



Special Education Operations Manual and Resource Handbook



January 2009

INTRODUCTION

The release of this first edition of the Coronado Unified School District (District) *Special Education Operations Manual and Resource Handbook* marks a significant departure from the manner in which information on special education and related services is conveyed to staff and parents.

The intent of this manual focuses exclusively on procedures, compliance and sections of critical information in tabbed sections at your fingertips. The goal and function of the manual is to serve as a comprehensive resource to assist personnel in the implementation of special education procedures focused on the identification, referral, assessment and services in the provision of a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE). This is not only our duty, but the heart and soul of the work we all do on a daily basis for students with disabilities residing within the boundaries of the District. A section of this manual will serve as a side-by-side guide to the District's on-line IEP forms, with the elements of educational benefit listed on a page by page basis.

Although this manual is designed to address the needs of the District, the District cannot accept full credit for this work product. The District wishes to express thanks and acknowledge the excellent work done by the staff of the San Joaquin County Office of Education Special Education Local Plan Area (SELPA), who provided the template for this manual. Without their assistance, this manual would not be possible. In addition, the District wishes to thank and acknowledge the efforts of Muffin Kent, California Department of Education Special Education Consultant, retired, for her assistance in editing the manual, as well as, Mary Humphrey, for her assistance in formatting the manual. Where contributors come from outside the District and the San Joaquin County Office of Education SELPA, acknowledgement and credit are given.

Richard J. Erhard
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Coronado Unified School District

January 2009

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SECTION I

Special Education Referrals, Eligibility Determination And Continuum of Program Options

CHILD FIND

Each District, Local Education Agency (LEA) or County Office shall actively and systematically seek out all individuals with exceptional needs, ages 0 through 21 years, including children not enrolled in public school programs, children who are homeless, or wards of the State, who reside in the District or are under the jurisdiction of a District or a county office regardless of their disabilities who are in need of special education and related services. For students from birth to 3 years of age, Districts only have child find responsibilities for children with low incidence disabilities (deafness, blindness, or orthopedic impairments).

Each District or County Office shall provide for the identification and assessment of an individual's exceptional needs and the planning of an instructional program to meet the assessed needs. Identification procedures shall include systematic methods of utilizing referrals of students from teachers, parents, agencies, appropriate professional persons, and from other members of the public. Identification procedures shall be coordinated with school site procedures for referral of students with needs that cannot be met with modification of the general instructional program.

A student shall be referred for special educational instruction and services only after the resources of the general education program have been considered and, where appropriate, utilized.

Potential sources for referral include the following:

- **Parents** have the right to request in writing that their child be assessed to determine eligibility for special education services.
- Through the **Student Study Team (SST)** process, a student may be referred for assessment to determine eligibility for special education services.
- **Private school personnel** may make a referral in writing to have a student assessed to determine eligibility for special education services.

The process for a parent referral is as follows:

The parent requests, in writing, that her/his child be assessed to determine eligibility for special education services. Within 15 days of the referral, the parent shall be given, in writing, a proposed assessment plan. A copy of the notice of parent rights shall be attached to the assessment plan. A written explanation of all the procedural safeguards shall be included. No assessment shall be conducted unless the written consent of the parent is obtained. The parent shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision. Assessment may begin immediately upon receipt of the consent. At this point the 60 day timeline for assessment begins.

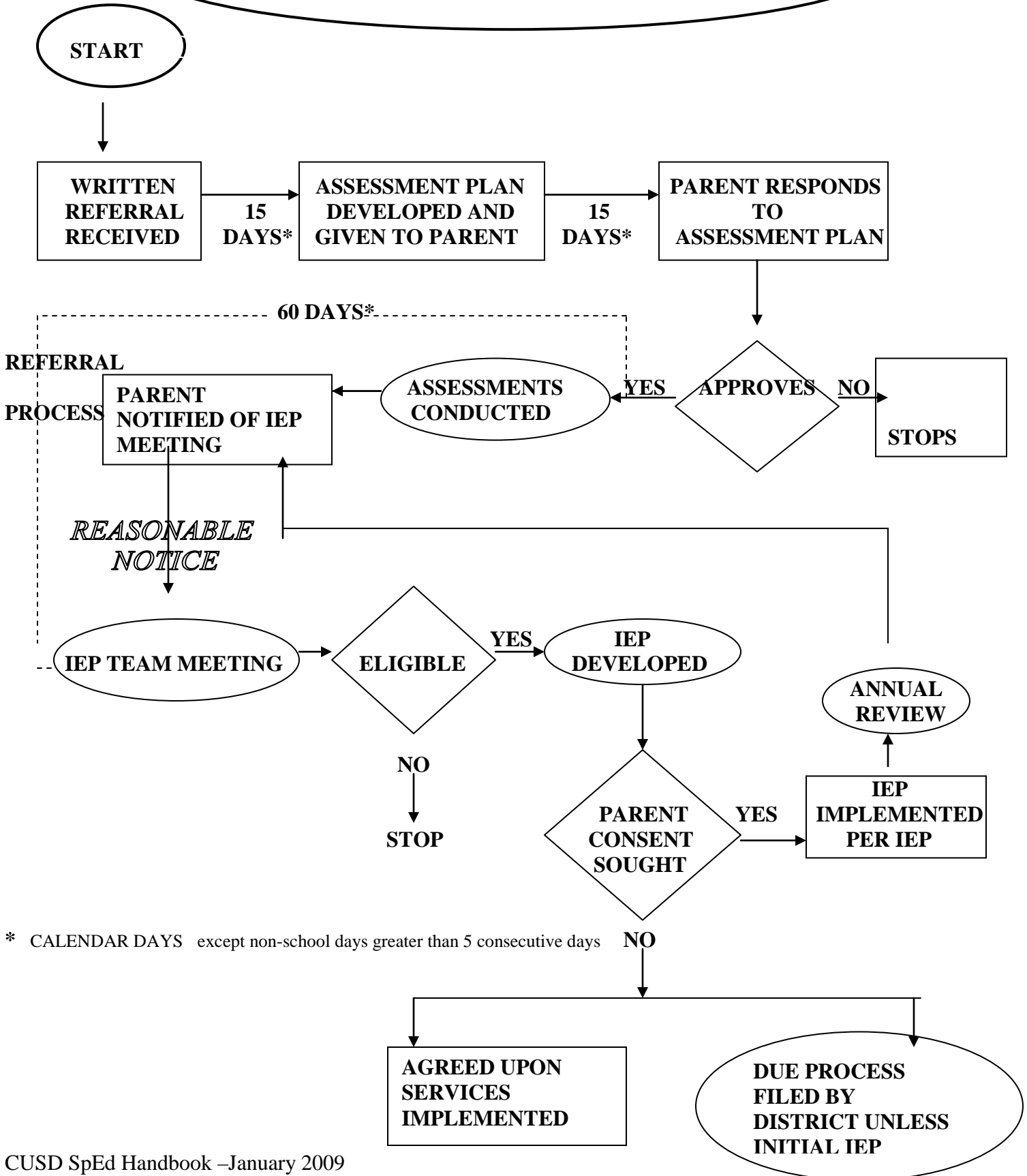
The process for the Student Study Team referral is as follows:

A Student Study Team may refer a student for assessment to determine eligibility for special education services. Prior to referral, the student study/success team will generally consider and/or review the interventions, adaptations, and modifications that have been (or may be) made in the general education environment in order to meet the educational needs of the student. The Student Study Team is established by the LEA and is a function of the general education program/process.

The process for a referral made by a private school is as follows:

The staff or the parent of a student attending a private or non-public school may make a referral, in writing, to the student's LEA for assessment to determine eligibility for special education services. All special education timelines for offering an assessment plan and holding an IEP must be followed by the District in which the student suspected of having a disability lives.

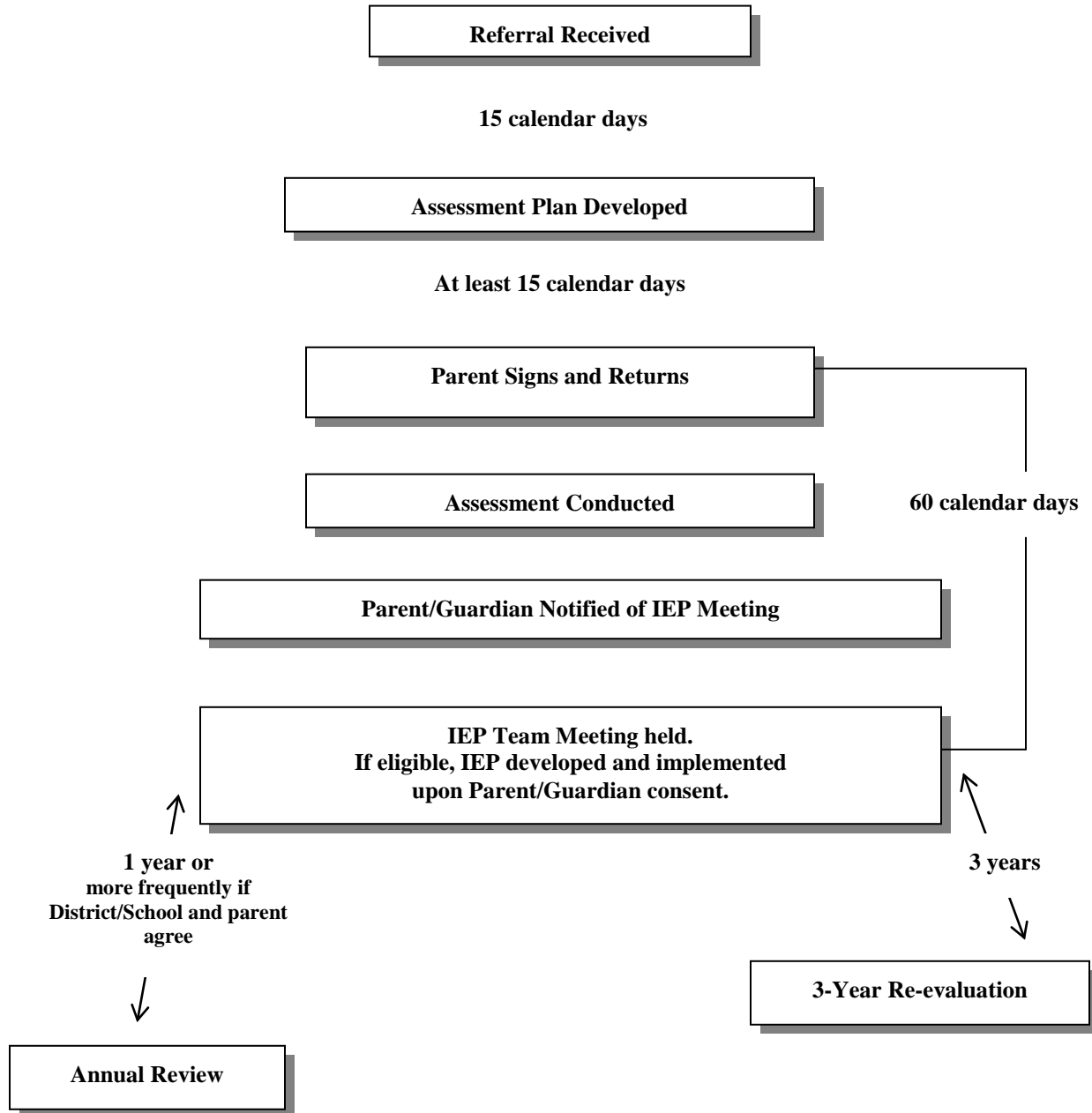
**CORONADO UNIFIED SCHOOL
DISTRICT
SPECIAL EDUCATION PROCESS FLOW CHART**



* CALENDAR DAYS except non-school days greater than 5 consecutive days

CORONADO UNIFIED SCHOOL DISTRICT

PROCESS FLOW CHART – ANOTHER VIEW



60 DAY ASSESSMENT TIMELINE

An Individualized Education Program (IEP) shall be developed within a total time not to exceed 60 calendar days from the date of receipt of the parents written consent of assessment, not counting days between school sessions, terms, or days of school vacation in excess of five school days.

In the case of school vacations in excess of five days, the 60 day timeline shall recommence on the date that student school days reconvene.

When a referral for special education is made within 30 days or less of the end of a school year, the assessment shall be completed and an IEP developed within the first 30 days of the subsequent school year.

The following 60 day timeline developed by the SJCOE psychological services staff is a tool to calculate the 60 day timeline based on the date of receipt of a signed assessment plan.

**

Developed by SJCOE Psychological Services

Aug 06

Revised Sep 07

SIXTY-DAY CALENDAR
JUNE

SIXTY-DAY CALENDAR
JULY

| Date | 60-Day Date | Date | 60-Day Date |
|-------------|--------------------|-------------|--------------------|
| June 1 | July 31 | July 1 | August 30 |
| June 2 | August 1 | July 2 | August 31 |
| June 3 | August 2 | July 3 | September 1 |
| June 4 | August 3 | July 4 | September 2 |
| June 5 | August 4 | July 5 | September 3 |
| June 6 | August 5 | July 6 | September 4 |
| June 7 | August 6 | July 7 | September 5 |
| June 8 | August 7 | July 8 | September 6 |
| June 9 | August 8 | July 9 | September 7 |
| June 10 | August 9 | July 10 | September 8 |
| June 11 | August 10 | July 11 | September 9 |
| June 12 | August 11 | July 12 | September 10 |
| June 13 | August 12 | July 13 | September 11 |
| June 14 | August 13 | July 14 | September 12 |
| June 15 | August 14 | July 15 | September 13 |
| June 16 | August 15 | July 16 | September 14 |
| June 17 | August 16 | July 17 | September 15 |
| June 18 | August 17 | July 18 | September 16 |
| June 19 | August 18 | July 19 | September 17 |
| June 20 | August 19 | July 20 | September 18 |
| June 21 | August 20 | July 21 | September 19 |
| June 22 | August 21 | July 22 | September 20 |
| June 23 | August 22 | July 23 | September 21 |
| June 24 | August 23 | July 24 | September 22 |
| June 25 | August 24 | July 25 | September 23 |
| June 26 | August 25 | July 26 | September 24 |
| June 27 | August 26 | July 27 | September 25 |
| June 28 | August 27 | July 28 | September 26 |
| June 29 | August 28 | July 29 | September 27 |
| June 30 | August 29 | July 30 | September 28 |
| | | July 31 | September 29 |

SIXTY-DAY CALENDAR
AUGUST

SIXTY-DAY CALENDAR
SEPTEMBER

| Date | 60-Day Date | Date | 60-Day Date |
|-------------|--------------------|--------------|--------------------|
| August 1 | September 30 | September 1 | October 31 |
| August 2 | October 1 | September 2 | November 1 |
| August 3 | October 2 | September 3 | November 2 |
| August 4 | October 3 | September 4 | November 3 |
| August 5 | October 4 | September 5 | November 4 |
| August 6 | October 5 | September 6 | November 5 |
| August 7 | October 6 | September 7 | November 6 |
| August 8 | October 7 | September 8 | November 7 |
| August 9 | October 8 | September 9 | November 8 |
| August 10 | October 9 | September 10 | November 9 |
| August 11 | October 10 | September 11 | November 10 |
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| August 26 | October 25 | September 26 | November 25 |
| August 27 | October 26 | September 27 | November 26 |
| August 28 | October 27 | September 28 | November 27 |
| August 29 | October 28 | September 29 | November 28 |
| August 30 | October 29 | September 30 | November 29 |
| August 31 | October 30 | | |

SIXTY-DAY CALENDAR
OCTOBER

SIXTY-DAY CALENDAR
NOVEMBER

| Date | 60-Day Date | Date | 60-Day Date |
|-------------|--------------------|-------------|--------------------|
| October 1 | November 30 | November 1 | December 31 |
| October 2 | December 1 | November 2 | January 1 |
| October 3 | December 2 | November 3 | January 2 |
| October 4 | December 3 | November 4 | January 3 |
| October 5 | December 4 | November 5 | January 4 |
| October 6 | December 5 | November 6 | January 5 |
| October 7 | December 6 | November 7 | January 6 |
| October 8 | December 7 | November 8 | January 7 |
| October 9 | December 8 | November 9 | January 8 |
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| October 25 | December 24 | November 25 | January 24 |
| October 26 | December 25 | November 26 | January 25 |
| October 27 | December 26 | November 27 | January 26 |
| October 28 | December 27 | November 28 | January 27 |
| October 29 | December 28 | November 29 | January 28 |
| October 30 | December 29 | November 30 | January 29 |
| October 31 | December 30 | | |

SIXTY-DAY CALENDAR
DECEMBER

SIXTY-DAY CALENDAR
JANUARY

| Date | 60-Day Date | Date | 60-Day Date |
|-------------|--------------------|-------------|--------------------|
| December 1 | January 30 | January 1 | March 2 |
| December 2 | January 31 | January 2 | March 3 |
| December 3 | February 1 | January 3 | March 4 |
| December 4 | February 2 | January 4 | March 5 |
| December 5 | February 3 | January 5 | March 6 |
| December 6 | February 4 | January 6 | March 7 |
| December 7 | February 5 | January 7 | March 8 |
| December 8 | February 6 | January 8 | March 9 |
| December 9 | February 7 | January 9 | March 10 |
| December 10 | February 8 | January 10 | March 11 |
| December 11 | February 9 | January 11 | March 12 |
| December 12 | February 10 | January 12 | March 13 |
| December 13 | February 11 | January 13 | March 14 |
| December 14 | February 12 | January 14 | March 15 |
| December 15 | February 13 | January 15 | March 16 |
| December 16 | February 14 | January 16 | March 17 |
| December 17 | February 15 | January 17 | March 18 |
| December 18 | February 16 | January 18 | March 19 |
| December 19 | February 17 | January 19 | March 20 |
| December 20 | February 18 | January 20 | March 21 |
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| December 22 | February 20 | January 22 | March 23 |
| December 23 | February 21 | January 23 | March 24 |
| December 24 | February 22 | January 24 | March 25 |
| December 25 | February 23 | January 25 | March 26 |
| December 26 | February 24 | January 26 | March 27 |
| December 27 | February 25 | January 27 | March 28 |
| December 28 | February 26 | January 28 | March 29 |
| December 29 | February 27 | January 29 | March 30 |
| December 30 | February 28 | January 30 | March 31 |
| December 31 | March 1 | January 31 | April 1 |

SIXTY-DAY CALENDAR

SIXTY-DAY CALENDAR

FEBRUARY

MARCH

| Date | 60-Day Date | Date | 60-Day Date |
|--------------|-------------|----------|-------------|
| February 1 | April 2 | March 1 | April 30 |
| February 2 | April 3 | March 2 | May 1 |
| February 3 | April 4 | March 3 | May 2 |
| February 4 | April 5 | March 4 | May 3 |
| February 5 | April 6 | March 5 | May 4 |
| February 6 | April 7 | March 6 | May 5 |
| February 7 | April 8 | March 7 | May 6 |
| February 8 | April 9 | March 8 | May 7 |
| February 9 | April 10 | March 9 | May 8 |
| February 10 | April 11 | March 10 | May 9 |
| February 11 | April 12 | March 11 | May 10 |
| February 12 | April 13 | March 12 | May 11 |
| February 13 | April 14 | March 13 | May 12 |
| February 14 | April 15 | March 14 | May 13 |
| February 15 | April 16 | March 15 | May 14 |
| February 16 | April 17 | March 16 | May 15 |
| February 17 | April 18 | March 17 | May 16 |
| February 18 | April 19 | March 18 | May 17 |
| February 19 | April 20 | March 19 | May 18 |
| February 20 | April 21 | March 20 | May 19 |
| February 21 | April 22 | March 21 | May 20 |
| February 22 | April 23 | March 22 | May 21 |
| February 23 | April 24 | March 23 | May 22 |
| February 24 | April 25 | March 24 | May 23 |
| February 25 | April 26 | March 25 | May 24 |
| February 26 | April 27 | March 26 | May 25 |
| February 27 | April 28 | March 27 | May 26 |
| February 28* | April 29 | March 28 | May 27 |
| | | March 29 | May 28 |
| | | March 30 | May 29 |
| | | March 31 | May 30 |

* Please Note: During leap year, add 1 day to 60 Day Date column to any timeline that includes Feb 29

SIXTY-DAY CALENDAR
APRIL

SIXTY-DAY CALENDAR
MAY

| Date | 60-Day Date | Date | 60-Day Date |
|-------------|--------------------|-------------|--------------------|
| April 1 | May 31 | May 1 | June 30 |
| April 2 | June 1 | May 2 | July 1 |
| April 3 | June 2 | May 3 | July 2 |
| April 4 | June 3 | May 4 | July 3 |
| April 5 | June 4 | May 5 | July 4 |
| April 6 | June 5 | May 6 | July 5 |
| April 7 | June 6 | May 7 | July 6 |
| April 8 | June 7 | May 8 | July 7 |
| April 9 | June 8 | May 9 | July 8 |
| April 10 | June 9 | May 10 | July 9 |
| April 11 | June 10 | May 11 | July 10 |
| April 12 | June 11 | May 12 | July 11 |
| April 13 | June 12 | May 13 | July 12 |
| April 14 | June 13 | May 14 | July 13 |
| April 15 | June 14 | May 15 | July 14 |
| April 16 | June 15 | May 16 | July 15 |
| April 17 | June 16 | May 17 | July 16 |
| April 18 | June 17 | May 18 | July 17 |
| April 19 | June 18 | May 19 | July 18 |
| April 20 | June 19 | May 20 | July 19 |
| April 21 | June 20 | May 21 | July 20 |
| April 22 | June 21 | May 22 | July 21 |
| April 23 | June 22 | May 23 | July 22 |
| April 24 | June 23 | May 24 | July 23 |
| April 25 | June 24 | May 25 | July 24 |
| April 26 | June 25 | May 26 | July 25 |
| April 27 | June 26 | May 27 | July 26 |
| April 28 | June 27 | May 28 | July 27 |
| April 29 | June 28 | May 29 | July 28 |
| April 30 | June 29 | May 30 | July 29 |
| | | May 31 | July 30 |
| | | May 1 | June 30 |

REFERRAL

The identification of students with exceptional needs shall be coordinated with school site procedures for identifying those students whose needs have been found to be beyond the resources of general education interventions. The Assessment Plan shall address **all areas of suspected need**. Within 15 calendar days of receiving a written referral for a special education assessment, an assessment plan shall be developed and presented to the parent. The parent/guardian has at least 15 days to provide consent for the proposed assessment. No assessment shall be conducted without parental consent. If consent for assessment is refused, in the case of an initial referral, the District need not pursue consent through due process. If the student is already identified as having a disability, the District must pursue consent through mediation or due process.

A case manager should be appointed by the District or school site at this time. The case manager is generally responsible for the following:

- Being the primary contact with the parent and other agencies.
- Reviewing the proposed assessment plan with the parent and explaining parent rights and special education timelines and procedures.
- Ensuring that all required notices are provided to parents and that required parent signatures are obtained.
- Coordinating observations and assessments.
- Ensuring all IEP timelines are met.
- Scheduling the IEP team meeting and inviting all team members.
- Ensuring that all IEP data is entered into SpEd Forms and that all required forms are prepared for the IEP team meeting.
- Maintaining the IEP file according to District guidelines.

PARENTAL CONSENT

The District shall not be required to obtain informed consent from the parent of a child for an initial assessment to determine eligibility for special education and related services under the following circumstances:

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

The 2006 IDEA regulations state that any of the following individuals may be a “parent” for purposes of rights and responsibilities under the law:

- A biological or adoptive parent.
- A foster parent.
- A guardian generally authorized to act as the parent, or authorized to make educational decisions for the child (but not the state, if the child is a ward of the state).
- An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives.

- An individual who is legally responsible for the child's welfare.
- An appropriately appointed surrogate parent.

Consent for initial assessment may not be construed as consent for initial placement or initial provision of special education and related services.

Parental consent is not required before reviewing existing data as part of an assessment or reassessment or before administering a test or other assessment that is administered to all children.

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an assessment for eligibility for special education and related services. A screening includes basic tests administered to or procedures used for all children in a school, grade or class. Massed screenings used in connection with child find activities are not considered evaluations and thus do not require prior parental notice and consent requirements that apply to initial evaluations.

If a parent refused to respond or consent to a District's request to conduct an initial assessment for special education eligibility, the District may request due process to override the lack of consent.

If a parent refused to consent to the initiation of initial special education services, the District shall not request due process to override the lack of consent.

If a parent refuses all services after having consented to them in the past, the LEA shall file a request for due process. If the parent consents to special education and related services, but not all components of the IEP, those components to which the parent consents shall be provided. If the components of the IEP to which the parent has not consented are necessary to provide a FAPE, the District shall initiate due process and the decision shall be binding.

ASSESSMENT

Once consent for assessment has been given by the parent, the case manager shall distribute a copy of the Assessment Plan to all staff conducting the assessment. All assessments must be completed and an IEP meeting scheduled within 60 calendar days, which may exclude those days in which the student's educational program has not been in session for more than five consecutive days (e.g., winter break, spring break, off-track time, and summer vacation). If parental consent is not given in the case of an initial referral, the referral form and other related documentation should be placed in the student's permanent file.

All assessments shall be administered by trained and properly credentialed, qualified staff. Qualified means a person who has met federal and state certification, licensing, registration, or other comparable requirements that apply to the area in which he/she provides special education or related services. The assessment shall be:

- Administered in the student's primary language or other mode of communication unless it is clearly not feasible to do so;
- Selected and administered so as not to be racially, culturally or gender biased;
- Validated for the specific purpose for which it is intended;

- Tailored to assess specific areas and provide information to determine the student's educational needs.

No single procedure shall be used as the sole criterion for determining eligibility for special education. The student shall be assessed in all areas related to the suspected disability. No service will be included on the IEP unless an appropriate assessment has been conducted by personnel credentialed in the designated area of need, i.e. LSH, APE, Vocational, etc.; and the student meets local and state eligibility criteria requirements.

Parents as well as school personnel may request additional assessment information in other areas related to the suspected disability. Their request shall include the reason for additional assessment. Parents and other sources should be contacted to determine if there have been any previous assessments that should be reviewed. Copies of any needed reports should also be requested.

It is recommended that IEP team members share their results with other team members prior to the IEP meeting. Staffing prior to the IEP meeting allows team members:

- Time to share thoughts and compare program responsibilities.
- Review eligibility criteria.
- Conserve time in the actual IEP meeting.
- Facilitate more appropriate placement.
- Formulate tentative goals and benchmarks. (Note: This information-sharing session is not intended to replace the IEP Team meeting. Draft goals and benchmarks are to be developed for discussion purposes only.)
- Any assessment conducted must be shared with the parent(s) in an IEP meeting. However, it is good practice also to share with parent(s) the assessment results and thoughts relative to possible student needs prior to the scheduled IEP meeting.
- Copies of all assessment reports must be provided to parents at the IEP meeting or prior to the meeting, if requested by the parents.

WRITTEN ASSESSMENT REPORT

Those persons assessing a student shall maintain a complete and specific record of diagnostic procedures and assessments employed, the instruments utilized, the conclusions reached and the proposed education or treatment alternatives indicated by the assessment results. Assessment team members shall prepare written reports that address areas included in the assessment plan.

The results of each assessment shall include the identification of the primary disability and the disabling condition, if any, including the appropriate eligibility criteria. The report shall include, but not be limited to, the following:

1. Results of any relevant, previous assessments.
2. Relevant behavior noted during testing sessions and any observation in the classroom.
3. The relationship of that behavior to the student's academic and social functioning.
4. The educationally relevant health, development and medical findings, if any.

5. Specific test scores for all assessments administered. An error analysis and integration of assessment data depicting strengths and weaknesses as related to ability/performance levels within the areas of academic achievement, language development, cognitive development, self-help, visual/auditory functioning, and sensory motor skills.
6. Determination of the effects of environmental, cultural and economic disadvantages upon overall performance level. This shall include, as appropriate, a review of the student's school And/or developmental history, as well as his/her English language proficiency.
7. For students with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services.
8. A summary of the findings and characteristics which identify the student as an individual with special needs and which document the need for special education and/or related services.
9. Relevant information from the parent.
10. Information related to enabling access to and progress in the general curriculum.

In the evaluation of assessment findings, it is important to bear in mind what the education code requires for program eligibility if the determinant factor is a lack of instruction in reading or math, limited English proficiency, or other environmental, cultural, or socio-economic disadvantage factors.

Copies of all documents used in making determination with regard to eligibility or needs should be maintained for future reference.

ALTERNATIVE ASSESSMENT

Alternative assessment methodologies are mandated in the assessment of African-American students and are useful in the assessment of other students in which traditional assessment techniques may not provide reliable data. Per the Larry P. vs. Riles court decision of 1979 and the Larry P. Task Force Report of 1989, no tests shall be administered to African-American students for the explicit purpose of deriving an I.Q. score for special education placement.

PRIMARY LANGUAGE ASSESSMENT

Materials and procedures used to assess a child with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measuring the student's English language skills.

Evaluations are to be administered in a language and form most likely to yield accurate information on what the student knows and can do academically, developmentally and functionally unless not feasible. Bilingual interpreters may be used to assist school personnel in administering assessments.

ASSESSMENT PROCEDURES WHICH MAY LEAD TO SPECIAL EDUCATION ELIGIBILITY DETERMINATION

Disclaimer: The following questions and answers are designed to assist special education personnel in navigating through the laws and regulations set forth by the federal and state government as it pertains to assessment and eligibility. This is not meant to be construed as the sole reference or measure for identification of student's into special education programs.

1. Why should I be concerned about test normative samples?

Testing and assessment materials and procedures used for the purposes of assessment and placement of individuals with exceptional needs are selected and administered so as not to be racially, culturally, or sexually discriminatory.

2. How shall I select testing and assessment materials for students with limited language ability?

Testing and assessment materials should be provided and administered in the student's primary language or other mode of communication, unless the assessment plan indicates reasons when this provision and administration are not clearly feasible.

3. Are they validated for a specific purpose?

Tests and assessment materials must be validated for the specific purpose for which they are used.

4. Who administers the assessments?

Trained personnel, in conformance with the instructions provided by the producer of tests and other assessment materials, except that a credentialed school psychologist should administer tests of intellectual or emotional functioning.

5. Are specific areas of need being assessed?

Tests and other assessment materials include those tailored to assess specific areas of educational need.

6. Are the test results accurate?

Tests are selected and administered to best ensure that when a test administered to a pupil with impaired sensory, manual, or speaking skills produces test results that accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure.

7. Are their multiple procedures being used?

No single procedure is used as the sole criterion for determining an appropriate educational program for an individual with exceptional needs.

8. Is the student being assessed in all areas?

The pupil is assessed in all areas related to the suspected disability including, where appropriate, health and development, vision, including low vision, hearing, motor abilities, language function, general ability, academic performance, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. A developmental history is obtained, when appropriate.

9. Are the persons conducting the assessment knowledgeable of the disability?

Persons knowledgeable of that disability shall conduct the assessment of a pupil, including the assessment of a pupil with a suspected low incidence disability.

ELIGIBILITY CRITERIA

To qualify for special education and related services under the IDEA, a student must be between the ages of 3 and 21 and must satisfy both parts of a two-part test. First, the student must meet the definition of one or more of the categories of disabilities specified under the IDEA. Second, the student must be in need of special education and related services as result of his disability or disabilities. When it enacted IDEA 2004, Congress created a special rule for eligibility determination not found in the previous version of the statute or in its implementing regulations. The new regulations stated that a child shall not be determined to be a child with a disability if the “determinant factor” is a “lack of appropriate instruction in reading, including in the essential components of reading instruction as defined in the No Child Left Behind Act”. NCLB defines the term “essential components of reading instruction” to mean:

- Explicit and systematic instruction in phonemic awareness
- Phonics
- Vocabulary development
- Reading fluency, including oral reading skills
- Reading comprehension strategies

Additionally, IDEA 2004 retained the previous law’s exclusion from eligibility for determinant factors of limited English proficiency and lack of instruction in math. The specific disabling conditions identified in the IDEA are 1) autism; 2) deaf-blindness; 3) deafness; 4) emotional disturbance; 5) hearing impairments; 6) mental retardation; 7) multiple disabilities; 8) orthopedic impairments; 9) other health impairment; 10) specific learning disability; 11) speech or language impairments; 12) traumatic brain injury; and 13) visual impairment including blindness.

The decision as to whether or not a student requires special education and related services shall be made by the IEP team which shall include those persons conducting the assessments. The IEP team shall take into account all the relevant material which is available on the student. No single score shall be used as the sole criterion for the decision of the IEP team as to the student’s eligibility for special education.

AUTISM

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

- (1) An inability to use oral language for appropriate communication.
- (2) A history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood.
- (3) An obsession to maintain sameness.
- (4) Extreme preoccupation with objects or inappropriate use of objects or both.
- (5) Extreme resistance to controls
- (6) Displays peculiar motoric mannerisms and motility patterns.
- (7) Self-stimulating, ritualistic behavior.

Definition:

A student may be determined eligible to receive special education services under the primary handicapping condition of **autism** when the student exhibits, over a long period of time (onset prior to age 3) and to a marked degree, a combination of at least one descriptor from each of the following categories:

1. Qualitative impairment in reciprocal social interaction as manifested by:

- marked lack of awareness of the existence or feelings of others
- no/abnormal seeking of comfort at times of distress
- no/impaired imitation
- no/abnormal social play
- gross impairment in ability to make peer friendships

2. Qualitative impairment in verbal and nonverbal communication and imaginative activity as manifested by:

- no mode of communication
- markedly abnormal nonverbal communication
- absence of imaginative activity
- marked abnormalities in production of speech
- marked abnormalities in form or content of speech, including stereotyped and repetitive use of speech marked impairment in the ability to initiate or sustain a conversation with others, despite adequate speech

3. Markedly restricted repertoire of activities and interests as manifested by:

- stereotyped body movements (self-stimulating, ritualistic)
- persistent preoccupation with parts of objects or attachment to unusual objects
- marked distress over changes in trivial aspects of the environment
- unreasonable insistence on following routines in precise detail
- markedly restricted range of interest and a preoccupation with one narrow interest

LANGUAGE OR SPEECH DISORDER

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

1. Articulation Disorder

The student displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention. Significant interference in communication occurs when the student's production of single or multiple speech sounds on a developmental scale of articulation competency is below that expected for his or her chronological age or developmental level and which adversely affects educational performance.

The student does not meet criteria for an articulation disorder if the sole assessed disability is an abnormal swallowing pattern.

The student does not meet criteria for an articulation disorder when the student exhibits:

- atypical speech resulting from a lack of familiarity with the English language.
- dialectical patterns resulting from the use of non-standard English.

2. Abnormal Voice

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

Due to frequent medical pathologies associated with deviant vocal production, vocal assessments shall, when appropriate, include a medical laryngeal examination with a statement that vocal therapy is not contra-indicated.

3. Fluency Disorders

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

4. Language Disorder

A student has an expressive or receptive language disorder when he or she meets one of the following criteria:

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

DEAF/BLINDNESS

A student has concomitant hearing and visual impairments, the combination of which causes severe communication, developmental, and education problems.

A state licensed ophthalmologist and a state licensed audiologist must verify the presence of both deficits, and the combination of the visual and hearing impairments cause severe communication, developmental, and educational problems that cannot be accommodated in general education, but require special education programs solely for deaf or blind children.

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

- Current audiological measures of auditory functioning documents a severe hearing loss, with and without amplification, as determined by a qualified audiologist.
- Assessment of receptive and expressive communication skills and current education performance reveals significant dysfunction directly related to the physical impairment.
- A written report of an eye examination by either a physician or an ophthalmologist that states that the student's acuity is 20/200 or less in the better eye after the best correction (legally blind).

DEAFNESS

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

For education purposes, a student is considered to be deaf when all of the following apply:

1. The student has a written diagnosis/report of hearing impairment from a licensed or credentialed audiologist with a specialization in clinical or rehabilitation services in audiology. This diagnosis/report should specify the range, nature and degree of hearing impairment. This report must be current and provide measures of audiological functioning both with and without amplifications. Such hearing impairment may be permanent or fluctuating, be present at birth or develop later in life, but results in a functionally severe loss. That is, it severely impairs the child's processing of linguistic information through auditory channels and adversely affects educational performance.
2. An assessment of the student's current level of receptive and expressive language skills has been made, which indicates severe problems in speech reception and discrimination due to the hearing loss, even with appropriate amplification.
3. The IEP Team has studied the assessments specified above plus any other relevant assessments and information and determined that the diagnosed hearing impairment results in the student functioning a severely hearing impaired individual, i.e., all of the following apply:
 - The student is severely impaired in processing linguistic information through auditory channels even with amplification, resulting in severe impairment of receptive and expressive oral language.
 - This severe impairment adversely affects educational performance.
 - Based on an educational assessment, the IEP team determines that such impairment adversely affects the student's educational performance.

- The student’s educational needs are such that the student requires special education and/or related services that cannot be provided with modification of the General school program.

EMOTIONAL DISTURBANCE

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

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

OTHER HEALTH IMPAIRED

A student has limited strength, vitality, or alertness due to chronic or acute health problems, including but not limited to a heart condition, cancer, leukemia, rheumatic fever, chronic kidney disease, cystic fibrosis, severe asthma, epilepsy, lead poisoning, diabetes, Tourette’s Syndrome, tuberculosis and other communicable infections diseases, and hematological disorders such as sickle cell anemia and hemophilia, which adversely affect a student’s educational performance. In accordance with Section 56026 (e) of the Education Code, such physical disabilities shall not be temporary in nature, as defined in Section 3001 (x).

