

# **SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES**

## **Chapter 1**

### **Information on Basic Rights**

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# **SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES**

## **Chapter 1**

### **Information on Basic Rights**

#### **Introduction**

Special education programs in California are governed by a combination of state and federal laws. Under these laws, school districts must provide each student with a disability with a free, appropriate public education (FAPE). FAPE means special education and related services that are provided at public expense and without charge, meet appropriate standards, include preschool through secondary education, and conform with an Individual Education Program (IEP). [Title 20 United States Code (U.S.C.) Section (Sec.) 1401(9); Title 34, Code of Federal Regulations (C.F.R.) Sec. 300.17.] Special education must be provided in the least restrictive environment. This means that to the maximum extent appropriate, all students with disabilities should be educated with students who are not disabled. [34 C.F.R. Sec. 300.114.] In addition, FAPE requires that special education students are involved and make progress in the general education curriculum and toward achievement of their IEP goals. [20 U.S.C. Sec. 1414(d)(1)(A); 34 C.F.R. Sec. 300.320(a)(1).]

#### **1. I hear a lot about federal and state laws, and federal and state regulations. What's the difference?**

In 1975, the 94th Congress of the United States passed The Education for All Handicapped Children Act (Public Law 94-142), now called the Individuals with

Disabilities Education Act (IDEA). [20 U.S.C. Secs. 1400 and following.] California has also passed its own laws, which generally parallel IDEA and form the basis for providing services in this state. [California Education Code (Cal. Ed. Code) Secs. 56000 and following.]

The federal and state laws contain most of the provisions governing delivery of special education and related services. However, sometimes the law is unclear or leaves something out. Where this has happened, both the federal Department of Education and the California State Department of Education (CDE) have created regulations under the authority of IDEA or state law. The federal regulations are at Title 34 of the Code of Federal Regulations, Part 300 (34 C.F.R. Sec. 300), and the state regulations are at Title 5, California Code of Regulations, Sections 300 and following (5 C.C.R. Secs. 300 and following.)

Federal law and regulations create the broad framework within which California must function as a recipient of federal funds under IDEA. Since California has enacted its own statutes and regulations, these generally will be followed in providing special education in the state. However, because of the Supremacy Clause of the U.S. Constitution, federal law and regulations must be followed whenever there is a conflict between state and federal law, except when the state law grants more rights to the individual. [Students of the California School for the Blind v. Honig (9th Cir. 1984) 736 F.2d 538.]

## **2. What is the definition of special education?**

Special education means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with disabilities. This instruction can include classroom instruction, home instruction, instruction in hospitals and institutions, instruction in other settings, and instruction in physical education. Special education also includes speech-language pathology or any other related service if the service is considered special education under state standard, travel training, and vocational education. California law adds to the federal definition of special education by requiring that special education be provided to those students with disabilities whose educational needs cannot be met with modification of the regular

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instructional program. [20 U.S.C. Sec. 1401(29); 34 C.F.R. Sec. 300.39; Cal. Ed. Code Sec. 56031.]

Federal regulations specifically define several key terms included in this definition:

At no cost means “that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.” [34 C.F.R. Sec. 300.39(b)(1).]

Physical education means “the development of physical and motor fitness; fundamental motor skills and pattern; and skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports). The term also includes special physical education, adapted physical education, movement education, and motor development.” [34 C.F.R. Sec. 300.39(b)(2).]

Specially-designed instruction means “adapting, as appropriate to the needs of an eligible child...the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child’s disability and to ensure access of the child to the general curriculum, so that she can meet the educational standards within the jurisdiction of the public agency that apply to all children.” [34 C.F.R. Sec. 300.39(b)(3).]

Travel training means “providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).” [34 C.F.R. Sec. 300.39(b)(4).]

Vocational training means “organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.” [34 C.F.R. Sec. 300.39(b)(5).]

### **3. How can I get the school district to evaluate or assess my child?**

Your school district has an obligation to “identify, locate and evaluate” all children with disabilities who may be eligible for special education, including those who are attending private schools or are homeless or wards of the court. [34 C.F.R. Sec. 300.111; Cal. Ed. Code Secs. 56300 & 301.] This is called “child find.”

You can also make a referral for assessment at any time. Contact your local school administrator (for example, the principal or special education program consultant). Outline your areas of concern about your child’s suspected disability and request an “evaluation” or “assessment.” Follow up with a **written**, dated request in order to document timelines. Once the school district receives your written request for assessment, the assessment process **must** begin. All written referrals shall initiate the assessment process. A referral is defined as any written request for assessment by a parent, guardian, teacher, or other service provider. School district personnel must help you put your request in writing. [Cal. Ed. Code Secs. 56029, 56301, 56302 & 56321(a); 5 C.C.R. Sec. 3021.] See *Sample Letter – Request for Assessment*, Appendices Section – Appendix A.

### **4. How long will it take for the district to complete my child’s assessment?**

Under state law, your school district must give you an assessment plan within **15 days** of their receipt of your **written** referral for special education services. If a referral for assessment is made 10 days or less prior to the end of the regular year, the assessment plan must be developed within 10 days after school commences the following school year. [Cal. Ed. Code Sec. 56321(a).]

You have at least **15 days** to respond to or approve the assessment plan. [Cal. Ed. Code Sec. 56321(4).] Once the district has received the signed assessment plan, it has **60 days** (excluding days of school vacation in excess of five and days that school is not in session) to complete the assessment and develop an Individualized Education Program (IEP), assuming it finds the child to be eligible. [Cal. Ed. Code Sec. 56344(a).] No determination of ineligibility for special education services can

be made without an evaluation. [20 U.S.C. Sec. 1414(c)(5); 34 C.F.R. Sec. 300.305(e)(1).]

If a child is referred to special education 30 or less days before the end of a school year, the district must hold a meeting to develop an IEP within 30 days after the beginning of the next school year. [Cal. Ed. Code Sec. 56344(a).]

## **5. Can a school district conduct an assessment without my written approval?**

No initial assessment may be done without your written approval unless the district seeks and wins a due process hearing to compel assessment. However, if a parent fails to respond to a district request to reassess a student already in special education, the district can assess without parent consent. The district must demonstrate that it has reasonably sought consent from the parent. [34 C.F.R. Sec. 300.300(c)(2); Cal. Ed. Code Secs. 56321(c)(2) & 56506(e).]

## **6. What should an assessment cover?**

The student is to be 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 interest, and social and emotional status. A developmental history should be obtained, when appropriate. [34 C.F.R. Sec. 300.304(c)(4); Cal. Ed. Code Sec. 56320(f).]

## **7. What are the standards for assessment tests and tools?**

A test and other evaluation material must be selected and administered so as not to be racially, culturally, or sexually discriminatory and must be administered in the student's primary language or other mode of communication. The test must also be validated for the specific purpose for which it is used. In addition, testing must

assess specific areas of educational need and not merely produce a single general intelligence quotient. No single procedure can be used as the sole criterion for determining an appropriate educational program for the student. Finally, for a student with impaired sensory, manual, or speaking skills, the testing must ensure that the results accurately reflect the student's aptitude or achievement level, and not the student's impaired skills, unless those skills are to be measured by the testing. [20 U.S.C. Sec. 1414(b); 34 C.F.R. Sec. 300.304; Cal. Ed. Code Sec. 56320.]

**8. Does the assessment have to be provided in my child's primary language?**

Yes. This is a requirement of both federal and state law, unless it is not feasible and is so stated in the assessment plan. If the assessor is not bilingual, the district should provide an interpreter. In addition, state law requires that testing and assessment material be selected so as not to be racially, culturally, and sexually discriminatory. [20 U.S.C. Sec. 1414(b); 34 C.F.R. Sec. 300.304(c)(1)(i); Cal. Ed. Code Secs. 56320(a) & (b).]

**9. Do I have the right to examine and/or get copies of my child's educational records?**

Federal regulations require school districts to comply with a parent's request to inspect and review educational records without unnecessary delay and in no case more than 45 days after the request has been made. [34 C.F.R. Sec. 300.613.] However, **state law gives parents the right to examine and receive copies of all school records within five business days from the date of an oral or written request.** The school district may charge no more than the actual cost of reproducing the records. If this charge effectively prevents a parent from getting copies, the copies shall be provided at no cost. [34 C.F.R. Sec. 300.617; Cal. Ed. Code Sec. 56504.]

**10. If I do not agree with the school district's evaluation, can I get the school district to pay for an independent evaluation?**

Yes. If you disagree with a school district's assessment, you must specifically ask the district to pay for an independent educational evaluation (IEE). It is very important that you state your request as a **disagreement** with a particular assessment.

When the school district receives your request for an IEE, the school district has only two options: **Fund or File**. Under federal regulations, the district must respond to your request for an IEE "without unnecessary delay." If the district fails to respond by either paying or filing for due process, it has failed to comply with the law. You could file a compliance complaint to ask the CDE to determine whether the school district should fund an IEE under those circumstances. [34 C.F.R. 502(b); Cal. Ed. Code Sec. 56329 (b) & (c).]

**11. If I disagree with an evaluation performed by the school, can I get an independent evaluation from someone who is qualified but is not employed by the school?**

Yes. You can always obtain an independent educational evaluation (IEE) at your own expense and the school district must consider the results of an independent evaluation in any decision regarding the provision of a free appropriate public education to your child. The results may also be presented as evidence at a due process hearing. [34 C.F.R. Sec. 300.502(c); Cal. Ed. Code Sec. 56329(c).]

**12. How often must evaluations be conducted for a student with a disability?**

An initial evaluation must be conducted prior to a student being considered for special education and related services. A re-evaluation must be conducted at least every three years for special education students with certain exceptions. A re-

evaluation must also be conducted whenever the student's parents, teacher or district staff request one. [20 U.S.C. Sec. 1414(a)(2); 34 C.F.R. Sec. 300.303.]

**13. What is the assessment process for Section 504? Is it the same as the special education assessment process?**

No specific assessment process is outlined in Section 504 of the Rehabilitation Act of 1973. However, Section 504 regulations require that school districts “conduct an evaluation...of any persons who, because of [disability], need or are believed to need special education or related services . . .” The school district must establish standards and procedures for 504 evaluations. [34 C.F.R. Sec. 104.35.] See Chapter 2 for more information on *Evaluations/Assessments*.

