Special
Education
Rights and
Responsibilities

Written by:
COMMUNITY ALLIANCE FOR SPECIAL EDUCATION (CASE)
and
PROTECTION AND ADVOCACY, INC. (PAI)

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Ninth Edition
Revised April 2003
CASE and PAI wish to extend our heartfelt thanks to the following individuals and agencies for their overall assistance in the preparation of this handbook. Their commitment, collaboration and good spirits were an invaluable contribution to the development of the handbook and are greatly appreciated.

The following individuals and organizations contributed to these educational materials: Suzanne Baldwin, Jo Carpignano, Maria Chairez, Carolyn Compton, Anita Bellomo, Amy Faltz, Joseph Feldman, Patty Fitzsimmons, Paul S. Foreman, Bill Gulla, Ann Halvorsen, Richard Hopper, Anna Irvine, Martha Lewis Kentfield, John Lamb, Arlee Maier, Arlene Mayerson, Dale Mentink, Gary Moe, Judith Racely, Blair Roger, Carlo Rossi, Heidi Saraf, Nancy Shea, Lawrence Siegel, Kim Swain, Don Vesey, Alice Wershing, Abigail Wine, Leland Yee, Michael Zatopa, Barry Zolotar, California Research Institute, Children’s Health Council, Disability Rights Education and Defense Fund, Mental Health Advocacy Services, Oakland Unified School District, Richmond Unified School District, San Francisco State University, San Leandro Unified School District, Special Education Resource Network, and the State Department of Education.

Printing for Special Education Rights and Responsibilities was partially under-written through a generous donation from the Junior League of San Francisco.

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PAI receives funding under the Developmentally Disabled Assistance and Bill of Rights Act and the Protection and Advocacy for Mentally Ill Individuals Act. Any opinions, findings, recommendations or conclusions expressed in this publication are those of the authors and do not necessarily reflect the views of the organizations which fund PAI.
Federal special education law was significantly amended by Congress in 1997 and further clarified by regulations from the U.S. Department of Education in March 1999. The California Education Code has been amended to reflect some of the federal law changes but not all. In October 1999, Governor Davis vetoed a significant piece of state legislation which would have further amended California law to be consistent with federal law. Therefore, in certain circumstances where it provides greater protections or entitlements, California law will continue to control special education pupils’ rights unless it is amended to completely conform to federal law.

CASE and PAI will monitor the development of conforming state law and regulations, so that revised state laws and regulations can be incorporated into later supplements and editions of SERR.

For further information on the development of federal and state law and regulation, or clarification about IDEA implementation, please contact CASE or PAI.
# SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

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<td>ADD</td>
<td>Attention Deficit Disorder</td>
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<td>AIDS</td>
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<td>California Code of Regulations</td>
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<td>California Children Services</td>
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<td>California Department of Education</td>
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<td>C.F.R.</td>
<td>Code of Federal Regulations</td>
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<td>CAHSEE</td>
<td>California High School Exit Exam</td>
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<td>Cir.</td>
<td>Circuit (9th Cir. = Ninth Circuit Court of Appeal)</td>
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<td>CMH</td>
<td>Community Mental Health</td>
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<td>DHS</td>
<td>Department of Health Services</td>
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<td>Acronym</td>
<td>Full Form</td>
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<td>DIS</td>
<td>Designated Instruction and Services</td>
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<td>DMH</td>
<td>Department of Mental Health</td>
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<td>DR</td>
<td>Department of Rehabilitation</td>
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<td>DSS</td>
<td>Department of Social Services</td>
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<td>e.g.</td>
<td>exempli gratia, for example</td>
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<td>EHLR</td>
<td>Education for the Handicapped Law Reporter</td>
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<td>EMR</td>
<td>Educable Mentally Retarded</td>
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<td>EPSDT</td>
<td>Early and Periodic Screening...</td>
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<tr>
<td>et seq.</td>
<td>et sequens, and the following</td>
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<tr>
<td>etc.</td>
<td>et cetera, and others, and so forth</td>
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<td>ETC</td>
<td>Educational Transition Center</td>
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<td>F.</td>
<td>Federal Reporter (F.2d = Federal Reporter Second ...)</td>
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<td>FAPE</td>
<td>Free Appropriate Public Education</td>
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<td>FEP</td>
<td>Fluent in English Proficiency</td>
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<td>id.</td>
<td>idem, the same</td>
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<td>Individuals with Disabilities Education Act</td>
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<td>IDELR</td>
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<td>i.e.</td>
<td>id est, that is</td>
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<td>MFCC</td>
<td>Marriage, Family, and Child Counselor</td>
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<td>OAH</td>
<td>Office of Administrative Hearings</td>
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<td>Office for Civil Rights – Federal</td>
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<td>Office of Special Education Programs – Federal</td>
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<td>Peabody Individual Achievement Test</td>
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<td>Public Law (Federal)</td>
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<td>PPVT – R</td>
<td>Peabody Picture Vocabulary Test – Revised</td>
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<td>Resource Specialist Program</td>
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<td>SB</td>
<td>Senate Bill (California State Senate)</td>
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<td>S-B IV</td>
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v., vs. versus, against
VABS Vineland Adaptive Behavior Scales
WISC – III Wechsler Intelligence Scale for Children – III
WJPEB – R Woodcock-Johnson Psychoeducational Battery – Revised
WPPSI – R Wechsler Pre-School and Primary Scale of Intelligence – Revised
WRAT 3 Wide Range Achievement Test – Revision 3
SPECIAL EDUCATION RIGHTS
AND RESPONSIBILITIES

Chapter 1

Information on Basic Rights and Responsibilities

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SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

Chapter 1

Information on Basic Rights and Responsibilities

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.) Sec. 1401(8); Title 34, Code of Federal Regulations (C.F.R.) Section (Sec.) 300.4.] 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. 300.550(b)(1)(2).]

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, Code of Federal Regulations (C.F.R.) Part 300, and the state regulations are at Title 5, California Code of Regulations (C.C.R.), Secs. 3000 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.

2. Who is eligible for services under IDEA?

Children who have an eligible disability that causes them to need specialized educational services to benefit from their education are entitled to receive special education and related services. Eligible disabilities include: children with mental retardation; hearing impairments (including deafness); speech or language impairments; visual impairments (including blindness); children who are emotionally disturbed; children with orthopedic impairments; children with autism; children with traumatic brain injury; children with other health impairments; and children with specific learning disabilities. [20 U.S.C. Sec. 1401(3); 34 C.F.R. Sec. 300.7; Cal. Ed. Code Sec. 56026(a).] Federal law refers to an eligible child as a “child with a disability.” California law refers to an eligible child as an “individual with exceptional needs.”

Children meeting these criteria between the ages of 5 and 18, inclusive (which means throughout a student’s entire eighteenth year of life), are eligible for special education. [Cal. Ed. Code Sec. 56026(c)(3).] Individuals between 19 and 21, inclusive, who are enrolled in or are eligible for a special education program prior to their 19th birthdays, and if they have not completed their prescribed course of study or met proficiency standards in basic skills (which are adopted by the governing board of each school district but may, beginning in 2004, involve passing the High School Exit Exam), or have not graduated from high school with a regular diploma, are eligible for special education. [Cal. Ed. Code Sec. 56026(c)(4) and 56026.1(b).] However, a student who graduates with a regular high school diploma is ineligible for further special education even though he is 18 years old or under. [Cal. Ed. Code Sec. 56026.1(a).]

3. 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.

All of these conditions except (14) are defined in C.F.R. Sec. 300.7, and discussed
in 5 C.C.R. Sec. 3030.

An “established medical disability” is defined in Cal. Ed. Code Section
46441.11(d) as a disabling medical condition or congenital syndrome that the IEP
team determines has a high predictability of requiring special education and
services.

In addition to meeting one or more of the qualifying conditions, to qualify for
special education, a child must need specially designed instruction or services 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 Sec. 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:

(1) Unfamiliarity with the English language;
(2) Temporary physical disabilities;
(3) Social maladjustment; or
Environmental, cultural, or economic factors.
[Cal. Ed. Code Sec. 56441.11(c).]

See Chapter 11, *Information on Preschool Education Services*.

4. **Are there educational programs for children under three years of age?**

Early educational opportunities are available to infants and toddlers less than three years of age who have low incidence disabilities (blind, deaf, or orthopedic impairments who are not eligible for regional center services) or who are developmentally delayed or at risk of such delay. [Public Law 105-17/Part C and Cal. Gov. Code Sec. 95000, *et seq.*]

Regional centers are the responsible lead agencies for infants and toddlers who are developmentally delayed or at risk of delay while local education agencies have responsibility for those who have solely low incidence disabilities.

Each eligible child must have an Individual Family Service Plan (IFSP) which focuses both on the needs and concerns of the family and the needs of the child. See Chapter 12, *Information on Early Intervention Services*.

5. **What is the maximum age eligibility for special education?**

Special education students may continue to be eligible for special education services until they turn 22 (and for a number of months beyond) depending on a number of factors, such as whether they have passed the district’s regular proficiency standards, or individualized differential proficiency standards which may have been included in their IEP. But how long a student continues to be eligible for special education after his 22nd birthday depends on the month in which he was born. Students born in January through June may finish out the fiscal school year and any extended school year program. Students born in September may not start a new fiscal year; but, if they are on a year-round school program and are completing their IEPs in a term that extends into the new fiscal year, they may complete that term. The law does not mention students born in July or August, but the California Department of Education (CDE) has indicated, and advocates would argue, that the rules applying to students born in September should also apply to those born in July or August. A student born in October through December is eligible for special education only through December 31 of the year in which he turns 22, unless he would otherwise complete his IEP at the end of that current fiscal year, or unless he has not had an individual transition plan incorporated into his IEP and implemented from the age of 20 years forward, in
which case the student will be able to complete that fiscal year. [Cal. Ed. Code Sec. 56026.] See Chapter 3, Information on Eligibility Criteria.