For educational purposes, a student is considered health impaired when both of the following apply:

1. The student has a written diagnosis from a licensed physician and/or surgeon that he/she has a severe medical condition resulting in limited strength, vitality or alertness due to chronic or acute health problems, excluding those of an emotional origin, and
2. The IEP team determines that such impairment adversely affects the student’s educational performance.

SPECIFIC LEARNING DISABILITY

The IDEA 2004 changed the criteria from obligatory to optional for whether or not a District requires the use of a “severe discrepancy” model for determining if a student has a specific learning disability. The IDEA 2006 regulations maintain the current definition of SLD as meaning “a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an impaired ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia.”

Should a District determine that the discrepancy model will continue to be utilized to determine if a student has a specific learning disability, no single score or product of scores, test or procedure shall be used as the sole criterion for the decision of the individualized education program team as to the student’s eligibility for special education. When standardized tests are considered to be valid for a specific student, a severe discrepancy is demonstrated by:

1. Converting into common standard scores, such as using a mean of 100 and a standard deviation of 15, the achievement test score and the ability test score to be compared;
2. Computing the difference between these common standard scores;
3. Comparing this computed difference to the standard criterion that is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests.
4. A computed difference which equals or exceeds this standard criterion, adjusted by one standard error of measurement, the adjustment not to exceed 4 common standard score points, indicates a severe discrepancy when such discrepancy is corroborated by other assessment data which may include other tests, scales, instruments, observations and work samples, as appropriate.

The discrepancy shall not be primarily the result of limited school experience or poor school attendance.

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

When standardized tests do not reveal a severe discrepancy as defined above, the IEP team may find that a severe discrepancy does exist, provided that the team documents, in a written report, that the severe discrepancy between ability and achievement exists as a result of a disorder in one or more of the basic psychological processes. The report shall include a statement of the area, the degree, and the basis and method used in determining the discrepancy. The report shall contain information considered by the team which shall include, but not be limited to:

1. Data obtained from standardized assessment instruments;
2. Information provided by the parent;
3. Information provided by the student's present teacher;
4. Evidence of the student's performance in the general and/or special education classroom obtained from observations, work samples, and group test scores;
5. Consideration of the student's age, particularly for young children;
6. Any additional relevant information;

A student whose educational performance is adversely affected by a suspected or diagnosed **attention deficit disorder or attention deficit hyperactivity disorder** and who demonstrates a need for special education and related services by meeting the eligibility criteria of "other health impairments," "serious emotional disturbance," or "specific learning disabilities," is entitled to special education and related services.

A student shall be assessed as having a specific learning disability which makes him/her eligible for special education and related services when it is determined that all of the following exist:

1. First the IEP team must conclude that the student does not achieve adequately for his age, or meet state-approved grade-level standards, in one or more of the following areas, when provided with appropriate learning experiences and instruction:

- Oral expression
- Listening comprehension
- Written expression
- Basic reading skills
- Reading fluency skills
- Reading comprehension
- Mathematics calculation
- Mathematics problem solving

2. The discrepancy is due to a disorder in one or more of the basic psychological processes and is not the result of environment, cultural or economic disadvantages.

3. The discrepancy cannot be corrected through other general or categorical services offered within the general instructional program.

Districts may allow the use of other alternative research-based procedures for determining when a student has an SLD. “Response to Intervention” or RTI models vary widely, but they typically call for a system of increasing intense levels of service delivery. As the student fails to show progress at one level, he/she is moved to the next level of intensity. Ultimately, a lack of progress can lead to eligibility as having an SLD.

When an RTI model is utilized, documentation for determining eligibility of a student suspected of having an SLD must contain a statement concerning each of the following:

- Whether the student has an SLD.
- The basis for making the eligibility determination, including an assurance that the determination was made in accordance with IDEA regulations.
- The relevant behavior, if any, noted during the observation and the relationship of that behavior to the student’s academic functioning.
- Any educationally relevant medical findings.
- Whether the student does not achieve adequately for his/her age or does not meet state-approved grade level standards.
- Whether the student does not make sufficient progress to meet age or state-approved grade-level standards, or whether the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards or intellectual development.
- The determination of the team concerning the effects on the student’s achievement level of a visual, hearing or motor disability, mental retardation, emotional disturbance, cultural factors, environmental or economic disadvantage, or limited English proficiency.

- If the student has participated in a process that assesses his response to scientific, research-based interventions: (i) the instructional strategies used and the student-centered data collected; (ii) documentation that the parents were notified about: the policies regarding the amount and nature of performance data that would be collected and the general education services that would be provided; strategies for increasing the student's rate of learning; and the parents' right to request an evaluation.

A student shall **not** be eligible for special education on the basis of:

- Environmental or cultural factors
- Economic disadvantage
- A history of slow progress but is functioning within the instructional range of his/her class level
- Unfamiliarity with the English language
- Delays in maturation
- Truancy, excessive unexcused absences, a history of poor motivation or cooperation
- Social maladjustment (refer to SED eligibility criteria for further clarification)

TRAUMATIC BRAIN INJURY

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

For educational purposes, enrollment into a special education program will be considered when the IEP Team determines that such impairment adversely affects the student's educational performance.

The student must have a written diagnosis from a licensed physician or surgeon that he/she has a severe medical condition due to traumatic brain injury that inhibits participation in the general education program without the support of special education services.

MENTAL RETARDATION

A student has significantly below average general intellectual functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period or incurred as the result of disease or trauma, which adversely affects educational performance.

1. General intellectual Functioning is defined as the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing various aspects of intellectual functioning.

2. Adaptive Behavior is defined as the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for their age and culture group.

The student demonstrates moderate to profound delays in mental development, difficulty in concept formation and sensory motor integration, and delayed social and adaptive behaviors.

The student demonstrates severe disorders of communication and behavior in which the disability manifests early in the developmental period and is characterized by pervasive impairment of cognitive/perceptual functioning, limited ability to understand or communicate, and difficulty in concept formation. (Higher abilities in specific areas may accompany overall depressed intellectual development.)

SEVERE ORTHOPEDIC IMPAIRMENT

A student has a severe orthopedic impairment, which adversely affects the student's educational performance. Such orthopedic impairments include impairments caused by congenital anomaly, impairments caused by disease, and impairments from other causes.

The student has a written diagnosis from a licensed physician or surgeon that he or she has a severe orthopedic impairment which results in a serious impairment of locomotive and/or other motor functions, and

Based on educational assessment, the IEP Team determines that such impairment adversely affects the student's educational performance.

VISUAL IMPAIRMENTS

A student has a visual impairment that, even with correction, adversely affects a student's educational performance.

Designated instruction and services as specified in the individualized education program shall be available when the instruction and services are necessary for the student to benefit educationally from his or her instructional program. The general class teacher, the special day class teacher, or the resource specialist shall provide the instruction and services if the teacher or specialist is competent to provide such instruction and services and if the provision of such instruction and services by the teacher or specialist is feasible.

If not, the appropriate designated instruction and service specialist shall provide such instruction and services. A student is Visually Impaired for education purposes, when a visual impairment, even with correction, adversely affects the student's educational performance. Generally, individuals who are considered partially sighted or legally blind require special education interventions.

Partially Sighted:

Visual acuity ranging from 20/70 to 20/200 in the better eye, with correction.

Legally Blind:

Central visual acuity of 20/200 or less in the better eye after best correction with conventional spectacle lenses, or visual acuity better than 20/200 if there is a field defect in which the widest diameter of the visual field is no greater than 20 degrees.

VISION SERVICES

Relevant information to assist in identifying a student's needs include:

1. A written report of an eye examination by a licensed ophthalmologist verifies the visual impairment, and
2. An assessment by a credentialed teacher of the visually handicapped determines that such services are necessary in order for the student to benefit from the educational program, and
3. The provision of service(s) is not within the expertise of the General Education, Special Day class teacher, or resource specialist.
4. An individual is ineligible for vision services if the individual demonstrates visual perceptual problems that do not relate to physiological or structural defects of the visual system.

Vision services may include one or more of the following:

1. Adaptations in curriculum, media, and the environment.
2. Instruction in special skills.
3. Consultative services to students, parents, teachers and other school personnel.

ORIENTATION AND MOBILITY SERVICES

Relevant information to assist in identifying a student's needs include:

1. A written report of an eye examination by a licensed ophthalmologist verifies the visual impairment, and
2. An assessment by a credentialed mobility instructor determines that such instruction is a necessary part of the student's education program, and
3. The provision of service(s) is not within the expertise of the General education teacher, special day class teacher, or resource specialist.
4. An individual is ineligible for orientation and mobility services if the individual demonstrates visual motor problems that do not relate to physiological or structural defects of the visual system.

PROGRAM CONTINUUM

PROGRAM OPTIONS: CONTINUUM OF SERVICES

Once a student is eligible for special education, a continuum of program options is available.

1. General Education

Placement in the general education program shall occur when the student's educational needs can be addressed through modifications of the general education program.

2. Resource Specialist Program (RSP)

Students have special learning needs that may require special education instruction and services. The Individualized Education Plan Team has identified these needs. The students are **assigned to general classroom teachers for the majority of a school day**. The resource specialist plans and directs the student's instruction and assists the general education teacher.

3. Designated Instruction and Services (DIS)

Designated Instruction and Services (DIS) shall be available when the instruction and services are necessary for the student to benefit educationally from his or her instructional program. Some students may need assistance in special areas that may include, but are not limited, to the following:

- Language/speech development & remediation
- Adapted physical education
- Physical therapy
- Parenting and occupational therapy counseling/training
- Health/Nursing services
- Social worker services
- Transportation
- Recreation
- Vision services
- Psychological services other than assessment and developing IEP's

- Counseling and guidance services, including rehabilitation counseling
- Health and Nursing services
- Interpreting services
- Instruction in the home or hospital
- Audiological services
- Orientation/mobility services
- Specially-designed vocational education and career development
- Specialized driver training instruction
- Recreation services
- Specialized services for low-incidence disabilities, such as readers & vision/hearing services
- Medical services for diagnostic and evaluation

4. Special Classes

Students may need special instruction for a **majority of the day in a self-contained special day class** on an **integrated** or **isolated** site to accommodate their special needs. Specially trained personnel staff these classes. Placement in a special class shall only occur when the student's goals and objectives cannot be met in a less restrictive environment.

5. Nonpublic, Nonsectarian School Services

Students may need educational services and programs that are not offered by the public schools. These students may attend state certified non-public and non-sectarian schools on a full or part-time basis. This placement recommendation is based on the IEP Team decision that an appropriate public program is not available.

6. State Special Schools

Students may need a special school such as one of those operated by the State for severely handicapped children. These schools may be considered as a placement option when the IEP Team has determined that no appropriate placement is available within the Coronado Unified School District (CUSD).

7. Instruction in settings other than classrooms where specially designed instruction occurs.

Students may need instruction in settings other than classrooms where specially designed instruction may occur. Community-based instruction, vocational training and/or work experience training would be examples.

8. Itinerant Instruction

Students may need itinerant instruction in classrooms, resource rooms and settings other than classrooms where specially designed instruction may occur. Examples would include itinerant deaf/hard of hearing services in general education and/or visually handicapped services in general education or orientation and mobility training in the community.

9. Instruction using telecommunication, instruction in the home, in hospitals, & in other institutions as required

Students may need such instruction due to illness or judicial placement (for example) juvenile halls or youth authority settings. With constant technological advances, long-distance learning through telecommunication becomes an increasing valuable support on the educational continuum.

PROMOTION, RETENTION AND GRADING

1. May students with disabilities be retained?

Yes, students with disabilities can be retained; however, careful consideration in the development and implementation of the student's individualized education program (IEP) should prevent student failure in most cases.

2. Do local governing board-adopted standards for promotion apply to students with disabilities?

Local governing board-adopted standards for promotion apply to students with disabilities; however, IEP teams should consider whether the student's disability adversely impacts the student's potential for learning or rate of learning. If so, the IEP team should consider whether accommodations or curricular modifications can minimize this impact.

3. May students with disabilities have individualized promotion standards?

If, even with accommodations or curricular modifications, the student will be unable to meet the board-adopted promotion standards due to the nature or severity of the disability, the IEP team should document individualized promotion standards for the student that are within the context of District standards. The documentation of an individualized promotion standard should be completed before the first day of the school year, if possible. The student, parents, general and special education teachers should be informed of potential consequences of individualized promotion standards (i.e. will the individualized promotion standard satisfy District requirements for graduation with a diploma or entrance requirements of a postsecondary institution?).

4. Are individualized promotion standards determined by the location where services are provided to students with disabilities?

No, for example, a student with significant disabilities who spends all or most of the instructional day in general education classrooms learning social or communication skills may have individualized promotion standards. Yet, a student with emotional or behavioral disabilities who spends most or part of the instructional day in a more restrictive environment may be held to the General promotion standards.

5. What if a student with a disability fails to meet board-adopted or individualized promotion standards?

If a student with a disability fails to meet board-adopted or individualized promotion standards, the IEP team should reconvene immediately to consider the following:

- Is the current IEP for the student's academic, linguistic, social, emotional, and behavioral needs appropriate?
- Is the manner of assessment appropriate, including accommodations and modifications identified in the IEP?

- Were all the services required by the student to make progress in the general education curriculum appropriately identified in the student's IEP?
- Were the linguistic needs of English learners appropriately identified?
- Did the student receive all the services identified in the IEP?
- Was the assessment conducted consistent with the IEP?
- Was the student's promotion standard appropriate and clarified in the IEP?

6. What if the IEP was written to consider the student's individualized needs, but the student still failed to meet the promotion standards?

If the questions in item #5 above were answered positively, but the student still failed to meet the promotion standards, then the student should participate in intensive supplemental instruction. The IEP team should document all the supports and related services the student will need to benefit from supplemental instruction.

If after intensive supplemental instruction, the student still does not meet the board-adopted or individualized promotion standards, an IEP meeting should be held to develop an appropriate plan for helping the student advance. The IEP team should also consider not promoting the student to the next grade level.

If the questions in item #5 were answered in the negative, the IEP team should determine why such supports were not provided, develop an alternate plan, provide intensive supplemental instruction, and consider not retaining the student because the District did not provide the supports and services necessary for the student to benefit from the educational program.

7. May students with disabilities participate in intensive supplemental instruction pursuant to *Education Code 37252.2 – 37252.8* and Extended School Year (ESY) under the Individuals with Disabilities Education Act (IDEA) simultaneously?

Yes, a student may participate in the two programs simultaneously, but only if the need for supplemental instruction is documented in the student's IEP. In order to receive both services, ESY and supplemental instruction, the IEP must reflect that the student needs to participate in an intensive supplemental instruction program as part of the ESY services necessary for the provision of a free appropriate public education (FAPE). In other words, the student is receiving supplemental instruction in order to meet the standards-based goals of the IEP, and special education and related services will be provided in order for the student to benefit from that instruction.

8. Where can more detailed information on pupil promotion, retention and related supplemental instruction be found?

Detailed information on pupil promotion and retention and related supplemental instruction can be found on the California Department of Education Web site at <http://www.cde.ca.gov/re/lr/pr/index.asp>.

GRADES, REPORT CARDS, AND TRANSCRIPTS FOR STUDENTS WITH DISABILITIES

1. Should a student's grade reflect that accommodations have been made for that student to access the general education curriculum?

No. A student's grade should not reflect that accommodations have been made. Accommodations provide students with disabilities an equal opportunity to participate in the general education curriculum.

An accommodation is a change in the course, standard, test preparation, location, timing, scheduling, expectation, student response, or other attributes that provides access for a student with a disability to participate in a course, standard or test, and it does not fundamentally alter or lower the standard or expectation of the course, standard or test.

The [Matrix of Test Variations](#) has examples of accommodations..

2. May a student's grade reflect that modifications have been made for that student to access the general education curriculum?

Yes. If modifications have been made to the curriculum of any course, it is important that the student's grade reflect the student's achievement in the modified curriculum, as long as modified grades are available to all students. However, any modifications to programming, instruction, and grading must be documented in the student's IEP and be directly related to the student's disability. To automatically give modified grades to all special education students would be discriminatory and potentially violate Section 504 of the Rehabilitation Act of 1973.

A modification is a change in the course, standard, test preparation, location, timing, scheduling, expectation, student response, or other attribute that provides access for a student with a disability to participate in a course, standard or test and it does fundamentally alter or lower the standard or expectation of the course, standard or test.

The [Matrix of Test Variations](#) has examples of accommodations.

3. May some type of symbol or code be used on a student's report card to indicate that the student has had a modified curriculum in the general education classroom?

Yes. A symbol or code may be used on a student's report card to indicate that the student has had a modified curriculum in the general education classroom. However, this type of coding should not be used solely for students with disabilities. A policy should be developed that applies to all students.

4. May pass/fail grades be used for students with disabilities in the general education classroom?

Yes. A student with disabilities may be given a pass/fail grade as long as participation in this grading system is voluntary and is available to all students. In addition, the grading system must meet the student's special needs and must be documented in the IEP.

5. May a student's transcript indicate that the student participated in a modified curriculum?

Yes. The purpose of the transcript is to present an accurate picture of a student's coursework. If the curriculum content has been modified, the transcript may reflect that modification through some type of symbol or code that indicates that the student received modified grades or completed work at a lower grade level. The explanation of the symbol or code cannot indicate that the student has a disability or that the student is in special education.

EXIT CRITERIA

The IEP Team shall determine the exit decision for each student based upon the following criteria:

1. The student shall be ineligible for special education services when the impairment no longer adversely affects educational performance or when the student no longer meets eligibility criteria.
2. The student's needs can be met in a less restrictive environment or in general education, not necessarily at grade level.
3. A plan to facilitate the student's transition to a less restrictive environment will be developed, including alternative placement if needed, and a plan to assist the receiving teacher.

SECTION II

Types of IEP Meetings, Sequence and Facilitation Supports And Roles

TYPES OF IEP MEETINGS

An IEP team meeting must be held when the following occurs:

- When a formal assessment has been conducted.
- At least annually to review progress, goals, related services and supplementary aids and services and make any revisions to the IEP.
- Every three years to determine continued eligibility.
- Within 30 days when a parent or education staff member requests a meeting to review and/or revise the IEP.
- When a student demonstrates a lack of anticipated progress.
- When placement in a more restrictive program is under consideration.
- Within 30 days after an administrative placement of a transfer student into any special education program.
- For any change of placement, including those involving discipline.
- When a Manifestation Determination must be made due to student discipline issues.

Initial IEP

The IEP is convened at the conclusion of the assessments conducted to determine initial eligibility. Anyone may refer for special education eligibility assessment but, of course, parents must be in agreement and give written permission through a signed assessment plan. Assessments must be conducted in all areas of suspected disability. Procedural safeguards & thorough explanations are critical as “informed consent” is the standard. Parents must understand that permission for this assessment may lead to the recommendation for special education eligibility.

The purpose of the initial IEP is to review all assessment data/reports, develop present levels and determine eligibility. If eligible, the team goes on to address all areas of need through goal development, determination of needed supports & services. Once service needs are identified, the team must consider the continuum of placement options & determine where services should be delivered. What is the student’s least restrictive environment? The place most closely aligned to the general education placement the student would otherwise attend. Annual reviews, reviews in general and triennials all flow from the initial IEP meeting.

Annual Review

Once a student has been found to be eligible for Special Education and related services, a review of the IEP placement, related services and supplemental aids and services shall be held annually. The annual review procedures should be conducted so that the IEP that is to be the basis of an upcoming school year’s programming is finalized prior to the start of the new school year. There must be an IEP in effect at the beginning of each school year.

Parents shall be provided with a copy of their Parents’ Rights at the annual IEP team review. The case manager shall be responsible for coordination of the annual review. IEP reviews must be conducted by at least the minimum required membership of the IEP Team that made the initial placement. Each IEP review shall be conducted in accordance with the notice and scheduling requirements for the initial assessment. If a parent requests an IEP review the IEP team meeting shall be held within 30 days of the request.

When reviewing a student's progress at the annual IEP review, the IEP team must consider the following when determining whether changes are needed in the student's program:

- Any lack of expected progress toward the student's annual IEP goals and in the general education curriculum, where appropriate.
- The results of any reevaluation.
- Information about the child provided to, or by, the parents.
- The child's anticipated needs.
- Any other relevant matters.

Triennial Review

A reevaluation of the student shall be conducted at least once every three years or more frequently, if conditions warrant a reevaluation, or if the student's parent or teacher requests a reevaluation and a new individualized education program is to be developed. If the reevaluation so indicates, a new individualized education program shall be developed.

As part of any reevaluation, the individualized education program team and other qualified professionals, as appropriate, shall do the following:

1. Review existing assessment data on the student, including assessments and information provided by the parents of the student, current classroom-based assessments and observations, and teacher and related services providers' observations.
2. On the basis of this review and input from the student's parents, identify what additional data, if any, is needed to determine:
 - Whether the student continues to have a disability
 - The present levels of performance and educational needs of the student.
 - Whether the student continues to need special education and related services.
 - Whether any additions or modifications to the special education, related services and supplemental aids and services are needed to enable the student to meet the measurable annual goals set out in the individualized education program of the student and to participate, as appropriate, in the general curriculum.

If the IEP team and other qualified professionals, as appropriate, determine that no additional data is needed to determine whether the student continues to be an individual with exceptional needs, the District shall provide prior written notice to the student's parents of that determination and the reasons for it, and the right of the parents to request an assessment to determine whether the student continues to be an individual with exceptional needs; however, the District shall not be required to conduct an assessment unless requested by the student's parents.

No reevaluation shall be conducted unless the written consent of the parent is obtained prior to reevaluation except when the District has taken reasonable measures to obtain consent and the parent has not responded.

The Regulations require that the District have a record of its attempts to request consent for reevaluation in meeting the reasonable measure requirement. At least three attempts must be made to contact the parent by note, telephone, home visit, and or by mail. All attempts must be documented.

Review

An IEP meeting shall be held as least annually and more frequently if requested by the parents or a member of the IEP team. The IEP review meeting must be held within 30 days of the request for the meeting. The purpose of a review IEP shall be to discuss additions and/or revisions to the IEP that are necessary to provide a FAPE for the student. For a review IEP team meeting only those IEP team members whose services are being discussed are required to attend, although all members of the IEP must receive a copy of the revised IEP document/addendum IEP.

30 Day Administrative Placement/Transfer Students *

If a student with a disability (who had an IEP that was in effect in a previous District within the state) transfers to a new District in the same state, and enrolls in a new school within the same school year, the new District (in consultation with the parents) must provide the student with FAPE, including services comparable to those described in the previously held IEP, until it adopts the previously held IEP or develops, adopts, and implements a new IEP. The review IEP must take place within 30 days of enrollment in the new District.

In the case of a student with a disability who transfers school Districts within the same academic year, who enrolls in a new school, and who had an IEP in effect from another state, the District must provide the student with FAPE, including services comparable to those described in the previous IEP, in consultation with the parents until such time as the LEA/District conducts an evaluation, if determined to be necessary, and develops a new IEP, if appropriate.

To facilitate either an in-state or out-of-state transfer, the new District where the student now resides shall take reasonable steps to promptly obtain the student's records, including the IEP, any supporting documents and other records concerning the provision of special education or related services. In addition, a pupil's individualized education program shall be implemented as soon as possible following the individualized education program team meeting.

*(Please refer to Appendix F for additional guidance and authority)

Manifestation Determination

A "manifestation determination" means the evaluation of the relationship between a student's disability and act of misconduct that must be undertaken when a District proposes to take specified serious disciplinary actions such as suspension or expulsion. Only if the District concludes, after performing a manifestation determination review that the misconduct was not related to the student's disability, can it impose the proposed disciplinary sanction (except for removals due to special circumstances, i.e., weapons, drugs or infliction of serious bodily injury which can be made without regard to whether the behavior is a manifestation of the disability). A manifestation determination must be made within 10 days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct.

The manifestation review is conducted by the District, the parents, and relevant members of the IEP team as determined by the District and the parent. This review does not have to be conducted by the

full IEP team. The individuals involved in making the manifestation determination are charged with reviewing all relevant information in the student's file, including the IEP, any teacher observations and any relevant information provided by the parent. The purpose of this review is to determine the following:

1. If the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or
2. If the conduct in question was the direct result of the District's failure to implement the IEP, the suspension/expulsion shall not go forward.

IEP TEAM MEMBERS

The 2006 regulations to IDEA 2004 identify the IEP team as a group of individuals composed of:

Parents One or both of the child's parents are considered necessary members of the team. While a school District cannot compel the attendance of parents in the same way it can demand attendance of its own personnel or contractors, it must ensure that parents are invited and encouraged to attend.

Regular education teacher(s) A child's IEP team must include not less than one regular education teacher, if the child is, or may be, participating in the regular classroom environment.

As to the number of regular education teachers needed to be included on the team, the ED, in its discussion accompanying publication of the 2006 final regulations, said the following:

“In the situation in which there is more than one regular education teacher, the IEP Team need not include more than one regular education teacher. The regular education teacher who serves as a member of a child's IEP Team should be a teacher who is, or may be, responsible for implementing a portion of the IEP so that the teacher can participate in discussions about how best to instruct the child. If the child has more than one regular education teacher responsible for carrying out a portion of the IEP, the LEA may designate which teacher or teachers will serve as the IEP member(s), taking into account the best interest of the child. An LEA also could agree that each teacher attend only the part of the meeting that involves modification to, or discussion of, the teacher's area of the curriculum.”

Special education teacher(s) The IDEA requires inclusion on the team of not less than one special education teacher, or where appropriate, not less than one special education provider. The choice of the particular individual(s) is up to the District, but it should select, to the extent possible, the person who is (or will be) responsible for implementing the child's IEP. Also note that a child's related services provider will not always qualify as his special education provider.

District representative A representative of the school District or other public agency who is qualified to provide or supervise the provision of special education and is knowledgeable about both the general curriculum and school District resources must participate. The representative must be authorized to make decisions on behalf of the school District, commit its resources and, according to ED's discussion issued with the 2006 final regulations, be able to ensure that whatever services are set out in the IEP actually will be provided. The requirement that the IEP team contain an agency official follows necessarily from the directive that an IEP be implemented as soon as possible after the IEP meeting. Failure to include an individual with the authority to commit the school District generally will be considered to be a substantive denial of FAPE.

Evaluation interpreter The IDEA mandates that the IEP team must include an individual who can interpret the instructional implications of evaluation results. The law does not preclude other team members (except the parents and the child) from serving in this capacity. Thus, the team's special education teacher may do double duty, as may the District representative, regular education teacher, or any other individual who has been invited to participate by either the District or the parent to share his or her knowledge or special expertise about the child.

Other individuals Other individuals in addition to those listed above who have knowledge or special expertise regarding the child, including related services personnel as appropriate, may be included as members of the IEP team "at the discretion of the parent or the agency."

Additionally, according to 34 CFR 300.321 (f), in the case of a child previously served under Part C, "an invitation to the initial IEP meeting shall, at the request of the parents, be sent to the Part C services coordinator or other representatives of the Part C system to assist with the smooth transition of services."

Student Wherever appropriate, the child must be a member of the Team. A student's attendance is appropriate when the IEP team convenes a meeting to discuss postsecondary goals and the transition services needed to assist the child in achieving those goals. If the student does not attend the transition services meeting, the District must take other steps to ensure his preferences and interests are considered.

TIPS FOR CHAIRING AN IEP MEETING

Start-up

Introductions and Roles (Document in notes)

“Hello, my name is _____. I am (student’s name) special education teacher. I would like each of you to introduce yourself as you would like to be addressed and have you state your role in this meeting.”

Purpose (document in notes)

“The purpose of today’s meeting is an annual, or yearly, IEP for (student’s name). We will review (Student’s name) present levels of performance, which include assessment results, strengths, and weaknesses, concerns of team members, progress toward goals, proposed goals, placement options, and services needed to access the educational program.”

Establish Time Parameters (If yes, document in notes)

“Before we go any further, are there any time limitations for any of you? **If so**, what time does the meeting need to conclude for today? Just a reminder – if the IEP has not been completed in this time frame, we will reconvene as soon as possible. **If not**, OK great, let’s continue with the meeting!”

The meeting minutes are very important and the person doing that should be carefully selected.

Parent’s Rights (Document in notes)

“Here is a copy of your Parent’s Rights. Please remember that it is very important that you are actively involved in the educational planning for your child. If you ever have questions or concerns about (student’s name) IEP, please contact me. If we need to we can schedule a review IEP to bring the team back together to discuss your concerns or address your questions.”

“Here is a brochure that describes the Community Advisory Committee (CAC). This group provides educational and support services to parents.”

“This brochure describes the Alternative Dispute Resolution (ADR) process, which the CUSD provides to address situations where the IEP team needs assistance in reaching agreements. Do you have any questions about any of this material?”

Agenda (Document in notes)

“We will proceed through the IEP in the following order: (Use the Agenda handout) we will discuss present levels of performance, followed by the review of and establishment of goals. We will then determine appropriate placement and services. We will finish the meeting by reviewing what we agreed upon and any actions that need to be followed up with.” **(To parent)** “What discussion items would you like to add to the agenda?”

Ground Rules (If necessary and document in notes)

Use the hand-out since visual reminders are helpful

“In order to work as an effective team, it is important that we all agree to practice the following ground rules:

- Communicate clearly and listen carefully
- Respect the views of others
- Share your views willingly
- Ask and welcome questions
- Be open to ideas and views presented
- Honor time limits and stay on task

“If issues come up that cannot be resolved through brief discussion, we will place them in the “parking lot” to be addressed again later in the meeting or at another meeting if necessary. This will ensure that we are able to get through each of the items on the agenda in a timely manner.”

“Decisions are made through CONSENSUS: A consensus decision involves building agreement by the whole group on a course of action. Although individual members may feel that other choices may be better for one reason or another, a consensus is built when all members come together on the final choice. Can you live with it and will you support it?”

“Before we begin, I would like to remind you that the IEP paperwork I brought to the table is a draft. We can make changes on any of the material.”

Present Levels of Performance

For students who are 16 or over, or will turn 16 prior to their next IEP, begin by reviewing the components of the Transition Plan.

Review components of ITP including input from the student.

“Are there any questions or comments about this area? Do we have agreement on the items discussed?”
(Document in notes)

What does the child know and is able to do now?

Review present levels of performance. Remember if you are going to write a goal then there should be baseline data in the present levels.

“Are there any questions or comments about this area? Do we have agreement on the items discussed?”
(Document in notes)

Assessment

Review results of academic and/or functional living skills. Remember if you are going to write a goal there should be baseline data in the present levels or in assessments.

“Are there any questions or comments about this area? Do we have agreement on the items discussed?”
(Document in Notes)

Review Progress toward Previous IEP Goal

“Are there any questions or comments about this area? Do we have agreement on the items discussed?”
(Document in notes)

Review Concerns

“Are there any questions or comments about this area? Do we have agreement on the items discussed?”
(Document in notes)

Establish Goals and Benchmarks

- Benchmarks are only required if the student is assessed by alternative means including English language learners.
- What do we want the student to know and do a year from now?
- Establish and Revise Goals

Review proposed goals and benchmarks (if appropriate) as related to California State Standards. “We need to write goals that are measurable so we all know when it is accomplished. Also the goals are based on assessment; they should be reasonably calculated that they are obtainable.” If parents request a goal that the team feels is not obtainable, then discuss and perhaps break it down into smaller parts so the parent understands we are all moving in the same direction.

Determine Appropriate Services

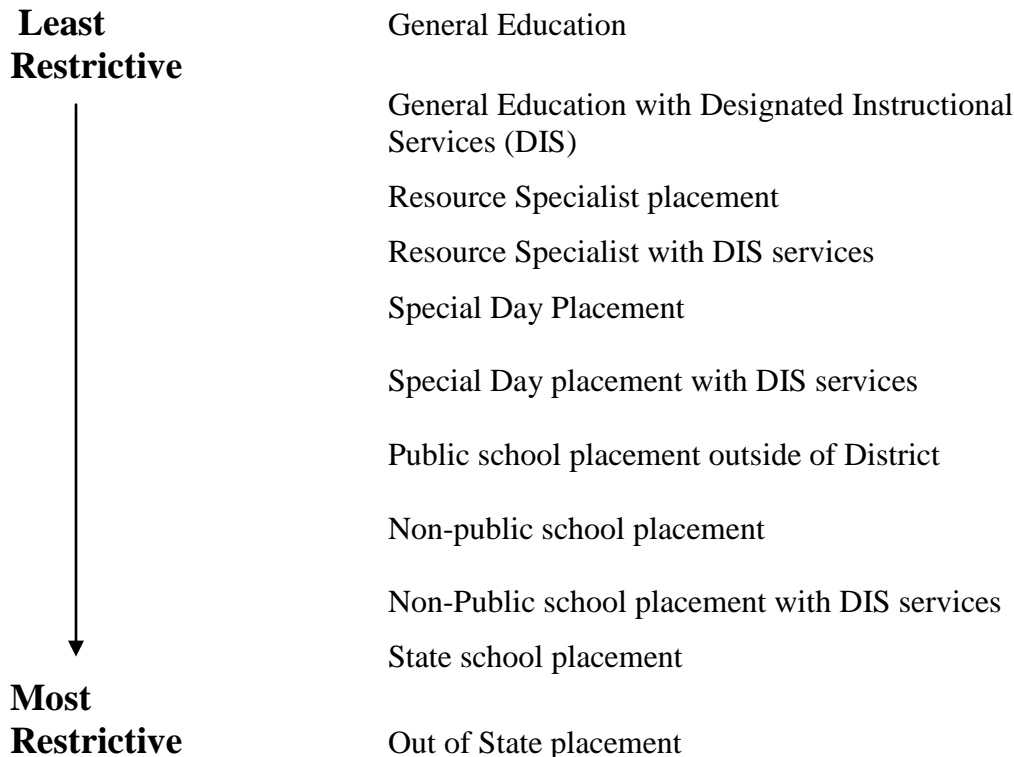
- Special Education and Related Services
 - anticipated frequency, location and duration
 - projected date for the beginning of services
 - location of services is defined as the type of environment where the services will be provided
- Supplementary aids and services and assistive technology
 - Supplementary Aids and Services is defined as aids, services and other supports that are provided in general education classes or other educationally related settings to enable students with disabilities to be educated with non-disabled students to the maximum extent appropriate.
- General education accommodations and modifications
- Participation in State assessments
- **Designated instruction and services (DIS)** are those services necessary for a student to benefit from his or her instructional program to include: LSH, OT, APE, Counseling, transportation, etc. The level of support service delivery models, etc. will vary depending on what base support the student already has in their program. Methodology is typically left up to the District.
- **Extended School Year (ESY):** The IEP team must consider how the continuing impact of the child’s disability, the pattern of regression, difficulty retaining skills after vacations and school breaks impact the provision of FAPE. Enrichment is not a reason for ESY. Family social economic issues are not a reason for ESY. The purpose of ESY is not to introduce new goals.

PLACEMENT OPTIONS THAT MAY BE CONSIDERED BY THE IEP TEAM

After services are determined, the IEP team determines “where” services are best provided for the individual student. The IEP team responsibility is to determine the Least Restrictive Environment (LRE) or the place on the continuum below, closest to general education, where the student can make appropriate progress and gain **Educational Benefit**.

Ultimately the team makes one offer of placement and services. **Least Restrictive Environment:** to assure to the maximum extent appropriate that the student is educated with non-disabled peers at his/her school of residence with accommodations and/or modifications that will help support the student in general education. **FAPE:** specially designed to meet the unique needs of a disabled student supported by such services as are necessary to permit the child to benefit from the special instruction at no cost to the parent. It is not maximizing the child’s potential and may not be the “best” education that money can buy, however a student is expected to show educational benefit over time in the recommended placement.

IDEA in general tells us that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The following chart indicates the progression of placement options from the *least restrictive* to the *most restrictive*.



TRANSITION PLANNING

The following components shall be included:

- Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills.
- The transition services, including courses of study needed to assist the pupil in reaching those goals.
- Is designed within an outcome-oriented process that promotes movement from school to post school activities, including postsecondary education, vocational training, and integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation.
- Is based upon the individual student's needs, taking into account the student's preference and interests.
- Includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

CONCLUDING

- Read notes for the team, make corrections and document that the notes were read and corrected.
- Review the total IEP.
- Develop action plan / schedule next IEP as appropriate.
- Confirm agreements and ensure understanding that there is CONSENT given for services and placement.
- Offer IEP for signature (team members and parents) Review the signature box. Everyone in attendance signs.
- Parents may take the IEP home if needed to review before signing and the District keeps a copy. Discuss when parent will be responding to the District offer.

Tape Recording of the IEP Meeting

The parent or District shall have a right to electronically record the proceeding of individualized education program meetings on an audio tape recorder. The parent or District special education office shall notify the members of the individualized education program team of their intent to record a meeting at least 24 hours prior to the meeting. If the District initiates the notice of intent to audio tape record a meeting and the parent objects or refuses to attend the meeting because it will be tape-recorded, then the meeting shall not be recorded on an audio tape recorder.