**14. Who is eligible for special education under federal and state law?**

The federal and state regulations establish eligibility criteria for all students seeking special education services. In order to qualify under the eligibility criteria, the assessment must demonstrate that the student's impairment requires special education. The qualifying areas of impairment set out in federal and state eligibility regulations are:

- (1) Visual impairment;
- (2) Deaf or Hearing impairment;
- (3) Deaf-Blind;
- (4) Severe orthopedic impairment;
- (5) Language or Speech disorder;
- (6) Other health impairment (impaired in strength, vitality, or alertness due to chronic or acute health problems);
- (7) Autistic-like behaviors;
- (8) Mental retardation;

- (9) (Serious) emotional disturbance;
- (10) Specific learning disability;
- (11) Traumatic brain injury; and
- (12) Multiple Disabilities.

[34 C.F.R. Sec. 300.8; 5; C.C.R. Sec. 3030.]

A student is not eligible for special education and services if she does not otherwise meet the eligibility criteria and her educational needs are due primarily to:

- (1) Unfamiliarity with the English language;
- (2) Temporary physical disabilities;
- (3) Social maladjustment; or
- (4) Environmental, cultural, or economic factors.

[20 U.S.C. Secs. 1401 & 1411; 34 C.F.R. Secs. 300.8(b)(10)ii); 300.306 & 300.311(a); Cal. Ed. Code Sec. 56026.]

In terms of **minimum age**, a child may be eligible for special education services, in the form of early intervention services, from birth. After age three and until school age, a child may be eligible for preschool special education. In terms of **maximum age** (and assuming the student has not yet graduated from high school with a regular diploma), a student may continue to be eligible for special education past her 18th year. A student between the ages of 19 and 21 may continue in special education under certain conditions. [34 C.F.R. Sec. 300.102; Cal. Ed. Code Secs. 56026(c)(4) & 56026.1.]

## **15. What are the eligibility criteria for children from age three through five years of age?**

Eligibility criteria for preschool children are linked to the criteria for school-age children. To be eligible for special education, a child must have one of the following disabling conditions: Autism; Deaf-blindness; Deafness; Emotional

disturbance; Hearing impairment; Mental retardation; Multiple disabilities; Orthopedic impairment; Other health impairment (potentially includes attention deficit disorder, attention deficit hyperactivity disorder, Tourette Syndrome, dysphagia, fetal alcohol syndrome, bipolar disorders, or other organic neurological disorders, see Fed. Reg. Vol. 71, No. 156, p. 46550); Specific learning disability; Speech or language impairment in one or more of voice, fluency, language, and articulation; Traumatic brain injury; Visual impairment; or Established medical disability (a disabling medical condition or congenital syndrome that the IEP team determines has a high predictability of requiring special education and services). [34 C.F.R. Sec. 300.8; 5 C.C.R. Sec. 3030, Cal. Ed. Code Sec. 56441.11.]

In addition to having one or more of the qualifying conditions, a child must need specially designed instruction or services to qualify for special education, and must also have needs that cannot be met with modification of a regular environment in the home or school, or both, without ongoing monitoring or support as determined by an IEP team. [Cal. Ed. Code Secs. 56441.11(b)(2) & (3).]

A child is not eligible for special education and services if she does not otherwise meet the eligibility criteria and her educational needs are due primarily to: Unfamiliarity with the English language; Temporary physical disabilities; Social maladjustment; or Environmental, cultural, or economic factors. [Cal. Ed. Code Sec. 56441.11(c).] See Chapter 12, *Information on Preschool Education Services*.

**16. If my child does not meet special education eligibility, is there any other way to obtain some special services to address educational problems?**

A student who may have problems learning may not be found eligible for special education services because she does not fit into one of the special education eligibility categories and/or because her learning problems are not severe enough to qualify her for special education. A student, however, may be eligible for special services and program modifications under a federal antidiscrimination law designed to reasonably accommodate her condition so that her needs are met as adequately as the needs of non-disabled students. The law is commonly known as

Section 504 of the Rehabilitation Act of 1973. [29 U.S.C. Sec. 794 (implementing regulations at 34 C.F.R. Sec. 104.1 and following).]

Section 504 eligibility is not based on a categorical analysis of disabilities. Rather, Section 504 protections are available to students who can be regarded as “disabled” in a functional sense. These students must:

- (1) Have a physical or mental impairment which substantially limits a major life activity (such as learning);
- (2) Have a record of such an impairment; or
- (3) Be regarded as having such an impairment.

[See 34 C.F.R. Sec 104.3(j) for further definition.]

For more information on *Eligibility*, see Chapter 3.

## **17. What is an “appropriate” special education program?**

The U.S. Supreme Court’s landmark decision, *Board of Education v. Rowley* [458 U.S. 176 (1982)] declared that under federal law an “appropriate” educational program and placement is designed to meet a student’s unique needs, if it provides services to the disabled student sufficient for her to obtain “educational benefit,” and it is provided in conformity with the student’s IEP. In addition, the program must be provided to the maximum extent appropriate in the least restrictive environment. It does not entitle the student to the “best” possible educational program or a “potential maximizing” education. The *Rowley* case was specifically adopted by the federal courts governing California in a decision called *Gregory K. v. Longview School District* [811 F.2d 1307 (9th Cir. 1987)].

The courts are constantly exploring the determination of what is “educational benefit.” Certainly, the plan of instruction and placement should be likely to result in meaningful educational progress and not regression or trivial educational advancement. In California, educational benefit is measured by whether the child is making progress toward achieving the central goals of the IEP. [*County of San Diego v. Cal. Special Ed. Hearing Office*, 93 F.3d 1458 (9th Cir. 1996).]

In addition, an appropriate education is one in which a student is involved in — and making progress in— the general curriculum. [20 U.S.C. Sec. 1414(d)(1)(A); 34 C.F.R. Sec. 300.320; Cal. Ed. Code Sec. 56345.]

## **18. What is an Individualized Education Program (IEP) and how do I request one for my child?**

An IEP is a written statement that describes your child's present levels of performance, learning goals, school placement, and services. In order to obtain an IEP, your child must first be assessed. Starting from the date the district receives your written consent to assessment, the assessment(s) must be completed, and the IEP developed at a meeting within 60 calendar days. In counting days, you do not count the days in between regular school sessions or school vacation in excess of five school days. If an initial referral of a student to special education has been made 30 days or less before the end of the regular school year, an IEP shall be developed within 30 days after the beginning of the next school year. [34 C.F.R. Sec. 300.320; Cal. Ed. Code Sec. 56344 (a).]

## **19. What rights do I have in the IEP process?**

You should be aware of these basic rights in the IEP process, including the rights to:

- (1) Receive written notice of the time, location, and purpose of the meeting, and of who will be attending the meeting early enough to ensure that you will have an opportunity to attend. The school district must also schedule the meeting at a mutually agreed-upon time and place. [34 C.F.R. Secs. 300.322 (a) & (b).] It should be noted that if the district is unable to convince you to attend a properly scheduled IEP meeting, the district may hold the meeting without you if it has kept a record of its attempts to arrange a mutually agreed on time and place. However, the district must also take steps to insure parent participation — such as through conference calls. [34 C.F.R. Sec. 300.322 (d).]

- (2) Attend the meeting and be accompanied by other persons (including a representative, who may be an attorney, or advocate). [20 U.S.C. Sec. 1414(d)(1)(B)(vi); 34 C.F.R. Secs. 300.321(a)(6) & (c).] Whenever appropriate, your child may also attend and participate. [20 U.S.C. Sec. 1414(d)(1)(B)(vii); 34 C.F.R. Sec. 300.321(a)(7).] For an IEP that will be in effect when your child turns 16, the notice to you of an IEP meeting must also notify you that transition services and goals will be discussed and that the district will be inviting your child to attend the meeting. [34 C.F.R. Sec. 300.322(b)(2).]
- (3) Present your concerns regarding enhancing the education of your child. [20 U.S.C. Sec. 1414 (d)(3)(A); 34 C.F.R. Sec. 300.324(a)(1)(ii).]
- (4) Have language or sign interpreter present if needed for you to participate in the meeting. [34 C.F.R. Sec. 300.322(e).]
- (5) Obtain a copy of the IEP. [34 C.F.R. Sec. 300.322(f); 5 C.C.R. Sec. 3040(b).]
- (6) Have the IEP reviewed annually, with all the above rights applying. [20 U.S.C. Sec. 1414 (d)(4)(A); 34 C.F.R. Sec. 300.324(b).]
- (7) Have the IEP implemented as soon as possible following the development of the IEP, and to have a complete IEP in place at the beginning of each school year.

[34 C.F.R. Secs. 300.323(a) & (c)(2); 5 C.C.R. Sec. 3040(a).]

## **20. How often are IEP meetings held?**

An IEP meeting must be held at least annually. In addition, an IEP meeting must be held when a student has received an initial assessment, when she demonstrates a lack of anticipated progress, or when a parent or teacher requests a meeting to develop, review or revise a student's individualized education program. An IEP meeting may also be held each time a student receives a new formal assessment. [Cal. Ed. Code Sec. 56343.]. You should request an IEP team meeting after each new assessment. Neither federal nor state law limits the number of IEPs you may request per year.

**21. Who is required to attend the IEP team meeting and what are the members supposed to contribute to the meeting?**

The team must include the following people:

- (1) One or both of the child's parents, a representative selected by the parent, or both;
- (2) At least one general education teacher if the child is, or may be, in a general education environment. If the child has more than one general education teacher, the school can select which one attends;
- (3) At least one special education teacher or service provider;
- (4) A school district representative who is: qualified to provide or supervise the provision of specialized instruction; knowledgeable about the general curriculum; and knowledgeable about the resources of the district. Another district member already on the IEP team may serve in this role;
- (5) The individual who conducted the assessments of the student, or someone who is knowledgeable about the procedure used and the results, and is qualified to interpret the instructional implications of the results. Another IEP team member may serve in this role;
- (6) Other people with specific expertise or knowledge of the student, at the parent or district's request. Whether the additional invited person has sufficient knowledge or expertise is decided by the party who invited the person to the meeting; and
- (7) The student, when appropriate.

[Cal. Ed. Code Sec. 56341.]

**22. Can I bring an advocate or attorney to an IEP meeting?**

Yes. At your discretion, you can bring to the meeting individuals with knowledge or special expertise regarding your child — including an advocate, friend, regional center case manager (service coordinator) or attorney. The parent or school district that invited the individual to the meeting makes the determination of whether an

individual has knowledge or special expertise. [34 C.F.R. Secs. 300.321(a)(6) & (c); Cal. Ed. Code. Secs. 56341(b)(6) & 56341.1(f).]

**23. If I need an interpreter at the IEP meeting, must one be provided?**

Yes. If you need a language or ASL (American Sign Language) interpreter to participate at the IEP meeting, one must be provided at no expense to you, the parent. [34 C.F.R. Sec. 300.322(e); Cal. Ed. Code Sec. 56341.5(i).] You are entitled to a free copy of the IEP in your primary language. [5 C.C.R. 3040(b).]