6. **Who is eligible for educational program modifications under Section 504 of the Rehabilitation Act of 1973?**

A child who may have problems in 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 for the student to qualify for special education. Such a child, however, may be eligible for special services and program modifications under a federal anti-discrimination law designed to reasonably accommodate the student’s condition so that her needs are met as adequately as the needs of students without disabilities. The law is commonly known as Section 504 of the Rehabilitation Act of 1973 [29 U.S.C. Sec. 794] and its 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 in a functional sense as “handicapped,” i.e., students who have a physical or mental impairment which substantially limits a major life activity (such as learning), has a record of such an impairment, or is regarded as having such an impairment. [34 C.F.R. Sec. 104.3(j).]

Whenever you make a referral for special education assessment, you should also request that your child be assessed for eligibility for accommodations under Section 504. This way, if the child is not found eligible for special education, she may still be able to obtain necessary services or modifications under Section 504. You should also request that the district’s Section 504 Coordinator be present at the initial IEP meeting to discuss the results of the Section 504 assessment. If your child is not found to be “handicapped” for purposes of Section 504 accommodations, that determination can be appealed. The local education agency is responsible for arranging the Section 504 hearing process. The hearing officer selected by the local education agency must be independent of the local agency but can be, for example, a special education administrator from another school district, county office of education, or special education local plan area as long as there is no conflict of interest.

The Office of Civil Rights administers and enforces Section 504 protections in education. If you believe your child has not been afforded her rights under Section 504, you may file a complaint with the Office of Civil Rights at:
7.  I have heard about a new federal law called the No Child Left Behind Act. What are the important parts of that law for children with disabilities?

The No Child Left Behind (NCLB) Act provides federal money to the states and requires 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 by the year 2013. States may set the achievement levels that must be reached by schools in the intervening years. However, states are not free to set minimal goals in the early years with the expectation of great gains in the latter years. If schools fail to make AYP for their students toward the 100% proficiency goal, they will be required to provide supplemental instructional services, public school choice (if allowed by state law), corrective actions (such as replacing staff), or operation of the school by outside parties, such as private contract managers. It is likely that these goals and these consequences will create an even greater focus than did IDEA 1997 on linking special education IEP goals with the content standards of the general education curriculum.

NCLB may result in more emphasis on participation of children with disabilities in state-wide testing procedures in reading and math in grades 3 through 8. NCLB may require as high as 95% participation of all students in state-wide testing in these grades in order to be in compliance with the law. If students with disabilities do not participate, or their scores are not counted because they take the state-wide tests with accommodations or modifications that invalidate their scores, the students will not have participated. If the participation rate is not as high as 95% (or whatever percentage is finally adopted by the U.S. Department of Education), the state will be out of compliance and subject to sanctions. States will need to ensure that their test procedures and materials are sufficiently inclusive to allow and account for individualized accommodations determined necessary by each child’s IEP team without diminishing the standards of the test.
NCLB requires that each classroom teacher have a full state license or credential by 2005. No credential waivers, emergency, temporary, or provisional credentials or licenses will count. All new first year teachers must have full state credentials or licenses by the 2002-2003 school year. These requirements are likely to be the same for all special education teachers and related services personnel.

8. 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 instructional program. [20 U.S.C. Sec. 1401(25); 34 C.F.R. Sec. 300.26; Cal. Ed. Code Sec. 56031.]

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

1. 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. 300.26 (b)(1).]

2. 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. 300.26 (b)(2).]

3. 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 he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.” [34 C.F.R. Sec. 300.26 (b)(3).]

4. 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. 300.26 (b)(4).

(5) 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. 300.26 (b)(5).

9. Who is responsible for providing special education services to my child?

Your local school district is responsible for ensuring that appropriate special education services are delivered. Services may actually be provided by a school district, special education local plan area (SELPA), county office of education, state school, certified nonpublic school or other public agency. If the school district fails to ensure services, the CDE is ultimately responsible for providing your child with educational services. [20 U.S.C. Sec. 1413(a)(1); 34 C.F.R. Sec. 300.220; Cal. Ed. Code Secs. 56300 and following.]

10. What are related services and who provides them?

Related services are support services a student requires in order to benefit from his special education program. California calls related services Designated Instruction and Services (DIS). [34 C.F.R. Sec. 300.24, Cal. Ed. Code Sec. 56363; 5 C.C.R. Secs. 3051 and following.] It is important to remember that education for children with disabilities includes independent living skills, not just academics. Therefore, a broad range of related services may be required.

The term “related services” means transportation, such developmental, corrective, and other supportive services including speech-language pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, orientation and mobility services, counseling services, including rehabilitation counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only, as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. [20 U.S.C. Sec. 1401 (22); 34 C.F.R. Sec. 300.24.] In
California, Designated Instruction and Service (DIS) includes, but is not limited to, the following:

(1) Language and speech development and remediation;
(2) Audiological services;
(3) Orientation and mobility instruction;
(4) Instruction in the home or hospital;
(5) Adapted physical education;
(6) Physical and occupational therapy;
(7) Vision services;
(8) Specialized driver training instruction;
(9) Counseling and guidance;
(10) Psychological services other than assessment and development of the individualized education program;
(11) Parent counseling and training;
(12) Health and nursing services;
(13) Social worker services;
(14) Specially designed vocational education and career development;
(15) Recreation services; and
(16) Specialized services for low-incidence disabilities, such as readers, transcribers, and vision and hearing services. [Cal. Ed. Code Secs. 56000.5, 56026.6, 56026.5 and 56363.]

Although not specifically identified as a related service, federal law requires that districts ensure that assistive technology devices and/or services are available to special education students who need them as part of their special education or related services or as part of the supplemental aids and services used to assist them in being placed in the least restrictive environment and to receive a FAPE. [34 C.F.R. Sec. 300.308 and 300.346 (a)(2)(v).]

All related services must also be provided without any charge to the parent. In most cases, your local school district is responsible for providing the related services directly or by contracting with appropriate persons. Under California law, some related services, including occupational and physical therapy and mental health services, are provided by other state agencies. [Cal. Gov. Code Secs. 7570-7588.] However, if the other agency does not provide the services, and you can
successfully demonstrate to the IEP team or a due process hearing officer that the services are necessary for the student to benefit from his education, the school district is responsible for providing them. Disputes regarding related services are resolved through the fair hearing procedures in the same fashion as disputes about any other part of your child’s special education program. See Chapter 5, Information on Related Services, and Chapter 9, Information on Inter-Agency Responsibility for Related Services (AB 3632/882).

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

In 1982, the U.S. Supreme Court issued a decision in *Board of Education v. Rowley*, 458 U.S. 176; 102 S.Ct. 3034; EHLR 553:656, declaring that under federal law an “appropriate” educational program and placement is designed to meet a student’s unique needs, 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 must be followed throughout the United States and was specifically adopted by the federal courts governing California in *Gregory K. v. Longview School District*, 811 F.2d 1307 (9th Cir. 1987); EHLR 558:284. Specifically, in *Rowley*, the court was considering a student with disabilities who was mainstreamed in general education classes. For these students, the court said that educational benefit usually means that the child is making passing grades and is being promoted from grade to grade.

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. [*Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3d Cir. 1988).*] 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), 24 IDELR 756.]

12. **What does Least Restrictive Environment (LRE) mean?**

Least Restrictive Environment (LRE) means that:

To the maximum extent appropriate, children with disabilities (including children in public or private institutions or other care facilities) are educated with nondisabled children. 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 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. 300.550(b)(1) & (2).]

State law provides that special education students be provided with “maximum interaction with the general school population” as appropriate. [Cal. Ed. Code Sec. 56001(g).] Further, state policy provides that special education students “should receive their education in chronologically age appropriate environments with non-handicapped peers.” [CDE, Office of Special Education, Policy Statement on Least Restrictive Environment (October 10, 1986).] This means, for example, that a 10-year-old student with disabilities should attend public school at a local elementary campus with other nondisabled students of the same age. Depending on the student’s individual needs, he could be fully included in a regular classroom with support services, mainstreamed, attend a special class, or be placed in a combination of both as appropriate.

This does not mean that all students must attend regular education classes or attend school at regular education campuses. Depending on the student’s individual needs, as documented by the IEP team, he may need to receive educational programming in a self-contained classroom or at a special school, nonpublic school or residential facility.

Systematic efforts on the part of special and regular educators should be made to promote positive interactions between students with disabilities (severely disabled and learning disabled) and their nondisabled peers. See Chapter 7, Information on Least Restrictive Environment.

13. What responsibilities do I have in providing special education to my child who has a disability?

Both federal and state law were designed to give parents a voice in the fundamental decisions regarding provision of special education and related services to their children with disabilities. This includes a responsibility to be knowledgeable and concerned about the child’s educational needs and to participate in the procedures set forth in the laws. [20 U.S.C Sec. 1415 (b)(1); 34 C.F.R. Sec. 300.345, 34 C.F.R. Part 300, Appendix (App.) A, Q. 5.] When a child has no parent who can be identified or located, or where the child is a ward of the state, the local education agency must assign a surrogate parent to fulfill this role. [20 U.S.C Sec. 1415 (b)(2); 34 C.F.R. Sec. 300.515; Cal. Ed. Code Sec. 56050.]
14. How do I make a referral for special education services?