(Sample)

**GROUND RULES TO ENHANCE
TEAM COMMUNICATION**

Communicate Clearly and Listen Carefully

Respect the views of others

Share your views willingly

Ask and welcome questions

Be open to ideas and views presented

Honor time limits, stay on task

EC 56341.1(h) It is the intent of the Legislature that the individualized education program team meetings be non-adversarial and convened solely for the purpose of making educational decisions for the good of the individual with exceptional needs.

TOOLS AND STRATEGIES FOR IEP FACILITATION

SAMPLE AGENDA

1. Introduction of team members
2. Share the purpose/outcomes of the meeting
3. Review of Parent Rights/CAC and ADR information
4. Share assessment reports and discuss/determine present levels
 - A. General Education Teacher
 - B. Special Education Teacher
 - C. Psychologist
 - D. Other Specialists: Speech/Language Therapist, Adaptive P.E., Occupational Therapist, Physical Therapist, Counselor, Vision Specialist, etc.
5. Parent input
6. Review and determine eligibility criteria (initial & triennials only)
7. Develop ITP @ 16 or younger as appropriate
8. Develop BSP or PBIP as appropriate
9. Develop goals and objectives
10. Discuss the placement continuum (service/program options needed)
11. Determine appropriate placement, services and accommodations/modifications
12. Review summary of notes taken during the meeting
13. Clarify next scheduled review date (remind participants that they may call an IEP team meeting at any time)
14. Sign all required forms

Triennial/Annual Review

IEP Meeting for _____

Date: _____

Time: _____

Agenda (sample)

Outcomes:

(Based on parent and school input)

(Examples)

Review all assessment data

Determine continued eligibility for special education

Review _____'s needs in relation to behavior support

Review and revamp _____'s behavior plan as needed

Other

1. **Opening:**
 - a. Purpose of meeting
 - b. Introductions
 - c. Outcomes overview
 - d. Agenda overview
 - e. Ground rules
 - f. Decision-making process
 - g. Explanation of parents' rights
2. **Review assessments and determine eligibility**
(Be sure all appropriate Present Levels pages are completely filled out-no blanks)
3. **A. Discuss and determine needs and goals**
B. Determine if any additional assessment information is needed
4. **Discuss and determine placement and services**
5. **Other** (This is the time you go back to the IEP forms and make sure every item is addressed in the first 5 pages – no blanks)
6. **Closing:**
 - a. Confirm Agreements (at this time you may want to read the minutes aloud to be sure you captured all the important decisions)
 - b. Schedule next IEP meeting, as appropriate
 - c. Closing team comments

SAMPLE ACTION PLAN

Coronado Unified School District
FOLLOW UP ACTIONS REQUIRED FOLLOWING THE I.E.P.
(NOT IEP FORM – SUPPORTING WORKSHEET ONLY)

| Student Name: _____ Birth date: _____ IEP date: _____ | | | |
|--|------------------------------|-----------------|----------------|
| Actions Required Following the IEP | | | |
| Action – Add detail as appropriate | Responsible Personnel | Position | By When |
| <input type="checkbox"/> Placement | | | |
| <input type="checkbox"/> Transportation | | | |
| <input type="checkbox"/> Modifications and Accommodations Implementation | | | |
| <input type="checkbox"/> Case Management | | | |
| <input type="checkbox"/> Copy of IEP to all Service Providers | | | |
| <input type="checkbox"/> Agency(s) referral | | | |
| <input type="checkbox"/> Other | | | |
| <input type="checkbox"/> Other | | | |

MEETING TIPS

(While waiting for everyone; waiting for forms to be completed, etc.)

- Provide a parent handbook.
- Bring materials/books used in classes. Ask the parent to look through them to get an idea about the type of work their child is expected to do.
- Have a portfolio of student's work available to look through. Focus on what the student can do/improvement/growth.
- If the meeting is in your classroom and the child is at the meeting, ask the child to show the parent around the room, share some of the work and materials. It might be helpful to rehearse with the child in advance so they know what to show the parent.
- Ask team members ahead of time to be ready to fill in time by talking to the parent: small talk, discuss upcoming school and/or community activities, possible future plans for the student (moving on to junior high, high school, graduating), school/community activities that might be interesting and appropriate for their child, discuss the IEP process (did they feel comfortable, involved, are there questions/concerns to address the next time?)
- Parking Lot

Remember: You never need to subject yourself or the team to verbal abuse. If the ground rules are not observed after a reminder, you could take a short break to cool off. If that doesn't help, you may want to adjourn the meeting "until such time as you can do the work of the IEP team in a more productive and respectful manner."

SECTION III

Accommodations Modifications State Testing

In general keep in mind the following definitions of:

ACCOMMODATION: Generally, an adaptation that enables a student with a disability to participate in educational programming, complete school work or tests with greater ease and effectiveness, to the extent possible, as if he or she were non-disabled. Accommodations do not alter the fundamental nature of the program, work or service. Accommodations are not intended to provide additional advantage but rather to “level the playing field” for students with disabilities.

MODIFICATION: More significant levels of alteration of participation in the program, work or service for students with disabilities. Changes rather than simply supporting what the student is required to perform. Modifications, when applied, have the potential to alter scores, credits or evaluation of the work.

Accommodations and Modifications should not simply be applied at the time of testing as a means of support. In order to justify the use of accommodations/modifications during testing, a student should also have access to the needed supports during instruction in the classroom.

State Testing and Reporting System (STAR) is the broad category of state required assessments for all students in California. Special Education students are required to participate in STAR. IEP teams decide on an individual basis “how” students will participate, which test versions and with what accommodations/modifications. Depending on the test, accommodations and modifications may vary. Generally the use of modifications (which alter) affects the participation code or validity of the test. Remember the CA High School Exit Exam (CAHSEE) is a part of the STAR testing rubric. All STAR tests are high stakes and great care and caution must be taken by the IEP team to ensure maximum validity and participation status. Consult the CA Department of Education (CDE) if unclear.

The following documents are provided to further detail & explain STAR components & accommodations and modifications. The Desired Results Developmental Profile (DRDP) is included as the required assessment for preschoolers even though, at this time, it is not considered part of STAR.

See the following document: Testing Variations, Accommodations and Modifications for guidance related to accommodations and modifications on STAR testing components. Definition of accommodation vs. modification can change depending on the test content and whether the support does or does not alter what is being assessed or tested.

Star Testing Accommodation/Modification Matrix: Always find the most current document for your reference in your SEIS document library.



Testing Variations, Accommodations, and Modifications

Note: Refer to the *California Code of Regulations, Title 5, Education*, for each specific assessment program for more detail.

Matrix 1. Matrix of Test Variations, Accommodations, and Modifications for Administration of California Statewide Assessments (October 2007)

| Test Variation (1) Accommodation (2) Modification (3) | Standardized Testing and Report (STAR) Program | | | | | Physical Fitness | |
|--|---|--|--|--|---|--|--|
| | California Achievement Tests (CAT/6 Survey) | California Standards Test (CST) | Standards-based Tests in Spanish (STS) | Apreda, La prueba de logros en español, Tercera edición (Apreda/3) | California High School Exit Exam (CAHSEE) | | California English Language Development Test (CELDT) |
| Test administration directions that are simplified or clarified (does not apply to test questions) | ALL | ALL | ALL | ALL | ALL | ALL | |
| Student marks in test booklet (other than responses) including highlighting | ALL For grade 3 marks must be removed to avoid scanning interference or transcribe | ALL For grades 2 and 3 marks must be removed to avoid scanning interference or transcribe | ALL For grades 2 and 3 marks must be removed to avoid scanning interference or transcribe | ALL | ALL | ALL For grades K-2 mark with a red ball point pen ONLY; marked test booklets may not be used again. | Not Applicable |
| Test students in a small group setting | ALL | ALL | ALL | ALL | ALL | ALL | |

| | |
|--------------------|--|
| All | All students may be provided these test variations. |
| Test Variation (1) | Students may have these testing variations if regularly used in the classroom. |
| Accommodation (2) | Eligible students shall be permitted to take the examination/test with accommodations if specified in the eligible student's IEP or Section 504 Plan for use on the examination, standardized testing, or for use during classroom instruction and assessment. |
| Modification (3) | For the STAR Program and CELDT , eligible students shall be permitted to take the tests with modifications if specified in the eligible student's IEP or Section 504 Plan. Students who use a modification on any STAR examination shall not be included in the participation calculation for Adequate Yearly Progress (AYP) and shall receive a score of 200 and a ranking of Far Below Basic for the purposes of calculating the Academic Performance Index (API). Eligible students shall be permitted to take the CAHSEE with modifications if specified in the eligible student's IEP or Section 504 Plan for use on the examination, standardized testing, or for use during classroom instruction and assessment. |

October 2007

| | Standardized Testing and Report (STAR) Program | | | | | | |
|---|--|---------------------------------|--|--|---|--|------------------|
| | California Achievement Tests (CAT/6 Survey) | California Standards Test (CST) | Standards-based Tests in Spanish (STS) | Apranda, La prueba de logros en español, Tercera edición (Apranda/3) | California High School Exit Exam (CAHSEE) | California English Language Development Test (CELDT) | Physical Fitness |
| Test Variation (1) Accommodation (2) Modification (3) | | | | | | | |
| Test individual student separately, provided that a test examiner directly supervises the student | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Visual magnifying equipment | 1 | 1 | 1 | 1 | 1 | 1 | Not Applicable |
| Audio amplification equipment | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Noise buffers (e.g., individual carrel or study enclosure) | 1 | 1 | 1 | 1 | 1 | 1 | Not Applicable |
| Special lighting or acoustics; special or adaptive furniture | 1 | 1 | 1 | 1 | 1 | 1 | Not Applicable |
| Colored overlay, mask, or other means to maintain visual attention | 1 | 1 | 1 | 1 | 1 | 1 | Not Applicable |
| Manually Coded English or American Sign Language to present directions for administration (does not apply to test questions) | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Student marks responses in test booklet and responses are transferred to a scorable answer document by an employee of the school, district, or nonpublic school | 2 | 2 | 2 | 2 | 2 | 2 | Not Applicable |

| | |
|--------------------|---|
| All | All students may be provided these test variations. |
| Test Variation (1) | Students may have these testing variations if regularly used in the classroom. |
| Accommodation (2) | Eligible students shall be permitted to take the examination/test with accommodations if specified in the eligible student's IEP or Section 504 Plan for use on the examination, standardized testing, or for use during classroom instruction and assessment. |
| Modification (3) | For the STAR Program and CELDT, eligible students shall be permitted to take the tests with modifications if specified in the eligible student's IEP or Section 504 Plan. Students who use a modification on any STAR examination shall not be included in the participation calculation for Adequate Yearly Progress (AYP) and shall receive a score of 200 and a ranking of Far Below Basic for the purposes of calculating the Academic Performance Index (API). Eligible students shall be permitted to take the CAHSEE with modifications if specified in the eligible student's IEP or Section 504 Plan for use on the examination, standardized testing, or for use during classroom instruction and assessment. |

| Standardized Testing and Report (STAR) Program | | | | | | | |
|--|---|---------------------------------|--|--|---|--|------------------|
| | California Achievement Tests (CAT/6 Survey) | California Standards Test (CST) | Standards-based Tests in Spanish (STS) | Apranda, La prueba de logros en español, Tercera edición (Apranda/3) | California High School Exit Exam (CAHSEE) | California English Language Development Test (CELDT) | Physical Fitness |
| Test Variation (1) Accommodation (2) Modification (3) | | | | | | | |
| Responses dictated [orally, or in Manually coded English or American Sign Language] to a scribe for selected-response items (multiple-choice questions) | 2 | 2 | 2 | 2 | 2 | 2 | Not Applicable |
| Word processing software with spell and grammar check tools turned off for the essay responses (writing portion of the test) | Not Applicable | 2 | Not Applicable | Not Applicable | 2 | 2 | Not Applicable |
| Essay responses dictated orally or in Manually Coded English to a scribe, audio recorder, or speech-to-text converter and the student provides all spelling and language conventions | Not Applicable | 2 | Not Applicable | Not Applicable | 2 | 2 | Not Applicable |
| Assistive device that does not interfere with the independent work of the student on the multiple-choice and/or essay responses (writing portion of the test) | 2 | 2 | 2 | 2 | 2 | 2 | Not Applicable |
| Braille transcriptions provided by the test contractor | 2 | 2 | 2 | 2 | 2 | 2 | Not Applicable |
| Large print versions | | | | | | | |
| Test items enlarged if font larger than required on large print versions | 2 | 2 | 2 | 2 | 2 | 2 | Not Applicable |
| All students may be provided these test variations. | | | | | | | |
| Test Variation (1) Accommodation (2) Modification (3) | All students may have these testing variations if regularly used in the classroom. | | | | | | |
| | Eligible students shall be permitted to take the examination/test with accommodations if specified in the eligible student's IEP or Section 504 Plan for use on the examination, standardized testing, or for use during classroom instruction and assessment. | | | | | | |
| | For the STAR Program and CELDT, eligible students shall be permitted to take the tests with modifications if specified in the eligible student's IEP or Section 504 Plan. Students who use a modification on any STAR examination shall not be included in the participation calculation for Adequate Yearly Progress (AYP) and shall receive a score of 200 and a ranking of Far Below Basic for the purposes of calculating the Academic Performance Index (API). Eligible students shall be permitted to take the CAHSEE with modifications if specified in the eligible student's IEP or Section 504 Plan for use on the examination, standardized testing, or for use during classroom instruction and assessment. | | | | | | |

| Standardized Testing and Report (STAR) Program | | | | | | | |
|--|---|---------------------------------|--|--|---|--|------------------|
| Test Variation (1) Accommodation (2) Modification (3) | California Achievement Tests (CAT/6 Survey) | California Standards Test (CST) | Standards-based Tests in Spanish (STS) | Aprenda, La prueba de logros en español, Tercera edición (Aprenda/3) | California High School Exit Exam (CAHSEE) | California English Language Development Test (CELDT) | Physical Fitness |
| Extra time on a test within a testing day | 2 | ALL | ALL | ALL | ALL | ALL | ALL |
| Test over more than one day for a test or test part to be administered in a single sitting | 2 | 2 | 2 | 2 | 2 | 2 | Not Applicable |
| Supervised breaks within a section of the test | 2 | 2 | 2 | 2 | 2 | 2 | Not Applicable |
| Administration of the test at the most beneficial time of day to the student | 2 | 2 | 2 | 2 | 2 | 2 | 2 |
| Test administered at home or in hospital by a test examiner | 2 | 2 | 2 | 2 | 2 | 2 | 2 |

Reminder: Students who use a modification (3) on any STAR examination **shall not** be included in the participation calculation for Adequate Yearly Progress (AYP) and shall receive a score of 200 and a ranking of Far Below Basic for the purposes of calculating the Academic Performance Index (API). Students shall receive their actual scores on their STAR Student Report.

| | | | | | | | |
|------------|---|---|---|---|---|---|----------------|
| Dictionary | 3 | 3 | 3 | 3 | 3 | 3 | Not Applicable |
|------------|---|---|---|---|---|---|----------------|

| | |
|--------------------|--|
| All | All students may be provided these test variations. |
| Test Variation (1) | Students may have these testing variations if regularly used in the classroom. |
| Accommodation (2) | Eligible students shall be permitted to take the examination/test with accommodations if specified in the eligible student's IEP or Section 504 Plan for use on the examination, standardized testing, or for use during classroom instruction and assessment. |
| Modification (3) | For the STAR Program and CELDT , eligible students shall be permitted to take the tests with modifications if specified in the eligible student's IEP or Section 504 Plan. Students who use a modification on any STAR examination shall not be included in the participation calculation for Adequate Yearly Progress (AYP) and shall receive a score of 200 and a ranking of Far Below Basic for the purposes of calculating the Academic Performance Index (API). Eligible students shall be permitted to take the CAHSEE with modifications if specified in the eligible student's IEP or Section 504 Plan for use on the examination, standardized testing, or for use during classroom instruction and assessment. |

| | | | | | | | |
|--|----------------------------------|--|----------------------------------|----------------------------------|-----------------------------------|----------------|----------------|
| Manually Coded English or American Sign Language to present test questions | 2 Math | 2 Math, Science, History-social Science | 2 Math | 2 Math | 2 Math | 2 Writing | Not Applicable |
| | 3 Reading, Language, Spelling | 3 ELA | 3 Reading, Language, Spelling | 3 Reading, Language, Spelling | 3 Reading, Listening, Speaking | | |
| Test questions read aloud to student or used audio CD presentation | 2 Math | 2 Math, Science, History-social Science | 2 Math | 2 Math | 2 Writing | Not Applicable | |
| | 3 Reading, Language, Spelling | 3 ELA | 3 Reading, Language, Spelling | 3 Reading, Language, Spelling | 3 Reading | | |
| Calculator on the mathematics tests | 3 | | 3 | 3 | 3 | Not Applicable | |
| | 3 | | 3 | 3 | 3 | | |

| | |
|--------------------|---|
| All | All students may be provided these test variations. |
| Test Variation (1) | Students may have these testing variations if regularly used in the classroom. |
| Accommodation (2) | Eligible students shall be permitted to take the examination/test with accommodations if specified in the eligible student's IEP or Section 504 Plan for use on the examination, standardized testing, or for use during classroom instruction and assessment. |
| Modification (3) | For the STAR Program and CELDT, eligible students shall be permitted to take the tests with modifications if specified in the eligible student's IEP or Section 504 Plan. Students who use a modification on any STAR examination shall not be included in the participation calculation for Adequate Yearly Progress (AYP) and shall receive a score of 200 and a ranking of Far Below Basic for the purposes of calculating the Academic Performance Index (API). Eligible students shall be permitted to take the CAHSEE with modifications if specified in the eligible student's IEP or Section 504 Plan for use on the examination, standardized testing, or for use during classroom instruction and assessment. |

October 2007

| | | | | | | | |
|--|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Calculator on the science tests | Not Applicable | 3 | Not Applicable | Not Applicable | Not Applicable | Not Applicable | Not Applicable |
| Arithmetic table or formulas (not provided) on the mathematics tests | 3 | 3 | 3 | 3 | 3 | Not Applicable | Not Applicable |
| Arithmetic table or formulas (not provided) on the science tests | Not Applicable | 3 | Not Applicable | Not Applicable | Not Applicable | Not Applicable | Not Applicable |
| Math manipulatives on the mathematics tests | 3 | 3 | 3 | 3 | 3 | Not Applicable | Not Applicable |
| Math manipulatives on the science tests | Not Applicable | 3 | Not Applicable | Not Applicable | Not Applicable | Not Applicable | Not Applicable |
| Word processing software with spell and grammar check tools enabled on the essay responses writing portion of test | Not Applicable | 3 | Not Applicable | Not Applicable | Not Applicable | Not Applicable | Not Applicable |
| Essay responses dictated orally, in Manually Coded English, or in American Sign Language to a scribe [audio recorder, or speech-to-text converter] (scribe provides spelling, grammar, and language conventions) | Not Applicable | 3 | Not Applicable | Not Applicable | Not Applicable | Not Applicable | Not Applicable |
| Assistive device that interferes with the independent work of the student on the multiple-choice and/or essay responses | 3 | 3 | 3 | 3 | 3 | 3 | Not Applicable |
| Unlisted Accommodation or Modification | Check with CDE | Check with CDE | Check with CDE | Check with CDE | Check with CDE | Check with CDE | Check with CDE |

| | | | | | | | |
|--------------------|---|--|--|--|--|--|--|
| All | All students may be provided these test variations. | | | | | | |
| Test Variation (1) | Students may have these testing variations if regularly used in the classroom. | | | | | | |
| Accommodation (2) | Eligible students shall be permitted to take the examination/test with accommodations if specified in the eligible student's IEP or Section 504 Plan for use on the examination, standardized testing, or for use during classroom instruction and assessment. | | | | | | |
| Modification (3) | For the STAR Program and CELDT, eligible students shall be permitted to take the tests with modifications if specified in the eligible student's IEP or Section 504 Plan. Students who use a modification on any STAR examination shall not be included in the participation calculation for Adequate Yearly Progress (AYP) and shall receive a score of 200 and a ranking of Far Below Basic for the purposes of calculating the Academic Performance Index (API). Eligible students shall be permitted to take the CAHSEE with modifications if specified in the eligible student's IEP or Section 504 Plan for use on the examination, standardized testing, or for use during classroom instruction and assessment. | | | | | | |

California Modified Assessment Participation Criteria

These criteria for guiding individualized education program (IEP) teams in making decisions about which students with disabilities should participate in the California Modified Assessment (CMA) are based, in part, on Title 34 of the Code of Federal Regulations, Part 200—Title I—Improving the Academic Achievement of the Disadvantaged.

1. Previous Participation

CST

The student shall have taken the California Standards Test (CST) in a previous year and scored Below Basic or Far Below Basic in the subject area being assessed by the CMA and may have taken the CST with modifications.

CAPA

Previous participation in the California Alternate Performance Assessment (CAPA) shall not preclude a student from participation in the CMA.

- The student shall have taken the CAPA Level 2–5 in two previous years and received a performance level of either Proficient or Advanced

Note: The student shall not be allowed to take both the CAPA and CMA. Students shall take either:

- CAPA in all subject areas;
- CST in all subject areas;
- CMA in all subject areas; or
- a combination of CST and CMA in the subject areas being assessed.

2. Progress Based On Multiple Measures and Objective Evidence

The student's disability has precluded the student from achieving grade-level proficiency, as demonstrated by such objective evidence as the student's performance on the CST and other assessments that can validly document academic achievement within the year covered by the student's IEP plan. The determination of the student's progress must be based on multiple measurements, over a period of time that are valid for the subjects being assessed.

- The student will not receive a proficient score on the CST (even with provision of accommodations) based on evidence from multiple, valid, and objective measures of student progress (or lack of progress)

3. **Response To Appropriate Instruction**

The student's progress to date in response to appropriate grade-level instruction, including special education and related services designed to address the student's individual needs, is such that, even if significant growth occurs, the IEP team is reasonably certain that the student will not achieve grade-level proficiency within the year covered by the student's IEP plan.

- The student who is assessed with the CMA has access to the curriculum, including instruction and materials for the grade in which the student is enrolled
- The student's IEP plan includes grade-level California content standards-based goals and support in the classroom for a subject or subjects assessed by the CMA.
- The student has received special education and related services to support access to and progress in the general curriculum in which the student is enrolled
- The IEP team has determined that the student will not achieve grade-level proficiency even with instructional intervention

4. **High School Diploma**

The student who takes alternate assessments based on modified academic achievement standards is not precluded from attempting to complete requirements, as defined by the State, for a regular high school diploma.

Note: Students must continue to meet the California High School Exit Examination (CAHSEE) requirement in order to receive a diploma from a California public high school.

5. **Parents Are Informed**

Parents of the students selected to be assessed with the CMA are informed that their child's achievement will be measured based on modified achievement standards.

Note: The test, while based on grade level content, is less rigorous than the CST.

California Modified Assessment Additional Decision Making Considerations for CMA

1. The decision to participate in the CMA is *not* based on the amount of time the student is receiving special education services.
2. The decision to participate in the CMA is *not* based on excessive or extended absences.
3. The decision to participate in the CMA is *not* based on language, culture, or economic differences.

4. The decision to participate in the CMA is *not* based solely on the student's disability (i.e., deafness/blindness, visual, auditory and or motor disabilities) but rather the student's inability to appropriately demonstrate his or her knowledge on the California content standards through the CST.
5. The decision to use the CMA *is* an IEP team decision based on student needs.

California Modified Assessment Definition of Terms

CAPA is designed to assess those students with significant cognitive disabilities who cannot participate in the CST or the CMA even with accommodations and/or modifications. The CDE developed CAPA to comply with the requirements of the No Child Left Behind Act of 2001. CAPA links directly to the California academic content standards at each grade level and accurately reflects the portions of the content standards from Kindergarten through high school that are accessible to students with significant cognitive disabilities. CAPA is given in grade spans (Levels I – V).

CMA is designed to assess those students whose disabilities preclude them from achieving grade-level proficiency on an assessment of the California content standards with or without accommodations. The CMA has been developed to provide more access so students can better demonstrate their knowledge of the California content standards. The CDE developed CMA to comply with the flexibility offered through the provisions of the No Child Left Behind Act of 2001.

CST in English-language arts, mathematics, science, and history-social science are administered only to students in California public schools. Except for a writing component that is administered as part of the grade four and seven English-language arts tests, all questions are multiple-choice. These tests were developed specifically to assess students' knowledge of the California content standards.

California Content Standards were adopted by the State Board of Education and specify what all California children are expected to know and be able to do in each grade or course.

Goals are those written by the IEP team, while not inclusive, for reading, writing, and mathematics and may include support for those areas in additional courses or study.

Grade-level proficiency refers to the student's level of knowledge and degree of mastery of the California Content Standards for the subjects being assessed. This grade-level proficiency should not be confused with the STAR Performance Levels as reported on the STAR student report

Objective evidence is the most recent data available for the student's performance on the California Standards Test (CST), CAPA, or CMA and locally used assessments and/or assignments, whether used for placement, diagnosis or to track student progress throughout the year.

Modified Academic Achievement Standards are used to measure the student's achievement on the California Modified Assessment; are aligned to the California content standards, but less difficult than the grade-level academic achievement standards; and are developed through a validated standard setting process.

Multiple Measures are various assessments and/or instruments, including STAR program assessments, as well as locally used assessments and/or assignments, whether used for placement, diagnosis or to track student progress throughout the year.

Valid refers to the degree to which evidence and theory support the intended purpose of the test and the interpretation of test scores for the subjects being assessed.

CAPA Participation Criteria

California Alternate Performance Assessment (CAPA) Participation Criteria assists Individualized Education Program teams in determining how a student should participate in the Standardized Testing & Reporting (STAR) Program.

Test site coordinators are responsible for having students' Individualized Education Plans (IEPs) reviewed to determine if the students will take the California Standards Tests (CSTs) with no accommodations or modifications, take the CSTs with accommodations and/or modifications, take the California Modified Assessment (CMA), or take the CAPA. Since examiners may adapt the CAPA based on students' instruction mode, accommodations and modifications do not apply to CAPA.

IEP teams determine how students with disabilities will participate in the STAR Program. If the IEP team determines that the student should be assessed with the CAPA, the IEP team is also responsible for determining if the student should take the grade-assigned CAPA level or CAPA Level I. This information is included on each student's IEP. Students with grade-level designations on their IEPs **must take** either CAPA Level I or the CAPA level designated for their individual grade level.

Table 1. CAPA Levels.

| CAPA Level | Grade Range | Subjects |
|------------|-------------|--------------------|
| I | 2–11 | ELA, Math, Science |
| II | 2 & 3 | ELA, Math |
| III | 4 & 5 | ELA, Math, Science |
| IV | 6–8 | ELA, Math, Science |
| V | 9–11 | ELA, Math, Science |

Students who repeat grade eleven for multiple years continue to take CAPA Level I or Level V as their statewide assessment until enrolled in grade 12.

Questions: STAR Office | [Write STAR](#) | 916-445-8765

Desired Results *access*

The Desired Results system is an accountability initiative of the California Department of Education (CDE) developed to determine the effectiveness of its child development and early childhood special education services and programs. The system ensures that children who are enrolled in state-funded preschool programs benefit from those programs. Central to the Desired Results System are the assessment instruments that measure children's progress. These instruments, the Desired Results Developmental Profiles (DRDP), comprise the child assessment component of the Desired Results system. All preschool-age children with Individualized Education Programs (IEPs) participate in this assessment system. The Desired Results *access* Project assists the California Department of Education, Special Education Division (SED), in implementing the DRDP Assessment System to measure the progress of California's preschool-age children with IEPs.

- The Desired Results Access Project web site offers information and resources to assist special educators, administrators, and families in participating in the Desired Results assessment system. You can view and download the two Desired Results assessment tools used with preschool-age children with IEPs: the PS DRDP-R (including instructions for use with children with IEPs) and the DRDP *access*.

Timeline for DRDP Assessment System Data Collection and Reporting 2008-09

As of February, 2007, California's special education programs began collecting and reporting data twice yearly on all preschool-age children with IEPs using the DRDP instruments. SELPAs report DRDP data to the California Department of Education (CDE), Special Education Division (SED) through direct entry or data upload to the Special Education Desired Results System (SEDRS). The table below specified the data collection and reporting timelines for 2008-2009

Please note:

- Eligible children are:
 - Every three, four, and five year old child with an IEP who receives preschool special education services (regardless of setting or level of service).
 - Those who enter special education prior to November 1 for inclusion in the fall assessment, and prior to April 1 for inclusion in the spring assessment.
- DRDP data must include a Rating Record and Information Page for each child assessed.
- Any time during the year:
 - Teacher and data entry clerks will be able to print SEDRA reports.
 - Administrators will be able to download data from the previous data collection period.
- Please check for updates on the Desired Results *access* Project website www.draccess.org

| Timelines for DRDP Data Collection and Reporting 2008-2009 | | | |
|---|---|-------------------------------------|---|
| Assessment Period | Observation and Documentation with the PS DRDP-R or the DRDP <i>access</i> | DRDP Data Submitted to SELPA | Data Certified by SELPA Fax by due date to 916-327-3730 |
| Fall, 2008 | October 1 - November 30, 2008 | December 1 2008 - January 31, 2009 | February 1, 2009 |
| Spring, 2008 | March 1 – April 30, 2009 | May 1 – June 30, 2009 | July 1, 2009 |

Note to Assessors: Assessors will submit data to SELPA in advance of the due dates to ensure sufficient time for data entry, accuracy checks, and certification by SELPA. Please contact your local SELPA office for dates that data are due..

SECTION IV

Transition Post Secondary

TRANSITION: PLANNING FOR SUCCESS

What's New!!

IDEA Re-authorization 2004

Transition services (designed with a results oriented process focused on improving the academic functional achievement of the child) must be addressed in the IEP of the student not later than in the year in which they turn 16 years of age

Note: When a student exits from special education as a result of earning a diploma or aging out, the LEA shall provide the student with a summary of their academic achievement and functional performance along with recommendations how to assist the student in meeting their post-secondary goals

IDEA Re-authorization 2004

Points to consider

- Took effect July 1, 2005
- Aligning with state law – conformity legislation passed Oct. 2005
- Regulations are out and took effect on 10/13/2006

California Core Messages for Transition

- Student Focused Planning
- Student Development for Adult Living
- Interdisciplinary and Interagency Collaboration
- Family Involvement
- Program Structures and Attributes

Philosophy

Transition is all about planning for a student's future and how academic courses, functional curriculum and vocational activities help move a student towards the future goal.

Discussion about transition or future planning should begin an IEP so that the team is focused throughout the meeting on helping the student work towards his or her future goals.

What is the goal of Transition?

To provide the student with all the skills, knowledge and support necessary to make their post school goals a reality.

Research conducted by Storms, O'Leary, and Williams (2000) suggested that the concept of transition is simple and generally involves three major activities:

1. Coaching every student, along with his or her family, to think about goals for life after school and to develop a long-range plan to get there.

2. Designing the school experience to ensure that the student gains the skills and competencies needed to achieve his or her desired goals.
3. Identifying and linking the student and families to any needed post-school services and supports.

What needs to happen before the IEP meeting where Transition is discussed?

- Prepare student and family for the transition process.
- Help student and family make a connection between the student's abilities and future career/living situation.
- Discuss H.S. Diploma and Certificate of Completion and what each means.
- Encourage student and family to explore adult living and employment options.
- Help the student and family describe student's disabilities and any accommodations that may be needed.
- Give the student opportunities to discover what he/she can do, cannot do or do with support.
- At age 17 or earlier, discuss Age of Majority and what it means to the student and family.

Gather information from student, parents and school staff regarding:

- (1) Student's vision for the future
- (2) Student's present levels of functioning as related to transition in:

- Work Experience
- Recreation and Leisure
- Home/Independent Living
- Community Participation
- Postsecondary Training and Learning
- Related Services

Who needs to be invited to an IEP where Transition will be discussed and what is each participant's role?

IDEA 2004

- (34 CFR 300.321(e) (1) An IEP team member may be excused from attending the IEP Team meeting, in whole or in part, if the parents and LEA agree because the area of curriculum or related service is not being modified or discussed. The agreement must be in writing.
- (34 CFR 300.321(e)(2) An IEP team member may be excused from attending an IEP Team meeting even if their curriculum area or related service area is being discussed by the written agreement and consent of the parent and the LEA. The IEP Team member shall submit their input in writing to the Team prior to the meeting.

Student

Their Role – participates, communicates preferences and interests, communicates strengths, and takes part in the IEP development. (If the student is not in attendance, how were the student's interests and preferences determined?)

300.321(b)(1) Would provide that the child be invited to the IEP meeting if a purpose of the meeting is consideration of the child's postsecondary goals and the transition services needed to achieve those goals.

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

Parent/Family

Their Role – supports the student, reinforces the value of an individual program, provides information about student's strengths and areas where assistance is needed.

Special Education Teacher

Their Role – provides information, provides teaching strategies including accommodations and or modifications, suggests course of study related to student's post school goals; identifies related services, provides input into transition service needs, links student and parents with appropriate post-school services, coordinates all people, agencies, services or programs involved in the transition planning process

General Education Teacher

Their Role – assists in planning course of study, assists in identifying and providing modifications, adaptations, support and positive behavioral strategies or interventions.

34 CFR 300.321 – Not less than one regular education teacher of such child must attend (if the child is, or may be, participating in regular education)

LEA Representative

Their Role – Support staff, allocate resources

- Qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities
- Is knowledgeable about the general curriculum and the availability of resources of the LEA
- Has the authority to commit the LEA to implement the IEP
- LEA may designate another staff member of the IEP team if these criteria are met.

Other Specialists

- An individual who can interpret the instructional implications of evaluation results
- May be one of the team members already listed.

Other Appropriate Agency Personnel

Their Role – Provide information about services, eligibility criteria, explain difference between entitlement of school programs and eligibility of adult services, assist in identifying community or adult services

Sec. 300.321(b)(3) would require, to the extent appropriate, and with the consent of the parent or a child who has reached the age of majority, that a representative of a participating agency that is likely to be responsible for providing or paying for transition services be invited to the meeting.

What needs to be included in the IEP when a student turns 16?

- The student!!!
- The student's post school goals
- The student's transition service needs (course of study).
- A statement of transition service needs that includes a school program and community activities based on the student's level of functioning and future goals and that identifies the end result: ,Diploma or Certificate of Completion.
- A statement of needed transition services (includes instruction, related services, community experiences, employment and post school adult living objectives, agency linkages and, if appropriate, acquisition of daily living skills and functional vocational assessment.)

Goals and Objectives

- The annual goals and short term objectives and benchmarks of the IEP should support the student's expressed post secondary vision.
- School goals and vision, be based upon the student's present levels of performance, and reflect the statement of needed transition services.
- (ii) RULE OF CONSTRUCTION— nothing in this section shall be construed to require –
- (I) That additional information be included in a child's IEP beyond what is explicitly required in this section; and
- (II) The IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.
- (34 CFR 300.320) An IEP must include short term objectives or benchmarks only for those students with disabilities who will be assessed using alternate achievement standards (students with significant cognitive disabilities).

What is an agency linkage?

- An outside agency, other than the public agency (usually the school District), that is likely to provide the needed services, and/or support to help facilitate the student's progression to his or her post school goal or vision.
- Required with IDEA 2004 but...

A representative from any agency that is likely to be responsible for providing or paying for transition services may be invited to the IEP beginning when the student is 16 or younger if appropriate **with parental consent or consent of adult student.**

“...would require, to the extent appropriate, and with the consent of the parent or a child who has reached the age of majority, that a representative of a participating agency that is likely to be responsible for providing or paying for transition services be invited to the meeting.”

- 1997 Sec. 300.344(b)(3)(ii), addressing the public agency's obligations to take steps to obtain the participation of the other agency in the planning for transition services if the other agency does not send a representative, was removed as it was seen as an unnecessary burden.

SECTION V

**EXTENDED SCHOOL
YEAR (ESY)**

EXTENDED SCHOOL YEAR

ESY services are individualized extensions of special education and related services that are provided to a student with a disability beyond the regular school year, for example, during the school (year round) and summer vacation. They are provided by the Coronado Unified School District at no cost to the parents so that students may maintain the specific skills they've learned during the school year. ESY services vary in intensity, location, type of service and length of time, depending upon each student's needs.

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

Parents who disagree with the IEP team's decision concerning eligibility for ESY services may resolve their disagreement through the Due Process Procedures.

In this section you will find first, a simple, two page document describing ESY requirements and considerations followed within the Coronado Unified School District. The second document immediately behind is more detailed and describes with more specificity, the ESY requirement.

The last two pages are worksheets that IEP teams can use to assist in the determination of ESY need for an individual student. The first of the two worksheets is a data collection sheet the teacher can use to document regression/recoupment after breaks. The second of the two worksheets are the discussion points to guide the IEP team in determination using the regression/recoupment data along with all other relevant team considerations.

These forms are also all in your SpEd Forms document library and when changes are required to any of these documents, revisions will be provided to you through that source.

**Coronado Unified School District
Extended School Year Programming**

GUIDELINES

Pursuant to Section 300.309 of Title 34 of the Code of Federal Regulations, extended school year services (ESY) shall be included in the IEP and provided to the pupil if the IEP team determines, on an individual basis, the services are necessary for the provision of a free appropriate public education (FAPE).