**24. What is Prior Written Notice?**

The district is required to give you a prior written notice “a reasonable time before” it refuses to initiate or change the identification, evaluation, placement or the provision of a free, appropriate public education (FAPE). The term “reasonable time” is not defined in the statute. The notice must contain the service or placement refused by the district, an explanation for the refusal, a description of each evaluation procedure, assessment, record, or report used by the school district to make their decision. The notice must also inform you of your right to challenge that decision. [34 C.F.R. Sec. 300.503; Cal. Ed. Code Sec. 56500.4.]

**25. Must my child’s IEP address her involvement in the general curriculum regardless of the nature and severity of her disability and the setting in which she is educated?**

Yes. Even students with “severe” disabilities and those in more restrictive placements must have IEPs which address how they will be involved and progress in the general curriculum. IEPs, therefore, should not be limited to functional life skills and self-help activities, but must also include goals that enable every student to access and progress in the general curriculum. [34 C.F.R. Sec. 300.320(a)(4).]

**26. Do I have to sign the IEP at the IEP meeting?**

No. It is reasonable for you to have a copy made of the proposed IEP to take home to read over more closely and/or to discuss with your spouse, partner or someone else before deciding whether to sign. You may not be able to take the original document home with you. Your child remains eligible for special education services and stays in her current placement while you decide whether to consent. If you do not consent or file for due process in a reasonable period of time, then the district may file for due process.

**27. How can supplementary aids and services help my child in the regular classroom?**

Federal law and regulations presume that a student with a disability will be educated in regular education classes with their “typically developing” peers. Your district must ensure that a student is not removed from the regular education environment unless the nature and severity of the disability is such that education in regular classes with supplementary aids and services cannot be satisfactorily achieved. Supplementary aids and services can range from teaching aids such as computers to additional staff support (e.g. one-to-one paraprofessional assistance, a note-taker or test-giver). These support services can be provided in the regular class, regular education environment or in other education-related settings. Any supplementary aid or service that the IEP team agrees on must be included in the IEP. [34 C.F.R. Secs. 300.42 & 300.114-300.120.]

**28. How can my child qualify for “extended school year” services?**

Federal regulations define extended school year (ESY) services as “special education and related services ... that are provided to a child with a disability ... beyond the normal school year of the public agency ... in accordance with the child’s IEP...” These must be provided at no cost to the parent and must meet state standards. [34 C.F.R. Sec. 300.106(b).]

Under state law, a student must meet certain eligibility requirements for ESY services under California law. To qualify, a student must show:

- (1) Her disabilities “are likely to continue indefinitely or for a prolonged period;
- (2) Interruption of her educational program may cause regression;
- (3) Limited recoupment capacity; and
- (4) The above factors make it “impossible or unlikely” that she will attain self-sufficiency and independence without ESY services.

However, the “lack of clear evidence” of the above factors may not be used to deny a student ESY if the IEP team determines the need such a program and it is written into the IEP. [5 C.C.R. Sec. 3043.]

## **29. Can I tape record an IEP meeting?**

Yes. Parents may use an audiotape recorder to record an IEP meeting, even without the school district’s permission, as long as the parents give the school district 24 hours notice of their intention to do so. Similarly, a school district may tape record a meeting with 24 hours notice to the parent. However, the district cannot tape record the meeting if the parent objects. If the parent objects to the district tape recording, then there can be no tape recording of the meeting by either the district or the parent. [Cal. Ed. Code Sec. 56341.1(g)(1).] For more information on IEP Process, see Chapter 4, *Information on IEP Process*.

## **30. What are related services?**

Related services are any services that are necessary to help a student benefit from her special education program. To “benefit from special education” has generally been interpreted to mean making meaningful progress toward meeting IEP goals and objectives.

Federal regulations define related services as follows:

Transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. [34 C.F.R. Sec. 300.34.]

In California, the list of related services — usually referred to as “designated instruction and services” — is similar to the federal listing. [Cal. Ed. Code Sec. 56363; 5 C.C.R. Secs. 3051 and following.]

**31. My child needs health services in order to attend school, but the district told me it does not have to provide such services because they are “medical.” Is this true?**

The distinction between “medical services” and school “health services” is important. Except for those medical services that are for “diagnostic or evaluation purposes,” districts are not responsible for providing medical services as related services. [34 C.F.R. Sec. 300.34(a).] “Medical services” are defined in federal law as “services provided by a licensed physician.” [34 C.F.R. Sec. 300.34(c)(5).] If a service can be performed by a school nurse or other qualified person, and is not one that must be provided by a licensed physician, then it is not a medical service. [*Cedar Rapids Community School Dist. v. Garret F.*, 526 U.S. 66 (1999).]

Districts must provide health services that are not medical services if they are related services. A health service is a related service if it is necessary to help a child with a disability benefit from special education. If your child needs the health service to be able to attend school at all, then she needs it to benefit from special education. [*Irving Independent School Dist. v. Tatro*, 468 U.S. 883, 892

(U.S. 1984).] Your child’s right to attend school cannot be legally conditioned on your presence at the school as her health services provider.

**32. Are districts responsible for providing a student with a paraprofessional (instructional aide)?**

The district must provide a paraprofessional if your child needs an aide to benefit from her education — including situations where your child needs an aide to assist her in a regular classroom. The district has a duty to educate special education students to the maximum extent appropriate with nondisabled peers. [34 C.F.R. Secs. 300.114 & 300.115.]

For example, a paraprofessional might be required to help a student with significant physical disabilities perform educational tasks (such as note taking), or to assist in a behavioral management program for a student with significant behavior problems.

Just as it does for related service providers, the CDE must “establish and maintain” qualifications to ensure that paraprofessionals are appropriately and adequately prepared and trained, with the “content knowledge and skills” to serve children with disabilities. These qualifications must be consistent with state-recognized certification, licensing, registration or other comparable professional requirements for para-professionals. These qualifications cannot be waived for a paraprofessional on an emergency, temporary or provisional basis. [34 C.F.R. Secs. 300.156(a) & (b).]

**33. What psychological, mental health or counseling services can be provided for my child?**

Related services include: initial mental health assessment, psychotherapy (individual or group), medication monitoring, intensive day treatment, day rehabilitation and case management. [2 C.C.R. Sec. 60020(i).] Medication monitoring includes all medication support services, but does not include the medications themselves or the laboratory work. Medication support services

include prescribing, administering, dispensing, and monitoring of the medications. [2 C.C.R. Sec. 60020(f).] Interagency mental health services may also include residential placement [Cal. Gov. Code Sec. 7572.5; 2 C.C.R. Secs. 60100(a)-(g)] and in rare cases out-of-state residential placement. [Cal. Gov. Code Sec. 7572.55; 2 C.C.R. Sec. 60100(h).] See Chapter 9, *Information on Inter-Agency Responsibility for Related Services (AB 3632)*.

**34. My child has ongoing behavior problems. Does the district have any responsibility to address those problems?**

Yes. Although not specifically identified as “related services” under federal or state special education law, services to address serious behavior problems must exist in California. [Cal. Ed. Code Secs. 56520-56524.] Also known as the Hughes Bill, the law prohibits the use of “aversive behavior interventions” and mandates the development and implementation of positive behavior intervention plans for special education students with serious behavior problems, after conducting a “functional analysis assessment.” [5 C.C.R. Secs. 3001 & 3052.]

In addition, federal and state law require that, when appropriate, the IEP team consider strategies, including positive behavioral interventions, and supports to address that behavior, for a student whose behavior impedes her learning or that of others. [34 C.F.R. Sec. 300.324(a)(2); Cal. Ed. Code Sec. 56341.1(b)(1).]

**35. What is assistive technology?**

An assistive technology (AT) device is any item, piece of equipment, or product system — whether acquired commercially off the shelf, modified or customized — that is used to increase, maintain, or improve the functional capabilities of students with disabilities. [34 C.F.R. Sec. 300.5; Cal. Ed. Code Sec. 56020.5.] Assistive technology service means: any service that directly assists a student with a disability in the selection, acquisition or use of an assistive technology device. It includes:

- (1) Evaluating the needs of a student with a disability, including a functional evaluation of the child in the child's customary environment;
- (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities;
- (3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive technology devices;
- (4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (5) Training or technical assistance for a student with a disability or, if appropriate, that student's family; and
- (6) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the student.

[34 C.F.R. Sec. 300.6; 5 C.C.R. Sec. 3065(b).] For more information, see Chapter 5, *Information on Related Services*.

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

When the parents of a student with disabilities and the school district disagree about the student's eligibility, placement, program needs or related services, either side can request a due process hearing. At the hearing, both sides present evidence by calling witnesses and submitting any reports and evaluations that support their position. A state hearing officer decides whose witnesses and documents are correct and what program is appropriate. A due process hearing is generally not appropriate for issues addressed by the compliance complaint process.

### **37. What is a compliance complaint?**

When the district appears to have violated a part of special education law or procedure, a parent, individual, public district or organization can file a complaint

with the California State Department of Education (CDE). Examples of violations include: (1) failure to implement an individualized education program (IEP); (2) failure to assess or refer a student to special education; (3) failure to follow timelines for assessment and referral; (4) failure to inform parents of an IEP meeting; or (5) failure to implement a due process hearing decision or mediation agreement. An investigator from the CDE investigates the allegations and makes a written determination of whether the district was “out of compliance” with law or with the student’s IEP. If a district is found “out of compliance,” the district should be ordered to come back into compliance. In addition, the CDE may order the district to submit a “corrective action plan” — a document describing the steps the district has taken, or will take, to assure that the problem does not occur again, as well as the timelines for taking those steps. CDE must approve or modify the plan.

### **38. What is the difference between a compliance complaint and a due process hearing?**

Although people often confuse compliance complaints and due process, the main difference is:

- (1) When there is a disagreement about what should go into a student’s IEP, or where to implement the IEP, then due process is appropriate; but,
- (2) When the district has not followed special education laws or procedures or has not implemented what is already specifically written into a student’s IEP, then a compliance complaint is appropriate.

In other words, due process procedures involve a disagreement over what a student’s program should include, while a compliance complaint involves a failure by the district to follow the rules or to do what has already been agreed to in writing in the IEP.

**39. Who can file a compliance complaint?**

Any individual, public agency or organization (such as a parent group) may file a written complaint. [5 C.C.R. Sec. 4600(c).] The complaint may concern a single student, a group of students or a local district policy which you think violates federal or state special education law. If the complaint concerns more than one student, CDE calls this a “various” complaint. Although the statute does not say so, the Department may require that more than one student be named in the complaint.