To refer your child for special education services, write a letter to your child’s teacher, principal or special education administrative office. Tell the school district that you are concerned about your child’s educational progress. Say that you are making a referral for assessment for special education services. You may also want to let the district know that you are looking forward to receiving an assessment plan within 15 days of the district’s receipt of your letter. Keep a copy of this request and any other correspondence with the school district. If you call to make a referral, school district personnel must by law assist you to put your request in writing. If the school district refers your child for special education, it is still important to follow up with your own written request. Your written referral will ensure that assessment and IEP meeting timelines will begin. [Cal. Ed. Code Sections 56026 and 56302.5, and 5 C.C.R. Sec. 3021.] See Sample Letter at the end of this chapter.

School districts sometimes take the position that they must believe a child is likely to ultimately qualify for special education before a district has any duty to assess a child for special education eligibility. The law does not leave the decision of whether to assess up to the school district’s discretion. Title 5 Cal. Code of Regulations Sec. 3021(a) states that all referrals for special education shall initiate the assessment process. California Education Code Sec. 56029 defines “referral for assessment” as any written request, by a parent, guardian, teacher, or foster parent, for assessment to identify an individual with exceptional needs. Having made a written referral of her child for special education assessment, a parent should receive a proposed assessment plan within 15 days. [Cal. Ed. Code Sec. 56321(a).] If a school district refuses to conduct assessment following a written referral, the authors of this manual recommend that parents file for a due process hearing, rather than a compliance complaint (see Chapter 6, Information on Due Process Hearings/Complaints), because there is a disagreement regarding the need for assessment. Parents should only file for a due process hearing, however, if they are prepared for the hearing with evidence establishing that the school acted unreasonably in failing to suspect the child has a qualifying disability. See Chapter 2, Information on Evaluations/Assessments Q&A 5, regarding Student Study Teams.

Effective in 2002, foster parents are authorized to initiate a referral for special education of their foster child. [Cal. Ed. Code Sec. 56029(c).] In addition, a foster parent may, for the duration of the foster parent – foster child relationship, have all the rights a natural parent would have in the special education process. [Cal. Ed. Code Sec. 56055.] The foster parent’s rights do not arise, however, unless a court
has terminated the natural parents’ authority to make educational decisions, and the foster parent has an ongoing, long-term relationship with the child and is willing to make these decisions and has no conflicts of interest. [34 C.F.R. Sec. 300.20(b); Cal. Ed. Code Sec. 56055(a).]

15. **My child is already receiving special education services. May I request additional assessments? When can I expect the assessments to be completed and a new IEP meeting held to discuss the results?**

Yes, you can request additional assessments. If the school district agrees to conduct the additional assessments for the potential revision of the IEP, you should receive an assessment plan within 15 days of making a written request, not counting days in between school sessions or terms or days of school vacation in excess of five. [Cal. Ed. Code Sec. 56321(a).] Once you sign the assessment plan, state law provides that an IEP, required as a result of assessment, must be developed within 50 days, not counting days in between school sessions or terms or days of school vacation in excess of five. [Cal. Ed. Code Sec. 56344.]

If the school district does not agree to conduct the additional assessments, the issue of whether the child requires these assessments will likely have to be resolved through the special education due process mediation and hearing system. See Chapter 6, *Information on Due Process Hearings/Complaints.*

16. **What are the timelines for the assessment and the IEP meeting?**

After an initial written referral to special education or your written request for a new or additional assessment of a child already receiving special education, the local education agency has 15 days (not counting days between regular school sessions or terms or days of school vacation in excess of five school days from the date of receipt of the referral) to provide you with a written proposed assessment plan containing a copy of the notice of parent rights. An assessment plan must be developed within 10 days after commencement of a subsequent regular school year or term for any student who was referred for special education assessment 10 days or less prior to the end of the prior regular school year or term. [Cal. Ed. Code Sec. 56321(a).] Parents have 15 days to determine whether they will consent to the proposed assessments. [Cal. Ed. Code Sec. 56321(c).]

Starting from the date the local education agency receives the written consent to assessment, the assessment(s) must be completed and the IEP developed at an IEP
meeting within **50 days** (not counting days between regular school sessions or terms or days of school vacation in excess of five school days from the date of receipt of the referral). [Cal. Ed. Code Sec.56344.] If the initial referral to special education is made 20 days or less prior to the end of the regular school year, an IEP must be developed within 30 days after the commencement of the next school year. [Cal. Ed. Code Sec. 56344.] See *Assessment and IEP Time Lines Summary* at the end of this chapter.

If you are requesting an IEP meeting without the need for new assessments for a child already in special education, the IEP meeting must be held within **30 days** (not counting days in July or August) from the date of receipt of your **written request**. [Cal. Ed. Code Sec. 56343.5.]

17. **What rights do I have in the assessment and evaluation process?**

Among the numerous rules applying to initial evaluations/assessments and assessments for revision of an IEP, are:

(1) Parental consent must be obtained prior to assessment. [20 U.S.C. Sec. 1414 (a)(1)(C), (c)(3); 34 C.F.R. Sec. 300.505(a)(1)(i); Cal. Ed. Code Sec. 56321(c).]

(2) Evaluation is by a multidisciplinary team, and assessment is in all areas related to the child’s suspected disability including, where appropriate: health and development, vision, hearing, motor abilities, language function, academic performance, general intelligence, self-help, orientation and mobility skills, career and vocational abilities and interests, social and emotional status, and communication status. [34 C.F.R. Secs. 300.532(g); Cal. Ed. Code Secs. 56320(e), (f).]

(3) Tests must be validated for the specific purpose used and be given by trained personnel. Tests must accurately measure a child’s aptitude or achievement and assess specific areas of educational need rather than providing a single IQ and/or reflecting the child’s impaired sensory, manual or speaking skills. No single procedure or test is to be used for determining an appropriate educational program for a child. [20 U.S.C. Sec. 1414 (b)(3)(B)(i); 34 C.F.R. Sec. 300.532(d)(e)(f), (b), (d); Cal. Ed. Code Secs. 56320(b), (c), (d), (e).]

(4) The assessments must be given in the student’s native language and/or other mode of communication. If this is not feasible, an interpreter must be used. [20 U.S.C. Sec. 1414 (b)(3)(A)(ii) 34 C.F.R. Secs. 300.532(a)(1); Cal. Ed. Code Secs. 56320(b)(1); 5 C.C.R. Secs. 3023.]
(5) Testing and evaluation materials must be selected and administered so as not to be racially, culturally or sexually discriminatory. [20 U.S.C. Sec. 1414 (b)(3)(A)(i); 34 C.F.R. Sec. 300.532(a); Cal. Ed. Code Sec. 56320(a).]

(6) The school must provide the parents a copy of the assessment findings if the parents request one. It is best to request that a copy of the written assessment be sent to you before the IEP meeting so that you can consider the results in planning for the meeting. [Cal. Ed. Code Sec. 56329.]

(7) If you disagree with the assessment, you can either challenge it through the fair hearing procedure or obtain an independent assessment. An independent assessment must be considered by the district when it makes any decisions about the student. The district, upon request, must pay for the cost of the private assessment unless it can show, through a hearing which it requests, that the district’s assessment was accurate, complete and met the legal requirements described above. [20 U.S.C. Sec. 1415 (b)(1); 34 C.F.R. Sec. 300.502; Cal. Ed. Code Sec. 56329.]

(8) A complete reevaluation must be completed at least every three years and more frequently if requested by either a parent or the student’s teacher. Reevaluations in one particular area or evaluation in a new area must also be done at a parent or teacher’s request. [20 U.S.C. Sec. 1414 (a)(2); 34 C.F.R. Sec. 300.5364.] See Chapter 2, Information on Evaluations/Assessments.

(9) A copy of a notice of parent rights must be attached to the assessment plan. The notice must explain all of the procedural rights of a special education student under federal and state special education law and include information on the procedures for requesting an informal meeting, pre-hearing mediation conference, mediation conference, or due process hearing, the time lines for completing each process, whether the process is optional, and the type of representative who may be invited to participate. [Cal. Ed. Code Sec. 56321(a).] See Chapter 6, Information on Due Process Hearings/Compliance Complaints.

Federal regulations state that the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked” to the disability category of the child. The school district must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical, and developmental factors have on the functioning of the child. In general, the school district must use “assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.” [34 C.F.R. Sec. 300.532(h), (i), and (j).]
In addition, the school district must use a variety of assessment tools and strategies to gather both relevant **functional** and **developmental** information about the child, including information provided by the parent. The evaluation must also gather information related to enabling the child to be involved in and progress in the general curriculum or for a preschool child to participate in appropriate activities. For a child with limited English proficiency, materials and procedures must be selected and administered to measure the extent of a child’s disability rather than measuring the child’s English language skills. [34 C.F.R. Sec. 300.532 (a) and (b).]

18. **What is an IEP and how is it developed?**

An IEP is an Individualized Education Program, which sets forth in writing the educational program for the student. The IEP is developed at an IEP meeting by a team of people which must include the parent/s, a special education teacher, a regular education teacher if appropriate, a district representative or school administrator and the student if appropriate. If the IEP meeting is being held following an assessment, a member of the assessment team must participate. Other people who may participate are a therapist, a nurse and anyone else selected by either the parent or the district if they have knowledge or special expertise regarding the child [20 U.S.C. Sec. 1414 (d)(1)(B); 34 C.F.R. Sec. 300.340 and 344; Cal. Ed. Code Sec. 56341.]