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

Determination of ESY Eligibility and Programming

ESY programming must be provided to eligible students at no additional cost to parents. The IEP team shall determine the need for ESY eligibility and programming considering the following factors:

Nature and severity of the disability The more severe the disability, the higher the probability that the student will need ESY services.

Current IEP goals and objectives If progress on meeting these goals has been very slow, the student may need ESY services to continue to make progress in support of FAPE.

Emerging skills and breakthrough opportunities If a student is just beginning to communicate or accomplish self-care skills a temporary break may cause a setback.

Interfering behaviors Behavior may have an impact of student’s ability to make educational progress.

To prevent serious regression during an extended break The Worksheet for Determining Extended School Year Programming may be used along with the regression/recoupment data collection sheet. If the student has continued to progress educationally from year to year despite the lack of ESY programming, ESY may not be necessary to ensure FAPE. Additionally however, there does not need to be a pattern of regression previously but team needs to consider whether there is a likelihood of regression based on knowledge of student.(see attachment A & B).

Rare and unusual circumstances ESY services are more likely to be necessary for students who have been absent for extended periods of time or for students moving from restrictive placements to inclusive programs

If ESY programming is recommended, then the IEP team shall a) identify the specific goals that are to be addressed, and b) include the specific nature of the program and services on the IEP, including the, frequency, duration and location.

Definition: Regression/Recoupment

All students experience some regression and loss over an extended break. In most instances these skills are re-mastered (recouped) within a reasonably short period of time. However, some special needs students have disabilities which are likely to continue indefinitely or for a prolonged period, and interruption of the student's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition. However, the lack of clear evidence of such factors may not be used to deny a student an ESY program if the team determines the need for ESY programming. Thus, when a student experiences more than minimal regression and he/she is not able to recoup skills within a short period of time the provision of a free appropriate public education means that instruction and/or related services must also be provided during an extended break.

Definition: Extended Break

Extended break means a period of time when school is not in session such as summer break, school holidays and when school is off-track or on intersession.

Definition: Extended School Year Programming

ESY services are special education and related services that are tailored to each student to help him or her meet specific goals in his/her IEP to support the delivery of FAPE for the individual student as appropriate.

Procedural Guidelines doc 07/08 (GBD)

Coronado Unified School District

Extended School Year (ESY) Resource Guide

With acknowledged appreciation to Riverside County SELPA

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EXTENDED SCHOOL YEAR

Extended School Year (ESY) services are special education and related services that are required by an individual student beyond the 180-day school term/year. The services provided must be consistent with the student's individual education program so that the student will receive a free appropriate public education (FAPE). "Extended School" year services shall be provided for each individual with exceptional needs, who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to continue indefinitely or for prolonged periods, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. The lack of clear evidence of such factor may not be used to deny an individual an extended year program if the individualized education program (IEP) team determines the need for such a program and included extended year in the individual program pursuant to subsection (f)." (CCR-Title 5, Division 1, Chapter 3, section 3043).

The key issues for **ESY** focus on regression and recoupment. Although there are no state or federal regulations addressing when a child requires these services, there have been court cases that provide Districts with guidance. It is the issues of regression and recoupment that provide a framework upon which to base discussion on the needs of the student.

From a Sixth Circuit court decision {Cordrey v. Euckert [17EHLR 104]}, they noted that **"the school District has no purely custodial duty to provide for handicapped children while similar provision is not made for others. Therefore, begin with the proposition that providing an extended school year is the exception and not the rule..."** Therefore, Districts will consider all appropriate factors in determining whether the benefits a student has been credited with during the regular school year would be at significant risk for regression if not provided with **ESY**.

If the student does not require **ESY**, the student **could** be considered for regular summer school services offered within the school District (refer to page 4).

When should ESY be recommended?

Since the need for **ESY** is based on an unacceptable regression or recoupment as demonstrated by the student, there needs to be some discussion on what might be acceptable for most students. There was a study completed by Tilley Cox and Staybrook (1986) that found that most students experience some regression during summer break. Using standardized test, they found the rate of regression for regular education students was 4%. They also found students with mild handicaps, hearing impairments and serious behavior disorders regressed at approximately the same rate as their regular education peers. They found that for students with moderate to severe handicaps, there was an increased rate of regression and a slower rate of recoupment. According to the study, the areas that were most impacted for those students were language, gross motor, fine motor and self-help skills.

Therefore, it is reasonable for those students with moderate to severe challenges to be considered for an **ESY** program that would concentrate on skill regression and recovery.

*When considering **ESY** for any student, the IEP team must consider data collected during the previous year(s) to determine the student's need based on regression and recoupment. After a three month summer break it is reasonable to expect that, after eight weeks of instruction and re-teaching, the student should have regained or recouped last spring's performance levels. It is common that the re-teaching time be equal to the length of the break. If data shows that this is not the case, a regression/recoupment problem may exist.

When considering **ESY** for any student, the IEP must consider data collected during the previous year(s) to determine the student's need based on regression and recoupment. This decision should be based on a multi-faceted measurement, although there may be rare instances where the IEP team might consider **ESY** services based on a single criterion. In either case, the IEP team must decide a child's eligibility for **ESY** services based on data collected that reflects his/her regression/recoupment capacity. **ESY** services are to be considered for students between the ages of three to twenty one and/or students who have not graduated from high school with a diploma.

Several Districts have year round calendars which would require a timeline for consideration of **ESY** or a comparable program at the end of the student's track year. The timeline for year round would be to call a meeting three months prior to the end of the student's year. **ESY** services would still be provided if the team determines the services are warranted. The District would have to determine the number of days the student would require. Each District would then identify the support provided during intercession. It is important to remember that the number of days recommended for **ESY** is based on student data collected to support student need (CCR 3043, d (1),(1)).

How should ESY eligibility be determined?

The child's individual education program (IEP) plan should be the foundation for determining the need for **ESY**. This can be achieved through ongoing assessment/review of the goals/objectives. The IEP team meets to review the student's progress, considering a variety of measurements to provide a baseline that documents the regression and recoupment rate. Pinkerton (1990) identified four points at which data should be collected regarding student progress: 1) at the end of the school year, 2) at the end of the summer program (if applicable), 3) at the beginning of the next school year, and 4) at the end of the current school year. The assessment must be based on the IEP objectives so that progress can be matched directly to each benchmark outlined and the data can be compared to support evaluation of service effectiveness.

There have been several recent court cases, which help clarify issues of regression/recoupment. In **SS, JD, SS v. Henricoe County School Board** (38 IDELR 261, 326 F.3d 560 [4th Cir. 2003]), the Hearing Officer found that **ESY** services "were not for the purpose of achieving goals not met during the school year." In **MM v. School District of Greenville County**, (37 IDELR 183, 303 F.3d 523 [4th Cir. 2002]), the court ruled the "**ESY** services are only necessary to FAPE when the benefits accrued a disabled child during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months."

Prior access to, or lack of **ESY**, is not a factor in determining need. Each student should be considered for services based on, but not limited to, the following factors:

Degree of impairment, regression rate for students, rate of progress, behavioral and physical problems, curricular areas which would be adversely impacted, and vocational needs. The severity of the handicap

is a primary consideration in determining eligibility for **ESY**. The IEP team should consider the following when discussing **ESY** eligibility:

- Student's age
- Severity of the disability
- Presence of medically diagnosed health impairments
- Attainment of self-sufficiency*

Younger students with medically diagnosed health impairments are more likely to be referred for **ESY** due to degenerative diseases and/or high absenteeism as a result of the health impairment. Additionally, the ability to maintain self-sufficiency skills for our more mentally and physically challenged students will continue to be a key issue in **ESY** eligibility.

Once services are determined as necessary based on data collected and regression/recoupment rate, the IEP team must include a statement that included a description of the services required by the child's IEP in order to receive FAPE.

LEAs are not required to create programs in order to provide **ESY** services. An example would be a student who requires an integrated setting. If the LEA does not provide summer services for non-disabled students, the LEA is not required to create a new program (**Tuscaloosa County Board of Education, 35 IDELER 172 [SEA AL 2001]**).

What extended school year services should be included in a child's IEP?

The extended school services should concentrate on the areas most impacted by regression and inadequate recoupment. These services may look markedly different in **ESY** as determined by the IEP team. (**The decision is not driven by the setting in which the student is educated during the comprehensive school year**). This may also be true for the amount the duration of services as based on the individual child's needs. Related services must also be considered as they relate to the child's benefiting from special education.

Several court cases have referred to the "availability of alternative resources" when considering **ESY** services. The LEA could consider community programs that are available to students. If there are programs which meet the needs of the student, there must be a discussion regarding whether or not **ESY** would then be required for FAPE. The LEA must be cautious when identifying services provided by community agencies such as a Parks and Recreation program. These outside agencies have no "requirement to maintain the student in their program".

What is the difference between ESY and Summer School?

- Summer school classes are not special education, and therefore are not required.
- Summer school classes are not based upon a child's individual needs and do not require an IEP.
- Summer school classes are not required in order for a child to receive FAPE which is in contrast with those services provided in **ESY**.
- In addition, a school District can choose not to provide summer school.

WHAT EXTENDED SCHOOL YEAR IS AND IS NOT

Extended School Year (ESY) is:

- Based only on the individual student's specific critical skills that are critical to his /her overall education progress as determined by the IEP team
- Designed to maintain student mastery of critical skills and objectives represented on the IEP and achieved during the regular school year
- Designed to maintain a reasonable readiness to begin the next year
- Focused on specific critical skills where regression, due to extended time off, may occur
- Based on multi-criteria and not solely on regression
- Considered as a strategy for minimizing the regression of skill, in order to shorten the time required to gain the same level of skill proficiency that the child exited with at the end of the school year

Extended School Year (ESY) is not:

- It is not a mandated 12-month service for all students with disabilities
- It is not required to function as a respite care service
- It is not funded by General Fund
- It is not required or intended to maximize educational opportunities for any student with disabilities
- It is not necessary to continue instruction on all the previous year's IEP goals during the ESY period
- It is not compulsory. Participation in the program is discretionary with the parents, who may choose to refuse the ESY service. There may be personal and family concerns that take precedence over ESY
- It is not required solely when a child fails to achieve IEP goals and objectives during the school year
- It should not be considered in order to help students with disabilities advance in relation to their peers
- It is not for those students who exhibit random regression solely related to transitional life situation or medical problems which result in degeneration
- It is not subject to the same LRE environment considerations as during the regular school year as the same LRE options are not available. Additionally, LRE for some students may be home with family members
- It is not a summer recreation program for students with disabilities
- It is not to provide a child with education beyond that which is prescribed his/her IEP goals and objectives

Adapted from www.slc.sevier.org 2003

EXTENDED SCHOOL YEAR (ESY) TIMELINE

| |
|--|
| First 8 weeks of school: |
| <ul style="list-style-type: none">• Collect data and re-teach• Compare to Spring data to determine if the student recouped his/her skills from previous year (This data should be the basis of the ESY eligibility discussion at the annual IEP)• Instruction and ongoing data collection• As soon as a student is found eligible for ESY at the annual review IEP, document the reasons why ESY is recommended on the summary page or on an addendum IEP• Include data supporting the recommendation for ESY• Continue instruction and document progress on progress reports |
| Following the first and second grading period |
| <p>*For new students or any student for whom you were unable to gather regression/recoupment data during the first 8 weeks of school, review data before and after any break from school (e.g. Thanksgiving, Winter or Spring break) to determine student may have a significant regression/recoupment problem</p> <ul style="list-style-type: none">• Use data collected as the basis for ESY eligibility discussion at the annual review IEP or addendum meeting• Re-teaching time should equal the length of the break (1 week break = 1 week re-teaching and then retest)• As soon as students are found eligible for ESY, the reasons for eligibility are documented on the IEP summary sheet or addendum• Continue instruction and document progress on progress report |
| Two to three months prior to the end of the school year |
| <ul style="list-style-type: none">• Notify District administrator for students eligible for ESY<ul style="list-style-type: none">➢ Be sure to include documentation to support decision• Continue to teach and gather data for last quarter/trimester of the school year• If the data indicates the student has a need for ESY, convene an IEP team meeting<ul style="list-style-type: none">➢ If the team determines services are warranted, notify the District administrator as explained above |
| When should ESY Data Collection occur? |
| <ul style="list-style-type: none">• Recommended times for data collection:<ul style="list-style-type: none">➢ At the end of regular school year➢ At the end of summer program➢ At the beginning of subsequent school year➢ Before and after school vacations; ongoing collection of information throughout the school year➢ Before/after student has been out of school for other reasons |

Adapted from ESY Timeline, www.kyrene.org/resource/esy

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Extended School year Services. www.matrix.org

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Pinkerton, Diana, Extended School Year. ERIC Digest #E471, 1990, (ED 371503). www.ericfacility.net/databases/ERIC_Digests

Tilley, B.K., Cox, L.S., & Staybrook, N. (1986). An Extended School Year Validation Study. Report No. 86-2). Seattle: Seattle Public Schools.

*Based on/adapted from “Extended School Year (ESY)”. Pinkerton, Dianna, ERIC Digest #4

Student Name _____ School _____ Age _____ Grade _____ Date _____
 Primary Disability _____ Education Placement _____ DIS Services _____

Regression/Recoupment Analysis Worksheet

| Current IEP: Date: _____ Assessment Area: _____ | Pre-Break Present Levels of Performance Date: _____ (Describe levels based on measurable data- prior to an academic break of 2 weeks or more.) If additional space is needed, include attachments. | Post -Break Present Levels of Performance Date: _____ (Describe levels based on measurable data- after returning from break.) If additional space is needed, include attachments. | *Regression/Recoupment If regression is noted, record the time required to recoup Pre-Break levels (i.e. 4 days, 2 weeks...). | ESY Recommended Yes/No ESY is recommended in noted areas below based on regression and recoupment data. |
|--|--|---|--|---|
| Communication | | | | |
| Reading | | | | |
| Written Expression | | | | |
| Math | | | | |
| Behavior | | | | |
| Fine Motor | | | | |
| Gross Motor | | | | |
| Self Help | | | | |
| Social Emotional | | | | |
| Other: | | | | |
| | | | | |

* See Extended School Year Resource Guide for additional guidance.

WORKSHEET FOR DETERMINING EXTENDED SCHOOL YEAR PROGRAMMING

The form should be used as a guide for IEP team members when needed to assist in determining the need for Extended School Year Services

Student Name: _____ Date of Birth: _____

School: _____ Date: _____

DEFINITIONS:

ESY: Extended school year services are programs and services that assist the student in working toward the same goals and objectives the student works on during the school year. Utilizing the data collection process below ESY services are provided only for those areas in the current IEP where the student has demonstrated **a)** regression of skills during an extended school break and **b)** limited ability to benefit from re-teaching of skills after an extended school break.

Regression: Loss of previously attained skills documented by a review of the IEP goals, due to an extended school break.

Rate of Recoupment: Length of time required to relearn skills following an extended school break.

Regression and Recoupment: Some students have disabilities which are likely to continue indefinitely or for a prolonged period, and interruption of the student's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will reach the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition.

SUMMARY OF DATA USED IN DETERMINING NEED FOR EXTENDED SCHOOL YEAR

Relevant Data Reviewed:

- | | | |
|--|---|---|
| <input type="checkbox"/> IEP | <input type="checkbox"/> WorkSamples | <input type="checkbox"/> Discipline |
| <input type="checkbox"/> ProgressReports | <input type="checkbox"/> PrePost Testing | <input type="checkbox"/> TeacherCharting |
| <input type="checkbox"/> Gradesand Quizzes | <input type="checkbox"/> StateWide Assessment Results | <input type="checkbox"/> Districtlevel Assessment Results |

DEGREE OF PROGRESS TOWARDS IEP GOALS

Has there been a history of skill regression? Yes No Basis for determination (including any attachments as appropriate) _____

Has there been a history of poor recoupment of skills? Yes No Basis for determination (including any attachments as appropriate) _____

DETERMINATION/ESY PLANNING

Student is found to be in need of ESY services: Yes No
(If yes, detail target goals and needed service on IEP)

* See Extended School Year Resource Guide for Additional Guidance

Attachment B

SECTION VI

Assistive Technology/ Augmentative Communication (AAC) Low Incidence

ASSISTIVE TECHNOLOGY (AT)
ALTERNATIVE and AUGMENTATIVE COMMUNICATION (AAC)
LOW INCIDENCE

NEEDS MUST BE CONSIDERED AT EVERY IEP MEETING

Assistive Technology Overview

Assistive Technology is defined as: Any item, piece of equipment, product/system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain, or improve functional capabilities of children with disabilities.

Additionally, assistive technology service is defined as: Any service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device.

Augmentative Communication specifically subsumes under Assistive Technology.

The key consideration is that AT serve as a tool for the student to access the curriculum and school environment and assist in independence, be it communication, mobility, or independent living. "AT bridges the gap between a child's functional skills and his ability to participate in the educational process. It breaks through the barriers associated with vision, hearing, communication, processing and motor skills and allows students to do the same things as their general education peers." (Purcell and Grant, 2002)

Look to AT to enhance the following areas and include the consideration of:

Participation in the School Curriculum:

- Colored overlays
- Visual Structure; including picture symbols, digital photos and picture schedules
- Screen magnifiers
- Braille translation
- Pencil grips, rubber stamps, keyboarding
- Switch adapted toys, switch adapted materials for small and large group activities
- Shared tasks, partial participation
- Word prediction software
- Calculators
- Timers (visual and auditory)
- Social stories, social scripts

Activities of Daily Living:

- Adapted eating utensils
- Dressing aids
- Environmental aides for daily living and transfer systems

Vocational Pursuits and Work Place Design:

- Shared work tasks
- Modifications of work stations
- Switch adapted materials / equipment

Computer Access:

- Switches

- Alternate keyboards
- Touch screens
- Arm supports
- Voice recognition software

Seating Positioning and Mobility

- Canes
- Grab rails
- Lever handles
- Wheelchairs
- Move-n-sit cushion
- Dycem (anti skid materials)
- Cube chairs

Communication

- Picture symbols
- Augmentative communication systems with voice output
- Alternative communication methods such as sign language
- Object and picture schedules

BEST PRACTICE

INTERDISCIPLINARY TEAM CONSIDERATIONS AND COLLABORATION

Infusion Throughout the IEP Process and Document:

In order to address the consideration of the AT needs of a particular student with disabilities, a team of people most knowledgeable about that student would come together to identify the student's strengths, skills, educational tasks, current tools used and any barriers to success. The identified team would meet and conduct brainstorming sessions to consider all possible solutions. The team may include family members, student (as appropriate), General/Special Ed Teacher, LSH specialist, school nurse, RSP Teacher, APE specialist, occupational or physical therapist, administrator, etc. It is also vital to consider team members that may be involved via outside agencies (e.g. SDRC, CCS). The team may be changed due to need/resource changes. Consideration of AT needs is a dynamic and ongoing process.

Once an assistive technology need is identified through the team process, it is then infused into the student's IEP document. The required components of an IEP that might logically include AT are:

1. Present Levels of Performance
2. Annual Goals including benchmarks or short term objectives
3. Special education services
4. Related services
5. Supplementary aids and services
6. Program modifications or support for school personnel
7. Modifications to assessments
8. Special factors
9. Transition service needs

AT is very much a dynamic, interdisciplinary team process, which must be individualized to each student based on current performance and needs. Remember to consider AT on every IEP. Collaborate and work together as an IEP team to document AT use and trial periods.

| <u>DO</u> | <u>DON'T</u> |
|--|---|
| Begin with assessment and present levels of performance in all domains. | Put a specific device or system first. |
| Design goals and objectives, based on the present levels and CONSIDER if any AT would be appropriate in order for the student to meet his/her goals | Write goals merely based on a device or system. The AT is the TOOL to help attain the goals |
| Develop an action plan for each appropriate IEP team member if a trial of a system or device is agreed upon. Also agree upon how documentation will be collected and when it will be reviewed. | Leave the IEP meeting without a clear plan in place for documentation and timelines. |
| Begin with the “least restrictive” intervention first. | Begin with a laptop if a pencil grip will work. This is <i>not</i> about saving money but more about doing the “least” first and not adding AT that is not necessary or may make the student feel different. |
| Conduct a trial and include the consumer whenever possible. | Purchase a device without really researching the features and assume that the student will automatically want to use it. |
| Consider the individual’s present levels and the diagnosis as appropriate to the individual student’s profile but stick to the student’s individual goals and current needs. | Assume that all students with the same diagnosis need the same AT. |
| Train staff, family members and all who would interact with the student using the device or system on the specific features including programming etc. | Assume that a school system will program or use device or system just because one has been purchased. |
| Have a “low-tech” backup for all “high- tech” AT applications. | Rely solely on a “high-tech” system. There will inevitably be times where devices/systems break down, need repair etc. The individual will still need AT in place in order to participate and meet his/her goals. |
| Try and try and try again. Modify, adapt, individualize, etc. | Give up! Be sure to document progress and make changes based upon individual student needs. Remember AT that was once considered ineffective may be worth revisiting at a later date based on the readiness of the student. |

| | |
|--|---|
| Work as a team for consideration of AT across settings activities and people. | View AT as an isolated therapy or activity. Keep function first. For example, picture communication systems should not only be used in speech therapy. Repetition and variety of environments is critical. |
| Get creative! | Rely solely on catalogs for purchasing AT items and systems. |
| Consider the present levels of performance and the goals/objectives on the IEP regarding specific AT-use. | Merely write down that the campus has a computer lab and that the classroom has calculators. |
| Have a stash of batteries, chargers etc. based on the AT in use. | Forget the juice! The AT is effective only if it is working. This may fall into an IEP team action plan for roles and responsibilities regarding obtaining batteries etc. and who is responsible for charging the device. |
| Consider AT vendors and companies as “experts” in their specific devices and systems. Contact them for product information, customer service, trainings etc. | Conduct an AT evaluation with a specific vendor representing one product/line. This is never advisable. |
| Conduct an AT evaluation as much as possible in the natural environment. AT trials should also occur in the environment where the student would be accessing the device/systems. An AT evaluation should be an interdisciplinary process and include all the appropriate IEP team members. | Use one isolated evaluation session as completely diagnostic of all AT considerations. A clinic-based evaluation can certainly provide valuable information and directions for IEP teams. However, the use and trial of AT should be conducted in the natural environment along with data collection regarding effectiveness of the AT use. |

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(www.wati.org)

(1998) California State University Northridge Assistive Applications Certification Program.
(<http://www.csun.edu/codtraining/>)

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(www.nxf.org)

Rehabilitation Engineering Center for the Advancement of Cognitive Technologies (RERC-ACT)
(<http://www.erc-act.org/>)

AAC-RERC
Rehabilitation Engineering Research Center for AAC
(www.aac-erc.org)

Effectiveness of Reading and Mathematics Software Products:
Findings from the First Student Cohort – Report to Congress, March 2007
<http://ies.ed.gov/ncee/pdf/20074005.pdf>

AAC Institute
(www.aac-institute.org)

Closing the Gap: AT Resources for Children and Adults with Special Needs
(<http://www.closingthegap.com/>)

Supporting Early Education Delivery Systems – Sacramento County Office of Education
(<http://www.scoe.net/seeds/at/index.html>)

California State University Northridge – Center on Disabilities, 2005 Conference Proceedings. Purcell and Grant. Using Assistive Technology to Meet Literacy Standards.
(<http://www.csun.edu/cod/conf/2005/proceedings/2357.htm>)

Mayer-Johnson
www.mayerjohnson.com

Don Johnston
www.donjohnston.com

Enabling Devices
www.enablingdevices.com

AbleNet
www.ablenet.com

Intellitools
www.intellitools.com

Alphasmart
www.alphasmart.com

Independent Living Aids
<http://www.independentliving.com/>

Visual Supports / Structure
www.usevisualstrategies.com

CORONADO UNIFIED SCHOOL DISTRICT

Low Incidence Overview

As part of the Local Plan submitted to the State, each SELPA shall describe how specialized books, materials and equipment will be distributed within the SELPA. This policy has been developed to provide a summary of legal requirements and guidelines for pupils with low incidence disabilities. In addition to this policy, all requirements outlined under the annual State Low Incidence Funding Update will be observed.

Summary of Legal Requirements

Education Code Section 56836.22 provides for funds to purchase “specialized” books, materials and equipment as required under the student’s individualized education program (IEP) for students with low incidence disabilities as defined in Section 56026.5 (hearing impairments, vision impairments, severe orthopedic impairments, or any combination thereof).

As a condition of receiving these funds, the Coronado Unified School District shall ensure that:

- a) The appropriate books, materials and equipment are purchased.
- b) The use of equipment is coordinated as necessary.
- c) The books, materials and equipment are reassigned within the District once the student that originally received the equipment no longer needs it.

Special supplies and equipment purchased with State funds are the property of the State and shall be available for use by individuals with exceptional needs throughout the State.

The SELPA Director coordinates distribution of funds for identified students with low incidence disabilities to minimize the necessity to serve the students in isolated sites and to maximize the opportunities to serve the students in their least restrictive environment.

Funding

Funding is determined by dividing the total number of pupils with Low Incidence disabilities in the state, as reported on the December 1 unduplicated pupil count of the prior fiscal year, into the annual appropriation in the Budget Act of the current year. In order to receive the low incidence entitlement, low incidence students must be identified by their low incidence disability (FHI code) and reported to the State by the SELPA through CASEMIS. The low incidence disability may be documented as either their primary or secondary disability in the IEP.

The annual entitlement can be carried over into subsequent fiscal years. It is permissible to “pool” funds to be used by one or more pupils with Low Incidence disabilities and there is no legal limitation on the amount of funding used to purchase specialized books, materials and equipment for any particular student.

Eligibility

Funds may be used for all pupils with Low Incidence disabilities (ages 0-21) as defined in law, even though they may have been counted in another category in the pupil count. For example, a pupil who is deaf and also mentally retarded would still be eligible even if the pupil was reported in the latter category or as multihandicapped.

Also, some pupils counted as orthopedically impaired may not be eligible because they are not “severely orthopedically impaired” as per the definition of Low Incidence disabilities in Education Code 56026.5. Pupils who are severely orthopedically impaired require highly specialized services, equipment and materials per Education Code Section 56000.5(b). Generally, a student with severe orthopedic impairment would have a medical diagnosis including significant gross motor, range of motion deficiencies.

Education Code Section 563320(g) requires that the assessment of a pupil, including the assessment of a pupil with a suspected low incidence disability, shall be conducted by persons knowledgeable of that disability. A low incidence disability does not guarantee the use of low incidence funds. The IEP team reviews assessment data and determines the most appropriate equipment needed to address the student's unique educational needs as it relates to their Low Incidence disability. These may, or may not be "specialized". Equipment which is found in most classrooms would not be acquired through low incidence funds for specialized equipment & materials. Additionally, there may not be adequate Low Incidence funding to provide for Low Incidence identified needs as documented on the IEP of eligible students with Low Incidence disabilities. Lack of Low Incidence funds does not remove the LEA responsibility to provide for Low Incidence identified needs as documented on the IEP.

Purchasing/Repair/Replacement of Specialized Books, Materials and Equipment

Equipment purchased through Low Incidence funds must be related to the UNIQUE EDUCATIONAL NEEDS resulting from the low incidence disability as indicated under the IEPs of these students. For example, regular textbooks and workbooks are not "specialized on contrast to large print or Braille books for students who are visually impaired. Basic tumble forms, bolsters, and mats for young children should be a part of basic equipment and would not qualify, while specialized or adapted feeding and self-care equipment, needed by children because of their severe orthopedic impairments would qualify as "specialized".

Specialized books, materials, and equipment may be used by students enrolled in non-public and private schools by the public school, or served in the student's home, when required under the IEP, pursuant to DISTRICT local plan policies and procedures.

Low Incidence equipment is purchased through Low Incidence funding. The State Budget Act requires the LEA to coordinate activities such as purchasing, and reassigning of equipment. Purchasing and reassignment is tracked through a local low incidence inventory. The inventory process is managed by the Low Incidence Committee.

Repair Guidelines:

Equipment under \$125.00 will not be repaired unless under warranty.

Equipment over \$125.00 would be considered on a case-by-case situation.

Responsibility

Low Incidence funding is legally the responsibility of the SELPA, including accountability of how the funds are used and reassignment of specialized books, materials and equipment within the District and sharing with neighboring Districts. To meet this responsibility, a Low Incidence committee shall be established and comprised of knowledgeable educators of low incidence students and District representatives. The Coronado Unified School District Low Incidence Committee is to establish procedures and guidelines for purchases through the Low Incidence funds. The committee shall establish a priority for the use of funds in accordance with State policy.

Coronado Unified School District Staff is responsible for accessing this fund in accordance with the criteria established in this guideline.

CORONADO UNIFIED SCHOOL DISTRICT
Definition of Low Incidence Disabilities

Students qualify under any of the following conditions or combinations of these conditions.

Hearing Impairment

A pupil has a hearing impairment, whether permanent or fluctuating, which impairs the processing of linguistic information through hearing, even with amplification, and which adversely affects educational performance. Processing linguistic information includes speech and language reception and speech and language discrimination.

Visual Impairment

A pupil has a visual impairment, which, even with correction, adversely affects a pupil's educational performance.

Severe Orthopedic Impairment

A pupil has a severe orthopedic impairment which adversely affects the pupil's educational performance. Such orthopedic impairments include impairments caused by congenital anomaly, impairments caused by disease, and impairments from other causes.

CORONADO UNIFIED SCHOOL DISTRICT **Procedures for Accessing Low Incidence Funds**

1. **Determining student needs:** The IEP team determines the student's educational need for equipment through collaborated medical and educational assessments and IEP process. Assessment is required on case-by-case basis. Full IEP documentation of need required for **all** requests.

Education Code Section 56327(h) states, "The personnel who assess the pupil shall prepare a written report, or reports as appropriate, of the results of each assessment. The report shall include, but not be limited to, all of the following:

The need for specialized books, materials, and equipment for pupils with low incidence disabilities consistent with guidelines established pursuant to Section 56136.

To fulfill these requirements, a written assessment report **OR** (present levels of performance) must be completed including but not limited to the following:

- How the equipment assists the student's instruction in accordance with the IEP.
- How often the equipment will be used or is needed.
- How the equipment better facilitates integration in the classroom.
- Specific projected student outcomes.

2. **The IEP team determines eligible low incidence disability (fhi code) and documents on IEP.**

3. **IEP documentation includes:**

- Justification statement that is related to the student's unique educational needs as identified in the assessment report or through present levels of performance.
- Assessment, goals and objectives must correlate to the justification statement of need.
- Goals/objectives **SHOULD NOT address** specific low incidence equipment. They should be written to address the student's needs, such as inability to write due to orthopedic impairment, and types of adaptations that can be used to address the writing deficiency. Include environment in which the equipment will be used. This is important if home use is warranted.
 - Present levels that reflects assessment information and need for support.
 - FHI indication of low incidence disability.
 - **DO NOT** list specific equipment in the student's IEP, including the brand. Objectives should be addressed generically. What the IEP must show is that the student has a **UNIQUE EDUCATIONAL NEED** directly related to the low incidence disability **AND** that this need **CAN ONLY** be met with specialized books, materials, or equipment. Goals **MUST BE WRITTEN** to address the **UNIQUE NEEDS**, **NOT** the desired equipment, specialized books or

A word of caution: including specific equipment, books or materials DOES NOT mean that the Low Incidence Fund is the most appropriate source of acquisition. There is NO GUARANTEE of approval by the Low Incidence Committee. Once specific equipment is listed, the District is ultimately and legally responsible for acquisition of such.

4. **Complete the “Low Incidence Request” form** thoroughly and legibly.
5. **Include the current IEP.**
6. **Include all supportive documentation** pertinent to the low incidence funds request (eg. assessment report, specific catalog ordering information).
7. **Send the request packet to your District Director, Pupil Personnel Services, or designee for approval and authorizing signature.** It will then be sent to the Low Incidence Committee Chairperson.
8. **Chair reviews packet and summarizes request and documentation.** Chair distributes summarized request information to Low Incidence Committee members for discussion and voting. Simple majority of voting committee members needed for approval. Chair does not vote. Email is encouraged for this process with cc to requestor and authorizing Director or designee.

Every effort is made to expedite completion of a request, typically within 1 week of the request.

It is imperative that complete documentation is included with the request in order to ensure timely consideration by the Committee. If not included, delays will result. A copy should be retained by the requester.

9. **Purchasing the LI equipment:** Once approval is granted the Committee will process the purchase through the District office. It will be inventoried and sent to the site indicated on the request form. A staff responsibility memo will be included. Please check to make sure the appropriate inventory tag(s) are attached to the equipment.
10. **Student moves into the LEA:** When a student moves into the Coronado Unified School District with low incidence equipment already purchased for them in their last placement, it is the responsibility of the LEA of attendance to secure or document that the equipment could not be transferred. Documentations should be attached to the “low Incidence Request” form when asking for equipment to be repurchased.
11. **When student moves out of the Coronado Unified School District:** (see Low Incidence Movement/Reassignment/Repair Form and complete as appropriate).
12. **Equipment no longer needed:** If the equipment has been purchased for one student and is no longer being utilized by that student, the equipment MUST be reassigned to another student in the classroom or District who qualifies for use of the equipment under low incidence criteria OR it MUST be returned to the District Special Education Office (see Low Incidence Movement/Reassignment/Repair Form and complete as appropriate).

If the equipment was purchased for more than one student, the equipment may stay at your site as long as at least one student still qualifies for use of the equipment.

CORONADO UNIFIED SCHOOL DISTRICT
Low Incidence Request

Requested by: _____ Title: _____ Phone: _____

Email: _____ Location: _____

Send equipment to: Name: _____ Site: _____ Phone: _____

Email: _____

LEA District of attendance: _____ Date submitted: _____

District approval signature needed before submitting: _____

Student(s): 1. _____ IEP Date: ____/____/____ FHI: _____

2. _____ IEP Date: ____/____/____ FHI: _____

3. _____ IEP Date: ____/____/____ FHI: _____

Is this an accessory to equipment previously approved? Yes No

Attach a copy of the IEP for each student. Justification of need must be indicated on IEP. Does assessment, goals and objectives correlate to the justification statement of need? Yes No

Comments: _____

- Indicate expected frequency of usage by student: Daily Weekly Other
- What level of assistance or adaptation is needed? None Other (describe)

- What support will be needed to set up equipment and implement?

******* ORDERING INFORMATION *******

| Quantity | Item & Description | Catalog # | Unit Price | Total Cost |
|----------|--------------------|-----------|------------|------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

*** Copy of catalog/web site description needed for backup in the business office**

VENDOR: _____ Sub Total: _____

ADDRESS: _____ Tax: _____

CITY/STATE/ZIP: _____ Shipping: _____

PHONE: _____ Total: _____

******* COMMITTEE ACTION ***** (For Office use only)**

Date request received: _____ Date reviewed by committee: _____

Does the request meet the criteria for low incidence expenditures Yes No

Approved Not approved (Initials) _____

(simple majority required)

Comments: _____

Ordering Process and Inventory

Date requisition started: _____ Date equipment arrived to DISTRICT: _____ Serial # _____

DISTRICT tag#: _____ Date equipment sent to the site: _____

Notification Process

Send a copy of this form to the Director of Program to verify committee approval or denial _____

Send a copy of this form to Committee Facilitator when the process is completed _____

Send a copy of this form along with the equipment _____

Coronado Unified School District

Date:

From: Low Incidence Committee
Phone:

To:

Re: Staff Responsibility for Requested Low Incidence Equipment

The equipment is purchased for, and is to be used by, the student(s) indicated on the request form to meet his/her unique education needs per IEP goals and objectives. Low Incidence Equipment is not school District property; it is the property of the State managed by the Coronado Unified School District.

Sharing Equipment:

With other Low Incidence Eligible Students: Because of the high cost of many of the specialized equipment, it is permissible, and desirable, to request equipment to be shared by more than one low incidence eligible student.

With Non-Low Incidence Eligible Students: Shared use of LI equipment is allowable as long as:

1. The low incidence student for whom the equipment was purchased has first priority.
2. The equipment remains in the same setting as the low incidence student and continues to be available when needed for that student.
3. If the low incidence student is transferred to another special education program within the Coronado Unified School District, the equipment is transferred with the student.
4. When the equipment is no longer needed by the low incidence student it is either reassigned to another low incidence eligible student within the District or returned to the Pupil Personnel Services (PPS) Office.