**40. Is there a time limit on when I must file a compliance complaint?**

Yes. CDE must receive your complaint no later than one year after you claim the violation of special education law occurred. [34 C.F.R. Sec. 300.153(c); Cal. Ed. Code Secs. 56043(y) & 56500.2(b).]

**41. What happens when CDE finds a district to be out of compliance?**

If the investigation indicates a failure by the district to comply with the law, the CDE may require “corrective action.” The CDE investigation report must set forth the timelines the district must follow to correct its violations. [5 C.C.R. Sec. 4664.]

If the noncompliance is not corrected, CDE shall take further action. Actions may include a court proceeding for an order requiring compliance, or a proceeding to recover or stop state funding to the noncompliant local district. [5 C.C.R. Sec. 4670(a).]

If CDE finds that a district has not provided appropriate services, it must address the failure through corrective actions that address the needs of the affected student,

such as compensatory services or monetary reimbursement. The federal regulations also require CDE in its corrective action plan to “address...appropriate future provision of services for *all* children with disabilities.” [34 C.F.R. Sec. 300.151(b) (*italics added*).]

#### **42. Can I file a complaint with any other agencies?**

Yes. If your complaint involves an issue of educational discrimination under Section 504 of the Rehabilitation Act of 1973, you can file a disability-based discrimination complaint with the U.S. Department of Education, Office of Civil Rights (OCR). Complaints of educational discrimination against students with disabilities by school districts may also be filed with the CDE, using the complaint procedures described above. [5 C.C.R. Secs. 4600(c) & 4630(b).] Issues of disability-based educational discrimination, however, are usually appropriate for filing with OCR.

#### **43. Are there opportunities to resolve my complaint before an actual hearing?**

Yes. If you file a due process request, the district must offer you the opportunity to participate in a pre-hearing “resolution session” or “resolution meeting.” However, both sides may waive the resolution session in writing and agree to use mediation instead. You cannot proceed to hearing without participating in either mediation or a resolution session. If the *district* files for due process, there is no resolution meeting required, but mediation is available. [20 U.S.C. Sec. 1415(f)(1)(B); 34 C.F.R. Sec. 300.510; Cal. Ed. Code Sec. 56501.5.]

#### **44. What is a mediation conference?**

OAH will provide a mediator to sit down informally with you and the district before a due process hearing is held to try to resolve the problem, if both sides agree to mediate. This occurs either when the resolution meeting is waived or the

meeting ends without agreement. The mediator has no power to force either side to do anything, but only tries to help you and the district reach an agreement. The mediator will generally meet in one room with all persons attending, but may hold separate “caucuses” with either side in an attempt to resolve the problem. The mediator is usually an ALJ in the role of a facilitator and not a judge. The ALJ acting as mediator will not be the hearing officer assigned to hear your case should the dispute go to hearing. [Cal. Ed. Code Secs. 56500.3(c)-(e) & 56501(b)(2).]

#### **45. What happens to my child’s placement and services if I file for a due process hearing?**

Except in certain circumstances discussed below, your child must remain in her *current* educational placement and have her current agreed upon IEP fully implemented (including all related services) from the time you request a hearing until the due process hearing proceedings (and court appeals, if any) are completed. [Cal. Ed. Code Sec. 56505(d); 34 C.F.R. Sec. 300.518.] This protection is usually called a “stay-put” provision. The stay-put may be changed if the parent and district agree to a change in placement or services while due process is pending.

#### **46. What rights do I have in due process?**

You have many rights in due process, including the right to:

- (1) Be informed of available free or low-cost legal services. [Cal. Ed. Code Sec. 56502(h).]
- (2) Attend a mediation conference. [20 U.S.C. Sec. 1415(e); 34 C.F.R. Sec. 300.506; Cal. Ed. Code Secs. 56501(b)(1)(2) & 56503.]
- (3) Have the hearing held at a time and place reasonably convenient to you. [34 C.F.R. Sec. 300.515; Cal. Ed. Code Sec. 56505(b).]
- (4) Have the hearing conducted by an impartial hearing officer. [20 U.S.C. Sec. 1415(f)(3); 34 C.F.R. Sec. 300.511; Cal. Ed. Code Sec. 56505(c).]

- (5) Be represented by an attorney or advocate. [20 U.S.C. Sec. 1415(h)(1); 34 C.F.R. Sec. 300.512(a)(1).]
- (6) Present evidence and written and oral arguments; confront, cross-examine and require the attendance of witnesses; and, obtain a written or electronic record of the hearing. [20 U.S.C. Sec. 1415 (h)(2); 34 C.F.R. Sec. 300.512; Cal. Ed. Code Sec. 56505(e).]
- (7) Prohibit the introduction at the hearing of any evidence which has not been disclosed at least five business days before the hearing. [20 U.S.C. Sec. 1415(f)(2)(B); 34 C.F.R. Sec. 300.512; Cal. Ed. Code Sec. 56505(e).]
- (8) Obtain a written, reasoned decision containing findings of fact. The completed decision must be mailed to all parties within 45 days after the conclusion of the 30-day resolution meeting period. [34 C.F.R. Sec. 300.515(a); Cal. Ed. Code Secs. 56501.5, 56502(f) & 56505(f)(3).]

The due process hearing decision is the final administrative determination, and is binding on both sides. [34 C.F.R. Sec. 300.514; Cal. Ed. Code Sec. 56505(h).] Either side may appeal the hearing decision in state or federal court if it disagrees. The appeal must be filed within 90 days of the date of receipt of the decision. [20 U.S.C. Sec. 1415(i)(2); 34 C.F.R. Sec. 300.516(b); Cal. Ed. Code Sec. 56505(k).]

#### **47. Is there anything I can do to be reimbursed or compensated for the district's failure to provide FAPE to my child?**

If a court or hearing officer determines that a school district failed to provide your child an appropriate education, it may order reimbursement to you for out-of-pocket expenses (such as private school tuition or support services). In the Ninth Circuit, reimbursement is allowed for both “substantive” denials of appropriate education (disagreement over educational services and placement) and for “procedural” denials (violation of process used to develop the student’s IEP). [Burlington Sch. Committee v. Mass. Dept. of Ed., 471 U.S. 359, 105 S. Ct. 1996 (1985); Ash v. Lake Oswego Sch. Dist. No. 7J, 980 F.2d 585, 589 (9th Cir. 1992); W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23, 960 F.2d 1479, 1484-85 (9th Cir. 1992).]

**48. Are there any limitations to claiming reimbursement or compensatory education in California?**

Yes. California has established a two-year statute of limitations on claims in special education cases. In other words, a claim for compensatory (in-kind) educational services or reimbursement (out-of-pocket tuition or other expenses) cannot be made for a district's violations that occurred more than two years before the case is filed. [Cal. Ed. Code Sec. 56505(l)]. In addition, you cannot simply proceed directly into court to make a claim for reimbursement or compensatory educational services under IDEA. For more information, see Chapter 6, *Due Process/Compliance Procedures*.

**49. What does least restrictive environment (LRE) mean?**

Least Restrictive Environment (LRE) is the requirement in federal law that students with disabilities receive their education, to the maximum extent appropriate, with nondisabled peers and that special education students are not removed from regular classes unless, even with supplemental aids and services, education in regular classes cannot be achieved satisfactorily. The terms "mainstreaming", "integration", "full inclusion" and "reverse mainstreaming" do not appear in any law. These terms have been developed by educators to describe various ways of meeting the LRE requirements. As a result, different educational agencies may have somewhat different definitions of these terms.

Federal law provides that each local school district must ensure 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.

[20 U.S.C. Sec. 1412(a)(5)(A); 34 C.F.R. Sec. 300.114; Cal. Ed. Code Sec. 56342(b).]

**50. What sorts of things may I ask for in the way of supplementary aids and services to assist my child in the regular classroom?**

The federal law defines supplementary aids and services very broadly as: “aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate...” [20 U.S.C. Sec. 1401(33); 34 C.F.R. Secs. 300.42 & 300.114.] Examples of supplemental aids and services that might be used to assist special education students in regular classes include, but are not limited to: a structured learning environment, repeating and simplifying instructions about in-class and homework assignments, supplementing verbal instructions with visual instructions, using behavioral management techniques, adjusting class schedules, modifying test delivery, using tape recorders, computer-aided instruction and other audio-visual equipment, modified textbooks or workbooks, tailoring homework assignments, reducing class size, use of one-on-one tutorials, classroom aides and note takers, involvement of a “services coordinator” to oversee implementation of special programs and services, modification of nonacademic times (such as lunchroom, recess and physical education). [U.S. Department of Education, Office of Special Education and Rehabilitative Services, Policy Memorandum, September 16, 1993.]

Other examples are: modifications to the regular class curriculum, assistance of an itinerant special education teacher, special education training for the regular teacher, use of computer-assisted devices, and the use of a resource room.

[*Questions and Answers on the Least Restrictive Environment Requirements of the IDEA*, U.S. Department of Education, Office of Special Education and Rehabilitative Services, OSEP-95-9, 11/23/94, Questions and Answers Nos. 3 and 4.]

**51. If my child cannot benefit from the regular academic program, can she participate in other school programs?**

Yes. The law is clear that students with disabilities have the right to participate in nonacademic and extracurricular services and activities to the maximum extent appropriate to their needs. Further, districts must provide these activities in a way that gives students with disabilities an equal opportunity to participate. Such services and activities include meals, recess, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs, and employment opportunities. [34 C.F.R. Secs. 300.117 & 300.107.]

**52. Can the nature or severity of my child’s disability be used to justify a segregated educational setting?**

All students with disabilities have the right to an education in the LRE based on their individual educational needs rather than the label describing their disabling condition. Just because your child is labeled “severely retarded” or “emotionally disturbed” does not mean that contact with nondisabled students would be inappropriate.

**53. Do the LRE requirements apply to a preschool-age child? If my district does not offer any preschool for children without disabilities, will my child be able to integrate with any nondisabled children?**

Yes. All of the provisions of federal and state special education law apply to students starting at age 3, which includes preschool age special education students. Preschoolers also qualify for “a continuum of alternative placements... to meet the needs of children with disabilities...” [34 C.F.R. Secs. 300.115(b) & 300.116.] Preschoolers, therefore, may receive instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. [34 C.F.R. Sec. 300.115(b).] The LRE requirement for preschoolers may include

placement in a Head Start program or private preschool placement. For more information, see Chapter 7, *Least Restrictive Environment*.