Under federal and/or state law, the Individualized Education Program (IEP) for each student with disabilities must include:

1. The student’s present levels of educational performance, including how the child’s disability affects the child’s involvement and progress in the general curriculum. For preschoolers, present levels must include how the disability affects the child’s participation in appropriate activities.
2. A statement of measurable annual goals, including benchmarks or short-term objectives, related to:
   - meeting the child’s needs that results from the child’s disability to enable the child to be involved in and progress in the general curriculum, and
   - meeting each of the child’s other educational needs that result from the child’s disability.
3. A statement of: specific special education services (including, for example: physical education, vocational education, extended school year, instruction in academic or perceptual areas, teacher qualifications, class size, etc.);
specific related services, including the amount of time, frequency, and location for each service (for example, occupational therapy two times a week/45 minute sessions at the school site); supplementary aids and services (for example, instructional aides, note takers, use of the resource room, etc.); and, program modifications or supports for school personnel (for example, modifications to the regular class curriculum, use of computer-assisted devices, special education training for the regular teacher, etc.) to be provided to the child, on behalf of the child, or for the child to advance appropriately toward attaining the annual goals; to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and, to be educated and participate with other children with disabilities and nondisabled children.

(4) An explanation of the extent, if any, to which the child will not participate with nondisabled child in regular education classes as well as extracurricular and other nonacademic activities.

(5) The projected date for initiation and the anticipated duration, frequency, and location of the services and modifications included in the IEP.

(6) A statement of any individual modifications in the administration of state or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment.

(7) Appropriate objective criteria, evaluation procedures and schedules for determining, at least annually, whether the measurable goals contained in the IEP are being achieved and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

(8) A statement of how the student’s parents will be regularly informed of student progress (through such means as periodic report cards or progress reports) at least as often as parents are informed of their nondisabled student’s progress.

(9) A description of the type of placement needed to implement the IEP in the least restrictive environment. The school district must ensure that a continuum of alternative placements is available, including instruction in regular classes (with an aide or other adaptations if necessary), special classes, nonpublic nonsectarian schools, state special schools, residential placement, home instruction, and instruction in hospitals and institutions.

(10) For students 16 years of age or older, the IEP must state the transition services needed, including, if appropriate, a statement of the interagency responsibilities or any needed linkages. Transition services are “a
coordinated set of activities for a student ... which promotes movement from school to post-school activities... The activities shall include instruction, community experiences, the development of employment and other post-school living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.”

(11) For each student, beginning at age 14 and younger, if appropriate, the IEP must include a statement of the transition service needs of the student. The statement(s) should relate to those sections of the IEP that focus on the student’s courses of study (such as participation in advanced-placement courses or a vocational education program).

(12) Extended school year services, when needed. See Chapter 5, Information on Related Services.

(13) One year before the student turns 18, include a statement that the student has been informed of his or her special education rights that will transfer to the student at age 18.

[20 U.S.C. Sec. 1414(d); 34 C.F.R. Secs. 300.309, 347; Cal. Ed. Code Sec. 56345; 5 C.C.R. Sec. 3042(b).]

19. **Are there any other services or special factors that must be considered and included in an IEP if appropriate for a student?**

Under federal and/or state law, the IEP team must, when appropriate:

(1) For a student whose behavior impedes his or her learning or that of others, consider strategies, including positive behavioral interventions, and supports to address that behavior.

(2) For a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student’s reading and writing skills, needs, and appropriate reading and writing media, that instruction in Braille or use of Braille is not appropriate.

(3) Consider the communication needs of the student, and for a student who is deaf or hard of hearing, consider the student’s language and communication needs, opportunities for direct communications with peers and professional personnel in the student’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student’s language and communication mode.
(4) Consider whether the student requires assistive technology and services.

(5) For students in kindergarten and grades 1 to 6, the IEP must also contain prevocational career education.

(6) For students in grades 7 to 12, the IEP must also include any differential standards which will be used to enable them to graduate, and vocational education, career education, or work experience education, in preparation for remunerative employment, including independent living skill training.

(7) For students whose primary language is other than English, the IEP must include linguistically appropriate goals, objectives, programs and services.

(8) Provide for the transition into the regular class program if the student is to be transferred from a special class or center, or nonpublic, nonsectarian school into a regular class in a public school for any part of the school day, including:

(A) A description of activities provided to integrate the student into the regular education program. The description shall indicate the nature of the activity, and the time spent on the activity each day or week.

(B) A description of the activities provided to support the transition of students from special education program into the regular education program.

(9) For students with low-incidence disabilities, provide specialized services, materials, and equipment.

(10) For students in grades 7 to 12, inclusive, provide any alternative means and modes necessary for the student to complete the district’s prescribed course of study and to meet or exceed proficiency standards for graduation.


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

Appendix A to Part 300 – Notice of Interpretation specifically addresses this issue:

Yes. The IEP for each child with a disability (including children who are educated in separate classrooms or schools) must address how the child will be involved and progress in the general curriculum. However, the Part B regulations recognize that some
children have other educational needs resulting from their disability that also must be met, even though those needs are not directly linked to participation in the general curriculum. Thus, the IEP team for each child with a disability must make an individualized determination regarding (1) how the child will be involved and progress in the general curriculum and what needs that result from the child’s disability must be met to facilitate that participation; (2) whether the child has any other educational needs resulting from his or her disability that also must be met; and (3) what special education and other services and supports must be described in the child’s IEP to address both sets of needs. [34 C.F.R. Part 300, App. A, Q. 2.]

21. 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 participants in the meeting and have the meeting scheduled at a mutually agreed upon time and place. [34 C.F.R. Sec. 300.345(a), (b).] It should be noted that if you refuse to attend a properly scheduled IEP meeting, the local agency may conduct the meeting without you. However, the district must take steps to insure parent participation — such as conference calls or holding the meetings at after-hours times when you can attend. [34 C.F.R. Sec. 300.345(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. Sec. 300.344(a)(b).] Whenever appropriate, the student may also attend and participate. [20 U.S.C. Sec. 1414 (d)(1)(B)(vii); 34 C.F.R. Sec. 300.344(a)(7).]

(3) **Present information** to the IEP team and participate equally in the development of the IEP. [20 U.S.C. Sec. 1414 (d)(3)(A)(i); 34 C.F.R. Sec. 300.533(a)(1); 34 C.F.R. Part 300, App. A C, Q. 5.

(4) Have language or sign interpreter present if needed for the parent to participate in the meeting. [34 C.F.R. Sec. 300.345(e).]

(5) Obtain a copy of the IEP, on request. [34 C.F.R. Sec. 300.345(f).]

(6) Have the IEP reviewed annually, with all the above rights applying. [20 U.S.C. Sec. 1414 (d)(4)(A)(i); 34 C.F.R. Sec. 300.343(c)(1).]
(7) Have the IEP implemented as soon as possible, which is interpreted to mean immediately except where legitimate circumstances require a short delay. [34 C.F.R. Secs. 300.342(b), 300.346(d), and 300 App. 4 C No. 4; 5 C.C.R. Sec. 3040(a).] See Chapter 4, Information on IEP Process.

22. What happens if I don’t agree with all or part of the IEP? What are my options?

Under California law, a student with disabilities is not allowed to participate in any part of a special education program without written parental consent to the IEP. If you do not agree with an IEP, you can refuse to sign it altogether, or you can consent only to the parts with which you agree and specifically state your disagreement with other parts. Only those components of the IEP to which you have consented will be implemented. Any parts of the IEP to which you have not consented may become the basis for a due process fair hearing. [Cal. Ed. Code Sec. 56346.] In addition to a due process fair hearing, several other dispute resolution mechanisms exist but are at your option. See Chapter 6, Information on Due Process Hearings/Compliance Complaints.

Federal law makes it clear that the local agency may initiate a due process hearing to attempt to override your consent to initial placement. State law provides the local agency the same option with respect to portions of the IEP to which you have not consented. [34 C.F.R. Sec. 300.507(a); Cal. Ed. Code Sec. 56501(a).]

23. I agreed with the IEP when it was written, but I no longer think it is appropriate. What can I do?

If you are convinced your child’s IEP is no longer appropriate, you can request a new IEP meeting. In particularly serious cases, you have the option under federal law of revoking your consent to the IEP. [34 C.F.R. Sec. 300.500.] It is unclear, however, if revocation of consent after implementation of the new IEP will result in implementation of the previous IEP. See Chapter 4, Information on IEP Process.

24. I’ve been to the IEP meeting, but the school and I cannot agree on the special education, related services or placement my child needs. How can I resolve this difference of opinion?

If you have reached the point where further negotiation is fruitless and you believe the local agency is not providing your child a free appropriate public education, you may file for a due process fair hearing. [Cal. Ed. Code Secs. 56501 and 56502.] Common examples of this situation are the school district’s refusal to
include an important service in the IEP or a placement for your child where he can be integrated with nondisabled students. To request a hearing, write to the address below and send a copy to your child’s school district.

   Special Education Hearing Office (SEHO)
   Institute for Administrative Justice
   McGeorge School of Law
   3200 Fifth Avenue
   Sacramento, CA 95817
   Telephone: (916) 739-7053

In addition to a due process fair hearing, several other dispute resolution mechanisms are at your option. See Chapter 6, Information on Due Process Hearings/Compliance Complaints. A sample letter requesting due process is included at the end of Chapter 6.