TEACHER RESPONSIBILITIES:

1. The equipment should have a "Property of Coronado USD" tag. In addition, a numbered ID tag should be affixed only if the equipment value is \$500.00 or greater. District staff will put the appropriate tag(s) on the equipment. All equipment, as appropriate, will have an additional Low Incidence tag affixed. The equipment will then be inventoried into the database.
2. Upon request from the DISTRICT, you will be required to complete an inventory of all low incidence equipment in your classroom.
3. If the equipment has been purchased for one student and is no longer being utilized to meet the unique education need of that student per low incidence guidelines, the equipment **MUST** be reassigned to another student in your classroom or District who qualifies for use of the equipment or it **MUST** be returned to the Pupil Personnel Services Office. Complete the *Movement/Reassignment/Repair of Low Incidence* form and forward to the District Low Incidence Committee at the Pupil Personnel Services Office.
4. If the student has moved to another site within the District and can still benefit from use of the equipment, you **MUST** forward the item and a copy of the request to the student's new site/teacher. You **MUST** also inform the PPS office by completing the *Movement/Reassignment/Repair of Low Incidence* form and forward to the District Low Incidence Committee at the Pupil Personnel Services Office.
5. If the student has moved outside your District and you are not able to reassign the equipment to another low incidence eligible student, you **MUST** return the equipment to the Special Education Office. Call the office at 522-8932 to make arrangements for return of the equipment.
6. If the equipment was purchased for more than one student as indicated on the LI request form, and any of the conditions explained in 3-5 above exists, the equipment may stay at your site as long as at least one student still qualifies for use of the equipment.
7. All changes (including student assignment, location, etc.) regarding any low incidence equipment **MUST** be communicated in writing to the Pupil Personnel Services Office using the *Movement/Reassignment /Repair of Low Incidence* form. Always keep a copy of the forms for your files. **If an item is lost, broken or stolen, this should also be reported to the Pupil Personnel Services Office using the form described above.**

**Coronado Unified School District
Low Incidence Movement/Reassignment/Repair Form**

Student: _____ FHI: _____ School: _____
District/LEA: _____ Contact Person: _____ Date Submitted: _____
Phone: _____ Email: _____
Item 1) _____ ID# _____
Item 2) _____ ID# _____
Activity Requested: Movement/Reassignment Repair Other (Keep a copy of this form for your files)

Movement/Reassignment

- 1) Item remains with the student, however location has changed
Previous location:
Site: _____ Teacher: _____ Phone: _____
Move to Location:
Site: _____ Teacher: _____ Phone: _____
- 2) Student no longer needs equipment and will be reassigned to another Low Incidence student
Based on IEP need, reassigned to:
Student: _____ Site: _____ District: _____
Teacher: _____ Phone: _____ FHI: _____
Date of Reassignment: _____
Other student information as necessary: _____

- 3) Student no longer needs equipment and is being returned to the LI committee
- 4) Student has moved out of the Coronado Unified School District and equipment is being reassigned to another Low Incidence qualifying student(s) in the District.
- 5) Student has moved out of the CUSD. Address of new district if known:.
C/O Person: _____
Address: _____

Phone: _____

Repair Request

Send the material or equipment to the Pupil Personnel Services Office along with this form. Describe repair needed. Please be specific and detailed as to the problem. Attach a copy of any warranty or repair information that may come with the item.

Description of repair need:

Company: _____
Address: _____

Phone: _____ Web Address: _____
Email: _____

Lost Stolen

Comments: _____

CORONADO UNIFIED SCHOOL DISTRICT

Low Incidence Equipment Property Loan Guidelines

Provisions to use equipment at home:

1. The student must qualify as a Low Incidence Student.
2. The IEP Team must determine the need for home use and document rationale for the determination. The team will discuss related service standards which addresses the need for such equipment use being necessary at home for the student to benefit from special education.
3. Duplication of equipment to provide for both home and school use is not seen as appropriate.
4. The Local Education Agency (LEA)/District of student attendance will assume insurance responsibility or liability for the repair or replacement of low incidence equipment purchased out of Low Incidence Funds. The "Property Loan Approval Form" should be completed by the Director of Pupil Personnel Services.
5. The program provider will be responsible for tracking the location of the Equipment (see Low Incidence Property Loan Form).
6. The equipment may be available to the student during extended school year and when school is not in session, based on the IEP documentation and rational for extended use.
7. If equipment access is not necessary when the District/county program is not in session for the school year and extended school year, then the equipment will be returned to the program provider (teacher/classroom).
8. Parents/Guardians will agree in writing to:
 1. Secure the equipment and supervise proper use.
 2. Provide necessary and safe transportation of the equipment between home and school.
 3. Acknowledge that the equipment was purchased for student use with State funds and the State retains ownership of the equipment.
 4. Receive training in the use of the equipment before it can be sent home.
 5. Return the equipment promptly as identified on the agreement.
 6. Acknowledge that the equipment may be called back at any time it is no longer needed or that it is not being used properly.
 7. Acknowledge that the equipment may be called back for maintenance or calibration if necessary.
 8. Return the equipment to the identified service provider should the student move out of the Coronado Unified School District.

CORONADO UNIFIED SCHOOL DISTRICT
Low Incidence Equipment Property Loan Form

Student Name: _____ Current School: _____

Teacher: _____

Service provider who monitors the equipment:

Name: _____ Phone: _____

Date equipment loaned: _____ Return due date: _____

Description of Equipment: _____

Serial Number: _____

Condition of equipment upon loan: _____ (picture if possible)

Condition of equipment upon return: _____ (picture if possible)

Return equipment to: Name _____ Location: _____

Rationale for home use (documented in the IEP): _____

PARENT RESPONSIBILITY

As the parent/guardian of _____, I agree to:

1. Secure the equipment and supervise proper use.
2. Provide necessary and safe transportation of the equipment between home and school.
3. Acknowledge that the equipment was purchased for student use with State funds and the State retains ownership of the equipment.
4. Receive training in the use of the equipment before it can be sent home.
5. Return the equipment promptly as identified on the agreement.
6. Acknowledge that the equipment may be called back at any time it is no longer needed or that it is not being used properly.
7. Acknowledge that the equipment may be called back for maintenance or calibration if necessary.
8. Return the equipment to the identified service provider should the student move out of the District.

Parent/Guardian signature

Date

Address (Street City Zip)

Telephone

Email: _____

LOCAL AGENCY AUTHORIZATION:

The Local Education Agency (Coronado Unified School District) of student attendance will assume insurance responsibility and liability for the repair or replacement of equipment purchased out of Low Incidence Funds.

Signature of Director of Special Education of Designee

Date

Copies to: District, service provider, parent/guardian, CUSD Low Incidence Committee

SECTION VII

Educational Benefit

EDUCATIONAL BENEFIT

Board of Education v. Rowley 1982, was decisive in our understanding today of the term **educational benefit**. Ultimately after lower court decisions and appeals, the U.S. Supreme Court concluded that the IDEA does not require that States maximize the potential of students with disabilities. The intent of IDEA was more to open the door of public education to handicapped children rather than to guarantee any particular level of education once inside.

FAPE and LRE become our guideposts decided and analyzed individually to ensure the child is receiving a basic floor of opportunity and “**educational benefit.**”

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

- are provided at public expense
- meet the standards of the State
- include pre-school, elementary or secondary school and education through 22nd birthday
- is provided in conformity with the IEP

FAPE Standard

The Supreme Court established two criteria in determining FAPE

- have the procedures been adequately complied with (compliance) and
- is the IEP reasonably calculated to enable the child to receive **educational benefit**

Core Entitlements for Children with Disabilities

- a right to FAPE
- in the Least Restrictive Environment (LRE)
- as described in the IEP designed to provide “**educational benefit**”

IDEA (Individuals with Disabilities Education Improvement Act) of 2004 gave us further conceptual refinements:

- high expectations for all children
- ensuring access to the general education curriculum and standards in the general classroom, to the maximum extent possible
- preparing children with disabilities to lead productive and independent adult lives
- providing effective transition services to promote successful post-school employment or education.

So, while we know and understand the above concepts, it is critical that we analyze what we are doing over time for individual children to truly measure educational benefit. It is not just a snap shot at the time of a single IEP meeting. In a nutshell, analyze what did assessments/present levels say about needs, what goals supports & services were agreed to in response to identified needs, was the IEP implemented and did the student make progress or gain educational benefit. True analysis looks back thru years or the span of time between triennials.

EDUCATIONAL BENEFIT ANALYSIS

IN A NUTSHELL

In preparation for an annual IEP meeting

Review the following points related to the previous IEP. **Use the worksheet provided in this section of the handbook.**

- 1) What did assessments and present levels identify as areas of need?
- 2) What did the IEP team decide was appropriate in relation to each need?
 - Goals?
 - Services?
 - Accommodations/Modifications?
 - Special factors (AT, Behavior Support, Low Incidence needs)?
 - Other?
- 3) Was the IEP implemented appropriately? (Were all supports as services provided as written)?
- 4) Did the child make adequate progress? Did they receive **educational benefit** from the plan?
- 5) If not, what adjustments need to be made to the IEP contents to respond to lack of educational benefit? Additional assessment? Adjusted goals? Different services or level of services? Change in location where services are being delivered?

Educational Benefit Analysis Over Time

We should be preparing for every annual review with this analysis. When done over a period of years, you have a comprehensive analysis and rationale for the IEP team recommendations overtime. Assuming the IEP's are implemented fully and in compliance, you then have a long term record of the success of a carefully planned and implemented special education program for the student. This process provides proof positive of individual educational benefit.

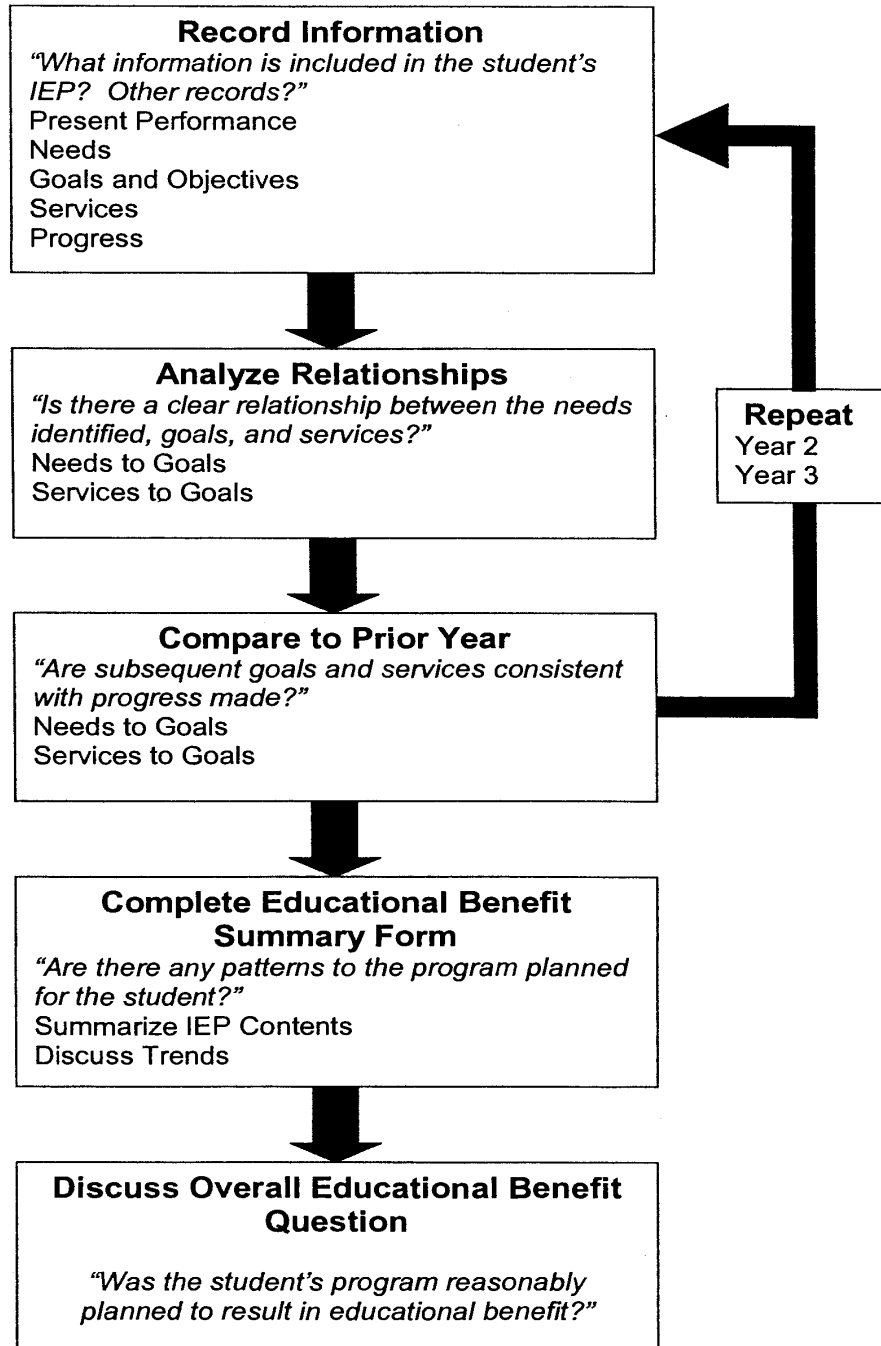
When the Coronado Unified School District participates in the State required Special Education Self Review (SESR) once every four years, a three year analysis or look back doing this educational benefit analysis is part of the review for several student records. Additionally when individual Districts are tapped for State required Verification Reviews which includes CDE participation, the same educational benefit analysis is conducted on our files by CDE.

In Summary

Our programming for students should be analytic, thoughtful and consistently designed based on individual assessed needs and the growth made from one IEP to the next. When you read an IEP you should be able to track threads through the document. Assessment report data should be visible in present levels. Needs should be visible in present levels. Services/supports and goals should be chosen and designed in response to specific, identified needs and measurable growth should result. The result of this process over time is

EDUCATIONAL BENEFIT.

Educational Benefit Review Process



| | |
|---------------------------------------|---|
| Student's Name: Site: District: | EDUCATIONAL BENEFIT REVIEW STUDENT SUMMARY WORKSHEET |
|---------------------------------------|---|

SESR
 Worksheet 2a

| Year 1 Assessment Area | Present Performance (Y/N) | Identified Need (Y/N) | Goals and Objectives (Y/N) | Placement & Services (Y/N) | Progress (Y/N) |
|--|------------------------------|--------------------------|-------------------------------|-------------------------------|-------------------|
| Gross Motor | | | | | |
| Fine Motor | | | | | |
| Communication | | | | | |
| Self Help | | | | | |
| Academic | | | | | |
| Social Emotional | | | | | |
| Behavior | | | | | |
| Vocational | | | | | |
| Other: | | | | | |
| Other: | | | | | |
| Other: | | | | | |
| Year 2 Assessment Area | Present Performance (Y/N) | Identified Need (Y/N) | Goals and Objectives (Y/N) | Placement & Services (Y/N) | Progress (Y/N) |
| Gross Motor | | | | | |
| Fine Motor | | | | | |
| Communication | | | | | |
| Self Help | | | | | |
| Academic | | | | | |
| Social Emotional | | | | | |
| Behavior | | | | | |
| Vocational | | | | | |
| Other: | | | | | |
| Other: | | | | | |
| Other: | | | | | |
| Year 3 Assessment Area | Present Performance (Y/N) | Identified Need (Y/N) | Goals and Objectives (Y/N) | Placement & Services (Y/N) | Progress (Y/N) |
| Gross Motor | | | | | |
| Fine Motor | | | | | |
| Communication | | | | | |
| Self Help | | | | | |
| Academic | | | | | |
| Social Emotional | | | | | |
| Behavior | | | | | |
| Vocational | | | | | |
| Other: | | | | | |
| Other: | | | | | |
| Other: | | | | | |
| <i>Please make any additional notes/comments on the back of this sheet</i> | | | | | |

1. Is the assessment complete and does it identify the student's needs?
 Yes No
 Explain: _____
2. Does the Present Performance identify all the needs identified in the assessment?
 Yes No
 Explain: _____
3. Are all of the student's needs addressed by appropriate goals and objectives?
 Yes No
 Explain: _____
4. Do the services support the goals and objectives?
 Yes No
 Explain: _____
5. Did the student make yearly progress?
 Yes No
 Explain: _____
6. If the student did not make progress, were the goals and objectives changed in the IEP to assist the student to make progress?
 Yes No
 Explain: _____
7. If the student did not make progress, were the services changed in the IEP to assist the student to make progress?
 Yes No
 Explain: _____
8. If the student did not make progress, were sufficient services provided to ensure that the student would make progress?
 Yes No
 Explain: _____
9. To assess for overall compliance: Considering the answers to each of the above, was the IEP reasonably calculated to result in educational benefit?
 Yes No
 Explain: _____

SECTION VIII

EARLY START

PART C

California Early Start
Created as Federal legislation (Part C)
Individual with Disabilities Education Act (IDEA)
Revised 1991, 1997 and 2004

Early Start ensures early intervention services to children birth through three years of age with disabilities and their families in a coordinated family-centered manner.

Two lead agencies are identified and function as the “payer of last resort” for Early Start Service. California Department of Education (CDE) and California Department of Developmental Services (DDS) take the lead with other agencies such as Family Resource Network, Public Health, Social Services and Head Start collaborating to meet the needs of eligible children in the context of their families.

Eligibility requirements differ from those of the more familiar (Part B). Little ones, birth to three, eligible through the Regional Center system must demonstrate a 1/3 delay in one skill area. Children being found eligible through education must demonstrate one 50% delay in a skill area or two skill areas with 25 % delays in each. Additionally, an established risk, or a solely low incidence condition with a known probability of causing a developmental disability are considered as factors to be considered related to Early Start eligibility.

Established risk conditions are specific and include:

- Certain chromosome and genetic disorders such as inborn errors of metabolism such as Down Syndrome
- Head or central nervous system injuries such as Traumatic Brain Injury (TBI)
- Certain congenital malformations such as Microcephaly
- Solely low incidence disabilities (served by education only) include blind, deaf, blind/deaf and orthopedic impairments

Intake starts with referral and intake, evaluation and eligibility determination plus the development of the Individualized Family Service Plan (IFSP) must be completed within 45 calendar days.

An Example of Early Start Services which may be appropriate includes:

- Audiology
- Family training, counseling, home visits
- Health Services
- Diagnostic Services
- Occupational Therapy/Physical Therapy
- Special Instruction
- Speech and Language Services
- Transportation
- Respite Services

Additional service providing agencies have separate eligibility and entitlement regulations but may include medical services (CCS, Medi Cal), family reunification (Social Services), food assistance (WIC, food stamps) and childcare.

With the addition of Part C to the Special Education Mandates, a full range of services became available to children and their families from birth-22 years of age depending on eligibility. While focus of Part B is Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE), Early Start focuses on the infant or toddler's needs in the context of the family and in the natural occurring environment for a child of that age.

SECTION IX

**PARENTALLY PLACED
PRIVATE SCHOOL
STUDENTS**

Parentally Placed Private School Students

Parents who choose to decline a District of residence's offer of FAPE (on an IEP and offered in the public school setting), give up their individual student entitlement to special education services.

The student may receive limited public school special education service through a "Service Plan" form. These services are decided upon by the school District (proportionate share) where the private school is located and provided by that same school District based on limited funding available for that purpose. When that funding is exhausted for the year, the service may also end. The District consults with the private schools within their boundaries and through that collaboration, decide what service(s) private schools are most desirous of receiving, often speech and language or RSP consultation.

Federal and State legislation indicates that District of Service (location) is responsible for assessment. District of Residence is responsible for the offer of FAPE and District of location is responsible for services on the service plan.

Included in this section is the service plan form used and reviewed annually for students in private schools with special education eligibility and needs. IEP's are not written to carry service for parentally placed private school students.

Students being served on private school service plans are entered into SpEd Forms and service plans are completed within that system. Service Plan information is submitted with CASEMIS data by District of location and used to calculate the proportionate share of funding to be spent on services for parentally placed private school students.

At the teacher level related to private school students, you will only be involved with the service plan development and implementation or assessment and FAPE offer.

**CORONADO UNIFIED SCHOOL DISTRICT
SERVICE PLAN (SP) for Parentally Placed Private School Students**

Student's Name: _____ DOB: _____ Grade: _____

Parents: _____ Address: _____

Home Phone: _____ Work Phone: _____

Local Educational Agency (District where private school is located/LEA): _____

District of Residence/DOR: _____ Home School: _____

Private School: _____ Private School Phone: _____

Check one of the following two boxes:

The above-named student is eligible for special education services. The student's parents have expressed an interest in enrolling the student in public school. Accordingly, the DOR has offered a free appropriate public education, (FAPE), available to the student by developing an individualized educational program, (IEP), on _____ (*insert date here*) By their signatures below, the student's parents acknowledge and agree that:

- (1) The DOR has offered a FAPE available to the student; and
- (2) the IEP developed on _____ (*insert date here*) constitutes a FAPE.

OR

The above-named student is eligible for special education services. The student's parents have clearly stated to the DOR that they will enroll or will continue to enroll the student in a private school without the consent of, referral by, or payment by the DOR. The student's parents have made it clear that they are not interested in the development of an IEP. Accordingly, the DOR has offered to develop an IEP if and when the student's parents express an interest in enrolling the student in public school. By their signatures below, the student's parents decline the development of an IEP at this time and state that they are enrolling or are continuing to enroll the student at the following private school:

.....

Pursuant to the Individuals with Disabilities Education Improvement Act, (IDEA), the LEA must provide services to parentally placed private school children with disabilities consistent with their number and location in the State using a proportionate share of federal funding. This obligation is set forth in the IDEIA-2004, 20 USC 1412(a)(10)(A), and the CORONADO COUNTY DISTRICT's *Policy for Serving Children with Disabilities Enrolled by Their Parents in Private School*. This policy has been presented and explained to the student's parents. By their signatures below, the student's parents acknowledge receipt of a copy of this policy.

.....

After appropriate consultation with representatives of private school children with disabilities, the LEA has decided to provide _____ services to parentally placed private school children with disabilities.

The LEA hereby offers the following service(s) to the student:

| Special Education Service(s) | Frequency, Duration & Location of Service(s) | Anticipated Start Date & End Date of Service(s) |
|------------------------------|--|---|
| | | |

**CORONADO UNIFIED SCHOOL DISTRICT
SERVICES PLAN – Page 2**

Check one of the following boxes:

- It is not appropriate to develop goal(s) and objectives for the above-specified service(s).
- It is appropriate to develop goal(s) and objectives for the above-specified service(s). See attached Coronado County DISTRICT or LEA Goals & Objectives Form.
- Refer to IEP developed on _____ for goals and objectives in the area of service(s) on this Services Plan.

Personnel Responsible for Implementation of Service(s):

Parents check one of the following two boxes if student is enrolling or continuing to enroll in private school:

- I consent to the above-specified service(s) to my child.
- I decline the above-specified service(s) to my child at this time.

Parent: _____ Date: _____

Parent: _____ Date: _____

Administrator/Designee: _____ Title: _____ Date: _____

Service Provider: _____ Title: _____ Date: _____

Other: _____ Title: _____ Date: _____

Other: _____ Title: _____ Date: _____

Other: _____ Title: _____ Date: _____

Other: _____ Title: _____ Date: _____

Private School Representative: _____ Title: _____ Date: _____

Private School Representative: _____ Title: _____ Date: _____

Note to Parents/Guardians: You will receive an annual letter requesting information regarding whether you:

- 1) intend to continue the student's unilateral placement at the private school for the following school year and continue to receive an SP;
- 2) intend to continue the student's unilateral placement at the private school for the following school year and discontinue receiving an SP;
- 3) are requesting that the DOR convene an IEP team meeting because you are interested in enrolling the student in public school; and/or
- 4) consent to a triennial evaluation (if applicable).

Annual Review Date: _____ Triennial Review Date: _____

SECTION X

SURROGATE PARENTS

APPOINTMENT OF A SURROGATE PARENT

Due process ensures parent participation, appropriate assessment, equality of access to special education programs and timely removal from special education programs when special education services are no longer needed or desired by a responsible adult student (18 years of age or older). Congress recognized that special provisions must be made to guarantee that students who do not have parents available to act for them nonetheless have access to the substantive and procedural protections of the IDEA, and included two specific provisions to ensure that all students with disabilities have a “parent” to act on their behalf. The first is a provision that provides an extremely broad definition of “parent,” and the second is a provision that mandates the appointment of another individual to act as the student’s parent whenever the student is without a parent to act on his or her behalf. The second provision is known as the “surrogate parent” mandate.

Parent means a natural, adoptive, or foster parent of a child, a guardian (but not the State if the child is a ward of the State), or an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with who the child lives, or an individual who is legally responsible for the child’s welfare.

The appointment of a surrogate parent seriously compromises natural parents’ rights to participate in the educational decisions affecting their child. Under IDEA, a surrogate parent need not be appointed for a student who has a known and available parent, guardian, or person acting as a parent. Even in cases where natural parents have lost legal custody of their child, courts have held they still have the right to advocate for the provision of a free appropriate public education. **Natural parents retain their rights with regard to the education of their child unless those rights are expressly abdicated or removed by the court.**

A parent is “unavailable” if, after documented reasonable efforts, the public agency cannot discover the whereabouts of the parent. What efforts are “reasonable” is determined on a case-by-case basis. Any effort that is not both diligent and thorough, however, may not be “reasonable.” It may be reasonable to appoint a surrogate parent during the search for a parent, and to dismiss him or her if a parent is found. **“Reasonable efforts” may include such things as documented phone calls, letters, certified letters with return receipts, and visits to parents’ last known addresses. A parent is not unavailable simply because the parent is non-responsive or uncooperative.** Educational agencies may use telephones, computers and other technology and strategies to gain the parent’s participation.

Section 56028(4), regarding the definition of “parent”, states that parent includes “A foster parent if the natural parents’ authority to make educational decisions on the child’s behalf has been specifically limited by court order in accordance with subsection (b) of Section 300.30 of Title 34 of the Code of Federal Regulations. The foster parent must be willing to perform the duties of a parent in the educational setting.

A surrogate parent **always** must be appointed when a student is a “ward of the state”.

A parent may voluntarily explicitly state in writing and, revocable at any time, appoint a surrogate for his/her child.

- The LEA shall make an effort to appoint a surrogate parent within 30 days.
- The surrogate parent shall not be an employee of the SEA, LEA or other agency involved in the care or education of the child
- An unaccompanied homeless youth shall be appointed a surrogate

While the IDEA does not expressly mandate training and support for surrogate parents, state and local educational agencies must ensure that surrogate parents who are appointed have “knowledge and skills” in order to provide adequate representation of the student. To assist surrogate parents in carrying out their responsibilities, state and local educational agencies should provide initial training that includes, at minimum, substantive and procedural information about the special education system and the role of the surrogate parent. Such training could be provided face-to-face by the educational agency or through the use of existing advocacy training sessions, television, videos or other technology devices.

The surrogate parent provision is critical to children with disabilities who are without parents.

The Coronado Unified School District Local Plan will define the responsibility for all components of the Surrogate Parent Program. The need of students to have a surrogate parent will be determined by the LEA based upon California and federal law. The District/LEA will develop and conduct surrogate parent training.

A surrogate parent must meet with the child at least one time and be limited to visitations at the school. Should a home visit appear necessary, it will be made only after contact with the social service guardian agency involved and the LEA. After the surrogate has received permission to make the home visit, the surrogate is to be accompanied by another person selected by the LEA for this purpose.

The surrogate parent will utilize the District address and telephone number if it is necessary to provide this information in their role as surrogate. The surrogate parent may also meet with the child at the school on additional occasions, attend the child’s individualized education program (IEP) meetings, review the child’s educational records, and consult with persons involved in the child’s education.

Compensation shall consist of reimbursement for out-of-pocket expenses such as telephone calls, mileage and stamps. The LEA utilizing the surrogate parent’s service will cover these costs.

Surrogate parents will be provided the same insurance coverage as other school volunteers.

Caseloads will be determined by mutual agreement between the surrogate and the LEA.

The surrogate parent shall comply with federal and state law pertaining to the confidentiality of student records and information, and shall use discretion in the necessary sharing of the information with appropriate persons for the purpose of furthering the interest of the child.

A surrogate parent should be terminated or replaced only when he / she wishes to relinquish his / her responsibilities or when, in the judgment of the multi-disciplinary team (which should include the surrogate parent), there is another individual who has closer ties to the student who is willing to be appointed the surrogate parent, or the surrogate is no longer qualified based on federal and state qualifications and standards. Removal of the rights of a surrogate parent may occur **for any of the following reasons:**

1. The parent or guardian returns and assumes educational responsibility for the student.
2. The student is no longer a ward or dependent of the court and a parent/guardian has been named and located.
3. The court reinstates the right of the parent/guardian to make educational decisions for the student who is a ward or dependent of the court.

4. The student reaches the age of majority unless the student is declared incompetent by a court of law.
5. The student is no longer eligible for special education and related services.
6. The LEA or DISTRICT Director of Pupil Personnel Services/Designee terminates the appointment of the surrogate parent.
7. The surrogate parent is found to have a conflict of interest or otherwise no longer meets the appointment.
8. The surrogate parent takes actions which threatens the well-being of the assigned student.
9. The student moves out of the DISTRICT.
10. The student becomes emancipated, married, or meets other criteria, which eliminates his or her need for a surrogate parent.
11. The surrogate engages in illegal activities.

When appointing a surrogate parent, the local educational agency shall, as a first preference, select a relative caretaker, foster parent, or court appointed special advocate, if any of these individuals exist and is willing and able to serve. If none of these individuals is willing or able to act as a surrogate parent, the local educational agency shall select the surrogate parent of its choice. If the student is moved from the home of the relative caretaker or foster parent who has been appointed as a surrogate parent, the local educational agency shall appoint another surrogate parent.

For the purposes of this section, the surrogate parent shall serve as the student's parent and shall have the rights relative to the student's education that a parent has under Title 20 (commencing with Section 1400) of the United States Code and pursuant to Part 300 of Title 34 (commencing with Section 300.1) of the Code of Federal Regulations. The surrogate parent may represent the student in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in all other matters relating to the provision of a free appropriate public education for the student. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program including non-emergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to this chapter. The surrogate parent may sign any consent relating to individualized education program purposes. As far as practical, a surrogate parent should be culturally sensitive to his or her assigned student.

Individuals, who would have a conflict of interest in representing the student, as specified under federal regulations, shall not be appointed as a surrogate parent. "An individual who would have a conflict of interest," for purposes of this section, means a person having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure a free appropriate public education for an individual with exceptional needs, as defined in Section 56026 of the Education Code.

Except for individuals who have a conflict of interest in representing the student, and notwithstanding any other law or regulation, individuals who may serve as surrogate parents include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers who are not employees of a public agency involved in the education or care of the student. The surrogate parent shall not be an employee of a public or private agency that is involved in the education or care of the student. If a conflict of interest arises subsequent to the appointment, another surrogate parent shall be appointed.

The surrogate parent and the local educational agency appointing the surrogate parent shall be held harmless by the State of California when acting in their official capacity except for acts or omissions that are found to have been wanton, reckless, or malicious.

SECTION XI

IDEA 2004
(REGULATIONS 2007)

**The IDEA 2004 and IDEA 2006 Regulations:
What You Need to Know**

January 2007

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I. Introduction

- A. The 2004 IDEA reauthorization – the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) - was signed into law on December 3, 2004. Other than the personnel requirements which went into effect when the bill was signed in December 2004, the new statutory provisions went into effect on July 1, 2005.

This outline summarizes the current statutory and regulatory requirements. The impact of the 2006 IDEA final regulations is highlighted throughout the outline under the bold font headings. **Even with the new federal regulations promulgated**, many questions of statutory interpretation remain. In addition, consideration **needs to be given to any state laws or regulations which may exceed the IDEA 2004 requirements. California Code provisions which exceed the IDEA are reflected in the notes throughout the outline.**

II. Individuals with Disabilities Education Improvement Act of 2004 History

- A. The President signed the IDEA bill into law - December 3, 2004.
B. The IDEA changes, except for the personnel requirements, took effect on July 1, 2005. (Public Law 108-446)
C. The final IDEA regulations, released in August 2006, took effect on October 13, 2006. (34 Code of Federal Regulations, Part 300)

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III. IDEA Purposes

- A. To ensure that children with disabilities have a Free Appropriate Public Education (FAPE) available to meet their unique needs and prepare them for further education, employment, and independent living.
B. To ensure that the rights of children with disabilities and their parents are protected.
C. To assist states, localities, educational service agencies, and Federal agencies in providing for the education of all children with disabilities.
D. To assist States in the implementation of a statewide, comprehensive, coordinated, multi-disciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families.
E. To ensure that educators and parents have the necessary tools to improve educational results for children with disabilities.
F. To assess and ensure the effectiveness of efforts to educate children with disabilities.

IV. Identification and Evaluation

A. Child Find (34 CFR 300.111 and 131)

1. Covers all children with disabilities, including students attending private schools placed by their parents.

The IDEA places the responsibility for child find activities on the Local Education Agency (LEA) where the private elementary or secondary school is located regardless of the residency status of the student. Child find activities must allow for the equitable participation for parentally placed private school students. The IDEA also requires that the LEA consult with appropriate representatives of private schools that serve children with disabilities and representatives of parents who have placed their children in private schools on how to carry out child find activities. In addition, expenditures for child find are not considered as part of the pro rated amount which LEA's need to spend on services for private school children with disabilities.

The IDEA clarifies that the child find requirements apply to highly mobile children (such as migrant children), homeless children, children who are wards of the state and children who may have a disability and be in need of special education even though they are advancing from grade to grade.

Note: The definition of a homeless child includes not only those children and youth who are living on the streets, cars, parks, etc., but also includes migratory children and children who are sharing housing of other persons due to loss of housing, economic hardship, or a similar reason (McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a, Section 725).

As applied to preschoolers, ages 3-5, the agency responsible for child find depends on whether the child is parentally placed in a day care center or preschool, meeting the state's definition of an elementary school. If yes, the LEA where the private preschool program is located is responsible for child find. If no, the LEA of residence is responsible for child find (Letter to Smith, (OSEP, December 1, 2006)).

2006 IDEA Regulations

- Clarifies that parentally placed private elementary and secondary students are subject to child find by the LEA where the private school is located even if the student is from out of state. (300.131 (f))
- Parental consent must be obtained before personally identifiable information is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence. (300.622 (a)(3))

B. Initial Evaluation (34 CFR 300.301)

1. An initial evaluation shall be conducted, pursuant to a request by the parents or the public agency, before the initial provision of special education and related services to a child with a disability.

Note: In California, the request for assessment must be written in order to document the time the request was received. (Code Section 56029)

In conducting the evaluation, the LEA must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to determine whether the child is special education eligible and the content of the child's IEP.

The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the child's disability category. Also, if appropriate, members of the IEP Team and other qualified personnel review existing information to determine what additional data needs to be collected as part of the evaluation.

The evaluation must be completed and the eligibility determination must be made within 60 days from the date of consent unless the State establishes a different time frame. Exceptions are permitted in situations where the student moves to a new LEA prior to the eligibility determination (in which case the LEA and the parent must agree to a specific time when the evaluation will be completed) or if the parent fails to produce the student for the evaluation.

Screening by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not deemed an evaluation. In addition, an evaluation involving two school Districts in the same academic year shall be coordinated and expeditiously completed.

C. Evaluation Contents (34 CFR 300.305)

1. Relevant functional and developmental information
2. Information from parents
3. Information related to enabling access in and progress in the general curriculum
4. Technically sound instruments that assess cognitive and behavioral factors in addition to physical and developmental factors
5. Review of existing data
6. Current classroom-based assessments and observations
7. Teacher and related service providers' observations

The regulatory requirements include:

- a. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
- b. If assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report. In addition, general curriculum is referred to as the "same curriculum as for nondisabled children."
8. Evaluations are to be administered in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally unless not feasible.

D. Notice/Consent for initial evaluation (34 CFR 300.300)

1. Written notice of initial evaluation

| |
|---|
| <p style="text-align: center;">Note: In California, a copy of the parent's procedural safeguards must be attached to the assessment plan. (Code Section 56321 (a))</p> |
|---|

2. Consent for initial evaluation: Parental consent is not required before reviewing existing data as part of an evaluation or administering a test/evaluation administered to all children.
3. Refusal to consent.: The District may use mediation and due process hearing procedures to pursue the evaluation.
4. If the child is a ward of the state (which does not include a child who has a foster parent) and not residing with a parent, reasonable efforts shall be made to obtain parent consent. No parental consent is required if the parent cannot be found, parental rights have been terminated, or a judge has appointed an individual with educational authority.

2006 IDEA Regulations

- If the parent does not provide consent for the initial evaluation or reevaluation, the LEA may pursue the issue through mediation or a due process hearing. The LEA does not violate its child find responsibilities if it declines to pursue the evaluation after making reasonable efforts to obtain parental consent. (300.300 (a)(3)(ii) and (c)(i))
- If a parent of a student who is home schooled or parentally placed in a private school does not provide consent for the initial evaluation or reevaluation, the
LEA may not use mediation or a due process hearing to override the parent's refusal. The LEA is not required to consider such child as eligible for services. (300.300 (d)(4))

E. Re-evaluations (34 CFR 300.303)

1. A re-evaluation is required to be conducted if conditions warrant, if the child's parent or teacher requests, but at least once every three years. The three year re-evaluation may be waived by agreement of the LEA and the parents. In addition, a re-evaluation need not be conducted more than once per year unless the parents and the LEA both agree.

2006 IDEA Regulations

- The Analysis and Comments the Regulations published in the Federal Register of August 14, 2006 (hereafter referred to as the Comments) state that if the parent requests a reevaluation more than once per year and the LEA does not agree that it is needed, the LEA shall provide the parents with written notice of the agency's refusal to conduct the reevaluation. The notice requirements must meet the standards summarized in Procedural Safeguard section (Section X- C) of this outline. (Page 46640 of the Federal Register)
2. Consent required. A District may conduct the re-evaluation without consent if it has taken reasonable measures to obtain consent and the parent has not responded. The IDEA requires that the agency have a record of its attempts in requesting consent for re-evaluation in meeting the reasonable measure requirement.