#### **54. Under what circumstances could my child with a disability be suspended or expelled from school?**

Students with disabilities are subject to the same suspension rules as nondisabled students, except that suspensions of students with disabilities cannot exceed 10 consecutive days (10 days in a row) without a “manifestation determination.” A suspension may result from such things as: fighting, possession of drugs or alcohol, possession of weapons, defiance of school authority, theft, bullying, assault or harassment. [Cal. Ed. Code Secs. 48900 and following]. A teacher may suspend a student for up to two days. [Cal. Ed. Code Sec. 48910.] A principal may suspend a student for up to five days. [Cal. Ed. Code Sec. 48911.] State law defers to federal law for most of the rules governing suspension and expulsion of special Education students. [Cal. Ed. Code Sec. 48915.5.] Federal and state law allow for up to 10 consecutive days of suspension of special education students without any requirement of a manifestation determination, but for suspensions in excess of 10 days, there must be a special meeting. [20 U.S.C. Sec. 1415(k)(1)(B).] Principals, therefore, sometimes extend students' five-day suspensions by an additional five days. Students with disabilities may be suspended for any one of the misbehaviors on the above list that applies to all students, even if the misbehavior is a manifestation of the child's disability.

#### **55. What is a "manifestation determination" meeting?**

The manifestation determination meeting is a meeting of the relevant members of the IEP team to determine whether a student with a disability may be expelled or have her placement changed for more than 10 consecutive school days for misconduct. It is supposed to be held within 10 days of the school's decision to expel the student or change her placement. At the meeting, the IEP team reviews the relevant information from the student's file, including the IEP and any information from teachers and the parents and then decides two things: (1) was the

behavior caused by, or did it have “a direct and substantial relationship” to, the student's disability, and (2) was the behavior the direct result of the district's failure to implement the IEP? [34 C.F.R. Sec. 300.530(e).]

If the IEP team answers “YES” to either question, the student cannot be expelled and any placement change requires either the consent of the parent or a hearing officer's order. If the IEP team determines that the behavior is a manifestation of the student's disability, then, unless the behavior is one of the serious offenses discussed below, the student must go back to her original placement — unless the parent and school agree otherwise. The school must also do a behavioral assessment for the student or modify the student's existing behavior plan to address the behavior. [20 U.S.C. Sec. 1415(k)(1)(F); 34 C.F.R. Sec. 300.530(f).] If the team answers “NO” to both questions, the student can be referred for expulsion.

**56. If I disagree with the recommendation of the manifestation determination IEP team to expel my child, can I challenge the recommendation?**

Yes. If you disagree with the team recommendation, you can file for due process to dispute the recommendation of the manifestation determination team. [20 U.S.C. Sec. 1415(k)(3); 34 C.F.R. Secs. 300.530-300.532.] In most cases, until the due process proceedings have been completed, your child must remain in her current classroom placement and continue to receive the special education services required in her IEP. See Chapter 6, *Information on Due Process/Compliance Complaints*.

**57. Are there any circumstances under which a school can change my child's placement immediately?**

Yes. Under certain circumstances, a district can immediately place your child in a different placement, and keep her there for up to 45 school days, even if the behavior is found to be a manifestation of her disability.

Your child may be placed in an “interim alternative educational setting” if the district claims she has done any of the following:

- (1) Carried or possessed a weapon to or at school or on school grounds or at a school function;
- (2) Knowingly possessed or used illegal drugs, or sold or solicited the sale of such a drug while at school, on school grounds, or at a school function;
- (3) Inflicted serious bodily injury upon another person while at school, on school grounds, or at a school function. "Serious bodily injury" means: substantial risk of death, or extreme physical pain, or protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. [20 U.S.C. Sec. Sec. 1415(k)(1)(G) and (7)(d)]; 34 C.F.R. Sec. 300.530(g).] The district must still meet with you within 10 days to have a manifestation determination meeting.

**58. Must the district continue to provide special education services to my child if she is suspended for more than ten days or if she is expelled?**

Yes. Unlike general education students, students with disabilities must continue to receive a free appropriate public education (FAPE) during any period of suspension beyond 10 days, during any period of interim placement and during any period of expulsion. The services your child receives under these circumstances must enable her to continue to participate in the general curriculum and to continue to progress toward meeting her IEP goals and to receive needed behavioral assessments and services. [20 U.S.C. Secs. 1412(a)(1) & 1415(k)(1)(D); 34 C.F.R. Sec. 300.530(d).]

**59. Are there any special rules governing the discipline of students identified as “disabled” under Section 504 of the Rehabilitation Act of 1973?**

Section 504 requires that schools evaluate a student believed to have a disability before making an initial placement of the student and before any subsequent, significant change in placement of the student. [34 C.F.R. Sec. 104.35(a).] According to OCR, the exclusion of a student for more than 10 consecutive days, the exclusion for an indefinite period, and the permanent exclusion of a student (expulsion) can constitute significant changes of placement under Section 504. A series of suspensions — each of which is 10 or fewer days in duration, but that creates a “pattern of exclusions” — may also be a significant change in placement. [Office of Civil Rights, Letter re: Akron City School Dist., 19 IDELR 542 (Nov. 18, 1992) (*cited in Parents of Student W. v. Puyallup Sch. Dist.*, No. 3, 31 F.3d 1489, 1495 (9th Cir. 1994) (citing OCR Letter).]

**60. My child has behavior problems that may put her at risk of suspension and/or expulsion. Are there any special services or protections for her?**

If your child is enrolled in special education and exhibits a serious behavior problem, the district must provide a “functional analysis assessment” by a behavior intervention case manager (who has training and experience in positive behavior intervention) and create a “behavior intervention plan.” The case manager must develop a positive behavior intervention plan which:

- (1) Identifies the function of the negative behavior for your child; and
- (2) Teaches her positive replacement behaviors that accomplish the same objectives but in a socially appropriate way.

[5 C.C.R. Sec. 3001(g).]

A “serious behavior problem” is a behavior problem which:

- (1) Is self-injurious or assaultive;

- (2) Causes serious property damage; or
- (3) Is severe, pervasive, and maladaptive and for which instructional/behavioral approaches specified in the student's IEP are found to be ineffective.

[5 C.C.R. Sec. Sec. 3001(a-b).]

## **61. What can I do if teachers or other school staff physically or emotionally abuse my child?**

Whether it is in the context of “discipline” or otherwise, a complaint may be filed with the CDE under the Uniform Complaint Procedure if: a child or group of children is in immediate physical danger; or the health, safety or welfare of a child or group of children is threatened. The CDE must directly intervene and not refer the complaint for a local investigation. [5 C.C.R. Secs. 4611(a) & 4650(a)(7)(C).] See questions regarding compliance complaints in Chapter 6, *Information on Due Process/Compliance Procedures*; see also CDE Legal Advisory LO:1-94, January 25, 1993, which states that the California Department of Education interprets Section 4650 of Title 5 as applying to physical injury and threats and also to threats that are verbal or emotional. For more information on *Discipline of Students with Disabilities*, see Chapter 8.

## **62. What are interagency related services?**

Interagency related services for special education are sometimes referred to as “Assembly Bill (AB) 3632” services or “Government Code Chapter 26.5” services. The most common name for these services is AB 3632, is the name that will be used in this handbook to refer to any of the interagency related services. Rather than have districts responsible for certain health and mental health services, the Legislature has decided to enter into interagency agreements with other state agencies to provide services to students. The primary interagency related services are physical and occupational therapy (PT/OT), which are offered by California Children's Services (CCS), and psychological or mental health services, which are

delivered by “community mental health” (CMH) agencies — sometimes called “county mental health.”

**63. Is AB 3632 the only way a California special education student can receive mental health services or occupational or physical therapy?**

No. School districts are responsible for providing these related services, if not provided by other agencies, but are needed in order for a student to benefit from special education. Districts cannot refuse to include services in an IEP just because a funding source has not been identified. [Cal. Gov. Code Sec. 7572(d).] AB 3632 specifically states that services not found to be needed for medical reasons by CCS must be provided by the local school if the services are necessary for the child to benefit from special education. [Cal. Gov. Code Sec. 7575(a)(2).] OT/PT and psychological services are, and have always been, listed among the special education related services under state law [Cal. Ed. Code Secs. 56363(b)(6) & (10)] and federal law [34 C.F.R. Secs. 300.34(c)(6)(9) & (10)] when they are necessary for educational reasons. That is, these services must be provided by school districts if they are necessary for a child to benefit from special education, even when, because of their own rules or eligibility requirements, CMH or CCS agencies do not provide them. [34 C.F.R. Sec. 300.34(a); Cal. Ed. Code Sec. 56031.]

**64. Which students receive their occupational or physical therapy services from CCS?**

If, after a district has evaluated a student, an IEP team suspects she may need occupational or physical therapy for both medical and educational reasons, the team will likely refer her to CCS for an OT or PT assessment. [Cal. Gov. Code Secs. 7572(a) & 7575(a)(1).] Only students referred to CCS who are found to need one of these therapies for medical reasons will receive the services from CCS. If the IEP team does not think there is a medical need for therapy or if CCS, after assessment, does not believe the student needs therapy for medical reasons, the

student will receive therapy from the district, following an assessment by school personnel, if it is educationally necessary. [Cal. Gov. Code Sec. 7575(a)(2).]

**65. If CMH rejects the IEP referral, is the District still responsible for providing psychological or mental health services?**

If CMH rejects the referral, the school district is still responsible for assessing a student in all areas of suspected disability. The district cannot contend that it does not suspect educational needs in the area of mental health after it has just referred a child for assessment to CMH.

Even when a student's psychological needs, which are inhibiting educational benefit, do not meet CMH criteria for eligibility, the district is still responsible for meeting the unique needs of the student with a disability. [20 U.S.C. Sec. 1401(29); 34 C.F.R. Sec. 300.39(a)(i).]

**66. Can children with disabilities ages 0-5 receive mental health services under AB 3632?**

Yes. Districts cannot refuse to refer children to CMH — and CMH cannot refuse to evaluate children simply because they are very young. Children younger than three years old and three-to-five years old are considered eligible for purposes of AB 3632 services. [Cal. Gov. Code Sec. 7584; Cal. Ed. Code Sec. 56026(c).] Whether a child of that age actually needs mental health services in order to receive educational benefit is a question to be addressed by the CMH assessment and determined by the IEP.

**67. My child may need a residential placement in order to be educated appropriately. Under AB 3632, how will this process work?**

*The AB 3632 procedure for obtaining residential placement applies only to children who meet the criteria for (serious) emotional disturbance. See Chapter 3,*

*Information on Eligibility Criteria.* For all students with disabilities not identified as emotionally disturbed, the school district is responsible for any educationally necessary residential placement. See Chapter 4, *Information on IEP Process*.