25. What happens to my child if I file for a due process hearing?

Under federal law, **your child will remain in her current educational placement and have her current IEP fully implemented (including all related services) from the time you request a hearing until the due process hearing proceedings (and judicial proceedings, if any) are completed.** This “status quo,” often called the “stay-put placement” can be altered only if you and the local education agency agree to a change in placement or services. [20 U.S.C. Sec. 1415 (j); 34 C.F.R. Sec. 300.514; Cal. Ed. Code Sec. 56505(d).] **This may not be true, however, if you elect to utilize one of the optional dispute resolution mechanisms described more fully in Chapter 6, Information on Due Process Hearings/Compliance Complaints.**

If you are very dissatisfied with the school district program or services, you may choose unilaterally to place your child in a nonpublic school or to purchase additional services. Should the hearing officer (or a court) later determine that such placement or services are appropriate and that the district’s program was inappropriate, the district may be responsible for reimbursing you for the cost of the placement or services.

26. What rights do I have in the hearing process?

It is important to note that you have many rights in the hearing process, including the right to:

(1) Be informed of available free or low-cost legal services. [34 C.F.R. Sec. 300.507(a)(b); Cal Ed. Code Sec. 56502(c).]
(2) After filing for a due process hearing, and as long as both parties agree, attend a mediation conference, which is an informal meeting held between you, the district and a state mediator, in an attempt to negotiate a resolution to the dispute. During the time of this mediation process, the student is entitled to remain in his current school placement and an attorney may represent any of the parties to the mediation. [20 U.S.C. Sec. 1415 (e); 34 C.F.R. Sec. 300.506, 507(a)(2); Cal. Ed. Code Sec. 56501(b)(1)(2) and 56503.] You and the district may also participate in a mediation session before filing for a due process hearing. [See Cal. Ed. Code Sec. 56500.3]. At this mediation, however, no attorneys or other independent contractor legal advocates may participate on behalf of any party. And, because this mediation process takes place before filing for a due process hearing, the district may not believe it is obligated to maintain the student in his current educational placement.

(3) Have the hearing held at a time and place reasonably convenient to the parent and child. [34 C.F.R. Sec. 300.511(d); Cal. Ed. Code Sec. 56505(b).] Continuances can be obtained upon a showing of good cause. [Cal. Ed. Code Sec. 56505(f).] You also have the right to have the child attend the hearing and to have the hearing open or closed to the public, if desired. [34 C.F.R. Sec. 300.509(c); Cal. Ed. Code Sec. 56501(c).]

(4) Have the hearing conducted by an impartial hearing officer. [20 U.S.C. Sec. 1415 (f)(3); 34 C.F.R. Sec. 300.508; 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. 300.509(a)(1).] If either party uses an attorney, that party must notify the other party in writing 10 days before the hearing. [Cal. Ed. Code Sec. 56507.]

(6) Present evidence and written and oral arguments; confront, cross-examine and compel the attendance of witnesses; and, obtain a written or electronic verbatim record of the hearing. [20 U.S.C. Sec. 1415 (h)(2); 34 C.F.R. Sec. 300.509(a)(2),(4); 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. 300.509(a)(3); Cal. Ed. Code Sec. 56505.1(f).]

(8) Obtain a written, reasoned decision containing findings of fact. The completed decision must be mailed to all parties within 45 days after the request for the hearing is received. [20 U.S.C. Sec. 1415 (h)(4); 34 C.F.R. Sec. 300.509(a)(5); Cal. Ed. Code Sec. 56505(f).]
If you are successful at the due process hearing or in court (the prevailing party), and you were represented by an attorney, the attorney’s fees and the costs of pursuing the case may have to be paid by the public education agency. [20 U.S.C. Sec. 1415 (i)(3)(B); 34 C.F.R. Sec. 300.513.]

The due process hearing decision is the final administrative determination, and is binding on both sides. [34 C.F.R. Sec. 300.510 (a); Cal. Ed. Code Sec. 56505(g).] A party who disagrees with the hearing decision may appeal that hearing decision in state or federal court. **The appeal must be filed within 90 days of the date of receipt of the decision.** [20 U.S.C. Sec. 1415 (i); 34 C.F.R. Sec. 300.512; Cal. Ed. Code Sec. 56505(i).] See Chapter 6, *Information on Due Process Hearings/Compliance Complaints.*

27. **I think the local education agency is violating special education law. What can I do?**

If you believe the local agency has not followed the terms of an IEP, mediation agreement, or due process hearing decision, or has violated special education laws, or has discriminated and the student is at risk of suffering some immediate loss of benefit as a result of the discrimination, or that a student or group of students is in danger or their health or welfare is threatened, you may file a complaint with the Complaint Management and Mediation Unit of the California Department of Education. [5 C.C.R. Sec. 4600 and following.] Some complaints may be filed first with the local education agency and some will be referred back to the local education agency by the Compliance Unit, but most issues arising under special education and IEP implementation may be filed directly with the state. [20 U.S.C. Sec. 1415 (b)(6); 34 C.F.R. Sec. 300.660 – 662; 5 C.C.R. Sec. 4650.] The complaint procedure is covered in greater depth in Chapter 6, *Information on Due Process Hearings/Compliance Complaints.* To file a complaint, write to the following address and send a copy to your school district.

Complaint Management and Mediation Unit  
Special Education Division  
California Department of Education  
1430 N Street, Suite 2401  
Sacramento, CA 95814
28. **Does my child have the right to participate in nonacademic and extracurricular activities offered at his school?**

Yes. School districts must take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford children with disabilities an equal opportunity for participation. [34 C.F.R. Sec. 300.306(a).] Such activities include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including employment by the school and assistance in making outside employment available. [34 C.F.R. Sec. 300.306(b).] In addition, in arranging for the provision of services, such as lunch and recess, the school district shall ensure that children with disabilities participate with nondisabled children to the maximum extent appropriate. [34 C.F.R. Sec. 300.553.]

The IEP must contain a statement of the special education and related services and supplementary aids and services that will be provided to the child so that he will be able to participate in extracurricular and other nonacademic activities. [34 C.F.R. Sec. 300.347(a)(3)(ii).] Regulations under Section 504 also ensure that children with disabilities have an equal opportunity for participation in nonacademic and extracurricular services and activities. [34 C.F.R. Sec. 104.37.]

29. **How do I find out if my child is entitled to an extended school year or summer school program?**

Special education and related services shall be provided on an extended year basis for students with disabilities whose unique needs require services in excess of the regular academic year. The IEP team makes the determination of whether a child needs such a program and should consider as factors whether the child’s disabilities are likely to continue indefinitely or for a prolonged period, or if interruption of her educational programming may cause regression and, coupled with limited recoupment capacity, render it impossible or unlikely that she will attain the level of self-sufficiency and independence that would otherwise be expected in view of her disabling condition. The lack of clear evidence of such factors may not be used to deny extended year services if the IEP team determines the need for an extended year program and includes the services in an IEP. The special education and related services offered during the extended year must be comparable in standards, scope and quality to the program offered during the regular academic year. If the IEP team recommends extended year services, the
recommendation should be written into the IEP. [34 C.F. R. sec. 300.309; 5 C.C.R. Sec. 3043.]

30. Can I see the records that the school keeps on my child?

Yes. You or your child’s representative have the right to inspect, review and get copies of all educational records relating to your child which are collected, maintained or used by the local agency. [20 U.S.C. Sec. 1415 (b)(1); 34 C.F.R. Sec. 300.501, 562; Cal. Ed. Code Sec. 49069.] For most special education students, school districts keep both a special education file and a cumulative file (general regular education information). You have the right to have access to both these files. You may need to remind your district to provide all educational records concerning your child to you no matter where they are located. See Sample Letter at the end of this chapter.

In addition, the local agency must explain and interpret records on request and provide you the opportunity to request correction or removal of information in the record you believe to be: inaccurate, misleading, an unsubstantiated personal conclusion or inference, a conclusion or inference outside the observer’s scope area of competence, not based on the personal observation of a named person with the time and place of the observation noted, or in violation of the privacy or other rights of your child. [Cal Ed. Code Sec. 49070(a).]

Under state law, the local agency must provide you with access to records, and copies as requested, within five days after written or oral request. [Cal. Ed. Code Sec. 49069 and 56504.] The local agency can charge you at most the actual cost of copying the records but must provide the copies for free if the cost “effectively prevents the parent from exercising the right to receive such copies.” [34 C.F.R. Secs. 300.560 and following; Cal. Ed. Code Secs. 49065, 56504.]

31. How do I correct or remove information contained in my child’s records?

To correct or remove information contained in your child’s records, you can file a written request with the superintendent of the school district. Within 30 days of the request, the superintendent will meet with you and the school staff who recorded the disputed information and either grant or deny your request. If your request is denied, you have 30 days in which to appeal the denial in writing to the governing board of the school district. If your request or appeal is denied, you have the right to submit a written statement of your objections to the information. The statement will become part of your child’s record until the information is corrected or
removed. [Cal. Ed. Code Sec. 49070(b)-(d).] An alternative way to correct or remove information from your child’s records is to file for a due process hearing. [34 C.F.R. Sec. 300.567.]