F. Scope of Re-evaluation (34 CFR 300.305)

1. If the IEP Team and "other qualified professionals" determine that no additional data is needed to confirm continued eligibility, the District shall:

- a. Provide notice to parents.
 - b. Afford the right of parents to request additional assessments. The District is not required to conduct the assessment unless requested by the parents.
2. The IDEA permits the IEP Team and other qualified individuals to review the existing evaluation data to determine the scope of the evaluation without a Team meeting required.

G. Exiting Special Education (34 CFR 300.305(e))

1. An LEA shall reevaluate a child with a disability before determining that the child is no longer eligible for special education services.. A re-evaluation is not required due to a termination of eligibility resulting from graduation with a regular high school diploma or exceeding the State’s age eligibility for FAPE. Note that graduation with a regular diploma constitutes a change of placement requiring prior written notice.

Note: In California, students with disabilities are allowed to continue in special education after reaching age 22 when their birthday falls during the current school term. (Code Section 56026©(4)(A) and ©)

2006 IDEA Regulations

- The term regular high school diploma does not include an alternative degree that is not fully aligned with the State’s academic standards, such as a certificate or a general educational development credential (GED). (300.102 (a)(3)(iv))
- The Comments state that the IDEA does not require an LEA to evaluate a student for other agency purposes such as a vocational rehabilitation program, a college or other postsecondary setting. (Page 46644)
- The Comments raise the question of whether parents who previously consented to special education services have the right to subsequently remove their child from special education. In a letter previously issued by OSEP, the OSEP stated: “If a public agency believes that a child continues to be eligible for special education, it cannot simply defer to the parent’s request and remove the student from special education services” (Letter to Williams (OSEP 1991). The Department indicated in the Comments that they anticipate publishing a notice of proposed rulemaking in the near future seeking input on this issue. (Page 46633)

H. Independent Educational Evaluation (34 CFR 300.502)

1. Parents have the right to obtain an Independent Educational Evaluation (IEE).
2. The IEE is at public expense if the parent disagrees with the District’s evaluation unless the District initiates a due process hearing. a. District has the right to initiate a hearing without unnecessary delay to show that its evaluation is appropriate.
3. The IDEA allows a public agency to ask for (but not require) an explanation by the parent why he/she objects to the agency’s evaluation. Such request may not unreasonably delay payment or due process.
4. The IEE at public expense must meet the same criteria as the District uses for its evaluations.

2006 IDEA Regulations

- The independent educational evaluation must be considered by the LEA in any decision made with respect to FAPE if the IEE meets the agency criteria. (300.502 ©(1))
- A parent is entitled to only one independent educational evaluation at public expense each time the agency conducts an evaluation with which the parent disagrees. (300.502 (b)(5))

V. Eligibility

- A. The term ‘child with a disability’ means a child – (34 CFR 300.8)
1. with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as ‘emotional disturbance’), an orthopedic impairment, autism, traumatic brain injury, deaf-blindness, multiple disabilities, other health impairments, or specific learning disabilities; and
 2. who, by reason thereof, needs special education and related services. Special education is defined as specially designed instruction (adapting, as appropriate, the content, methodology, or delivery of instruction) to address the unique needs of the child that results from the disability and to ensure access to the general curriculum. Special education includes travel training and related services (if state standards include related services as special education).
- B. Decisions made by a team of qualified individuals and the parent. (34 CFR 300.306)
- C. Copy of eligibility determination and evaluation report provided to parent.(34 CFR 300.306)
- D. Not eligible if the determinant factor is the lack of instruction in math or due to the limited English proficiency of the student. In addition, a student is not eligible for special education services if it is found that the determinant factor in learning problems is the lack of appropriate instruction in reading, including essential components of reading instruction as defined by the ESEA. The ESEA defines the essential components as: phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension strategies. (34 CFR 300.306)
- E. States have the discretion of using the “developmental delay” standard for determining eligibility for students ages three through nine. (34 CFR 300.8 (d))

Note: In California, preschool children, between the ages of 3 and 5, are eligible for special education if they have one or more of the enumerated disabilities or an established medical disability (defined as a disabling medical condition or congenital syndrome that the IEP Team determines has a high predictability of requiring special education and services. (Code Section 56441.11 (b) and (d))

- F. An LEA may opt out of using the severe discrepancy part of the specific learning disabilities definition (SLD) and replace it by using a response to scientific research based intervention (RTI) model of eligibility as part of the evaluation procedures. (34 CFR 300.307)
- G. States must establish policies and procedures designed to prevent inappropriate over-identification or disproportionate representation by race or ethnicity. (34 CFR 300.646)

2006 IDEA Regulations

- The definition of “other health impairment” now includes Tourette syndrome. (300.8 (c)(9))
- States must adopt criteria for determining SLD. A State must permit a process that determines if a child responds to scientific, research-based interventions and may permit the use of other alternative research based procedures. (300.307 (a))

Note: The language in the proposed regulations that would have allowed a State to prohibit the use of severe discrepancy was removed from the final regulations. The Comments to the regulations state that States are “free to prohibit the use of a discrepancy model.” (Page 46646)

- A child may be deemed to have a SLD if:
 - the child does not achieve adequately for the child’s age or does not meet State approved grade level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for the child’s age or State approved grade level standards:
 - * oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension, math calculations, math problem solving
 - the child does not make sufficient progress to meet age or State approved grade level standards when using a process based on response to scientific, research-based interventions or
 - the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, State approved grade level standards or intellectual development relevant to determining a SLD using appropriate assessments. (300.309 (a)(1))
- The eligibility team must consider data that prior to, or as part of the referral process, the child was provided appropriate instruction in regular education settings delivered by qualified personnel and repeated date based documented assessments of achievement at reasonable intervals, reflecting formal assessments during instruction which was reported to the parents. (300.309 (b))
- Parental consent must be promptly requested to evaluate if the child needs special education and related services If the child has not made adequate progress after an appropriate period of time, a referral for a special education evaluation must be made. (300.309 (c))

- The 60 day timeframe for evaluation must be adhered to unless extended by mutual written agreement. (300.309 (c)
- If RTI was used, documentation is required addressing: the instructional strategies used and the student centered data collected; parent notification of the State’s policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; strategies for increasing the child’s rate of learning; and the parent’s right to request an evaluation. (300.311(a)(7))

VI. Free Appropriate Public Education (FAPE)

- A. If eligible, the student is entitled to a FAPE. The term ‘free appropriate public education’ means special education and related services that –
1. have been provided at public expense, under public supervision and direction, and without charge;
 2. meet the standards of the State educational agency;
 3. include an appropriate preschool, elementary, or secondary school education in the State involved; and
 4. are provided in conformity with the individualized education program.

VII. Individual Education Programs (IEP)

A. IEP Team (34 CFR 300.321)

1. the parents;
2. not less than one regular education teacher of such child (if the child is, or may be, participating in regular education);
A regular education teacher must be part of an IEP Team when developing, reviewing, and revising the child’s IEP to the extent appropriate. The regular education teacher should assist in the determination of appropriate positive behavioral interventions/strategies, supplementary aids and services, program modifications, and supports for school personnel.
3. not less than one special education teacher, or where appropriate, at least one special education provider of such child;
4. a representative of the LEA who –
 - a. is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - b. is knowledgeable about the general curriculum; and
 - c. is knowledgeable about the availability of resources of the LEA.
The LEA representative must have the authority to commit the LEA to implement the IEP resulting from the meeting.
5. an individual who can interpret the instructional implications of evaluation results – who may be one of the above members;
6. at the discretion of the parent or the LEA, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and The party inviting these other individuals has the authority to determine whether they have knowledge or special expertise to participate.
7. whenever appropriate, the child with a disability.

If transition is being discussed, the student shall be invited to participate at the IEP meeting. If the child does not attend, the school shall take other steps to ensure that the child's preferences and interests are considered.

Note: In California, an individual with a disability is allowed to provide confidential input to any representative of the IEP Team. (Code Section 56341.5 (d))

2006 IDEA Regulations

- The Comments indicate that if the student is a minor, the parents (unless their rights have been limited or extinguished) have the authority to determine whether the student should attend the IEP Team meeting. (Page 46671)
8. If transition services are being discussed, representatives of other agencies who are likely to be responsible for paying for or providing transition services must be invited.

2006 IDEA Regulations

- To the extent appropriate, with the consent of the adult student or parents, the public agency shall invite representatives of other agencies likely to be responsible for providing or paying for transition services. (300.321 (b)(3))
9. If the public agency is considering a private school placement, it shall ensure that a representative of the private school attends the meeting or participates through other means.
10. If the child was previously served under Part C, the parent has the right to request that the Part C Coordinator or representative be invited to the initial IEP meeting.
11. An IEP Team member may be excused from attending the IEP Team meeting, in whole or in part, if the parents and LEA agree in writing because the area of the curriculum or related service is not being modified or discussed. The agreement must be in writing.

An IEP Team member may be excused from attending the IEP Team meeting even if their curricular area or related service area is being discussed by the written agreement and consent of the parent and the LEA. The IEP Team member shall submit their input to the Team in writing prior to the meeting.

Note: In California, the parent and the LEA must confer with the IEP Team member before consenting to the member's excusal from the IEP Meeting. (Code Section 56341 (g)(1))

2006 IDEA Regulations

- The Comments distinguish between an agreement with the parents and receiving consent from the parents. An agreement refers to a written understanding between the parent and LEA regarding excusal. Consent means that the parent has been fully informed and understands that the granting of consent is voluntary and may be revoked. Therefore, the LEA must provide the parent with sufficient information regarding the proposed excusal of a member. (Pages 46673-46674)
 - The Comments also clarify that the LEA determines the specific personnel to fill the roles for the school's required IEP Team participants (i.e., regular classroom teacher). A parent does not have the legal right to require other members of the school/public agency who are not designated by the LEA to attend the IEP Team meeting. (Page 46674)
 - The Comments state that if the LEA is aware of the need to request that an IEP Team member needs to be excused, the LEA could, but is not required, to include this in the notice of the meeting since the LEA may not be aware of the need to request an excusal at the time the notice is sent out. (Page 46678)
 - The Comments also caution that an LEA may not routinely or unilaterally excuse an IEP Team member. An LEA that routinely excuses IEP Team members from attending IEP Team meetings would not be in compliance with the IDEA and therefore would be subject to the State's monitoring and enforcement provisions. (Page 46674)
 - The Comments explain that a State must allow the LEA and parents the right to agree to excuse an IEP Team member. This is not an optional requirement for a state. (Page 46673)
12. The IEP may be amended between the annual IEP meetings without the necessity of calling a new IEP meeting if agreed to by the parents and the LEA. The amendment or modification to the IEP shall be in writing. Upon request, the parents shall be provided a revised copy of the IEP with the amendments incorporated.

2006 IDEA Regulations

- If changes are made to the child's IEP as a result of an agreement with the parent outside the IEP Team meeting process, the child's IEP Team must be informed of those changes. (300. 324(a)(4)(ii))
- B. Team Considerations (34 CFR 300.324)
1. strengths of the child
 2. concerns of the parent
 3. evaluation results

4. if behavior impedes learning of self or others, strategies, positive behavioral interventions and supports
5. language needs of a child with limited English proficiency
6. instruction in Braille for students who are blind or visually impaired unless the Team determines otherwise after an evaluation of the child's skills
7. communication needs of students and for students who are deaf or hard of hearing, the child's language and communications needs and the opportunities to directly communicate with peers and professional personnel
8. assistive Technology Device/Service needs
9. an agency is prohibited from requiring a child to obtain a prescription for a medication as a condition for attending school, getting an evaluation, or receiving services.

C. IEP Contents (34 CFR 300.320)

1. Present Level of Academic Achievement and Functional Performance
 - a. Involvement and progress in the general curriculum.

2006 IDEA Regulations

- The Comments specify that every IEP is required to include a statement of the child's present level of academic achievement and functional performance. The Comments stated that the Department cannot change the regulations to only require functional performance levels only if determined appropriate by the IEP Team. (Page 46662)
 - The Comments discuss that the term "functional" is generally understood to refer to skills or activities that are not considered academic and often used in the context of routine activities of everyday living. (Page 46661)
2. Goals/Objectives/Benchmarks
 - a. Measurable annual goals including academic and functional goals
 - b. An IEP must include short term objectives or benchmarks only for those students with disabilities who will be assessed using alternate achievement standards (students with significant cognitive disabilities).
 3. Special Education and Related Services
 - a. Anticipated frequency, location, and duration
 - b. Projected date for the beginning of services
 - c. The special education and related services in the IEP must be based on peer-reviewed research to the extent practicable.

- d. An assistive technology device/related service does not include a medical device that is surgically implanted or the replacement of such device.
- e. A related service includes nursing services designed to enable a student to receive FAPE

2006 IDEA Regulations

- The Comments define peer reviewed research generally as “research that is reviewed by qualified and independent reviewers to ensure that the quality of the information meets the standards of the field before the research is published”. However, the comments note that there is no single definition of the term. (Page 46664)
 - The Comments state that there is nothing in the IDEA that requires an IEP to include specific instructional methodologies. An IEP Team may address specific instructional methods in the IEP if they choose to do so. (Page 46665)
 - The Comments clarify that the IDEA does not require the IEP to include information about the specific person(s) providing the special education and related services. (Page 46667)
 - Related services do not include a medical device that is surgically implanted, the optimization of device functioning, maintenance of the device, or the replacement of that device. Services may include routine checking of an external component of a surgically implanted device. (300.34 (b))
 - Related services do include appropriate monitoring and maintenance of medical devices needed to maintain health and safety of a child (including breathing, nutrition or operation of other bodily functions). (300.34 (b)(2)(ii))
 - Interpreting services include sign language transliteration and transcription services (communication access real time translation, C-Print and Type Well). (300.24)
 - The final Regulations combine school health and school nurse services into one category.
 - Physical education services, specially designed if necessary, must be available to every child receiving FAPE unless children without disabilities do not receive physical education in that grade. (300.108)
4. Program Modifications
 5. Support for school personnel to assist the student in meeting IEP goals, progress in the general curriculum, and to be educated with nondisabled children. Support could include special training for staff in meeting a unique and specific need of the child.
 6. Explanation of the extent, if any, to which the child will not participate in class and extracurricular and non-academic activities with nondisabled children.

7. Supplementary Aids and Services

Supplementary Aids and Services is defined as aids, services, and other supports that are provided in regular education classes or other educationally related settings to enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate.

8. Participation/Modifications, if any, in District and State assessments The State must develop guidelines for the provision of appropriate assessment accommodations and participation in alternate assessments when necessary. The IEP shall include appropriate assessment accommodations. If an alternate assessment will be used to measure the student's proficiency, the IEP must include the reasons why and what alternate assessment will be administered.

NOTE: The United States Department of Education has issued proposed regulations allowing states to develop modified achievement standards for students with disabilities who can make significant progress, but not reach grade level achievement standards within the same time frame as other students.

Each state would be required to develop clear guidelines for IEP Teams to determine which students qualify for the modified assessments. For Adequate Yearly Progress determinations, up to 2% of all students assessed at the LEA and SEA level would be deemed proficient if they successfully pass the assessment based on the modified achievement standards.

Also, for the Adequate Yearly Progress determination for the subgroup of students with disabilities, the proposed regulations would allow a student with a disability who exits special education to be counted for up to two additional years in the subgroup of students with disabilities. Federal Register, December 15, 2005

9. Transition

- a. Transition services (designed with a results oriented process focused on improving the academic functional achievement of the child) must be addressed in the IEP of the student no later than in the year in which they turn 16 years of age.
- b. Appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment and where appropriate, independent living skills.

2006 IDEA Regulations

- The Comments clarify that the IEP must have transition goals for training, education, and employment. The only area which postsecondary goals are not required is in the area of independent living skills which are only required if appropriate. (Page 46668)

- c. At least one year before reaching the age of majority, a statement of rights under State law.
- d. Alternative strategies to meet transition objectives if other agencies fail to provide IEP services

NOTE: When a student exits from special education as a result of earning a diploma or aging out, the LEA shall provide the student with a summary of their academic achievement and functional performance along with recommendations how to assist the student in meeting their post-secondary goals.

- 10. A description of how progress toward the IEP goals will be measured and when periodic progress reports will be provided to the parent.
- 11. Extended School Year (ESY)

Each public agency shall ensure that ESY services are available as necessary to provide FAPE

2006 IDEA Regulations

- The Comments provide that States may use “recoupment” and “likelihood of regression or retention” as their sole criteria, but are not limited to these standards and have considerable flexibility in determining eligibility for ESY services and in establishing State standards for making ESY determinations. (Page 46582)
- The Comments state that there is nothing to limit the LEA from providing ESY services during times other than the summer, such as before and after regular school hours or during school vacations if the IEP Team determines that the student requires services during those times in order to receive FAPE. (Page 46582)

D. IEP Meeting Requirements/IEP Implementation (34 CFR 300.323)

- 1. An IEP must be made available “within a reasonable period of time” following receipt of parental consent for the initial evaluation. An IEP meeting must be held within 30 days of the eligibility determination.
- 2. The parents must receive notice of the purpose, time, location of the meeting, and who will be in attendance (including whether the student will be invited). In addition, they must be informed of their right to bring other individuals with knowledge or expertise. The IEP meeting may be held by using alternate means such as a video conference or conference call if the parents and LEA agree.

In the event that the parent does not attend, the agency must have a documented record of its attempts to arrange a mutually agreed on time and place for the meeting.

Note: In California, the parent or LEA is allowed to electronically record the IEP Meeting after providing their intent to record the meeting at least 24 hours prior to the meeting. (Code Section 56341.1 (g)(1))

3. An IEP must be in effect before special education and related services are provided. The IEP should be implemented “as soon as possible” after the IEP meeting.
4. The IEP must be accessible to each service provider who is responsible for its implementation.
5. Each service provider must be informed of his/her specific responsibilities related to implementing a child’s IEP.
6. The public agency shall give the parent a copy of the IEP at no cost.
7. A State may allow paraprofessionals who are appropriately trained and supervised under State standards to assist in the provision of special education and related services.
8. An agency must obtain written informed consent from the parents each time private insurance will be used to fund IEP services. Parents must be informed that the IEP services will be provided regardless if the parents use their private insurance.

2006 IDEA Regulations

- The agency must obtain parental consent each time access to public benefits or public or private insurance is sought. The parents must be notified that their refusal to allow access to their public insurance or benefits does not relieve the agency of its responsibility to ensure that all required services are provided at no cost to the parents. (300.154 (d)(2)(iv))
9. If a student on an IEP transfers from one LEA to another LEA in the same State within the same school year, the new LEA shall provide comparable services, in consultation with the parents, until the new LEA either adopts the previous IEP or develops a new IEP.

If a student on an IEP transfers from one LEA to another LEA in a different State within the same school year, the new LEA shall provide comparable services, in consultation with the parents, until the new LEA conducts a new evaluation, if necessary, and develops a new IEP.

The new LEA shall take steps to promptly obtain the educational records and the previous LEA shall promptly respond to such request.

2006 IDEA Regulations

- The Comments clarify that if a student on an IEP transfers to a new state and the new LEA determines that an evaluation is necessary, it would be deemed an initial evaluation requiring parental consent. (Page 46682)

- The Comments also state that if there is a disagreement as to what “comparable services” are, the dispute could be resolved through mediation or a due process hearing. (Page 46682)

VIII. Placement Issues

A. Least Restrictive Environment (LRE) (34 CFR 300.114-120)

1. To the maximum extent appropriate, children with disabilities are educated with children who are not disabled. Each public agency shall ensure that a continuum of alternative placements is available.
2. Parents must be made members of placement teams.
3. State funding formulas based on the type of setting in which the child is served must be reviewed to ensure that it does not support the violation of LRE requirements. If so, the State must revise the funding mechanism as soon as feasible.
4. LRE also applies to non-academic and extracurricular services and activities such as recess, meals, athletics, counseling, groups and clubs.
5. The placement must be as close as possible to the child’s home unless the IEP requires some other arrangement.

2006 IDEA Regulations

- The Comments clarify that placement decisions cannot be made solely on factors such as category of disability, severity of the disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience. (Page 46588)
- The Comments discuss the difference between placement and location. “Placement” refers to the points along the continuum of placement options and “location” is the physical surrounding such as the particular classroom. The school should have the flexibility to assign the child to a particular school or classroom provided that it is consistent with the placement determination. Schools are strongly encouraged to place the student in the school and classroom the child would attend if not disabled. (Page 46588)
- The Comments provide that while the school must notify parents regarding placement decisions, there is nothing in the IDEA that requires a detailed explanation in the child’s IEP of why their educational needs cannot be met in the location of the parent’s request. (Page 46588)

B. Unilateral Placements (34 CFR 300.148)

1. Applies to students who previously received special education services from a public agency.

2. A Hearing Officer or Court may order reimbursement if a FAPE was not made available in a timely manner before the student was removed from public school. The IDEA also requires that the court or hearing officer determine that the private placement made by the parents is appropriate. Such placement may be found to be appropriate even if it does not meet state standards.
3. Parental Notice of Unilateral Private Placement – Reimbursement for the costs of a unilateral private school placement may be reduced or denied if:
 - a. at the most recent IEP meeting that the parents attended prior to removal of their child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the LEA, including stating their concerns and intent to enroll their child in a private school at public expense; or
 - b. 10 business days prior to the removal of the child from public school, the parents did not give written notice to the LEA of their intent to make a unilateral private school placement and a statement of their concerns; or
 - c. prior to the parent’s removal of the child from the public school, the LEA informed the parents in writing of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or
 - d. upon a judicial finding of unreasonableness with respect to actions taken by the parents.
 - e. EXCEPT –
 - (1) if the parent is illiterate and cannot write in English;
 - (2) compliance with the notice requirement would likely result in physical or serious emotional harm to the child;
 - (3) the school prevented the parent from providing such notice; or
 - (4) the parents had not received notice from the LEA of their obligation to provide notice of their intent to make a unilateral private school placement.

C. Parentally Placed Private School Students (34 CFR 300.130-144)

1. The LEA where the private elementary or secondary school is located must conduct child find and provide equitable services to parentally placed students without regard to where the children reside.
2006 IDEA Regulations
 - Clarifies that parentally placed private elementary and secondary students are subject to child find by the LEA where the private school is located even if the student is from out of state. (300.131 (f))
2. To the extent consistent with their number and location in the State, amounts expended by a school District in providing services must be equal to a proportional amount of Federal special education funds.

The proportionate share is based on the proportion of the number of parentally placed private school children with disabilities to the total number of children with disabilities in the District. Numbers are based on eligible private school children with disabilities not just the numbers of such children being provided services under a service plan.

2006 IDEA Regulations

- The proportionate share must include both Section 611 grants (ages 3-21) and Section 619 grants (ages 3-5). (300.133 (a))
 - Evaluation costs are not considered part of the service expenditures. (300.131(d))
 - If the LEA does not spend all the proportionate funds by the end of the FY, there is a carry over for one additional year. (300.133(a)(3))
3. Special education services may be provided on site, including parochial schools, to the extent consistent with law.
 4. There is no individual right to receive some or all special education services the child would receive if enrolled in public school

2006 IDEA Regulations

- The Comments state that if found eligible by the LEA where the private school is located, the LEA of residence must make a FAPE available. An IEP must be developed by the LEA of residence unless the parent makes clear their intention to keep their child in the private school. Parental consent required to share information between the LEAs. (Page 46593)
5. The LEA shall consult with private school representatives and representatives of parents who place their children in private schools regarding: the child find procedures; determination of the proportionate share of Federal funds; how the consultation process will operate throughout the year; how, where and by whom special education and related services will be provided; types of services; methods of delivering services; and how and when decisions will be made. The LEA shall get written affirmation of their participation.
The LEA must provide private school representatives with a written explanation if the LEA disagrees with the private school on the provision and types of services. Private schools can file a complaint with the State Education Agency if it alleges the LEA failed to consult in a meaningful and timely way. An appeal of the SEA decision can be filed with the United States Secretary of Education.

2006 IDEA Regulations

- The Comments give the SEA flexibility to determine how private schools can file a complaint with the State. The State is not required to utilize the state administrative complaint requirements under the IDEA. (Page 46595)

6. Service plans must be developed for a private school child who receives services at a meeting with the IEP Team and representative of the private school. If the private school representative cannot attend, the LEA shall use other methods to ensure their participation. If necessary, the child must be provided transportation, the cost of which may be included in the pro-rated amount required to be expended.
7. Due process hearings are available to parents of private school students only on the issue of child find. The only avenue of challenging service decisions is by filing an administrative complaint with the SEA.
2006 IDEA Regulations
 - The due process hearing regarding child find would be with the LEA in which the private school is located. (300.140 (b)(2))
8. Students who are home schooled would be included only if, under State law, home schools are considered private schools.
9. The LEA shall provide the SEA the number of children evaluated in private schools, the number of children found eligible for special education and the number of children served.

IX. Disciplinary Actions

A. Short Term (34 CFR 300.530)

Short term suspensions, appropriate interim alternative settings, or other settings may be ordered for not more than 10 consecutive school days (to the extent such alternatives would be applied to children without disabilities) and for additional removals that do not constitute a change of placement.

A child with a disability can be removed from his/her current placement for up to 10 school days for any violation of school rules to the extent removal would be applied to a child without disabilities. In such a case, a public agency need not provide services for 10 school days or less if services are not provided to a child without disabilities who is similarly removed.

2006 IDEA Regulations

- The Comments clarify that the IDEA does not require that children with disabilities suspended or expelled for disciplinary reasons continue to be educated with children who are not disabled during the period of their removal. (Page 46586)
- The Comments clarify that the U.S. Department of Education's long standing policy regarding in school suspensions, portions of a day of suspension and bus suspensions, remain in effect. In school suspensions are not counted if: the child is afforded the opportunity to continue to appropriately progress in the general curriculum, continue to receive the IEP services and continue to participate with non-disabled children to the extent they would in their current placement. Portions of a day that a child is suspended may be considered as a removal in determining whether a pattern of removals exists. Bus suspensions also count if transportation is a part of the IEP and no alternative transportation is provided. (Page 46715)

B. Change of Placement (34 CFR 300.536)

1. A change of placement occurs if –

- a. The removal is for more than 10 consecutive school days; or
- b. The child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

2006 IDEA Regulations

- The regulations add another factor for determining whether a disciplinary change of placement has occurred - because the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals. (300.536 (a)(2)(ii))
 - The Comments provide that the decision of whether a change of placement has occurred is made by school personnel. The IEP Team need not be involved although there is nothing to prohibit school personnel from involving the parents or IEP Team. (Page 46714)
- c. The school may consider any unique circumstances on a case by-case basis when determining whether to order a change of placement.

2006 IDEA Regulations

- The Comments state that “unique circumstances” is best determined at the local level by school officials who know the child and all the facts and circumstances regarding the child’s behavior. Factors that could be considered include: the child’s disciplinary history, ability to understand consequences, expression of remorse and supports provided by the school prior to the misconduct. (Page 46714)

C. Services (34 CFR 300.530 (d))

1. In the case of a child with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the public agency, for the remainder of the removals, must –
Provide services to the extent necessary to enable the child to participate in the general curriculum, although in another setting and to progress toward meeting the goals set out in the child’s IEP if the removal is under the school personnel’s authority to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement.

2. School personnel, in consultation with at least one of the child’s teachers, determine the extent to which services are necessary to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child’s IEP if the child is removed under the authority of school personnel to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement.
3. The child’s IEP team determines the extent to which services are necessary to enable the child to continue to participate in the general curriculum and progress toward meeting the goals set out in the child’s IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child’s disability, if the disciplinary action constitutes a change of placement.

2006 IDEA Regulations

- The Comments provide that the term “participate” in the general curriculum should not be interpreted to mean that a school must replicate every aspect of the services the child would receive if in their classroom. (Page 46716)
 - The Comments explain that students who are suspended or who have been placed in an IAES or another setting due to discipline must participate in all general State and District wide assessments. (Page 46718)
- D. Interim Alternative Educational Setting (IAES) (up to 45 school days) (34 CFR 300.530 (g))
1. Basis for placing a student in an IAES:
 - a. Carries/possesses a weapon in school or at school functions
 - b. Knowingly possesses or uses illegal drugs
 - c. Sale or solicitation of a controlled substance
 - d. Infliction of serious bodily injury to another person at school, on school premises or at a school function. Serious bodily injury requires a showing of substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of function of a bodily member, organ or mental faculty.
 2. IAES placement/service determination by the IEP Team
 The term “dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2. inches in length.

2006 IDEA Regulations

- The Comments provide that the IAES is up to 45 school days which could extend to the new school year. (Page 46722)

E. Safety/Dangerousness (34 CFR 300.532)

1. A school District may seek a hearing officer order placing a student in an IAES for up to 45 school days if:
 - a. it is determined that maintaining the current placement for the student is substantially likely to result in injury to the student or to others.

2006 IDEA Regulations

- The Comments explain that in such a case, the school District would have the burden of proof. (Page 46723)

This matter would be addressed in an expedited hearing. Should the standard be met, a hearing officer would need to determine the IAES proposed by the school after consultation with the child's special education teacher.

2006 IDEA Regulations

- The regulations allow an LEA to seek a Hearing Officer's order again, after the expiration of the 45 school days, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or others. (300.532 (b)(3))

F. Behavior Assessments/Behavior Intervention Plans (34 CFR 300.530)

1. After taking disciplinary action involving a change of placement that is determined to be a manifestation of the student's disability, placement in an IAES or a removal for more than 10 consecutive school days that is deemed not to be manifestation, the IEP Team must, as appropriate, provide the child a functional behavioral assessment (FBA) and develop/review a behavior intervention plan.

2006 IDEA Regulations

- The Comments clarify that what constitutes a FBA is best left to the LEA, the parents, and relevant members of the IEP Team who are responsible for determining manifestation. (Page 46721)

G. Manifestation Determination (34 CFR 300.530 (e))

1. Required if the school is considering removing the child with a disability from their educational placement for more than 10 school days in a given school year when it is deemed a change in placement.

2006 IDEA Regulations

- The regulations require that on the date of which the decision is made to make a removal that constitutes a change of placement due to a violation of the code of student conduct, the LEA must notify the parents of that decision and provide a copy of their procedural rights statement. (300.530 (h))

2. Procedures
 - a. Determination made by the parent and relevant IEP Team members (as determined by the parents and LEA)
 - b. Determination made immediately, if possible, but no later than 10 school days after the date on which the decision to change the placement is made.
3. Considerations
 - a. all relevant information in the student's file
 - b. relevant information supplied by the parents
 - c. teacher observations of the student
 - d. IEP and placement
4. Manifestation Standard
 - a. Whether the behavior was caused by, or had a direct and substantial relationship to the disability, or was the direct result of the failure to implement the IEP.

2006 IDEA Regulations

- The Comments cite the Congressional Conference Committee's Report that "the manifestation determination will analyze the child's behavior as demonstrated across settings and across times when determining whether the conduct in question is a direct result of the disability". (Page 46720)

H. Manifestation (34 CFR 300.530 (f))

1. If there is a manifestation, a functional behavioral assessment will be conducted and a behavior intervention plan will be implemented or revised, as appropriate. The student will return to the last placement unless the parents and the LEA otherwise agree as part of the behavior intervention plan.

I. No Manifestation (34 CFR 300.530 ©)

1. Regular Disciplinary Hearing
 - a. Special education and Disciplinary records sent to disciplinary hearing authority
2. Continue to provide a free appropriate public education

J. Expedited Due Process Hearings (34 CFR 300.532)

1. Parent may challenge manifestation determination or any decision regarding placement with a right to have an expedited due process hearing. The expedited hearing shall

occur within 20 school days of the request and shall result in a determination within 10 school days after the hearing.

2. “Stay Put” is the IAES pending the hearing officer’s decision or the expiration of disciplinary removal, whichever occurs first, unless otherwise agreed upon.

3. “Stay Put” Exception for dangerousness
 - a. Expedited hearing applying dangerousness standard.

2006 IDEA Regulations

- In the event an expedited hearing is requested, a resolution meeting must occur within seven days of the hearing request with a 15 day period of resolution unless the parties have mutually waived the resolution process. (300.532 (c)(3))
- The Comments explain that, in an expedited due process hearing, there is no procedure for challenging the sufficiency of the request for the expedited due process hearing. (Page 46725)
- States may establish different state imposed procedural rules for expedited Hearings. (300.532 ©(4))

K. Students Not Yet Eligible (34 CFR 300.534)

1. May assert IDEA protections if it is shown school District had knowledge that the child had a disability before the behavior incident.
2. The District shall be deemed to have such knowledge if:
 - a. parent has expressed concern in writing to school personnel that the child is in need of special education;
 - b. parent has requested an evaluation; or
 - c. the teacher or other school personnel expressed specific concern about a pattern of behavior of the child to the special education director or to other supervisory school personnel.

If the LEA does not “have knowledge” that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as are applied to children without disabilities who engage in comparable behaviors.

If a parent requests an evaluation of a regular education child who is suspended or expelled, the evaluation must be expedited. Pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

Such placement can include suspension or expulsion without educational services.

L. Referral to Law Enforcement/Judicial Authorities (34 CFR 300.535)

1. IDEA does not limit a District from reporting a crime to appropriate agencies.
2. Transfer of special education and disciplinary records.

The IDEA allows the transmission of the records only to the extent permitted by the Family Educational Rights and Privacy Act. Absent parent consent, FERPA allows disclosure if pursuant to a subpoena or court order, in connection with an emergency, or pursuant to a State statute concerning the juvenile justice system.

M. Discipline Records (34 CFR 300.229)

1. A State may require that LEAs include and transmit information regarding current or previous disciplinary actions to be included in the education records of a student with a disability to the same extent as students who are not disabled.
2. Content of the record includes a description of:
 - a. behavior requiring disciplinary action
 - b. disciplinary action taken
 - c. other relevant information regarding the safety of the child or others
3. Transmission of records includes:
 - a. statement of current and past disciplinary action, and
 - b. IEP

X. Procedural Safeguards

A. State/Local procedures must be established (34 CFR 300.500)

B. Parent Participation (34 CFR 300.501 and 300.30)

1. The IDEA requires that parents be given an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and provision of a free appropriate public education.
2. Parent means a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent), a guardian (but not the State if the child is a ward of the State) or an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare or a surrogate parent

Note: The IDEA also allows a State to transfer parental rights to a student who reaches the age of majority unless a Court has determined the adult student be incompetent under state law.

2006 IDEA Regulations

- The biological or adoptive parent shall be presumed to be the parent when more than one party qualifies under the IDEA definition of parent unless the natural/adoptive parent does not have the legal authority to make educational decisions or there is a judicial decree or order specifying a person to act as the parent for educational decisions. (300.30(b))

C. Written Notice (34 CFR 300.503)

1. Parents must receive prior written notice whenever the agency proposes to or refuses to change:
 - a. identification
 - b. evaluation
 - c. educational placement; or
 - d. provision of a free appropriate public education
2. The notice must:
 - a. be in parent's native language, unless it is clearly not feasible to do so
 - b. describe the action
 - c. explain why the agency is proposing/refusing such action
 - d. description of other options considered
 - e. evaluations and other information used as a basis for the action
 - f. other relevant factors
 - g. how a copy of the procedural safeguards can be obtained
 - h. resources to assist parents

Note that notice is also required for IEP meetings.

Parents may elect to receive notices by e-mail if the agency makes this option available.

D. Consent (34 CFR 300.300)

1. Consent is required in order to conduct an initial evaluation or a reevaluation consisting of more than a review of existing information
2. Consent is required for the initial provision of special education. The LEA must seek the informed consent from the parent before providing special education and related services. There is no override provision in the event the parent does not provide informed written consent. In such an instance, the LEA cannot be charged with a violation of failure to provide a FAPE to the student.

If no consent for services is received, the LEA is not required to convene an IEP meeting or develop an IEP for the special education and related services for which the LEA is requesting consent.

2006 IDEA Regulations

- The regulations state that “consent” means that the parents have been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; the parent understands and agrees in writing to carry out the activity and that the granting of consent is voluntary and may be revoked at any time although the revocation is not retroactive. (300.9)
 - The Regulations require the LEA to make reasonable efforts to obtain informed consent for the initial services. (300.300 (b)(2))
 - The Comments clarify that “initial provision of services” means the first time a parent is offered special education and related services after the child has been evaluated and found eligible. (Page 46633)
 - The Comments also clarify that “fully informed” means that a parent has been given an explanation of what the special education and related services are and the types of services that might be found to be needed for their child, rather than the exact program of services that would be included in an IEP. (Page 46634)
3. Consent is required if the LEA will be asking the parents to use their private or public insurance or other benefits to cover the costs of the special education or related services.