If your child meets special education criteria for “seriously emotionally disturbed” or “emotionally disturbed” and any member of the IEP team, including you, recommends residential placement based on relevant assessment information, the team must be expanded to include a CMH representative (if CMH is not already on the team.) The expanded IEP team must convene within 30 days to review assessment information and determine whether your child’s needs can be met through any combination of nonresidential services, and if not, whether residential services are necessary for the child to benefit from education. It also will determine whether residential services are available which address the needs identified in the assessment and which will ameliorate the conditions leading to the seriously emotionally disturbed designation. [Cal. Gov. Code Sec. 7572.5; 2 C.C.R. Secs. 60100(a)-(c).]

**68. Who makes decisions for a special education student whose parents’ rights have been terminated or who has no parent involved in her life?**

When there is no one to act as a parent for a student with disabilities, the school district or the juvenile court must appoint a responsible adult for making educational decisions. Under AB 3632, the responsible adult is known as a “surrogate parent.”

The district must make “reasonable efforts” to appoint a surrogate within 30 days of determining that a parent surrogate is necessary. In addition, the responsible adult appointed by the district cannot have any conflict of interest with the student. A conflict means any interest that might restrict or bias the ability to advocate for all of the services required to ensure that the student has FAPE. [Cal. Gov. Code Secs. 7579.5(a) & (i).]

If the student is subject to the authority of the juvenile court, the judge appoints someone to make educational decisions for a dependent or ward of the court. The court may leave decision-making authority with the parent if that parent is still part of the student's life. However, it has the power to limit the parent's authority regarding educational decisions through a court order, but only to the extent necessary to protect the student.

**69. I am a foster parent for a special education student. What are my rights?**

Both state and federal law recognize a foster parent's right to act in place of a parent in the IEP process if the parent's educational rights have been terminated. [34 C.F.R. Sec. 300.30(a)(2) & (b); Cal. Ed. Code Sec. 56028(a)(2).] In addition, California law makes it clear that a foster parent must be given preference — after a relative caretaker and before a CASA — when a district appoints a surrogate parent. [Cal. Gov. Code Sec. 7579.5(c).] For more information on *Inter-Agency Services (AB 3632)*, see Chapter 9.

**70. Does the school district have to help students with disabilities make the transition from high school to adult life?**

Yes. Federal special education law requires that there be transitional planning services for students with disabilities regardless of which agencies provide support or educational services to the student. Beginning no later than the first IEP held after a student turns 16 (or younger if determined appropriate by the IEP team) and updated annually, the IEP must contain a statement of appropriate measurable postsecondary goals. The goals must be based on age appropriate transition assessments related to training, education, employment and independent living skills where appropriate. The IEP must also contain a statement of needed transition services for the student that focus on the student's courses of study (such as participation in advanced-placement courses or a vocational education program). In addition, the IEP must contain, when appropriate, a statement of the

interagency responsibilities. [20 U.S.C. Sec. 1414(d)(1)(A); 34 C.F.R. Secs. 300.320(b) & 300.321(b)(3).]

## **71. What are transition services for students in special education?**

Transition services for students in special education are services that help students move from school to adult life. They should reflect the student's own goals for her future.

The law defines transition services as:

A coordinated set of activities for a student with a disability that —

- (1) Is designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (2) Is based upon the individual student's needs, taking into account the student's preferences and interests; and
- (3) Includes instruction, related services, community experiences, the development or employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

[20 U.S.C. Sec. 1401(34); 34 C.F.R. Sec. 300.43(a).]

State law requires that the superintendent provide transition services for a broad range of special education students, such as employment and academic training, strategic planning, interagency coordination, and parent training. [Cal. Ed. Code Sec. 56461.]

## **72. What is an individual transition plan (ITP)?**

The Individual Transition Plan (ITP) is a written plan designed to help prepare students for passage from school to post-school life. [20 U.S.C. Sec. 1401(34);

Cal. Ed. Code Secs. 56462 & 56345.1.] The ITP must be based on the student's needs, preferences and interests and reflect the student's own goals. Objectives, timeliness, and people responsible for meeting the objectives should be written into the ITP (and made part of the IEP). It is important to understand that transition planning and development of the ITP are part of the IEP process.

Transition planning can occur at a combined Individualized Education Program (IEP) and Individualized Transition Plan (ITP) meeting, or it can occur in a separate meeting. A separate transition planning meeting can be beneficial because it allows more time to focus on the student's desires and preferences. Then, the ITP can be made part of the IEP.

### **73. Can a student continue to get transition services after receiving a certificate of completion?**

Yes. A student who has not met graduation requirements may receive a "certificate of achievement" ("certificate of completion") at the end of the typical senior year or at any time before she exits the school district. The district must continue to provide transition services to this student until she turns 22 years of age. See Chapter 11, *Information on Graduation/Testing*.

You should ensure that your child's IEP includes a transition plan beginning at age 16, or younger, focusing on transition services. [Cal. Ed. Code Sec. 56345(a)(8).] You should also discuss with the IEP team how your child's IEP goals addressing transition will be completed before all services from the school district have ended.

### **74. What is the relationship between transition services and vocational education?**

Vocational education is broadly defined in the overall definition of special education as "organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree." [34 C.F.R. Sec. 300.39(b)(5).] In addition, vocational training is included within the

definition of transition services. [34 C.F.R. Sec. 300.43.] Since vocational education and training may be a crucial part of a student's transition services, they should also be a major part of the ITP planning process.

Specifically designed Vocational Education and Career Development for individuals with disabilities may include: providing prevocational programs, establishing work training programs, assisting in job placement, instructing job trainers and employers as to the unique needs of the individuals, coordinating services with the Department of Rehabilitation and other agencies. [5 C.C.R. Sec. 3051.14.]

## **75. What is Supported Employment?**

“Supported employment” is a vocational placement option that has been primarily used for persons with developmental disabilities. Under state law (the “Lanterman Act”) this means paid work in an integrated setting in the community in which persons with and without disabilities interact. The employee can be hired by an employer in the community, directly or through a (Regional Center or Department of Rehabilitation) contract with a supported employment agency. Typically, ongoing support services are provided to the employee so that she may keep the job. [California Welfare and Institutions Code (Welf. & Inst. Code) Secs. 4851(n)-(p).] The employee may be paid less than minimum wage. This vocational placement option should also be available to persons with other disabilities.

## **76. Does the California Department of Rehabilitation have any responsibility in assisting my child to transition from special education to post-school adult life?**

Yes. Each state's vocational rehabilitation agency must have policies and procedures in place for coordination between the agency and education officials responsible for special education. The California Department of Rehabilitation must provide technical assistance to districts in transition planning and services in such areas as vocational rehabilitation and IEP development. [29 U.S.C. Sec.

721(a)(11)(D).] See Chapter 10 for more *Information on Transition Services, including Vocational Education*.

**77. Is my child entitled to accommodations or modifications when taking the “STAR test” (CST)?**

The Standardized Testing and Reporting (STAR) Program measures students’ achievement of the “academically rigorous content standards and performance standards” adopted by the State Board of Education. School districts, charter schools, and county offices of education must administer to student in grades 2 through 11, an assessment instrument known as the California Standards Tests (CST). Depending on your child’s grade level, the CST tests students’ knowledge of reading, written expression, spelling, math, history, social science and science. [Cal. Ed. Code Secs. 60603(k), 60640 & 60642.5.]

Special education students do not have to participate in STAR testing. Whether or not to take the test is your decision, which should be discussed with the IEP team and included in the IEP. If your child does take the STAR test, she must be provided the accommodations and modifications written in her IEP. The IEP team may decide that a student should take alternate assessments if it determines that she cannot take the regular assessment. The IEP team must state in the IEP why an alternate assessment is necessary and why the assessment chosen by the team is appropriate. [Cal. Ed. Code Secs. 56345(a)(6) & 60640(e).]

**78. Is there an alternative way to complete the prescribed course of study?**

Yes. The local district board of education “with the active involvement” of parents, administrators, teachers and students, shall adopt alternative means for students to complete the prescribed course of study. (The prescribed course of study means the minimum number of units or courses students must complete in various subject areas in order to graduate high school). This may include: practical demonstration of skills and competencies, supervised work experience or other

outside school experience, career technical education classes, courses offered by regional occupational centers or programs, interdisciplinary study, independent study and credit earned at a college or university. [Cal. Ed. Code Sec. 51225.3(b).]

If the IEP team has individualized a course of study for a particular student, that course of study becomes the “prescribed course of study” for satisfying graduation requirements. [Cal. Ed. Code Secs. 51225.3(b) & 56345(b)(1).] Parents should include a written statement in the IEP that the student’s individualized course of study meets that requirement.

**79. How will the state requirement for an exit examination from high school affect my child’s entitlement to receive a diploma?**

Once a general education student has completed the prescribed course of study, she is required to take and pass a high school exit examination as a condition of graduation. [Cal. Ed. Code Sec. 60851.] The exam tests students in the areas of language arts and mathematics. [Cal. Ed. Code Sec. 60850(a).] This exit examination is called the California High School Exit Exam (CAHSEE).

As of July 2009, students with disabilities are exempt from the CAHSEE requirements and do not have to pass the exam in order to receive a diploma, but must still complete the prescribed course of study. However, most students on a 504 plan or IEP must take the exam in 10th grade, as required by the *No Child Left Behind* Act. This exemption shall last until the State Board of Education either implements an alternative means for students with disabilities to demonstrate achievement in the standards measured by the CAHSEE or determines that an alternative means assessment is not “feasible.” This may happen as early as January 2011. [Cal. Ed. Code Secs. 60852.1 & 60852.3(b).] Students with “significant cognitive disabilities” are not required to take the CAHSEE, but will instead take the California Alternative Performance Assessment (CAPA).

**80. What accommodations or modifications are available to students taking the CAHSEE?**

Although not required to pass the exam in order to receive a diploma, students with disabilities shall be permitted to take the CAHSEE with *accommodations* or *variations*. These must be specified in their IEP or 504 plan for use on the CAHSEE, standardized testing, or during classroom instruction and assessments.

Students shall also be permitted to take the CAHSEE with *modifications* — which “fundamentally alter what the examination measures or affect the comparability of scores.” These must also be specified in their IEP or 504 plan.

**81. If my child meets the graduation requirements and receives a diploma, does special education eligibility end?**

Yes. Graduation with a regular high school diploma will make your child ineligible for further special education services. Graduation with a regular diploma is a change of placement for special education students. [34 C.F.R. Sec. 300.102(a)(3)(i); Cal. Ed. Code Secs. 56026.1(a), 56500.4 & 56500.5.] The district must send you a prior written notice (a reasonable amount of time before this change in placement) which includes: a description of what the district intends to do, an explanation of the reasons for the action, a description of any alternatives the district considered and why those were rejected, and a description of the reports, tests, and procedures on which the action is based. [34 C.F.R. Secs. 300.102(a)(3)(iii) & 300.503.]