32. Under what circumstances may my child attend school in a school district other than my district of residence?

There are three circumstances where an interdistrict transfer may occur:

1. If your district does not have an appropriate placement for implementation of the IEP, it may enter into an interdistrict attendance agreement with a neighboring district (the nonresident district) to enroll your child in a special education program. [See Ed. Code Sec. 46600 and following.] The nonresident district is not obligated to accept your child. However, the nonresident district cannot refuse to enter into an interdistrict attendance agreement for discriminatory reasons, such as the need for special education, bilingual, or other special services, and the nonresident district’s belief that the additional cost of educating the student is greater than the additional amount of state funds it would receive as a result of the transfer. [Cal. Ed. Code Sec. 48209.3.] However, the nonresident school district can refuse to accept a pupil if the transfer would require the nonresident district to either create a new program or provide a new service to serve the pupil. [Cal. Ed. Code Sec. 48209.3(a).] Both districts must agree on funding allocations, transportation, etc. These interdistrict agreements usually allow the receiving district to terminate the enrollment at the district’s own discretion, subject, of course, to the prohibition against discriminatory reasons for the transfer described above.

2. The parent of an elementary school child may elect to have the child enrolled in the district where either parent’s employment is located. [Cal. Ed. Code Sec. 48204.] However, if this is the basis for the interdistrict attendance, the district of employment may refuse to enroll the child if the additional cost of educating the child exceeds the amount of additional state aid received as a result of the transfer. [Cal. Ed. Code Sec. 48204(f)(3).] This provision could form the basis for refusal of a special education child.

3. Any district may elect to accept nonresident students who apply to attend school there from outside that district. If a district elects to accept transfers, it must develop policies specifying how many transfers it will accept and which ensure that admission of nonresident students is a random, unbiased process that gives no consideration to academic or athletic skills. Cal. Ed. Code Sec. 48209.1(a).] However, either the district of residence or the
receiving district can refuse a transfer or limit the number of transfers if the
governing board of either district determines that the transfer would
negatively impact a court-ordered desegregation plan, a voluntary
desegregation plan, or the racial or ethnic balance of either district. [Cal. Ed.
Code Sec. 48209.1(b).] Generally, the district of residence has no right to
prohibit the transfer. [Cal. Ed. Code Secs. 48209.1(c) and 48980(j).]

If interdistrict attendance is denied by either district, the district denying attendance
must advise you of the right to appeal to the county board of education within 30
days of the failure or refusal to permit interdistrict attendance. If the district
denying attendance refuses to notify you of the appeal right, then the district of
residence must do so. Not filing the appeal within 30 days is good cause for denial.
If there are school district level appeal procedures that could be pursued first, the
county board of education may refer the matter back to the district level first. If and
when the county board considers the appeal, it has 30 days to make a decision. If
the county schedules a hearing on the appeal, it must notify all the parties of the
day and time. The hearing may be postponed for good cause under county rules.
Normally, a decision must be made within three days of the hearing. The hearing is
conducted by either a hearing officer or a hearing panel, none of whom can be a
member of the county board. [Cal. Ed. Code Sec. 46601(a) and (b).]

If the district of residence and district of would-be attendance are in two different
counties, the county board in which the district denying the permit has jurisdiction
of the appeal. If both districts have denied interdistrict attendance and are in
different counties, the county board having jurisdiction over the district of
residence must handle the appeal. In that case, if the appeal is successful with the
county of residence, the county of residence must try to persuade the other county
to allow interdistrict attendance. If the other county does not, the appeal is denied.
[Cal. Ed. Code Sec. 46601(d).]

Students who are expelled, or who are under consideration for expulsion, cannot
appeal interdistrict attendance agreement denials or rescissions while expulsion
proceedings are pending or during a period of expulsion. [Cal. Ed. Code Sec.
46601(e).] Therefore, it is unclear whether a receiving district in which a
nonresident child was going to school could simply initiate expulsion proceedings
and rescind an interdistrict attendance agreement and never finish the expulsion
process.

In considering whether to allow interdistrict attendance, school districts (and,
presumably, county boards of education in the case of an appeal) must give
consideration to the childcare needs of the pupil. [Cal. Ed. Code Sec. 46601.5(a).]
This provision does not require the granting of interdistrict attendance based on
childcare needs, it simply requires that childcare needs be considered. However, if a district has allowed interdistrict attendance based on childcare factors, it must allow the child to continue to attend the school district of your choice subject to the right of the district to terminate attendance if it would violate desegregation orders or plans or if the district determines that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer. [Cal. Ed. Code Sec. 46601.5(b) and (c).]

If an interdistrict transfer is made under (2) or (3) above, transportation will be a parental responsibility. Under any of the three options described above, your child’s placement and right to any upgrade of service is not as secure as in the district of residence.

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

Whenever a child transfers out of one school district into another that does not operate under the same local plan, the new school district must **immediately** provide an interim placement, to last not more than 30 days. Unless you agree otherwise, the interim placement must conform to an IEP — either the existing IEP implemented to the extent possible in the new district or a new IEP. Within 30 days after the interim placement was made, the IEP team must review the interim placement and make a final recommendation. The IEP team may use the records and reports from the previous school district in making its recommendation. [Cal. Ed. Code Sec. 56325.]

34. **What happens to my child’s special education program if he is placed in a group or foster home located in another school district?**

In order to encourage communication and planning, before placing a child with a disability in a group home or other residential facility, the placing agency (such as a regional center for the developmentally disabled, the Department of Social Services or a court) must notify the administrator of the special education local plan area in which the group home is located. The administrator must provide the placing agency with information about the availability of an appropriate special education program in the area. [Cal. Gov. Code Sec. 7579, Cal. Ed. Code Sec. 56156(a).]

If a child is placed by a court, regional center for persons with developmental disabilities, or other public agency, other than an educational agency, the special
education local plan area (SELPA) in which the child’s residential facility is located becomes responsible for her special education. Local agreements within that SELPA may specify that a particular school district or the county office of education is responsible for the actual educational services. [Cal. Ed. Code Sec. 56156.4 and 56156.5.]

Beginning in 2003, if a public agency, other than an education agency places a child with, or suspected of having, a disability in a facility out of state without the involvement of the school district, SELPA, or county office of education in which the parent or guardian lives, the public agency making the placement must assume all financial responsibility for the out-of-state placement, including residential, special education, and related services costs, unless the other state or its local agencies assume that responsibility. [Cal. Gov. Code Sec. 7579(d).]

35. **Which district is responsible for my child’s education program if she is placed in a public hospital, psychiatric hospital or other residential medical facility?**

Individuals with exceptional needs who are placed in a public hospital, state licensed children’s hospital, psychiatric hospital, proprietary hospital or a health facility for medical purposes are the educational responsibility of the district, special education local plan area (SELPA), or county office of education in which the hospital or facility is located. [Cal. Ed. Code Sec. 56167.]

36. **What happens to my child’s special education program if he is being discharged from a State Developmental Center (SDC), a state mental hospital, or a medical hospital?**

At least ten days prior to the discharge of a child who has had an active IEP from an SDC, mental hospital or medical hospital, the operator of the facility must give notice of the discharge, in writing, to the receiving special education local plan area. In addition, the operator must provide the special education local plan area with information useful in implementing your child’s IEP, including a copy of the IEP and the name of your child’s representative for educational and placement issues. It is the responsibility of the receiving school district to ensure that your child receives an appropriate educational placement that starts without delay upon his discharge. [Cal. Gov. Code Sec. 7579.1.]
37. Under what circumstances could my child be suspended or expelled from school?

Students with disabilities are subject to the same suspension rules as nondisabled students, except with regard to the length of suspension. Students may be suspended for up to five school days if they violate certain provisions of the California Education Code. The district must give you written notice of the suspension. The district must also give you and/or your child the right to contest the evidence of the misconduct and the appropriateness of the suspension at a meeting with school officials. Under certain circumstances, a nondisabled student can be suspended for a period in excess of 30 days cumulatively per school year. Students with disabilities may be suspended for up to ten days by the governing board of the school district if their presence at school would be dangerous. Under federal law, a special education student may not be suspended for more than ten consecutive days without parental consent. [20 U.S.C. Sec. 1415(k), 34 C.F.R. Sec. 300.520; Cal. Ed. Code Sec. 48911(h); Doe v. Maher, EHLR 557:353, 361.]

Students with disabilities cannot be expelled from school for misconduct that is related to their disability or if the IEP team determines that the student was not appropriately placed at the time of the misconduct. [20 U.S.C. Sec. 1415(k)(4)(C)(ii); 34 C.F.R. Sec. 300.523; Cal. Ed. Code Sec. 48915.5; Doe v. Maher, Education for the Handicapped Law Reporter (EHLR) 557:353, 359-60.] Because expulsion is a significant change in placement, prior to expelling a student with disabilities from school, the district must follow certain procedures including notice, assessment of the student, and convening an IEP team meeting to determine if the misconduct is related to the student’s disability. In analyzing whether the misconduct is related to the student’s disability, the analysis cannot be limited to the student’s “identified” disability as Cal. Ed. Code Sec. 48915.5(a)(2) indicates. A federal appellate case in California calls into question the validity of that portion of the state statute when compared with federal law. [See Hacienda La Puente Unified School District of Los Angeles v. Honig, 976 F.2d 487 (9th Cir., 1992).] In that case, the school district had failed to identify all of the child’s conditions and was attempting to expel the child because her misbehavior was not related to the condition that the district had identified the child as having. In addition, a student who has not been found eligible for special education and who has engaged in behavior that violated any school district rule or code of conduct, may assert any of the special education protections and rights if the school district had knowledge that the student was a student with a disability before the behavior that caused the disciplinary action occurred. [20 U.S.C. Sec. 1415(k)(8)(A); 34 C.F.R. Sec. 300.527.]
If you or your child disagree with the IEP team decision, regarding relationship of the misconduct to your child’s disability or the appropriateness of the placement at the time of the misconduct, you have a right to appeal the decision. Generally, a student has the right to remain in his current placement during the pendency of the IEP meeting and any appeals, aside from the initial suspension for the offense which may be up to ten days. However, there are exceptions to this rule if the student is charged with certain categories of offenses involving weapons or drugs, in which event the student may be placed in an alternative placement while expulsion proceedings are pending. [20 U.S.C. Sec. 1415(k)(1).] In addition, a hearing officer, upon application of a district, may subject a student to alternative placement, pending expulsion proceedings, if he finds that maintaining the current placement is substantially likely to result in injury to the child or others. [20 U.S.C. Sec. 1415(k)(2); 34 C.F.R. Sec. 300.521.]