2006 IDEA Regulations

- The Regulations require that parental consent be sought each time the LEA is proposing to access the parents’ private insurance or public benefits or insurance. The parents must be notified that refusal to allow access to their insurance does not relieve the agency of its responsibility to ensure that all required services are provided at no cost to the parents. (300.154)

E. Notice of Procedural Safeguards (34 CFR 300.504)

Shall be provided at a minimum:

1. Initial referral for evaluation
2. Once per year
3. Parental request for an additional copy
4. Filing a due process hearing complaint or administrative complaint

Note: In California, the parents must be informed of their procedural safeguards at each IEP Team meeting. (Code Section 56500.1(b))

2006 IDEA Regulations

- The Regulations also require that a notice of procedural safeguards be provided when the school is seeking a disciplinary change of placement. (300.530 (h))

F. Content of Procedural Safeguards must include a full explanation of: (34 CFR 300.504)

1. independent educational evaluation
2. prior written notice
3. parental consent
4. access to educational records
5. opportunity to present complaints to initiate due process
6. “Stay Put” – placement during pendency of due process
7. procedures for placement in an interim alternative educational setting
8. requirements for unilateral placements by parents seeking public payment
9. mediation
10. due process hearings - including disclosure of evaluation results
11. state level appeals (if applicable)
12. civil actions
13. attorneys’ fees

14. state administrative complaint procedures
15. statute of limitations period to file complaints
16. resolution meetings
17. time period for filing an appeal with the Court

2006 IDEA Regulations

- The Regulations add the requirement that the safeguards address the differences between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures. (300.504 ©(5)(iii))
- The United States Department of Education's Office of Special Education Programs issued a 44 page model Procedural Rights Statement which can be accessed at: www.ed.gov/policy/speced/guid/idea/modelformsafeguards.doc

G. Mediation (34 CFR 300.506)

1. States must offer mediation options to parents and LEAs even if a due process hearing has not been requested.
2. Voluntary
3. Not used to delay/deny rights
4. Conducted by a qualified and impartial mediator
 - a. trained in effective mediation techniques
 - b. knowledgeable in special education law
 - c. list maintained by State
5. State shall cover cost of mediation
6. Written Mediation Agreement - A mediation agreement is a legally binding agreement enforceable in State or Federal Court. The agreement will provide that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence during subsequent legal proceedings

Note: In California, attorneys/legal advocates are prohibited from attending a pre-hearing, voluntary mediation conference. (Code Section 56500.3(a)) Also, a pre-hearing mediation conference must be held within 15 days and completed within 30 days of receipt of the request for mediation. (Code Section 56500.3(e))

2006 IDEA Regulations

- The SEA may select mediators on a random or rotational basis or some other impartial basis. (300.506 (b)(3)(ii))
- A mediator could be an employee of a LEA not involved in educating the student. (300.506 ©)
- There is nothing to prohibit a State from using other enforcement mechanisms to enforce a mediation agreement provided that the use is not mandatory and does not delay or deny the right to seek enforcement in a Court. (300.537)
- The Comments allow the parties to sign a confidentiality pledge to ensure that discussions during the mediation remain confidential, irrespective of whether the mediation is successful. (Page 46696)

H. Due Process Hearings (34 CFR 300.507-515)

1. Due Process Hearing Complaints

- a. The parent or public agency may initiate a hearing on issues relating to identification, evaluation, educational placement or the provisions of FAPE. A due process hearing must be initiated within two years of the moving party either knowing of or should have known of the disputed decision, unless the state establishes an explicit state time limit. Exceptions are if the parent had not been informed or misinformed by the LEA.
- b. Either party requesting a due process hearing must file a written request to the other party and the SEA, which specifies the issues, the facts, and the proposed resolution to the extent known.

Note: In California, the party requesting the hearing must notify the other party of the issues at least 10 days prior to the hearing. (Code Section 56505 (e)(6))

Also, an unrepresented parent, upon request, must be provided a mediator by the LEA to assist them in identifying issues and proposed resolution. (Code Section 56505 (e)(6))

2. Sufficiency of the Due Process Hearing Complaint

- a. Either party can file a claim with the hearing officer within 15 days that such notice is legally insufficient. The Hearing Officer has five days on which to issue a ruling.
- b. The Complaint shall be deemed sufficient unless the receiving party files a sufficiency challenge and the hearing officer finds the complaint insufficient.

2006 IDEA Regulations

- The Comments to the Regulations clarify that there is no requirement that the party who alleges that a complaint notice is insufficient state in writing the basis for the allegation. (Page 46698)

3. Response to the Complaint

- a. The LEA must provide the parent with prior written notice responding to each issue unless it previously did so.
- b. The receiving party must file a response with the party which filed the complaint within 10 days addressing the issues raised.

2006 IDEA Regulations

- The Comments to the Regulations state that the IDEA does not establish consequences for the failure to respond to a due process hearing complaint notice. However, if either party fails to respond to or to file the requisite notices, it could increase the likelihood that the resolution meeting will not be successful in resolving the dispute and that a more costly and time consuming due process hearing will occur. (Page 46699)

4. Resolution Sessions

- a. If a party requests a due process hearing, a resolution meeting shall be held within 15 days with the parents and relevant members of the IEP Team who have knowledge of the facts identified in the request. No LEA attorney may attend unless the parent brings their attorney. A resolution meeting shall be held unless waived, in writing, by both parties or mediation is requested.
- b. If resolution is reached, a signed, legally binding agreement will be developed which may be voided within three business days. Such agreement shall be enforceable in Court.
- c. A due process hearing will be scheduled if no resolution is reached within 30 days. Hearing timelines commence at this point.

2006 IDEA Regulations

- Except where the parties have jointly waived, in writing, the resolution process or to use mediation, the failure of the parents to participate in the resolution meeting will delay the timelines for the resolution process and the due process hearing until the meeting is held. (300.510 (b)(3))
- If the LEA has been unable to obtain the parents participation in the resolution meeting after reasonable efforts have been made and documented (including the attempts to reach a mutually agreed on time and place for the meeting), the LEA at the conclusion of the 30 day period may request that the hearing officer dismiss the due process complaint. (300.510 (b)(4))
- If the LEA fails to hold the resolution meeting within 15 days or fails to participate, the parent may seek the intervention of the hearing officer to begin the due process hearing timeline. (300.510 (b)(5))
- There is nothing to prohibit a State from using other enforcement mechanisms to seek enforcement of a resolution agreement provided it is not mandatory and does not delay or deny the right to seek enforcement from a Court. (300.537)
- The 45 day due process hearing timeline starts after either: both parties waive, in writing, the resolution meeting, the 30 day resolution period has expired with no resolution reached, the mediation/resolution starts but the parties agree, in writing, that no agreement is possible before the expiration of the 30 day period or the parties agree to continue to mediate after the 30 day period but one party withdraws from the mediation process. (300.510 ©)
- The Comments provide that the parties may agree to enter into a confidentiality agreement as part of the resolution process. A State could not require a confidentiality agreement. (Page 46696)

5. Amending the Complaint

- a. No new issues can be raised that were not in the original request unless agreed to by the parties or allowed by the hearing officer (at least five days before the hearing).

2006 IDEA Regulations

- The Comments state that a hearing officer has the discretion whether to allow the non-complaining party to raise issues that were not raised in the due process hearing complaint. (Page 46706)

6. Disclosure of Evaluation Information

- a. evaluations and recommendations to be introduced at hearings
- b. disclosed at least five business days prior to hearing

7. Hearing Procedures

- a. right to be accompanied and advised by counsel and by individuals with special knowledge and training with respect to the problems of children with disabilities

Note: In California, a party must notify the other party within 10 days of the hearing if they intend to be represented by an attorney. (Code Section 56507 (a))

- b. right to present evidence and confront, cross-examine and compel attendance of witnesses
- c. right to prohibit the introduction of any evidence that has not been disclosed to that party at least five business days before the hearing
- d. parent has the option of written or electronic verbatim record of the hearing
- e. parent has the option of a written or electronic findings of fact and decision
- f. parents have the right to determine if the hearing will be open to the public and whether the student will be present

2006 IDEA Regulations

- The Department, in the Comments, stated that they are considering the issue of non-attorney representation in a due process hearing and anticipate publishing a notice of proposed rule making seeking public comment on the issue. (Page 46699)
 - If the hearing complaint involves an application for initial services under Part B of the IDEA (ages 3-21) from a child who is transitioning from Part C of the IDEA (ages Birth-3) and the child is no longer eligible for Part C services because the child has turned 3, the public agency under Part B is not required to provide the Part C services that the child had been receiving. If the child is eligible for Part B services and the parent consents to the initial provision of special education services, then the public agency must provide those services not in dispute. (300.518 ©)
8. Enforcement of a Due Process Decision
 - a. A due process hearing decision shall be enforceable in State or Federal Court.
 - b. A parent may file an administrative complaint with the SEA.
 9. Appeal
 - a. A party may appeal a decision to Court within 90 days of receiving the decision unless the state establishes a different time frame.

10. Due Process Hearing Officers

- a. Hearing Officers shall possess knowledge and ability to: understand state and federal statutes regulation and interpretations by the Courts; conduct hearings and to render and write appropriate decisions under appropriate standard legal practices.

11. FAPE/Procedural Violations

- a. A hearing officer can conclude that a FAPE was denied based on procedural violations only if the procedural violations resulted in a deprivation of educational benefit, significantly impeded the parents' opportunity to participate in the decision making process, or impeded the student's right to FAPE.

I. Attorney's Fees (34 CFR 300.517)

1. Court has discretionary authority to award reasonable fees to parents who prevail.

2. No fees for IEP meetings unless ordered by Hearing Officer or Court.
2006 IDEA Regulations

- A resolution meeting is not considered a meeting ordered by a Court or Hearing Officer. (300.517 ©(2)(iii))

3. State may prohibit fees for mediations conducted prior to hearing request.

4. Court may reduce fees if:

- a. parent unreasonably protracted final resolution;
- b. fees are unreasonable;
- c. hearing request did not provide appropriate information.

5. Fees may be denied if parents rejected an offer of written settlement, made at least 10 days before the hearing, which was as favorable as the decision.

6. An SEA/LEA that prevails may seek attorney's fees from a Court against the parent attorney if the action is deemed frivolous, unreasonable, without foundation, or prolonged the litigation.

An SEA/LEA that prevails may seek attorney's fees from a Court against the parent attorney or the parent if the complaint was presented for improper purposes such as to harass the District, cause unnecessary delay, or needlessly increased the cost of litigation.

**Note: In California, the Hearing Officer must indicate who the prevailing party is on each issue. (Code Section 56507 (d))
The parties are allowed to agree to attorney's fees to a prevailing parent in a due process hearing without Court action. (Code Section 56507 (b)(1))**

J. Surrogate Parent (34 CFR 300.519)

1. A surrogate parent shall be appointed whenever:
 - a. parents are not known;
 - b. parents cannot be located after reasonable efforts; or
 - c. child is a ward of the state.
2. The SEA shall make an effort to appoint a surrogate parent within 30 days.
3. The surrogate parent shall not be an employee of the SEA, LEA or other agency involved in the care or education of the child.
4. An unaccompanied homeless youth shall be appointed a surrogate.

Note: In California, surrogate parents are held harmless when acting in their official capacity. (Code Section 56050 ©)

K. State Administrative Complaints (34 CFR 300.151-153)

1. An organization or individual may file a signed written complaint alleging Part B violations.

The complaint must allege a violation not more than one year ago.

2. The State shall investigate, issue a report within 60 days and or corrective action, if warranted.

The State may order monetary reimbursement, compensatory education or other appropriate action to correct the non-compliance.

2006 IDEA Regulations

- The public agency must be given an opportunity to respond to the complaint and to submit a proposal to resolve the complaint. (300.152 (a)(3))
- With the consent of the parties, an opportunity to engage in mediation or other alternative means of dispute resolution must be afforded. (300.152 (a)(3)(ii))

- Clarifies that the enforcement of due process hearing decision against a public agency must be handled through the complaint process. (300.152 ©(3))
- Maintains the one year statute of limitation period but removes the three year period if compensatory services are being requested. (300.153©)
- The Comments state the regulations neither prohibit nor require the establishment of procedures to permit a party to request reconsideration of the complaint decision. (Page 46607)

L. Confidentiality (34 CFR 300.611-627)

1. The State shall take steps to ensure the protection of any personally identifiable data, information and records collected by the SEA and LEAs.
2. The parents have the same rights as parents under the Family Educational Rights and Privacy Act (FERPA) to access and challenge alleged inaccurate or misleading information in their child’s education records with the following additions:
 - a. Timelines for inspections—Right to inspect and review their child’s education records without unnecessary delay, before an IEP meeting, resolution meeting or a due process hearing but in no case later than 45 days.
 - b. Consent—The parent must give written consent before their child’s education records are shared between the LEA where a parentally private school is located and the LEA of the parents’ residence.
 - c. Destruction of Records—The agency must inform the parents when personally identifiable information maintained under the IDEA is no longer needed to provide educational services to the student. The information must be destroyed at the request of the parent. However, a permanent record of the student’s name, address, phone number, grades, attendance records, classes attended, grade level completed and year completed may be maintained.

XI. Personnel Issues

A. Standards (34 CFR 300.18)

1. Special Education Teachers
 - a. The highly qualified (HQ) teacher standards under the No Child Left Behind Act (NCLBA) apply to special education teachers with slight modifications. All elementary and secondary teachers who teach core academic subjects must be highly qualified by the end of 2005-2006 school year.

2006 IDEA Regulations

- Adds the definition of core academic subjects to include English, reading, language arts, mathematics, science, foreign languages, civics and government, economics, arts, history and geography. (300.10)

- The highly qualified requirements do not apply to teachers hired by private elementary and secondary schools even if the IEP Team places the student in the private school or for private school teachers contracted by the LEA to provide services under service plans. (300.18(h))
 - For charter schools, highly qualified means that the teacher meets the certification or licensing requirements set for in the State’s public charter school law. (300.18 (b)(1)(i))
 - The Comments state that the highly qualified special education teacher requirements apply to early childhood or preschool programs if a State includes the programs as part of its elementary school system. If the early childhood or preschool program is not part of the State’s public elementary school system, the highly qualified requirements do not apply. (Page 46555)
 - The Comments clarify that teachers who teach at multiple levels must meet the same requirements as all other special education teachers to be considered highly qualified. (Page 46555)
 - The Comments allow each State to determine when and on what basis to accept another State’s determination that a particular teacher is highly qualified. (Page 46560)
- b. All teachers must have at least a bachelor’s degree and be fully certified as special education teachers (including alternate routes to certification) or pass a State licensing exam. Waivers on an emergency, provisional, or temporary basis do not qualify.
- c. If a special education teacher is providing only consultative or collaborative support to a highly qualified teacher, the special educator need not be subject to credentialing.

2006 IDEA Regulations

- The Comments defer to each State whether the special education teacher is providing consultation services. There is no definition of consultation in the IDEA regulation. (Page 46558)
 - The Comments state that whether or how co-teaching is implemented is a matter that is best left to State and local officials’ discretion. (Page 46561)
- d. If a special education teacher teaches core academic subjects exclusively to students assessed against alternate achievement standards (students with significant cognitive disabilities), then whether a new teacher or not, he/she may become highly qualified by either:
- (1) meeting the NCLBA requirements for Elementary, Middle School, or High School teachers who are new or not new; or

- (2) meeting the Elementary standards under the NCLBA or if instruction is above the Elementary level, has subjected matter knowledge appropriate to the level of instruction being provided, as determined by the SEA, which is needed to effectively teach.

2006 IDEA Regulations

- The Comments provide an example of a high school student who is determined by the IEP Team to be assessed against alternate achievement standards, has knowledge and skills in math at the 7th grade level but is functioning in all other areas on the elementary level. The teacher would need to have knowledge in 7th grade math under the regulations. (Comments at Page 46559)
- e. If a special education teacher is teaching two or more core academic subjects exclusively to students with disabilities, the teacher may:
 - (1) meet the NCLBA standards
 - (2) if not a new teacher, demonstrate competence in all core academic subjects taught in the same manner as experienced teachers including through the State's highly objective uniform state system of evaluation (HOUSSE).
 - (3) if a new teacher and highly qualified in math, language arts or science, he/she must demonstrate competencies in other core subjects, including through the HOUSSE standards within two years of employment.

2006 IDEA Regulations

- The regulations provide that for a fully certified regular education teacher who subsequently becomes fully certified or The IDEA 2004 and IDEA 2006 Regulations January 2007 58 licensed as a special education teacher, they will be considered a new special education teacher. (300.18 (g)(2))
 - A State may develop a separate HOUSSE for special education teachers and may include a single HOUSSE evaluation that covers multiple subjects. The State's HOUSSE could not establish a lower standard for content knowledge and must meet all the HOUSSE requirements for regular education teachers. (300.18 (e))
2. Nothing in the IDEA creates a right of action on behalf of a student or class of students for failure to employ highly qualified staff. A complaint may be filed with the SEA, however.

2006 IDEA Regulations

- The Comments clarify that a parent or student may not file a due process hearing request based on the failure of a particular SEA or LEA employee to be highly qualified. (Page 46561)
 - The Comments provide that if the only reason a parent believes that their child was denied a FAPE is that the child did not have a highly qualified teacher, the parent would have no right of action under the IDEA. (Page 46562)
3. Related Service personnel must meet the applicable state licensing, certification, or comparable requirements. The requirement that the standards be based on the State’s highest requirements applicable to the profession or discipline is eliminated. No emergency, temporary, or provisional waivers allowed.
 4. Paraprofessionals must be appropriately trained and supervised in accord with state law or policy.
- B. NCLBA Highly Qualified Standards
1. Coverage
 - a. All public teachers hired after the first day of the 2002-2003 school year who teach core academic subjects in a Title I schoolwide program school or are paid by Title I funds in a targeted assisted school.
 - b. All public school elementary and secondary teachers who teach core academic subjects no later than the end of the 2005-2006 school year.

United States Department of Education Guidance

The United States Department of Education announced a flexible policy regarding the requirement that all elementary and secondary education teachers be “highly qualified” by the end of the 2005-2006 school year. The U.S. DOE will determine whether the state is implementing the law and making a good faith effort to reach the “highly qualified” goal by examining four elements:

- a. the state’s definition of a highly qualified teacher;
- b. how the state reports to parents and the public on classes taught by highly qualified teachers;
- c. the completeness and accuracy of highly qualified teacher data reported to the Department; and
- d. the steps the state has taken to ensure that experienced and qualified teachers are equitably distributed among classrooms with poor and minority children and those with peers. In addition, the Department will look at the State’s efforts to recruit, retain and improve the quality of the teaching force. If these conditions are met, a state will be able to negotiate a revised plan for meeting the highly qualified requirements by the end of the 2006-2007 school year. (Policy Letter from Secretary Spellings, October 21, 2005)

2. Highly Qualified
 - a. Full State certification as a teacher which may include alternative routes to certification; or

Pass a State teacher licensing examination and hold a license to teach in this State.
 - b. Teachers on waivers or temporary certification are not highly qualified.
 - c. Teachers new to the profession must:
 - (1) hold a bachelor's degree, and
 - (2) at the elementary level, pass a rigorous State test in the subject knowledge and teaching skills in reading/language arts, writing, math, and other basic areas of curriculum,
 - (3) at the middle and high school levels, pass a rigorous State test in each academic subject taught or in each academic subject taught have an undergraduate major (or equivalent course work), a graduate degree, or advanced certification or credentialing.
 - d. Teachers not new to the profession must:
 - (1) hold a bachelor's degree, and based on a high objective uniform State standard of evaluation (HOUSSE), demonstrate competency in each academic subject taught.
3. Personnel Flexibility – United States Department of Education Guidance, March 2004
 - a. Rural Teachers
 - (1) Teachers in qualified rural school Districts who are highly qualified in at least one subject will have three years to become highly qualified in the additional subjects they teach. Such teachers must be provided professional development, intense supervision, or structured mentoring to assist them in becoming highly qualified in those additional subjects.
 - b. Science Teachers
 - (1) States will determine, based on their current certification requirements, if a teacher is highly qualified in a broad field of science or in individual fields of science such as biology or chemistry.
 - c. HOUSSE for Current Teachers
 - (1) Current teachers do not have to return to school or take a test to become highly qualified. States may streamline the HOUSSE evaluation process

to determine if a teacher is highly qualified in multiple subjects by using factors such as experience, expertise, and professional training.

C. Paraprofessionals

1. Coverage

- a. Any paraprofessional who provides instructional support hired after January 8, 2002 if they are paid by Title I funds or work in a Title I schoolwide program.
- b. Any paraprofessional who provides instructional support hired before January 8, 2002, if they are paid by Title I funds or work in a Title I schoolwide program, must be qualified by the end of the 2005-2006 school year.
- c. All paraprofessionals must have a secondary school diploma or recognized equivalent regardless of the hiring date.

2. Application to Special Education Paraprofessionals

- a. The requirements for persons who deal with special education students differ depending upon the situation.

If a person (funded by Title I) working with special education students does NOT provide any instructional support (such as a person who solely provides personal care services), the person is not considered a paraprofessional under Title I, and the requirements do not apply. If a person works in a Title I schoolwide program and has instructional support duties, the requirements apply without regard to the source of funding that supports the position.

3. Qualifications

- a. Two years of Higher Education, or
- b. Associates Degree, or
- c. Meet rigorous standards of quality (math, reading, writing)

4. Non-instructional personnel exempted, such as those providing only technical support, clerical duties, or personal care services.

5. Direct supervision for instructional support

- a. teacher must plan instructional activities
- b. teacher evaluates student achievement

6. One-to-one tutoring permitted if scheduled at a time when the student would not otherwise receive instruction from a teacher

D. Parents Right to Know

1. At the beginning of each school year, parents of students attending a Title I school must be notified of their right to request information regarding the professional qualifications of their student's classroom teachers and whether their child is being provided services by paraprofessionals and, if so, their qualifications.
2. A school receiving Title I funds must also inform parents if a teacher of their child in a core academic subject is not highly qualified, if the teacher has taught their child at least four consecutive weeks.

XII. Pre-School Issues

A. Section 619

1. Permissive use of Section 619 funds to provide early intervention services, including an education component that promotes school readiness.
2. At the State's discretion, continue services coordination or case management for families who receive Part C services.
3. A State that provides early intervention services in accordance with Part C to a child eligible for Section 619 services is not required to provide such child with a FAPE.

B. Part C

1. A State may develop a policy between the SEA and Part C Lead Agency which allows parents to choose to continue Part C services.
2. Such State policy shall ensure that parents receive an annual notice giving them the right to elect services under Part C on Section 619 explaining the differences between the programs.
3. The State shall provide data on the number and percentage of students eligible under Section 619 whose parents choose Part C.
4. Early intervention services include sign language and cued language services.
5. Early intervention personnel include vision specialists, including ophthalmologists and optometrists.
6. IFSP includes measurable results or outcomes, including pre-literacy language skills, as appropriate. Services must be based on peer reviewed research. IFSP must include criteria and procedures to determine progress.
7. State referral policy must address children involved in substantiated cases of child abuse/neglect and those affected by illegal substances or withdrawal symptoms from prenatal drug exposure.

XIII. Miscellaneous

A. Federal and State Regulations

1. The United States Secretary shall promulgate regulations only to the extent necessary to ensure compliance with the statutory requirements. A 75-day comment period shall apply to proposed regulations.
2. The SEA must identify in writing to LEAs and the U.S. Secretary of Education any State policy/regulation/rule that is not required by the Federal Law.
3. The State shall minimize the number of rules/regulations/policies to which LEAs and schools are subject to.
4. By the date the final regulations are published, the U.S. Department of Education shall publish model IEP form, IFSP, procedural safeguard notice, and model prior written approval form.

B. State and Federal Compliance/Monitoring Issues (34 CFR 300.600)

1. The SEA shall develop performance goals and indicators, including annual measurement objectives, which addresses:
 - a. State's definition of adequate yearly progress
 - b. Graduation rates
 - c. Dropout rates
 - d. Other factors as determined by the SEA
2. The SEA must annually report to the Secretary and the public on the State's progress in meeting the performance goals. 3. Priority areas for State and LEA monitoring will focus on improved results and functional outcomes for students with disabilities. There must be quantifiable indicators addressing:
 - a. FAPE
 - b. LRE
 - c. Child Find
 - d. Resolution sessions
 - e. Mediation
 - f. Transition
 - g. Disproportionate representation

2006 IDEA Regulations

- The State must monitor LEAs using quantifiable indicators and using such qualitative indicators as are needed to adequately measure performance. (300.600 (d))
4. Each State had to develop a State Performance Plan, by December 2005, subject to the approval of the Secretary, which included measurable and rigorous targets in the priority areas. The SEA will provide annual performance reports to the Secretary.
 5. The Secretary shall determine if the SEA:
 - a. Meets the requirements of the IDEA
 - b. Needs Assistance
 - c. Needs Intervention
 - d. Needs Substantial Interventions
 6. Enforcement Options include:
 - a. Technical Assistance
 - b. Imposing special conditions on the IDEA grant
 - c. Requiring a corrective action or improvement plan
 - d. Requiring a compliance agreement
 - e. Withholding IDEA funds
 - f. Seeking recovery of funds
 - g. Referring matter to the Department of Justice for enforcement

C. Disproportionality

1. Each SEA must collect and analyze data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs with respect to:
 - a. identification including identification by disability category
 - b. placement in particular educational settings
 - c. incidence, duration and type of disciplinary action

2006 IDEA Regulations

- The Comments give each State the discretion to define the term significant disproportionality for the LEAs. States need to consider the population size, the size of individual LEAs, and composition of the State's population. (Page 46738)
2. If a significant disproportionality exists, the SEA shall review and, if appropriate, revise the policies, procedures and practices used.
 3. In such case, the SEA shall require the LEA to reserve 15 per cent of their Part B funds to provide comprehensive coordinated early intervening services.
 4. The LEA shall publicly report on the revision of its policies, practices, and procedures.

D. Funding

1. "Full Funding"
A goal, based on discretionary funding, is set to reach Federal funding of 40% of the national average per pupil cost by 2011.
2. Risk Pool a. A State may reserve up to 10% of funds to establish a reserve fund for high cost students.

E. Early Intervening Services (34 CFR 300.226)

1. An LEA may use up to 15% of its IDEA funds to develop and implement coordinated, early intervening services for students K-12 (with particular emphasis on students K-3) for students not currently identified as needing special education, but who need additional academic and behavioral support to succeed in general education. The LEA must report to the SEA on the number of students served and the number subsequently found special education eligible.

2006 IDEA Regulations

- The Comments emphasize that the use of early intervening services may not delay an appropriate evaluation for special education although there is no specific time limit for receiving such services before an evaluation. (Page 46626)
 - The Comments explain the early intervening services may not be used for preschoolers. (Page 46627)
2. Maintenance of Effort

An LEA may treat up to 50% of IDEA funding increase as local funds unless the SEA has determined the LEA is unable to establish and maintain FAPE.

F. Instructional Materials (34 CFR 300.172)

1. The SEA shall adopt the National Instructional Materials Accessibility Standards for persons who are blind or with print disabilities or provide assurances to the Secretary of Education.

2006 IDEA Regulations

- The United States Department of Education issued final rule (Appendix D of the Part 300 IDEA Regulations) establishing the National Instructional Materials Accessibility Standard (NIMAS) to increase the availability and timely delivery of print instructional materials in accessible formats to blind and other persons with print disabilities in elementary and secondary schools. (Federal Register, July 16, 2006)

XIV. Conclusions/Questions/Comments

Note: This outline is intended to provide workshop participants with a summary of selected Federal statutory/regulatory provisions and selected judicial interpretations of the law. The presenter is not, in using this outline, rendering legal advice to the participants. The services of a licensed attorney should be sought in responding to individual student situations

IDEA Case Law Up-Date

I. Evaluation/Eligibility

- A. The Court, in overturning the hearing officer's decision, held that the student with Asperger's Syndrome is eligible for special education services in spite of the fact that she was doing well academically. The "adverse affect" on her educational performance was the impact of her disability on her social skills and communication skills (Mr. and Mrs. I v. Maine School Administrative District 55, 416 F.Supp 2d 147, 45 IDELR 4 (D. ME (2006)). On Appeal.
- B. The Court found that a student diagnosed with ADHD, PTSD, RAD and Intermittent Explosive Disorder was not eligible for special education services and, therefore, her parents were not entitled to reimbursement for their private placement. The Court concluded that even if the student is emotionally disturbed, there was no adverse affect on her educational performance or need for special education. Her academic performance was average to above average and although she had social skill difficulties, she was able to maintain relationships with peers and teachers (R.B. v. Napa Valley Unified School District, 43 IDELR 188 (N.D. CA (2005)).
- C. The Court affirmed the school's right to conduct a medical evaluation of a student, as part of a reevaluation, in spite of the guardian's refusal to consent to such evaluation. It was found that the school articulated reasonable grounds for the necessity of the evaluation. The Court rejected the argument that the medical evaluation would violate the student's right to privacy stating that the guardian could decline special education under the IDEA rather than to have the medical evaluation (Shelby S. v. Conroe Independent School District, ___ F.3d ___, 45 IDELR 269 (United States Court of Appeals, 5th Circuit (2006)). On Appeal to the United States Supreme Court.

II. IEP/FAPE

- A. The U.S. Supreme Court in *Board of Education of the Hendrick Hudson Central School District, et al. v. Rowley, et al.* (102 S. Ct. 3034, IDELR 553:656 (1982)) held that an inquiry in determining whether a FAPE is provided is twofold:
1. Have the procedures set forth in the IDEA been adequately complied with?
 2. Is the IEP reasonably calculated to enable the child to receive educational benefits?
- B. The school District called an IEP meeting to propose a change in placement for a student who is autistic. A regular classroom teacher was invited, but did not attend the meeting. The IEP Team changed the student's placement from a regular kindergarten class to a special education class. The Court overturned the IEP Team decision holding that the lack of a regular class teacher at the meeting, standing alone, is a structural defect prejudicing the right of the student to a FAPE. Therefore, since the procedural deficiency resulted in a denial of FAPE, there was no need to analyze whether the IEP would have provided educational benefit to the student (*M.L. v. Federal Way School District*, 394 F.3d 634 (U.S. Court of Appeals, 9th Circuit (2005))).
- C. The Court found that the IEPs developed for a student with a disability provided the student with specialized instruction affording the opportunity to receive educational benefit and therefore provided FAPE. The school's occasional deviation from the IEP by assigning the student homework did not violate the IDEA since the homework was not graded (*L.C. v. Utah State Board of Education, et al.*, 43 IDELR 29 (United States Court of Appeals, 10th Circuit (2005))).
- D. The school District violated the IDEA when it unilaterally amended the IEP by removing the student's participation in the state's alternate assessment program. In addition, the parent's were not provided prior written notice of the change. The Court, in affirming the hearing officer, found that these procedural violations were more than harmless errors. In addition, the Court found that the student was entitled to occupational therapy and a certified sign language interpreter (*County School Board of York County v. A.L.*, ___ F.3d ___ (United States Court of Appeals, 4th Circuit (2006))).

III. Related Services

- A. The United States Supreme Court Decision – *Irving Independent School District v. Tatro*, 104 S. Ct. 3371, IDELR 555:511 (1984).
1. The United States Supreme Court established a three-prong test for determining whether a particular service is considered a related service under the IDEA. To be entitled to a related service:
 2. A child must have a disability so as to require special education under the IDEA;
 3. The service must be necessary to aid a child with a disability to benefit from special education; and
 4. The service must be able to be performed by a non-physician.

B. A school was ordered to provide a student with individual nursing services as a related service in his IEP. The court followed a “bright line” rule in the Tatro case. Since the services were not required to be administered by a doctor and were supportive services necessary for the student to attend school, they were required related services regardless of the cost (Cedar Rapids Community Sch. Dist. v. Garret F., 25 IDELR 139, U.S. Supreme Court (1999)).

C. A student with a progressively worsening vision condition required vision therapy as a related service in order to receive a FAPE. The evidence supported the parents’ contention that the student’s visual problems would have worsened significantly and interfered with his ability to benefit from his education had he not received the vision therapy (DeKalb County School District v. M.T.V., 164 Fed. Appx. 900, 45 IDELR 30 (United States Court of Appeals, 11th Circuit (2006))). This is an unpublished decision.

IV. Least Restrictive Environment

A. The parents of a kindergarten student, who has Down Syndrome, challenged the IEP Team’s decision to change his IEP placement (in effect for nine weeks) in a regular kindergarten class to a special education class. In concluding the LRE was the special education class, the Court rejected the parents’ arguments that the regular class placement was “sabotaged” due to the school’s failure to provide curricular adaptations, supplementary aids and services, training for staff, and properly communicate with the family (T.W. v. Unified School District No. 259, Wichita, Kansas, 43 IDELR 187 (U.S. Court of Appeals, 10th Circuit (2005))). This is an unpublished decision.

B. A change in the school site for a student with a hearing impairment was not a change in his educational placement under the IDEA requiring prior written notice. In addition, his IEP was not fundamentally changed when he was required to ride the special education bus instead of the regular school bus (Veazey v. Ascension Parish School Board, 42 IDELR 140 (United States Court of Appeals, 5th Circuit (2005))).

V. Unilateral Placements

A. The U.S. Supreme Court in Burlington, MA v. Department of Education et al., 105 S. Ct. 1996, IDELR 556:389 (U.S. 1985), held that parents may be awarded reimbursement of costs associated with a unilateral placement if it is found that:

1. The school District’s IEP is not appropriate;
2. The parent’s placement is appropriate; and
3. Equitable factors may be taken into consideration (see B.G. v. Cranford Board of Education, 702 F. Supp. 1158, IDELR 441:327 (D NJ 1988)).

B. Parental placement at a school which is not state approved or does not meet the standards of the state does not itself bar public reimbursement under the Burlington standard (Florence County School District Four et al. v. Carter, 114 S. Ct. 361, 20 IDELR 532 (U.S. 1993)).

C. The Court, in awarding reimbursement to the parents for their unilateral placement in a private school, held that the IDEA does not require that a student previously received special education services from the public school as a pre-condition for seeking reimbursement. Also, the Court stated that although the IDEA does not require that the private school be a state approved school meeting state education agency standards, the same considerations and criteria that

apply in determining the appropriateness of the public school's placement should be considered in determining the appropriateness of the parents' private placement. The parents need to demonstrate that the private placement provides specially designed instruction to meet the student's unique needs to permit the student to receive educational benefit (*Frank G. v. Board of Education of Hyde Park*, 46 IDELR 33 (United States Court of Appeals, 2nd Circuit (2006)). On Appeal to the United States Supreme Court.

- D. The Court held that a hearing officer or Court may award the parents reimbursement for services even if the student was never enrolled in a public school special education program. However, the Court affirmed the IEP offered by the school District was appropriate. The parent's dispute centered on a difference in methodology (verbotonal v. auditory-verbal therapy). The legal standard is FAPE not the "best" method for providing services (*M.M. v. School Board of Miami Dade County*, 437 F.3d. 1085, 45 IDELR 1 (United States Court of Appeals, 11th Circuit (2006)).
- E. The Court, in affirming the Administrative Hearing Officer's decision that a student was not eligible for services under the IDEA or Section 504, held that reimbursement for an unilateral private school placement is not available in a claim brought under Section 504 or the state's Section 504 regulations (*Janet G. v. State of Hawaii*, 410 F. Supp. 2d 958 (District Court Hawaii (2005)).

VI. Discipline

- A. A student was transferred from one elementary school to another as a result of behavioral incidents. The IEP Team determined that there was no manifestation between the disability and behavior.
The Court held that there was no change in educational placement which it defined as the environment in which educational services are provided, not the location to which the student is assigned.
The Court also affirmed the no manifestation decision of the team since the student's actions showed "forethought and investigation" and, therefore, was not impulsive (*A.W. v. Fairfax County Schools*, 372 F. 3d 674, 41 IDELR 119 (U.S. Court of Appeals, 4th Circuit (2004)).
- B. The Court upheld the IEP for a third grade student who exhibited several incidents of misconduct and assaultive behavior. Although an IEP must address disability related behaviors, the IDEA does not contain specific substantive requirements for IEP behavior intervention plans. Therefore, the Court held the behavior intervention plan cannot be deemed insufficient since there is no legal criteria by which to judge it (*Alex R. v. Forrestville Valley Community Unit School District #221*, 375 F.3d 603, 41 IDELR 146 (U.S. Court of Appeals, 7th Circuit (2004)).
- C. The Court, in upholding the appropriateness of an IEP, held that nothing in the IDEA or state law requires that a behavior intervention plan be in writing. The Court found that the staff responded to the student's behaviors with set procedures and documented the student's behavioral incidents and the school's responses (*School Board of Independent School District #11 v. Renollett*, 440 F. 3d 1007, 45 IDELR 117 (U. S. Court of Appeals, 8th Circuit (2006)).
- D. OSEP issued a policy clarification that if the parents refuse to provide consent for the initial provision of special education services, the parents have refused the benefits of FAPE and,

therefore, the IDEA disciplinary procedures do not apply (See Letter to Yudien, 38 IDELR 267 (OSEP (2003))).

- E. In denying reimbursement to the parents for their son's unilateral placement in a private school, the Court found that the post-expulsion IEP calling for an alternative placement provided a FAPE. Although the alternative placement did not offer all the programs and activities that the student had been enrolled in (Japanese immersion program, extra-curricular activities) prior to his disciplinary problems, the Court found no requirement under the IDEA to do so (Reiser v. Fairfax County School Board, ___ F. Supp. 2d ___, 44 IDELR 187 (E.D. VA (2006))).