**82. When my child reaches the age of 18, will she begin to make decisions regarding the IEP or will I continue to be the decision-maker for educational purposes?**

At age 18, educational decision-making authority transfers from the parent to the student, unless the student has been determined incompetent under California law. The school district must notify both you and your child of the transfer of rights and

must provide a notice of procedural safeguards no later than one year before your child turns 18. [34 C.F. R. Sec. 300.520; Cal. Ed. Code Secs. 56041.5 & 56043(g)(3).]

**83. If my child is not receiving a regular diploma, but will receive a certificate of achievement or completion, is she still eligible for special education?**

Your child is eligible for special education services until the academic year in which she reaches the age of 22, unless she meets graduation requirements before that time. [34 C.F.R. Sec. 300.102(a)(3)(ii); Cal. Ed. Code Secs. 56026(c)(4) & 56026.1.] Your non-graduating child may, however, receive a “certificate of achievement” (“certificate of completion”) at the end of the typical senior year or at any time before she exits the school district at age 22. The certificate may provide some recognition to students who meet their IEP goals or complete a prescribed alternative course of study, but who will not receive a regular diploma. The certificate was also created to overcome objections by district officials who believe special education students should not participate in graduation ceremonies with their same-age peers when they are not being awarded a diploma. Because a certificate does not end eligibility, a student who receives a certificate could continue working toward a regular diploma. [Cal. Ed. Code Secs. 56390 & 56392.]

**84. If my child is receiving a certificate of achievement or completion, can she participate in the graduation ceremony and related activities?**

According to state law, a student receiving a certificate of achievement or completion has the right to participate in graduation ceremonies and any school activity related to graduation. [Cal. Ed. Code Sec. 56391.] For more information on *District-Wide Assessments / Graduation Requirements*, see Chapter 11.

**85. Are there services for infants and toddlers with disabilities under the federal special education law?**

Yes. Part C of the IDEA governs the federal “early intervention” program for infants and toddlers, aged birth through two years. The term “infants and toddlers with disabilities” means children younger than three years old who need early intervention services because they are experiencing developmental delays in the areas of cognitive development, physical development, language and speech development, social or emotional development, or self-help skills. In addition, the term also includes infants and toddlers who have a diagnosed mental or physical condition that typically results in a developmental delay. The state may also decide the term includes children younger than 3 who are at risk of having substantial developmental delays.” The criteria for these definitions are to be determined by each state [34 C.F.R. Sec. 303.16.]

**86. Does California have its own legislation affecting infants and toddlers?**

Yes. The California Early Intervention Services Act is designed “to provide a statewide system of coordinated, comprehensive, family-centered, multidisciplinary, interagency programs, responsible for providing appropriate early intervention services and support to all eligible infants and toddlers and their families.” [Cal. Gov. Code Sec. 95002.]

**87. Which agencies are responsible for ensuring that services are provided to infant or toddlers?**

The CDE is responsible for administering services and providing educational programs for infants who meet the following criteria:

- (1) Have solely “low incidence” disabilities — conditions occurring in less than 1% of the school population which are solely visual, hearing, or severe orthopedic impairments, or any combination of those conditions;

- (2) Require intensive special education and services.

The local regional center is responsible for providing early intervention services to all other eligible infants, including children who have developmental delays or are at risk of delay. [Cal. Ed. Code Secs. 56026 & 56026.5; Cal. Gov. Code Sec. 95008; Welf. & Inst. Code Sec. 4435; 5 C.C.R. Sec. 3031.]

Families should have service responsibilities clearly specified in their child's Individualized Family Service Plan (IFSP). [Cal. Gov. Code Sec. 95014(c).]

## **88. What are the eligibility criteria for early intervention services (“Early Start”) in California?**

In California, a child younger than 3 years old is eligible for what the state calls “Early Start” services if, after assessment, she meets one of the following criteria:

- (1) Infants and toddlers with a **developmental delay** in one or more of the following five areas: cognitive development; physical and motor development, including vision and hearing; communication development; social or emotional development; or adaptive development. Developmentally delayed children are those who are determined to have a significant difference between the expected level of development for their age and their current level of functioning.
- (2) Infants and toddlers with established risk conditions are children under 3 with conditions of “known etiology” (cause) or conditions with established harmful developmental consequences. [Cal. Gov. Code Sec. 95014(a).]

## **89. What services are included under Part C for children from birth up until age 3?**

Services under Part C are provided by the regional center or a school district — either home-based or center-based, individually or in small groups — and almost always at no cost. They must be designed to meet the infant or toddler's

developmental needs.

Services may include: assistive technology devices and services; audiology; family training; counseling and home visits; health services (includes catheterization, tracheostomy care, tube feeding, changing of dressings and colostomy bags and physician consultation); medical services only for diagnostic or evaluation purposes; nursing services; nutrition services; occupational and physical therapy; psychological services; social work services; service coordination services; special instruction; speech and language services; transportation and related costs; vision services; and respite (must establish that the need is related to the child's developmental delay) and other family support services. [20 U.S.C. Sec. 1432(4); 34 C.F.R. Secs. 303.12(d) & 303.13; 17 C.C.R. Sec. 52000(b)(12).] For more information on *Early Intervention Services*, see Chapter 12.

### **90. Are school districts responsible for special education services for 3- to 5- year-old children?**

Yes. Under California law, all school districts have a mandate to provide special education and services for all eligible children between the ages of three- to five-years, inclusive. [Cal. Ed. Code Secs. 56001(b) & 56440(c).]

If a child is already receiving “early intervention” or “Early Start” services from the district, the district must ensure that she experiences a smooth and effective transition to preschool programs. [20 U.S.C. Sec. 1437(a)(8); Cal. Ed. Code Sec. 56426.9(a).] It must also ensure that an individual education program [IEP] has been developed and is being implemented by the time of the child's third birthday. [34 C.F.R. Sec. 300.124(b); Cal. Ed. Code Sec. 56426.9(b).] If a child turns three during the summer months, the IEP team must determine the date when IEP services will begin. [Cal. Ed. Code Sec. 56426.9(d).] The district must participate in transition planning conferences arranged by the regional center. [20 U.S.C. Sec. 1437(a)(8); Cal. Ed. Code Sec. 56426.9(c).] See Chapter 12, *Information on Early Intervention Services*.

**91. What are the eligibility criteria for children with disabilities who are three to five years old?**

Eligibility criteria for *preschool* children are linked to the criteria for *school-age* children. To be eligible for special education, a child must have one of the following disabling conditions:

- (1) Autism;
- (2) Deaf-blindness;
- (3) Deafness;
- (4) Emotional disturbance;
- (5) Hearing impairment;
- (6) Mental Retardation;
- (7) Multiple disabilities;
- (8) Orthopedic impairment;
- (9) Other health impairment (includes attention deficit disorder or attention deficit hyperactivity disorder);
- (10) Specific learning disability;
- (11) Speech or language impairment in one or more of voice, fluency, language, and articulation;
- (12) Traumatic brain injury;
- (13) Visual impairment; or
- (14) Established medical disability.

In addition to meeting the criteria of one or more of the disabling conditions, a child must need “specially designed instruction or services” to qualify for special education. Also, the child must have needs that cannot be met by modifying the home or school (or both), without ongoing monitoring or support. [Cal. Ed. Code Secs. 56441.11(b)(2) & (3).]

**92. What instructional services are available to my preschool-aged child?**

Services must meet the unique needs of your child in accordance with IDEA. Your child’s IEP must include these services and a statement of areas of need. The rights and services for three- to five-year-old children under IDEA are the same as those for children aged 5 to 22. Services may include:

- (1) Observation and monitoring of the child;
- (2) Activities developed to conform with the child’s IEP and to enhance the child’s development;
- (3) Consultation with family, preschool teachers and other service providers;
- (4) Assistance to parents in coordinating services;
- (5) Opportunities for the child to develop play and pre-academic skills; and self-esteem; and
- (6) Access to developmentally appropriate equipment and specialized materials.

[Cal. Ed. Code Sec. 56441.3(a).] See Chapter 4, Information on IEP Process.

**93. Will my preschool-age child be able to participate in educational activities with nondisabled children?**

Yes. The IDEA requirements regarding the education of children in the “least restrictive environment” (LRE) apply to preschool children with disabilities. [34 C.F.R. Sec. 300.116.] The district must provide a program with non-disabled peers if a child’s IEP team determines that this is appropriate. However, if the district has no preschool program for children without disabilities, there is no federal requirement to establish district-wide programs — or contract with private schools — for the sole purpose of implementing the LRE requirements. See Chapter 7, *Information on Least Restrictive Environment*, and for more information on *Preschool Education Services*, see Chapter 13.

**94. My child has a serious illness or condition (or is recovering from an accident or surgery) that will keep her from attending school for a short time. Can she receive any special services to help her stay current with her education?**

Yes. Students with temporary disabilities — for whom it is impossible or unadvisable to attend regular classes — may receive individual instruction, even if they are not eligible under the special education or Section 504 laws. “Temporary disability” means a physical, mental, or emotional disability that occurs while the student is in regularly enrolled classes and after which she can be reasonably expected to return to school. “Individual instruction” means instruction provided to the student at home, in a hospital or most other residential facilities. [Cal. Ed. Code Sec. 48206.3]

**95. Who is responsible for providing individual instruction to my child while she is at home or is temporarily hospitalized?**

While your child is at home, the school district in which you reside is responsible for providing individual instruction. If your child is hospitalized in a hospital within your district of residence, that same district will be responsible for individual instruction. If your child is hospitalized in a hospital outside your district of residence, the district in which the hospital is located is responsible for instruction. [Cal. Ed. Code Secs. 48206.3(a) & 48207.]

**96. Who qualifies for special education under the “other health impaired” category?**

Students qualifying for special education under this category are those who have limited strength, vitality, or alertness (including a heightened alertness to environmental stimuli that results in limited alertness in the educational environment), that is due to chronic or acute health problems, including, but not limited to, a heart condition, cancer, leukemia, rheumatic fever, chronic kidney disease, cystic fibrosis, asthma, epilepsy, lead poisoning, diabetes, tuberculosis and

other communicable infectious diseases, hematological disorders, such as sickle cell anemia and hemophilia, nephritis, attention deficit disorder, or attention deficit hyperactivity disorder, and which *adversely affects* a student's educational performance. [34 C.F.R. Sec. 300.8(c)(9); 5 C.C.R. Sec. 3030(f).] An "adverse effect" on educational performance may be measured by a student's grades, but may also include consideration of other ways in which a student's condition affects her school activities.