If it is properly determined that the misconduct is not related to all the student’s actual disabilities, and that the student was appropriately placed at the time of the misconduct, the student is treated the same as a student without any disability — regular expulsion proceedings may be initiated. [34 C.F.R. Sec. 300.524(a); Doe v. Maher, EHLR 557:353, 360.] However, both state and federal law severely restrict the expulsion of special education students. Even if a special education student meets the legal criteria for expulsion, federal law requires that the student continue to receive a free appropriate public education while expelled or suspended for a period in excess of ten days in a school year. Thus, unlike a regular education student, a special education student does not suffer a cessation of educational services during an expulsion, but may suffer a change of placement to an alternative setting which provides all services required by the student’s IEP. [20 U.S.C. Secs. 1412(a)(1)(A), 1415(k); 34 C.F.R. Sec. 300.121.] See Chapter 8, Information on Discipline of Students with Disabilities.

38. Under what circumstances can my child graduate with his nondisabled peers?

Pupils in special education may graduate with their peers and receive a high school diploma if they complete district requirements for the award of a diploma, which include completion of the prescribed course of study and passing proficiency standards in basic skills, where still utilized by school districts, until the 2003-04 school year. [See Cal. Dept. of Ed., Special Ed. Division, Memorandum Re Differential Proficiency Standards, March 14, 2000.] Beginning in 2003-04, these proficiency standards will be demonstrated by passing a high school exit exam and completing the district’s prescribed course of study (the required number of credits
or units in various areas of study such as English, math, social studies, etc.). Pupils in special education may also participate in graduation ceremonies but receive a certificate of achievement or completion. [Cal. Ed. Code Sec. 56390-56391.] In addition, a student could participate in graduation ceremonies with his peers, even if she is not receiving a diploma or a certificate, if participation in the ceremony was specified in her IEP as a component of her participation with nondisabled peers in school activities in the least restrictive environment. For a more thorough discussion of graduation, eligibility, transition, the exit exam, and prescribed course of study, see Chapter 10, Information on Transition Services, Including Vocational Education.

39. What can I do if a teacher or other school staff person hurts my child?

If a child or group of children has been hurt, mistreated verbally and/or emotionally, is in immediate physical danger, or the health, safety or welfare of a child or group of children is threatened, you may file a complaint with the CDE under the Uniform Complaint Procedure [5 C.C.R. Secs. 4600 and following]. The CDE must investigate your complaint. [5 C.C.R. Secs. 4611(a) and 4650(a)(viii)(C).] See questions and answers regarding Compliance Complaints in Chapter 6, Information on Due Process Hearings/Compliance Complaints.

The California Department of Education has determined that the “health, safety, or welfare of a child,” for purposes of direct state intervention under section 4650(a)(viii)(C), can be threatened both physically and non-physically (i.e., either verbally and/or emotionally). See California Department of Education Legal Advisory, “Mistreatment of Individuals with Disabilities,” LO: 1-94, 1/25/93.

40. 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. 300.500(b)(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 to be assessed in ways which measure the extent of a child’s disability rather than the degree of her English language skills. [34 C.F.R. Sec. 300.532(a).]

(4) The right to have an interpreter for any meeting which is convened for the purpose of deciding a child’s educational placement. [34 C.F.R. Sec. 300.501(c)(5).]

(5) The right to have an interpreter at IEP meetings. [34 C.F.R. Sec. 300.345(e).]

(6) The right to written notice, in one’s native language or other mode of communication, a reasonable time before a school district proposes to initiate or change the special education identifying category of a pupil, his evaluation data, his placement, or anything about the way the district is providing a free appropriate public education to him. Similarly, parents have the right to written notice in their native language or other communication mode within a reasonable amount of time before a school district refuses to initiate or change the special education identifying category of a pupil, his evaluation data, his placement, or anything about the way the district is providing a free appropriate public education to him. [34 C.F.R. Sec. 300.503(c)(1).] If a parent has no written native language or communication mode, the school district must take steps to orally translate the notice for the parent into the parent’s native language or other mode of communication. [34 C.F.R. Sec. 300.503(c)(2).]

(7) 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).]

(8) The right to have an interpreter at a due process hearing. [5 C.C.R. Sec. 3082(d).] Although not specifically stated, interpreters must be provided at mediation conferences as well. [5 C.C.R. Sec. 3086(b)(3).]

(9) The right to a Procedural Safeguards Notice provided in one’s native language. [20 U.S.C. Sec. 1415(d)(2); 34 C.F.R. Sec. 300.504(c).] The Procedural Safeguards Notice explains all of a parent’s and student’s rights in the special education system, including rights to notice, consent, records access, complaints and appeals, stay-put, discipline, etc. [34 C.F.R. Sec. 300.504(b).] It must be given to parents when a child first enters special education, each time an IEP meeting is set, each time a child is reevaluated, and whenever a parent or district starts due process. [34 C.F.R. Sec. 300.504(a).] Although there is no specific requirement that IEP meeting
notices be in a parent’s native language, if a Procedural Safeguards Notice in the native language must be sent each time an IEP meeting is noticed, it would make little sense if the IEP meeting notice itself was not also in the native language.

(10) 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.]

Some of a parent’s rights to documents in the parent’s native language are limited by law. If it is clearly unfeasible to provide a document in a parent’s native language, the district may not have to do it. Parents whose native languages are uncommon or, perhaps, uncommon in certain regions of the state may have greater difficulty exercising their rights under these provisions.

There is no specific entitlement under federal or state law to translated assessment reports, but some school districts do provide them upon request. Parents should always ask to have assessment reports translated. Requesting the translation of assessment reports should not pose a large obstacle for a school district if the assessment tests were administered in another language pursuant to 34 C.F.R. Sec. 300.532(a) and the person conducting the assessment also spoke that language. In other circumstances, however, requesting translation of assessments may cause the parent not to receive a copy of the report(s) within the time lines that would otherwise apply for the IEP meeting. In that situation, using an English version of the report and an interpreter to translate it for the parent prior to and at the meeting may be the only way to stay within the time lines for holding IEP meetings.

41. What rights do I have if English is not my child’s first language or if she does not speak any English?

Your child’s rights include:

(1) Assessments of your child’s abilities and needs must be in her native language. If this is not possible, an interpreter must be provided. The need for an interpreter does not mean completion of the assessments may be delayed. [20 U.S.C. Sec. 1414(3)(A)(ii); 34 C.F.R. Sec. 300.532(a)(1); Cal. Ed. Code Sec. 56320(b)(1); 5 C.C.R. Sec.3023.]
(2)  Testing and evaluation materials must be selected and administered so as not to be racially, culturally or sexually discriminatory. [20 U.S.C. Sec. 1414(3)(A)(i); 34 C.F.R. Sec. 300.532(a)(1); Cal. Ed. Code Sec. 56320(a).]

(3)  For students whose primary language is other than English, the IEP must include linguistically appropriate goals, objectives, programs and services. [Cal. Ed. Code Sec. 56345(b)(2).] Linguistically appropriate goals, objectives, and programs means: those activities which lead to the development of English language proficiency and those systems which meet the language development needs of the limited English language learner. For pupils whose primary language is other than English and whose potential for learning a second language, as determined by the IEP team, is severely limited, the IEP team may determine that instruction may be provided through an alternative program, which can include a program in the child’s primary language. In such a case, the IEP team would have to at least annually reconsider the individual’s ability to receive instruction in the English language. [5 C.C.R. Sec. 3001(s).]

(4)  IEP teams must consider special factors that also affect a student when developing the child’s IEP. One of those special factors is the language needs of a child with limited English proficiency. [34 C.F.R. Sec. 300.346(a)(2)(ii).] If an IEP team determines that sufficient progress toward a child’s IEP goals and objectives would not occur without certain services, such as bilingual instruction, this would be an example of the need to provide an alternative program as described above. Any such program should be specifically described in the IEP document.

42.  Are my child’s rights to a free, appropriate education affected if he 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 he is entitled to special education services. 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 INS 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. As discussed above, there are laws that require testing for a disability to take language and culture into consideration.

43. **Why is it important to know about bilingual education programs if my child is in special education programs?**

Bilingual programs should be coordinated with special education services. Bilingual services should not stop after the student qualifies for special education. Many students need both bilingual and special education services. Here are some points to remember:

1. Children must be tested in English upon enrollment. Then, the student is identified as either Limited English Proficient (LEP) or Fluent in English Proficiency (FEP).

2. LEP children are entitled to bilingual instruction, which teaches in the native language and also teaches English as a second language.

3. Special education staff and bilingual education staff both can provide instructional services, as appropriate. These services should be described specifically and included in the student’s IEP.

4. No bilingual student should be placed in special education solely because the student does not speak English. However, LEP students should receive appropriate special education services if needed.