VII. Due Process/Issues

A. Stay Put

- 1. The Court found that the receiving high school District was obligated to fund the private school "stay put" placement in a due process dispute originated against the former elementary school District (Casey K. v. St. Anne Community High School District, 400 F.3d 508, 43 IDELR 1 (United States Court of Appeals, 7th Circuit (2005))).
- 2. The Court found that the school District complied with the IDEA, even though it did not hold an annual IEP meeting, since the "stay put" provisions were invoked due to the parent's request for a due process hearing (C.P. v. Leon County School Board, 46 IDELR 182 (United States Court of Appeals, 11th Circuit (2006))).

B. Burden of Proof

- 1. The Court held that the burden of proof in a due process hearing is on the party challenging the IEP. Note: The Court commented that this decision does not address those states that have a state law which places the burden of proof on the school District in a due process hearing (Weast v. Schaffer, 126 S.Ct. 528, 44 IDELR 150 (United States Supreme Court (2005))).
- 2. Although the State Supreme Court had previously ruled that a school District has the burden of proof in an IDEA due process hearing, the Court held that the Weast decision is now applicable. Therefore, the burden of proof is on the parents in this case since the appeal in this matter was pending when Weast was issued. The Court also concluded that the Weast holding applies not only to issues of FAPE, but to any challenge to the IEP including LRE issues (L.E. v. Ramsey Board of Education, ___ F.3d ___, 44 IDELR 269 (United States Court of Appeals, 3rd Circuit (2006))).

C. Hearing Officer Authority

- 1. The student was awarded 810 hours of compensatory education by the due process hearing officer which was one hour for every day that he was not provided a FAPE. On appeal, the Court both rejected the hearing officer's award and the parents' argument that compensatory education should be calculated on the presumption that one hour without FAPE entitles the student to one hour of compensatory services. The Court held that compensatory education is an equitable remedy which must rely on fact specific, individually based considerations (Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32 (United States Court of Appeals, DC Circuit (2005))).
- 2. In rejecting a "lump sum" award of compensatory education which the Court described as a "cookie cutter" approach, the Court held that the award of compensatory education must be

reasonably calculated to provide the educational benefits that would have likely accrued from the special education services the student should have been provided in the first place. The inquiry must be “qualitative, fact intensive and, above all, tailored to the unique needs of the disabled student” (Branham v. District of Columbia, 427 F.3d 7, 44 IDELR 149 (United States Court of Appeals, DC Circuit (2005))).

3. The Court affirmed the Hearing Officer’s conclusion that two of the three IEPs in dispute did not provide the student a FAPE. The Court then affirmed the award of compensatory education which was additional services for the student’s teachers addressing the implementation of the IEP’s self-help goals. In so doing, the Court noted that the award of compensatory education is a form of equitable relief and the IDEA does not require services be awarded directly to the student (Park v. Anaheim Union School District, 444 F.3d 1149, 45 IDELR 178 (United States Court of Appeals, 9th Circuit (2006))).
4. The Court, in overturning the Hearing Officer and District Court, held that an IDEA Hearing Officer has jurisdiction to hear safety concerns (such as training and availability of substitutes, potential dangers in the classroom environment, etc.) that could interfere with a student’s right to receive FAPE. The broad language of the IDEA that due process issues could be brought with respect to “any matter” related to FAPE suggests that Congress did not intend to exclude from consideration these issues which may impact the student’s services (Lillbask v. State of Connecticut Department of Education, 397 F.3d 77, 42 IDELR 230 (United States Court of Appeals, 2nd Circuit (2005))).

D. Attorney’s Fees

1. Parents who prevail in a due process hearing are not entitled to recover the costs of experts or consultants under the IDEA’s attorney fees provision. The majority opinion rejected the argument that the legislative history of the IDEA supported such award basing its analysis on what it termed the “unambiguous text of the IDEA” (Arlington Central School District Board of Education v. Murphy, 126 S.Ct. 2455, 45 IDELR 267 (United States Supreme Court (2006))).
2. The parties reached a private settlement after the due process hearing was requested. The Court, in denying attorney’s fees to the parents, held that since the settlement agreement lacked judicial approval, the parents cannot be deemed to be prevailing parties. P.N. v. Seattle, ___ F.3d. ___, 46 IDELR 61 (United States Court of Appeals, 9th Circuit (2006)).
3. The Court applied the standard “degree of success” to determine whether parents who prevail in a due process hearing should be awarded full or partial reimbursement of their attorney’s fees (Aguirre v. Los Angeles School District, ___ F3d ___, 46 IDELR 91 (United States Court of Appeals, 9th Circuit (2006))).
4. The Court held that a parent who is also an attorney is not entitled to be reimbursed attorney’s fees for representing their child in an IDEA proceeding (Ford v. Long Beach Unified School District, ___ F3d. ___, 46 IDELR 92 (United States Court of Appeals, 9th Circuit (2006))).

E. Miscellaneous Hearing Issues

1. The Court held that although the IDEA gives parents the right to represent their child in an administrative due process hearing, such right does not extend to representing their child in an action in federal court. Also, the Court found that parents cannot pursue their own substantive IDEA claim pro se, because the IDEA does not grant parents a substantive right to have their child receive a FAPE (*Winkleman v. Parma City School District*, ___ F.3d ___, 44 IDELR 90 (United States Court of Appeals, 6th Circuit (2005)). Appeal granted by the United States Supreme Court.
2. The Court ordered the school District to immediately place and fund a student's placement in a private school. In so doing, the Court held that the parents were not required to exhaust their administrative remedies in a due process hearing since the process was inadequate. The Court's conclusion was based on the school District's failure to schedule a resolution session in a timely manner and failure to respond to the parent's request for the due process hearing as required by the IDEA (*Massey v. District of Columbia*, 400 F. Supp 2d 66, 44 IDELR 163 (D. D.C. (2005))).
3. The Court held that a parent's expert has the right under the IDEA to observe a placement which was proposed by the school District which was the subject of a due process hearing. In so doing, the Court overturned the hearing officer's decision which was based on a state law allowing such observation only as part of a parent's Independent Educational Evaluation of the child (*Benjamin G. v. Special Education Hearing Office*, 44 IDELR 7 (Cal. Ct. of Appeals (2005))).
4. The Court overturned the administrative complaint decision of the State Education Agency when it held that a school attorney's involvement in finalizing the draft of the resolution agreement, while in the school building where the resolution session took place was not a violation of the IDEA. Although the IDEA prohibits the school attorney from being included in the resolution session when the parent's attorney is not present, the attorney in this matter was not physically or functionally present (*Mr. and Mrs. S. v. Rochester Community Schools*, 46 IDELR 187 (Dist. Ct. W.D. Michigan (2006))).

VIII. Questions/Comments/Conclusions

Note: This outline is intended to provide workshop participants with a summary of selected Federal statutory provisions and selected judicial interpretations of the law. The presenter is not, in using this outline, rendering legal advice to the participants. The services of a licensed attorney should be sought in responding to individual student situations.

SECTION XII

CASEMIS

CASEMIS

California Special Education Management Information System

CASEMIS is a database that stores and utilizes special education student-level information at the State level. Two reporting periods (December and June) are required for all DISTRICT's in the State of California. Other States have similar systems, as some data and data reports are required of all States at the Federal Level also. CASEMIS reporting has been mandatory in California since the 1994-95 school year. Initially data was reported from teachers manually (remember the basic data form?) in DISTRICT's. As data requirements have increased in amount and complexity, web-based IEP systems such as SEIS have been developed to both manage the IEP and collect the required data.

CASEMIS serves many purposes at the local, state and federal levels.

- Allows California to monitor special education programs continuously to identify unusual phenomenon.
- Answers program questions by analyzing student level data (policy-making, planning and administration).
- Identifies and makes it possible to research program issues i.e. the increase of autism at the local, state and federal levels.
- Allows comparisons of special education data/outcomes to general education outcomes.
- Allows for the evaluation of individual student progress, movement through LRE, transition and now, even post-secondary data (Table D)
- Federal law requires statutory and programmatic data for federal funds.
- Projects future needs of special education population.
- Collects a common set of core data in special education to address issues of statewide and local interest (research capabilities)

In addition, with the reauthorization of IDEA in 2004, came the requirement for States to submit State Performance Plans (SPP) to the Federal Government annually through submission of the Annual Performance Report (APR). Twenty indicators are reported, many of which are gathered through local CASEMIS reporting i.e., graduation rates, drop out rates, STAR participation, Suspension/Expulsion rates, LRE, preschool assessment (DRDP), disproportionality representations (ethnicity and disability comparisons), Part C to Part B transition, secondary transition at 16 and post-school indicators.

The Federal Department of Education evaluates State performance through data analysis and the State of California evaluates individual districts in a similar manner. California Department of Education evaluates school Districts and COEs for compliance with federal and state laws and regulations. The purpose of this overall evaluation is ultimately to verify that students with disabilities receive programs and services they need, positive results are achieved and procedural safeguards are provided. Ultimately all purposes are aimed at ensuring disabled students receive free appropriate public education (FAPE).

Individual District CASEMIS data is reviewed. Districts are required to do Special Education Self-Reviews every four years. Individual Districts are chosen by CDE for verification reviews periodically and sanctions and technical assistance are penalties and supports utilized to ensure compliance and FAPE provision across California and the United States.

With the data being collected in multiple ways, for multiple purposes, it is important for teachers, administrators and service providers to understand when the data is reported, the purpose of the various reports and what is expected of personnel within the Coronado Unified School District to ensure the reports are completed in an accurate and timely manner.

Truly you can see the importance and “big picture” of that CASEMIS error check you run on each student’s IEP prior to affirming and attesting in SpEd Forms! The electronic IEP and Student Record in SpEd Forms are the CASEMIS data collection tool for the Coronado Unified School District. In order to accomplish thorough and accurate data reporting, collaboration occurs through SpEd Forms.

- Personnel participating in IEP’s are responsible for accurate data collection at the student level. Special education teachers and all service providers enter data into the future IEP. CASEMIS errors are corrected by anyone on the IEP team by running the CASEMIS error check. Case managers affirm and attest IEP’s throughout the year. CASEMIS data extracted electronically from the IEP is reflected also in Tables A (Student Demographic Information), B (Services Information), C (Discipline Information) and D (Post-Secondary Follow-up) in each student record.
- Table A and B information comes directly from the IEP and Student Record; Table C and Table D information is commonly entered into SpEd Forms at the District level for each student as appropriate.
- CUSD submits CASEMIS data to CDE twice a year. District level system managers for SpEd Forms, assist at this time by double-checking CASEMIS warnings and errors at the District level and ensuring the accuracy and completeness of Table C and D information depending on the report period.
 - December 1st: This is an unduplicated pupil count. This report contains Table A, Table B and DRDP data only. The state uses this reporting period data to meet federal reporting requirements and determine funding for Infant Programs and Low Incidence Equipment allocations. The data is also used for planning purposes, to make administrative decisions at the local, state and federal levels and has been known to be the basis of funding for Districts state-wide.
 - June 30th. This report contains all of the Dec. 1st data (Table A, Table B and DRDP) PLUS all data from Dec. through June, so it is cumulative for the year. It also contains Table C and Table D data as well. These reports are partially the basis for the Special Education Self Review (SESR) conducted DISTRICT-wide every four years as well as compliance monitoring for IEP’s, Triennials, Transition, ethnic disparities and other federal reporting requirements.

CASEMIS data requirements change frequently. These changes often drive IEP form or SpEd Forms changes. As future changes occur, as in the past, you will be apprised of those changes well in advance by the Pupil Personnel Services Office.

With appreciation to Kings County Office of Education and Thomas Robb for contributions to this section

SECTION XIII

Confidentiality of Student Records

CONFIDENTIALITY OF STUDENT RECORDS

Parents

Under Family Educational Rights and Privacy Act (FERPA), parents have the right to inspect and review their children's education records and seek to amend them in certain circumstances. Access to the records must be granted no later than five business days following the date of the request. In addition, an educational agency subject to FERPA may not have a policy or practice of disclosing education records, non-directory, personally identifiable information from education records, without the written consent of the parent or eligible student.

Type of Records

All pupil records are classified as Mandatory Permanent, Mandatory Interim or Permitted. Regulations governing access, transfer, and destruction of records vary according to their classification. Special Education Pupil Records are classified as Mandatory Interim Records. Therefore, school Districts must protect the confidentiality of personally identifiable information at collection storage, disclosure and destruction stages.

Safeguards

- One official at each Agency (school) must assume responsibility for ensuring the confidentiality of any personal identifiable information.
- All persons collecting or using personally identifiable information must receive training or instruction regarding the state policies and procedures as stated in the annual program plan.
- Each agency (school) must maintain for public inspection a current list of names and positions of those employees who have access to personally identifiable information.

Location of Pupil Records

- Records for each individual pupil shall be maintained in a central file at the school attended by the pupil.
- When records are maintained in different locations a notation in the central file as to where such other records may be found is required.

Procedures

Following are the procedural guidelines:

- All confidential records must be kept in a locked location.
- An access log must be kept in each file.
- A record must be kept indicating when and to who access was given plus when and to who records were sent outside the District.
- A list of District personnel who routinely have access to student files must be posted in the room in which the files are located.
 - All others must be identified in the file log prior to accessing file.
- Special Education information and material to be included in the student record file:
 - Copies of IEPs, less than or equal to three years old

- Assessment plans, reports, less than or equal to three years old
- Communication to and from parents, including all mandatory information, less than or equal to three years old

- Transition plans (included as necessary)
- Positive behavior support plans (included as necessary)
- Last District annual or triennial, even if older than three years
- List District psycho-educational report

Transfers

Confidential records and/or information may be transferred between public schools and public school Districts within the state of California without written permission by parent, guardian or student over 18 years of age. Records may be transferred by facsimile or secured modem to appropriate personnel.

Transfer of confidential records and/or information to a public school or District outside the state does require the written consent of parent, guardian or student over 18 years of age.

Transfer of confidential records and/or information to a private school or any private or public agency or other individual does require the written consent of parent, guardian or student over 18 years of age.

ACCESS TO STUDENT RECORDS

Access means a personal inspection and review of a record or an accurate copy of a record, an oral description or communication of a record or receipt or a copy of a record.

Those granted access are prohibited from releasing information to another person or agency without written permission from the parent or legal guardian. (If the student is 18 or older, the right of consent belongs to the student unless a parent or guardian obtains conservatorship.)

Students who are married are considered to be emancipated minors even if younger than 18 years of age.

State and federal laws permit access to records according to the following listings.

MANDATORY ACCESS

- Natural parents, adoptive parents or legal guardian of student younger than age 18 or dependent student age 18 or older (within 5 days of request)
- School officials and employees for legitimate educational purposes
- School Attendance and Review Board (SARB) members
- Other public schools (California) where student has enrolled or intends to enroll
- Federal, state, and county officials for program audit or compliance
- Agencies specified by law in cases of child abuse
- Those so authorized in compliance with a court order
- Private schools or out-of-state schools of anticipated or new enrollment

PERMITTED ACCESS

- Appropriate persons in an emergency
- Agencies or organizations in connection with students applying for financial aid

- Accrediting associations
- Organizations conducting studies on behalf of the District
- Private schools or out-of-state schools (to mandatory interim and permitted student records)
- The person or agencies authorized by parent or guardian with custody (or student of age 18 or older)

PROHIBITED ACCESS

If an agency or person is not included, the above access can only be granted through written permission.

Such permission must:

- Specify the nature of the information to be released; and
- Specify the purpose for which the information is released

In addition, the recipient must be informed of, but need not acknowledge in writing, restrictions upon further release to another agency or person without specific written authorization.

PARENT ACCESS TO STUDENT RECORDS

Parents must be notified, in writing, of their rights to inspect and review the school records of their students. This must be done at the time of initial enrollment and annually thereafter. If 15 percent of pupils enrolled speak single primary language other than English, as determined from census data in preceding year, then all notices, reports, statements, or records sent to parent or guardian of pupil by school shall, in addition to being written in English, be written in primary language, and may be responded to either in English or primary language. (EC 48985) Lack of English fluency should not preclude parent or guardian from exercising educational rights. School shall take reasonable steps to ensure parents and guardians are properly notified in English and in their home language, pursuant to EC 48985, of rights and opportunities available to them. Notice should contain the following specific information:

- The types of records and information contained therein.
- The position of the official responsible for the maintenance of each type of record.
- The location of the log or record required to be maintained.
- Criteria used by the District to define “school officials and employees” and in determining “legitimate educational interest.”
- The policies of the District for reviewing and expunging records.
- The right of the parent to access student records.
- The procedures for challenging the content of student records.
- The cost, if any, charged to the parent for reproducing copies of records.
- The categories of information that the institution has designated as directory information.
- Any other rights stated in the California Education Code and the right to file a complaint with Department of Health, Education and Welfare (HEW).
- Notice of all locations where copies of the policies and procedures regarding the General Education Provisions Act and confidential student records may be obtained.
- The right to inspect and review also includes responses to reasonable requests.

Parents may request explanations and interpretations of the records and the right to have a representative of the parent inspect and review the records. The parent must make the request in writing. The request is given to a certificated staff member who interprets the records where necessary. The certificated staff member schedules an appointment with the parent within five days and reviews the contents of the student's folder with the parent. If photocopies are requested, copy the requested materials immediately, if possible. If an immediate response is not possible, mail the requested photocopies to the parent within five days of the request.

Even though records from physicians may be stamped "Confidential" or a psychologist's report contains sensitive or potentially upsetting information, the parent or eligible student has full rights of access.

LOG OF REQUEST FOR INFORMATION

All requests of individuals or agencies, with the exception of other school officials and parents, must be recorded in a record or log of requests for information. The log or record must be open to the inspection of a parent and the school officials. The log or record must contain the following information: the name of the requesting party and the legitimate interest of the party. The log should be kept with the student's educational records.

RECOMMENDED PROCEDURE

- Upon receipt of a written request for "directory" information from a group authorized to receive it, check student folder for "objection to release" form. If Objection Form is present, refer to the Director of Special Education. If no objection form is present, supply the information. The law does not require logging request for directory information.
- If the request is oral, verify the identity of requester by calling back. If there is any doubt as to the identity of the requester, require a written request, on official letterhead.
- Upon receipt of a written request for information, ascertain whether or not it falls into the authorized categories as defined in the section above. If it does, supply the information as explained above. If it does not, log the request and refer it to the Director of Special Education.

TRANSFER OF SPECIAL EDUCATION STUDENT RECORDS

Special Education student records are mandatory to:

- California Public Schools
- California Private Schools
- Out-of-state Public Schools
- Out-of-state Private Schools

A copy of the records should be retained when these transfers occur. A minimum recommendation for records that should be retained is:

- Parent permission for assessment
- Parent permission for placement
- Evaluations (i.e., medical, psychological, educational)
- Current individualized educational plan

CONSENT TO RELEASE STUDENT RECORDS

- District to District record transfer does not have to be in writing.
- Written consent must specify the records to be released, identify the party or class of parties to whom records may be released, state the purpose(s) of the disclosure and be signed and dated by the parent of eligible student.

Whenever a student reaches the age of 18 years or is attending an institution of post-secondary education, the permission or consent required of, and the rights afforded to, the parents or guardian of the student shall thereafter only be required of, and afforded to, the student – unless a court of competent jurisdiction has granted another individual conservatorship over the student.

HOW TO PURGE INFORMATION FROM A STUDENT'S SPECIAL EDUCATION FILE

The special education file for African-American students should be reviewed when the student transfers into the District or is being reevaluated. The file shall be permanently sealed if it contains information or reference to IQ tests or prohibited tests. The records are to be opened only for litigation purposes, official state or federal audits, or upon parent request.

The parents shall be notified that the records will be sealed. The parent shall be informed of the court decision which prohibits the use of intelligence tests for African-American students for any purpose related to special education. Additionally, prior to sealing the records, a qualified professional should identify appropriate data to be copied and purge all references to information from IQ tests or prohibited tests. The remaining data should then be transferred to the student's current special education file.

1. Review the student's special education file for information pertaining to IQ or other prohibited tests.
2. Remove any prohibited protocols and all assessment reports which contain prohibited information.
3. Copy the original assessment report.
4. The following information shall be purged from the duplicated copy utilizing white out: (a) any reference to a test instrument which yields an IQ score or standard score that is an indication of cognitive functioning. (b) Any test data summary scores from the test instrument(s). (c) Commentary in the report which discusses the student's performance on the test instrument(s).
5. Duplicate copy of the purged report. File this in the student's special education file.
6. Seal the original report, any relevant protocols, and a copy of the letter sent to the parent/guardian in an envelope. Indicate the student's name and the document destruction date of five years hence on the outside of the envelope. Also, attach a label indicating the envelope is sealed per Larry P. ruling, and only to be opened for purposes of litigation, official state or federal audits, or upon parent request.
7. Place notification in the student's special education file regarding the sealed envelope.
8. Forward the sealed envelope to the Special Education Office.
9. The Program Manager will notify the parent in writing.

AMENDMENT OF RECORDS

If parents desire to challenge the content of student records, they must establish that specific grounds exist and provide a written request to correct or remove the information.

Grounds may include:

- Inaccurate information.
- Information is unsubstantiated personal conclusion or inference.
- Information is a conclusion or inference outside the observer's area of competence.
- Information is not based on personal observation.
- Parents of African-American students will be notified that records are being purged of all references to I.Q. data.

The agency must decide whether to amend the information within a reasonable time after receipt of the request to amend. If the agency refuses to amend the information, it must inform the parent(s) of the refusal and advise the parent(s) of their right to a hearing, as per District policy.

SECTION XIV

Common Acronyms and Terms

Resource:

*Special Education Dictionary edited by John W. Norlin, Esq., Julie J. Kline, Esq.
and Amy E. Slater, Esq., LRP Publications, 2007*

DICTIONARY OF SPECIAL EDUCATION TERMS

ABA: Applied behavioral analysis.

ADA: Americans with Disabilities Act

AT device: Assistive technology device

AT services: Assistive technology service

Accommodation: Generally, an adaptation or modification that enables a student with a disability to participate in educational programming, for example, complete school work or tests with greater ease and effectiveness, by enabling him or her to participate in the activity, to the extent possible, as if he or she were nondisabled.

Adaptive behavior: Behavior that displays an age-appropriate level of self-sufficiency and social responsibility: domains of adaptive behavior include: (a) independent functioning, (b) physical development, (c) economic activity, (d) language development, (e) numbers and time, (f) vocational activity, (g) self-direction, (h) responsibility and (i) socialization.

Age of Majority: When a child turns eighteen, he/she is legally considered an adult and is afforded all educational rights previously held by parent.

Applied Behavioral Analysis (ABA): A method of analyzing behavior into component parts to determine where a child (or an adult) fails to perform, and therefore permitting extra training to be applied to those specific parts; a method of using simple rewards and reinforcers to help train components of behavior.

Assessment: Broader than testing and typically includes gathering and integrating information to determine a student's current level of emotional, behavioral, academic and intellectual functioning, resulting educational needs and strategies for remediation to promote effective treatment programming. Parent permission required.

Assistive Technology: Any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

Assistive Technology Service: Any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.

Augmentative and Alternative Communication (AAC): Communication by means other than speech.

Augmentative Communication: Communication through enhanced use of an individual's residual expressive communication skills, e.g., speaking skills, sometimes distinguished from alternative communication, involving no use of speech.

Augmentative Communication Device: Computerized communication devices with vocal output used by individuals who cannot communicate readily or at all through speech or writing, typically because of severe cognitive or physical impairments.

Augmentative Communication System: Used by individuals unable to communicate readily or at all through speech or writing, typically because of severe cognitive or physical impairments; types of systems include manual (gestures and signing), communication board, and high-tech electronic communication aids (such as augmentative communication devices or computer-generated synthesized speech).

Baseline: The beginning point for measurement, prior to intervention or treatment, necessary to determine in order to measure effectiveness of the intervention or treatment.

Behavioral Emergency: The demonstration of a serious behavior problem (1) which has not previously been observed and for which a behavioral intervention plan has not been developed; or (2) for which a previously designed behavioral intervention is not effective. Approved behavioral emergency procedures must be outlined in the special education local planning area (DISTRICT) local plan.

Behavioral Intervention: The systematic implementation of procedures that result in lasting positive changes in the individual's behavior.

Behavioral Intervention Case Manager: A designated certificated school/District/county staff member(s) or other qualified personnel contracted by the school District or county office who has been trained in behavior analysis with an emphasis on positive behavioral interventions.

Behavioral Intervention Plan: A written document which is developed when an individual exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the individual's IEP. The behavioral intervention plan shall become part of the IEP. Requires a functional analysis assessment.

Behavior Support Plan: Developed by IEP team as needed. Does not require a functional analysis assessment.

CAHSEE: California High School Exit Exam - State law passed in 1999. Passing required for diploma issuance. Individual school board waivers may apply.

CAPA: California Alternate Performance Assessment: The alternate assessment within STAR (California Standardized Testing & Reporting) Program for children whose IEP teams determine alternate assessment is appropriate for students with significant cognitive disabilities.

CMA: **C**alifornia **M**odified **A**ssessment: STAR option designed to assess students whose disabilities preclude them from achieving grade-level proficiency on content standards with or without accommodations.

Child Find: In connection with Part B of the IDEA, the requirement set out in the statute at 20 USC 1412(a)(3) requiring states to ensure that all children with disabilities who are in need of special education and related services are identified, located and evaluated. The regulations at 34 CFR 300.128 further define child find responsibilities. 2. Under Part C, each statewide system of early intervention services must include a comprehensive child find system that is consistent with Part B regulations at 34 CFR 300.128. 3. A requirement similar to that of the IDEA applying to school Districts under Section 504 as set out in Section 504 regulations at 34 CFR 104.32, requiring Districts to annually “undertake to identify and locate every qualified [individual with a disability] residing in [the District’s] jurisdiction who is not receiving a public education.”

Cochlear Implant: An electronic auditory device intended to give an individual age 2 or over who is deaf or has a severe hearing loss or profound hearing loss the sensation of sound; made up of external parts worn outside the body and internal parts implanted surgically. External parts include a microphone headset (encased in what looks like a behind-the-ear hearing aid case), external transmitter coil and a speech processor responsible for turning sound into electric current; internal parts include an internal receiver surgically implanted in the mastoid bone behind the ear and magnetically attracted through the skin to the external transmitter.

Community Based Instruction (CBI): A model for delivery of instruction in which the IEP goals are met in a “natural” age-appropriate setting. For example, math, sequencing, travel, and social skills may all be developed in the setting of a trip to the grocery store.

Curriculum: Broadly, content of program of instruction detailing what students should learn, when they should learn it and how they should be taught.

Curriculum-based Measurement: Series of incremental assessments of what a student has learned.

Curriculum for Students with Mild Disabilities: Generally, the regular education curriculum, but taught with modifications and provision of accommodations.

Curriculum for Students with Severe Disabilities: Generally consists of survival skills, functional curriculum designed to optimize independence and ability to function responsibly in society.

Designated Instruction Services (D.I.S.): Those services as defined by Federal and State laws which may be needed by students to make adequate progress per IEP expectations (FHI) Federal Handicapping Indicator.

Diagnostic and Statistical Manual of Mental Disorders (DSM-IV): The fourth revision of the statistical and clinical nomenclature system of the American Psychiatric Association, the fundamental system of

medical diagnosis of mental disorders that is the standard in the medical community; categorical classification of mental disorders based on conformance of behavior observed by trained clinician to those identified as elements of a specific classification; diagnoses the presence of a disorder, not its etiology.

Disability Code: Areas of student eligibility for special education(mental retardation, hard of hearing, deafness, speech or language impairment, visual impairment, emotional disturbance, orthopedic impairment, other health impairment, specific learning disability, deaf-blindness, multiple disability, autism, traumatic brain injury).

Discrepancy: A difference between two tests, measuring intellectual ability and achievement.

Discrete Trial Training: A method of breaking down functions into single steps which are rewarded on a trial-by-trial basis.

Due Process: The process that either a parent or school District (or similar public agency) may initiate to resolve a disagreement about the identification, evaluation, educational placement, or provision of free appropriate public education (FAPE) for a child with a disability or suspected of being disabled under the IDEA. Each SEA, in accordance with 20 USC 1415(a), must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of 34 CFR 300.500 through 34 CFR 300.536.

Emergency Interventions: May be used by school personnel to control unpredictable, spontaneous behavior which poses clear and present danger of serious physical harm to the individual or others or serious property damage.

English Language Learner (ELL): Students for whom parents indicate a language other than English as primary for student on home language survey.

Extended School Year (ESY): Additional instruction beyond the normal school year, conducted during the school breaks. IEP team determines individual need related to regression, recoupment patterns and the need for ESY to ensure FAPE.

Free Appropriate Public Education (FAPE): 1. Entitles a public school child with a disability to an educational program and related services to meet her unique educational needs at no cost to the parents; based on IEP; under public supervision and meets state standards.

Full Inclusion: Generally means integration of a student with a disability in regular education classrooms for 100% of his or her school day.

Functional Analysis Assessment: Assessment conducted by a person who has documented training in behavior analysis with an emphasis on positive behavioral interventions.

General Education: As distinguished from special education, an established curriculum of academic subjects offered in essentially the same fashion for all children and youth. The term frequently is used interchangeably with regular education.

Generalization: Ability to apply a skill or behavior learned in one setting to another setting or ability to apply a learned skill or behavior in similar situations.

Health Assessment: In connection with school health services, the collection and analysis of information about the health situation of a student with a disability to determine his or her need for health-related supportive services.

Heterogeneous Grouping: In regular education, placement of students of varying skill or ability levels in the same classroom, as opposed to ability grouping.

IEP Meeting: The forum in which parents and the school District jointly determine the disabled student's needs and develop a program that will provide him or her with an appropriate education; intended by Congress to make parents and school Districts operate as equal participants in decisions regarding the disabled student's educational plan.

Impulsivity: An approach to problem-solving associated with attention deficit hyperactivity disorder (ADHD); responding abruptly without consideration of consequences or alternatives.

Incidental Learning: Learning that is peripheral to the primary objectives of instruction; for example, social skills are usually incidentally learned in the regular classroom environment.

Inclusion: Bringing the services to the child rather than bringing the child to the services. Involvement in mainstream activities comparable to those provided general education students is the focus.

Independent Educational Evaluation (IEE): 1. An evaluation of a child by a non-school District employee that parents may obtain as a right under the IDEA. 2. Defined, as a term of art, in IDEA regulations at 34 CFR 300.502(a)(3)(i) as: "an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the evaluation of the child in question."

Individual Transition Plan (ITP): An educational plan designed to facilitate a student's move from one setting to another (e.g., from one class room or school to another or from school to work). Required specifically as ITP at 16.

Individuals with Disabilities Education Act (IDEA 2004): Federal law that provides for special education and related services to eligible children with disabilities.

Individualized Education Program (IEP): The cornerstone of the IDEA, a written document, ideally developed in a collaborative and cooperative effort between parents and school personnel, that describes the disabled child's abilities and needs and prescribes the placement and services designed to meet the child's

unique needs. 2. Defined, as a term of art, in the IDEA at 20 USC 1401 (10) as: “A written statement for each child with a disability that is developed, reviewed and revised in accordance with [20 USC 1414(d)].”

Individual Program Plan (IPP): An annual-reviewed record of program and service needs provided by the Regional Center (i.e., respite care, behavior management training, etc.)

Individualized Family Service Plan (IFSP): See Early Intervention Program. Also includes services the family will receive. Birth through 3 years of age.

Informed Consent: 1. Generally, consent given after full disclosure of all the information a reasonable person would require to make an intelligent decision. 2. In connection with the IDEA, understood to mean parental consent that meets the requirements set out in Part B regulations at 34 CFR § 300.500(a): “(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication (2) The parent understands and agrees in writing [to the carrying out of the activity]...(3) The parent understands that the granting of consent is voluntary...and may be revoked at any time...”

Job Coach: An individual who supports and supervises an individual with a severe disability in supported employment by accompanying the disabled individual to the work site for intensive on-site job skill training, observation and supervision.

LEA: Local educational agency (District).

Learning Modalities: The three pathways through which students learn – visual, auditory and kinesthetic [sense].

Least Restrictive Environment (LRE): Generally, the appropriate placement for a child with a disability that most closely approximates where the child, if nondisabled, would be educated; not necessarily the regular education classroom and not synonymous with inclusion or mainstreaming. Whenever there is a reasonable likelihood that a student with a disability can be educated appropriately in a regular classroom with the use of supplemental aids and services, then a regular classroom placement should be tried according to 34 CFR 300.114(a)(2).

Low Incidence: Students with more involved disabilities in the areas of hearing, vision, hearing and vision, and hearing, vision and orthopedic disabilities.

Mainstreaming: Not a formal term, but common jargon in the educational community typically accepted as meaning the placement of a child with a disability alongside nondisabled children in the regular education setting for a % of total day; less preferred term for inclusion or full inclusion. The 2006 Part B regulations regarding the least restrictive environment place great emphasis on students with disabilities receiving their education in the regular classroom. 34 CFR 300.114 through 34 CFR 300.120.

Manifestation Determination: 1. The evaluation of the relationship between a student's disability and act of misconduct that must be undertaken when a District proposes to take specified serious disciplinary actions.

Modification: Changes in the delivery, content, or instructional level of a subject or test. They result in altered expectations and create a different standard for children with disabilities than for those without disabilities.

Monitoring and Compliance: Office of Special Education Programs (Federal) ongoing assessment of system effectiveness to ensure that state educational agencies (SEA's) meet their responsibility to ensure that all the requirements of Part B are carried out. (self review & verification review are examples at the District level).

Natural Environment: In connection with the provision of early intervention services to children with disabilities under Part C, the type of setting, such as the home, preschool or child care setting, which is natural or normal for the child's age peers who have no disabilities.

No Child Left Behind Act of 2001: Legislation reauthorizing the Elementary and Secondary Education Act of 2001, and codified at 20 USC 6301, et seq. In amending ESEA, the No Child Left Behind Act overhauled existing federal efforts to support elementary and secondary education. NCLB was designed around four essential components: accountability for results; an emphasis on scientific research; expanded parental options; and expanded local control and flexibility.

Non-Public Agency: A private establishment or individual that provides related services necessary for an individual with exceptional needs to benefit educationally from the pupils' educational program pursuant to an individualized education program and that is certified by the department. The nonpublic agency shall also meet standards as prescribed by the superintendent and board.

Non-public School (NPS): A private placement of a child whose needs cannot be served within the special education programs offered within the DISTRICT.

Orientation and Mobility (O & M): A related service—a child with visual impairments is trained to know where his or her body is in space and to move through space.

PECS: Picture Exchange Communication System

Positive Reinforcement: Principle used in behavior modification in which a student is motivated to perform a desired target behavior by his or her receipt of a reward after performing the desired behavior.

Postsecondary Education: In connection with transition services under the IDEA, a post-school activity that includes: technical trade schools and vocational centers, public community colleges, and four-year colleges and universities.

Response to Intervention (RTI): IDEA 2004. Districts may use RTI as part of eligibility determination process for special education. RTI structure and content is a general education responsibility.

Reverse Mainstreaming: A program in which typically developing students are brought into a special education classroom at various times to participate in activities with special education students. Such programs allow children with disabilities to remain in familiar, structured surroundings while interacting with typically developing peers. It also increases awareness and acceptance of differences between children.

SOP: Summary of performance. Provided to students upon leaving public education at the end of high school or young adult programming.

Screening: The first step in the assessment process, a fast, efficient way to identify students who may have disabilities and should undergo further testing. According to the Office of Special Education Programs (OSEP) the mass screenings used in connection with child find activities are not considered evaluations and thus are not subject to the prior parental notice and consent requirements that apply to preplacement evaluations. *Letter to Holmes*, 19 IDELR 350 (OSEP 1995).

Services Plan: Defined by the IDEA regulations as a written statement that describes the special education and related services the LEA will provide to parentally placed child with a disability enrolled in private school.

Star Testing: STAR Testing (State Testing and Reporting) CAT 6, Standards Test, CAPA, CMA etc.

State Educational Agency(SEA): California State Department of Education (CDE). 1. Defined, as a term of art, in IDEA regulations at 34 CFR 300.41 as the State board of education, or other agency or officer primarily responsible for the state supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the governor or by state law. 2. Defined, as a term of art in the NCLB as the “agency primarily responsible for the State supervision of public elementary and secondary schools.” 20 USC 7801(41). The state, through its SEA, has the ultimate responsibility for ensuring that eligibility requirements for federal funding are met. As a result, the state’s obligation can extend to actually providing an appropriate placement for a child with a disability when his or her local education agency (LEA) is unable, or unwilling, to do so.

Surrogate Parent: An individual assigned by a school District (or similar public agency) to assume the rights and responsibilities of a parent under the IDEA when no parent can be identified for a particular child, the public agency cannot determine the parents whereabouts, or the child is a ward of the state.

Triennial: Federal and State laws mandate special education students be assessed no later than every 3 years to determine current needs and continued eligibility. This information is provided by a multi-disciplinary team and is presented to the IEP team including parents and student for consideration.

VOCA: Voice output communication aid. Electronic augmentative communication system or specially adapted personal computer that allows the user to produce synthesized speech; generally contains a broader range of symbols or characters to be selected for expressive communication.