**97. My child is a special education student but must be educated at home for a while due to health issues related to her disability. The district says it will provide one hour of "home instruction" per day and no related services. Can the district do this?**

Home instruction (sometimes called "home/hospital") is an educational program option available to students with disabilities who cannot be educated in a public school setting. Typically, students in this placement have significant health needs or significant behavioral challenges.

All special education students are entitled to an individualized program of specialized instruction and related services designed to meet a student's unique needs and which results in educational benefit. [*Board of Education v. Rowley*, 102 S. Ct. 3034 (U.S. 1982).] An arbitrary limit of one or two hours per day of home instruction without individualized assessment of the placement and related services is not designed to your child's unique needs. Therefore, any home instruction program, including the need for related services, must be individually developed at an IEP team meeting. See Chapter 4, *Information on IEP Process*.

**98. Will I have to purchase any necessary equipment, like a computer or other technology, if my child receives home instruction?**

No. Any equipment or technology necessary to enable your child to benefit from home instruction, to access and make progress in the general curriculum, or to

ensure progress on her IEP or 504 goals must be provided as part of her FAPE. [20 U.S.C. Sec. 1401(9); 34 C.F.R. Secs. 104.33(c)(1) & 300.105.] If a student with a temporary disability (who is not a 504 or special education student) needs the use of a device, you should argue that the device must be provided by the district in order to facilitate the required home instruction. [Cal. Ed. Code Sec. 48206.3.]

**99. If my child has a communicable disease, can the district refuse to provide a home instructor or prohibit her from attending school on the basis of a risk to staff or other children?**

Under state regulations, a student “while infected with any contagious or infectious disease may not remain in any public school.” [5 C.C.R. Sec. 202.] However, a district policy that denies home instruction or school attendance to a student with a communicable disease on the ground of risk to others will be closely examined by the courts. At least one court has held that these factors shall be considered: 1) how great the risk really is in terms of how the disease is transmitted; 2) the duration of the risk; 3) how great the risk is in terms of the consequences of infection; 4) the likelihood of transmission of the disease; and 5) the reasonable steps that could be taken to reduce any risks. [*Martinez v. School Board of Hillsboro County*, 861 F.2d 1502 (11th Cir. 1988).]

**100. My child just needs to take her medication while at school. What assistance must the school provide to make sure this happens? Can my child administer her own medications?**

State law provides that school districts may use school nurses or others to assist students in taking their medications if the student's authorized health care provider specifies the method, amount and time of medication administration (and any other relevant information required by the school), and if the parent provides a written request for this assistance. An authorized health care provider is someone licensed in California to prescribe medication. [5 C.C.R. Secs. 600 & 601(a); Cal. Ed. Code Sec. 49423.]

Your child can carry and self-administer *prescription auto-injectable epinephrine* or *inhaled asthma medication* for asthma if the district receives certain written statements from you and your child's health provider. The student's physician or surgeon's statement shall include the medication's name, method, amount and administration time schedules. You will be required to give your written consent that your child may self-administer and that school staff may communicate directly with your child's health care providers. In addition, districts *may* provide epinephrine auto-injectors to trained personnel to provide emergency medical aid to persons experiencing an anaphylactic reaction. [Cal. Ed. Code Sec. 49414(a).]

In addition, if your child has diabetes and is able to *self-test and monitor her blood glucose level*, she will be allowed to test her level and provide diabetes *self-care* at school, upon your written request. This can occur in the classroom or any other area of the school, during any school-related activity and (upon your specific request) in a private location. You will also need to provide authorization from her health care provider [Cal. Ed. Code Sec. 49414.5(c).] For more information on *The Rights of Students with Significant Health Conditions*, see Chapter 14.

### **101. What is the impact of the *No Child Left Behind Act* on students with disabilities?**

The *No Child Left Behind Act* (NCLB) has provided federal money to states and required schools to show "adequate yearly progress" (AYP) towards the goal of 100% proficiency in reading and math for *all* students in grades 3 through 8. If schools fail to make AYP, they are required to provide supplemental instructional services, public school choice, corrective actions (such as replacing staff), and/or operation of the school by outside parties. This was meant to be accomplished by the year 2014. [20 U.S.C. Secs. 6301 and following; 34 C.F.R. Secs. 200 and following.]

Congress intended that these goals and consequences create a greater focus on linking IEP goals with the content standards of the general education curriculum. *Congress is expected to amend portions of NCLB in the near future.*

NCLB has resulted in more emphasis on participation of students with disabilities in state-wide testing procedures in reading and math in grades 3 through 8. For students with disabilities who cannot take the standard test, even with accommodations, the state must align the alternate test with the state's challenging academic content and student achievement standards or adopted alternate academic achievement standards. [20 U.S.C. Sec. 1412(a)(16)(C); 34 C.F.R. Sec. 300.160(c).] The Act also requires that each classroom teacher have a full state license or credential. These requirements are the same for all special education teachers and related services personnel. Paraprofessionals must also meet certain educational or experience standards.

## **102. What happens to my child's special education program if we move from one school district to another?**

When a student moves during a school year into a new district that is not part of the same Special Education Local Plan Area (SELPA), the new district must provide the student with a FAPE, including services which are comparable to those in her previous district's IEP for the first 30 days of attendance in the new district. (A SELPA is a California administrative unit composed of a single large school district, or a collection of smaller districts, which pools special education resources.) During the first 30 days, the new district must either adopt the old IEP or develop and implement a new IEP that is consistent with federal and state special education law. [Cal. Ed. Code Sec. 56325(a)(1).]

If a student moves to a new school district that is within the same SELPA, the new district must continue, without delay, to provide services comparable to those contained in the previous IEP, unless the parents and district develop and implement a new IEP. [Cal. Ed. Code Sec. 56325(a)(2).]

If a student transfers into California with an IEP from another state, her new district must provide her with FAPE, including services comparable to those in her previous IEP, in consultation with her parents, until the new district conducts any new assessments and then develops a new IEP. [Cal. Ed. Code Sec. 56325(a)(3).] The student's new district must take reasonable steps to promptly obtain her school

records. [20 U.S.C. Sec. 1414(d)(2)(C)(ii); 34 C.F.R. Secs. 300.323(e) & (f); Cal. Ed. Code Sec. 56325(b)(1).]

### **103. What rights do I have if English is not my first language or I do not speak any English?**

Families who do not speak or write English as their primary language have the right to participate fully in special education proceedings. These rights include:

- (1) The right to a copy of the IEP document in the primary language of the parent at the parent's request. [5 C.C.R. Sec. 3040(b).]
- (2) The right to be fully informed in one's native language or other mode of communication of all information relevant to an activity of the school district for which a parent's consent is being requested. [34 C.F.R. Sec. 300.9; Cal. Ed. Code Sec. 56021.1.]
- (3) The right to have assessments administered to a child of limited English proficiency in her native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, functionally, and developmentally. [34 C.F.R. Sec. 300.304(c)(1); Cal. Ed. Code Sec. 56320.]
- (4) The right to have an interpreter at IEP meetings. [34 C.F.R. Sec. 300.22(e).]
- (5) The right to written notice, in one's native language or other mode of communication, a reasonable time before a school district proposes — or refuses — to initiate or change the special education student's identifying category, her evaluation data, her placement, or anything about the way the district is providing FAPE. [34 C.F.R. Sec. 300.503(c)(1).]
- (6) The right to have assessment plans presented to parents in their native language or other mode of communication. [Cal. Ed. Code Sec. 56321(b)(2).]
- (7) The right to have an interpreter at a due process hearing. [5 C.C.R. Sec. 3082(d).] Although not specifically stated, interpreters should be provided at mediation conferences as well. [5 C.C.R. Sec. 3086(b)(3).]

- (8) The right to a Procedural Safeguards Notice provided in one’s native language. [34 C.F.R. Sec. 300.504(d).]
- (9) The right to receive, upon request, information in one’s native language regarding the procedures for filing a complaint with local child protective agencies against a school employee or other person who commits an act of child abuse against a child at a school site. If the information is communicated orally, an interpreter must be provided. [Cal. Ed. Code Sec. 48987.]

**104. Are my child’s rights to a free, appropriate education affected if she is undocumented?**

No. All children in the United States have the right to a free public school education in the school district in which they live. If your child has a disability as discussed in these materials, then she is entitled to special education services. [*Plyler v. Doe*, 457 U.S. 202 (1982).]

Immigrant children do not need a “green card,” visa, passport, social security number, or any other proof of citizenship or immigration status in order to register for school. You do not have to — and should not — check with the immigration authorities before sending your child to school. It is illegal for a school to require you to do so.

It is also important that only those children who are in need of special education receive it. Categorizing children whose English is incomplete or who have a different culture as “retarded” or “mentally disabled” has been a common problem in the United States. There are laws that require testing for a disability to take language and culture into consideration.

**105. Do students enrolled in charter schools have special education rights?**

Yes. Children with disabilities who attend public charter schools have all special education rights available under federal and state law. Charter schools, which

must comply with all federal and state special education procedures and requirements, may be organized in one of three ways: 1) if the charter school is part of a local district, the district is responsible for providing special education and related services to all eligible students; 2) if the charter school is its own district, the school is responsible for providing special education and must follow all federal and state procedures and statutes; or 3) if it is neither a public school nor its own district, the State is responsible for ensuring that the charter school meets all special education requirements. [34 C.F.R. Sec. 300.209; Cal. Ed. Code Sec. 47646.]

**106. If I place my child in a private or religious school does she have the right to an IEP and special education services?**

Federal law gives students with disabilities limited rights to educational services. A student with a disability who is “parentally-placed” in a private school, including a religious school — that is, voluntarily and “unilaterally” enrolled without the agreement of an IEP team — has no right to receive the special education and related services that she would receive if enrolled in a public school. [20 U.S.C. Secs. 1412(a)(10)(B) & (C); 34 C.F.R. Sec. 300.137.] The district must nevertheless provide for the participation of your child in its special education programs. [34 C.F.R. Sec. 300.132.] The amount of federal money that must be spent is limited to a proportionate share (based on the number of parentally-placed students compared to the total district population of students with disabilities) of the federal dollars received by the district. [34 C.F.R. Sec. 300.133.] However, federal law does not prohibit a district from spending additional state funds for this purpose. [34 C.F.R. Sec. 300.133(d).] Services may be provided on the premises of private schools, even religious schools “to the extent consistent with law.” [34 C.F.R. Sec. 300.139.]