For more information, contact the CDE, Language, Policy, and Leadership Office at (916) 657-2566.

44. **My child’s behavior problems are a major obstacle to her education. Is there anything that the school district must do to address my child’s behavioral needs?**

Yes. In May of 1993, the CDE issued regulations, which require school districts to assess special education students who demonstrate serious behavior problems and to then develop and implement a positive behavior intervention plan for each such student. The plan becomes part of the student’s IEP, has its own set of goals and benchmarks/objectives for replacement of targeted maladaptive behaviors with socially acceptable alternative behaviors, and is reviewed regularly for its effectiveness.

A serious behavior problem is one that is assaultive, self-injurious, causes serious property damage, or which is otherwise severe, pervasive, and maladaptive and has not been effectively addressed with instructional/behavioral approaches specified
in the IEP. Personnel trained in behavior analysis with an emphasis on positive behavior intervention must do the assessment, behavior intervention plan development, implementation, and monitoring.

The behavior interventions used by the district must be those which respect the student’s dignity and privacy, assure her physical freedom, social interaction, and individual choice, help the student learn to interact effectively socially, assure the student’s access to education in the least restrictive environment, and result in lasting positive behavioral change. The behavior interventions used by the district may never be used simply to eliminate maladaptive behaviors; behavior interventions may only be used to replace maladaptive behaviors with alternative acceptable behaviors.

In addition, the behavior interventions used by the district cannot involve the infliction of pain or trauma and cannot include verbal abuse, ridicule, humiliation, or the infliction of emotional trauma. Moreover, these behavior interventions cannot include denial of adequate sleep, food, water, shelter, bedding, comfort, or access to bathroom facilities. Nor can they include impediments to adequate supervision of the student. Also specifically prohibited, are interventions that involve locked seclusion, toxic or unpleasant sprays or mists released in or near the student’s face, deprivation of one or more of the student’s senses, and any device, material or object which simultaneously immobilizes all four extremities (except that in unanticipated emergency situations, prone containment may be used by trained staff for only that period of time necessary to abate the emergency).

IDEA requires that every student being suspended for a period in excess of 10 consecutive days is entitled to a behavioral assessment and a behavioral plan. For a detailed discussion of this subject see Chapter 8, Information on Discipline of Students with Disabilities.

45. **What is assistive technology under IDEA?**

An assistive technology 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 children with disabilities. [20 U.S.C. Sec. 1401(1); 34 C.F.R. Sec. 300.5.]

OSEP policy letters and state hearing decisions provide further clarification of the types of assistive services and devices that fall within the scope of IDEA’s mandate. Assistive devices that OSEP found to be within IDEA’s mandate include: Apple IIc computer; auditory training equipment; computer assistance;
computerized communication system; device for loading/unloading students from a bus; and a $7,000 liberator communication device.

Federal law specifically defines assistive technology services as any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. [20 U.S.C. Sec. 1401(2); 34 C.F.R. Sec. 300.6.] Assistive technology services include:

1. Evaluation of your child’s needs, including a functional evaluation of your child in her customary environment;
2. Purchasing, leasing, or otherwise providing for your child’s acquisition of assistive technology devices;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of 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 your child, or, where appropriate, your family; and
6. Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of your child. [20 U.S.C. Sec. 1401(2)(A-F); 34 C.F.R. Sec. 300.6.]

In addition, an IEP must consider whether a student with a disability requires assistive technology devices and services. [20 U.S.C. Sec. 1414(d)(3)(B)(v); 34 C.F.R. Sec. 300.346(a)(2)(v).]

46. My child attends a religious school. Can she receive related services from the public school system if she needs such services to benefit from education and the services are not available at the religious school?

Federal law gives limited rights to children placed in private schools unilaterally by their parents. The school district must provide for the participation of these students in the district’s special education programs. However, the amount of money spent on these students may be limited to only a proportionate share (based on the number of these students there are in the district) of the federal dollars
received by the district. Currently, only about 10% of the dollars required to provide special education are federal dollars. In a district with 1,000 children, 10 of whom are children with disabilities enrolled in private schools unilaterally by their parents, a district would only have to spend 1% of the 10% of its special education revenue on making provision for the participation of these 10 students in its special education programs. Services may be provided on the premises of private schools, even parochial schools “to the extent consistent with law.” [20 U.S.C. Sec. 1412(a)(10)(A)(i); 34 C.F.R. Sec. 300.450–300.462.]
Sample Letter - Referral for Special Education

Ms. Bev Blue
Address
City, State, Zip Code
Telephone Number

Date

Mr. Gary Green
Director of Special Education
Local Unified School District
Address
City, State, Zip Code

Dear Mr. Green:

I am the parent of John Blue, who is currently enrolled at the Regular Elementary School in the fifth grade. My child has not been doing well in school and I am concerned about his educational progress.

I am writing to make a referral for assessment for special education services for John, as required by 5 C.C.R. Sec. 3021(a). He may be eligible for special education assistance. I am requesting that John be given a comprehensive assessment by the school district and that an IEP meeting be scheduled for him. [Optional: As part of the assessment process, I also request that my child be assessed under Section 504 of the Rehabilitation Act of 1973 to determine whether he should be identified as “handicapped” pursuant to that law and to determine what, if any, accommodations might be required in his educational program in the event that he does not qualify for special education services or in addition to special education services. This is also to request that the Unified School District’s Section 504 Coordinator be present at the IEP meeting to discuss the results and recommendations of the Section 504 assessment.]

I look forward to receiving an assessment plan within 15 days. If you have any questions, please feel free to contact me. Thank you for your cooperation and assistance.

Sincerely,

Bev Blue
Sample Letter - Request for Records

Ms. Bev Blue
Address
City, State, Zip Code
Telephone Number

Date

Mr. Gary Green
Director of Special Education
Local Unified School District
Address
City, State, Zip Code

Dear Mr. Green:

I am the parent of John Blue, who is currently enrolled at the Regular Elementary School in the fifth grade. An IEP meeting has been scheduled for John on June 8. I would like to arrange a time to review my son’s educational records (both his special education file and cumulative file) at his school within the next five days, as required by Cal. Ed. Code Sec. 49069. I would like to make copies of some of his records at that time.

OR

I am writing to request that you provide copies of John’s educational records for my review within the next five days. I would like copies of both his cumulative file and his special education file. I cannot afford to pay for the copies of his records. I will call you soon to make arrangements for my school visit. (OR — Please send the records to my home address.) Thank you for your cooperation.

Sincerely,

Bev Blue
Time Lines for Assessment and IEP

Child Referred for Assessment

“Referral for assessment” means any written request for assessment to identify an individual with exceptional needs made by a parent, teacher, or other service provider.

Within 15 Calendar Days

District must Give Parent Proposed Assessment Plan

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

(1) Be in language easily understood by the general public.
(2) Be provided in the primary language of the parent or other mode of communication used by the parent, unless to do so is clearly not feasible.
(3) Explain each type of assessment instrument to be administered, the purpose of the instrument, and the professional personnel responsible for the administration and interpretation of the instrument.
(4) Fully explain the facts which make an assessment necessary or desirable.
(5) State that no educational placement will result from the assessment without the consent of the parent.
(6) Include a copy of the notice of parent rights which includes an explanation of all of the procedural safeguards of state and federal special education law and of any optional dispute resolution procedures under state law.

1 The 15 calendar days do not include days between the pupil’s regular school sessions or terms or days of school vacation in excess of five school days from the date of receipt of the referral. If a referral is made 10 days or less before the end of the regular school year or term, the school district must develop an assessment plan within 10 days after the next school year or term begins. [Cal. Ed. Code Sec. 56321.]
Parent must Give Written Consent to Conduct Assessments

Parent Has 15 Calendar Days to Arrive at a Decision

Written parental consent shall be obtained before any assessment of the student is conducted unless the public education agency prevails in a due process hearing relating to such assessment. The parent shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision. Assessment may begin immediately upon receipt of such consent.

Assessment Completed and IEP Developed

Within 50 Calendar Days of Receipt of Parent’s Written Consent for Assessment

It Is Expected That a Student’s IEP Will Be Implemented Immediately Following the IEP Meeting

Exceptions to the 50-day time limit would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances which require a short delay (for example, working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

If a parent does not consent to all the components of the IEP, then those components of the program to which the parent has consented shall be

2 An individualized education program shall be developed within a total time not to exceed 50 days, not counting days between school sessions or terms or days of school vacation in excess of five school days, from the date of receipt of the parent’s written consent for assessment, unless the parent agrees, in writing, to an extension. However, an individualized education program shall be developed within 30 days after the commencement of the subsequent regular school year for each student for whom a referral has been made 20 days or less prior to the end of the previous regular school year. In the situation of an initial referral to special education made 20 days or less prior to the end of the regular school year, the law does not begin counting the 50 days for assessment and development of the IEP from the date of receipt of the parent’s signed assessment plan but rather from the earlier date of the initial referral of the pupil to special education. [Cal. Ed. Code Sec. 56344.]
implemented so not to delay providing special education and related services to the child. [Cal. Ed. Code Sec. 56346(a).]

If the public education agency determines that the part of the proposed IEP to which the parent does not consent is necessary to provide a free and appropriate education to the child, they shall initiate a mediation conference or a due process hearing. While the mediation conference or due process hearing is pending, the child shall remain in his or her then-current placement, unless the parent and public education agency agree otherwise. [Cal Ed. Code Sec. 56346(b) and 56505(d).]