

# **El Dorado County Charter SELPA**

## **Procedural Guide**

**For**

## **Special Education**

**1st Edition**

(November, 2007)

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## **CHAPTER I**

### **IDENTIFICATION, ASSESSMENT,** **INSTRUCTIONAL PLANNING AND** **REVIEW PROCEDURES**

## **REFERRAL, ASSESSMENT AND PLACEMENT**

### **GENERAL TIMELINES**

1. **REFERRAL**- A referral may be initiated by a parent, teacher, student or other knowledgeable person. Procedures for handling referrals are to be determined in each Charter LEA.
2. **ASSESSMENT PLAN** - Within 15 calendar days of receiving the referral, an assessment plan is to be developed and a copy given to the parents. A copy of the **Notice of Parent Rights** shall be included with the assessment plan. For students currently enrolled in a special education program, an Individual Assessment Plan (IAP) will be developed any time a student is to be re-assessed.
3. **PARENT CONSENT** - No assessment shall be conducted unless the written consent of the parent is obtained. Parents have at least 15 days from receipt of the assessment plan to make a decision. Assessment may begin immediately upon receipt of consent.
4. **IEP TEAM**- Within 60 calendar days of receipt of the signed IAP, a team meeting is to be held and an individual education program developed for an eligible student. Parents are to be invited to all meetings regarding the educational program for their child.
5. **PROGRAM PLACEMENT**- Written parent permission must be obtained prior to placement. The recommended program placement and services should begin as soon as possible from the date of parent's written approval of the IEP.
6. **ANNUAL REVIEW** - Each special education pupil's educational program must be reviewed at least annually.
7. **RE-EVALUATION**- At least every 3 years, a special education student will be re-evaluated. Prior to the three year review, the IEP team shall review existing data on the child and determine what additional data is needed.
8. **INTERIM ADMINISTRATIVE PLACEMENTS** - When a special education student transfers from one SELPA to another, the following timelines apply:
  - **PROGRAM PLACEMENT**- Immediate implementation, to the extent possible, of the student's existing Individualized Education Program. An Interim Placement form is completed immediately upon enrollment and parent signature is obtained.
  - **ASSESSMENT**- Information, records and reports from the prior district may be utilized to make program recommendations. Upon receipt of the signed Individual Assessment Plan, the team will conduct any additional assessment needed to determine educational needs and make program recommendations.
  - **IEP TEAM MEETING**- Within 30 days, the IEP team will meet to review the placement, review any new completed assessments, and develop new goals and objectives if needed.



### **PRE-REFERRAL PROCESS**

1. Parents will be contacted whenever there is a concern about their child's progress.
2. Although a referral for special education assessment may be initiated by a parent, teacher, student or other knowledgeable person, current law requires that ***all options in the general program be tried before referral to special education***. These options may include, but are not limited to, the following:
  - Provide accommodations within the general education program
  - Provide research-based instructional strategies and interventions, including universal screening, "tiered" interventions, progress monitoring and problem solving teams within the general education program (Response to Intervention model).
  - Consultation with appropriate staff
  - Referral to alternative programs within the Charter LEA
  - Referral to professional and/or agencies outside of the Charter LEA
3. All options are to be explored by the general education staff prior to referral. The procedure to be followed when a student is first seen as having difficulty will be the responsibility of the general staff.
4. When all of the general education options have been implemented but have not met with success, the student may be referred for special education consideration.

### **REFERRAL PROCESS**

1. The specific procedures for handling referrals are to be determined in each Charter LEA; however, written documentation must be included in the referral that appropriate alternatives, accommodations and interventions have been implemented. (Written documentation should include but not be limited to the Referral Form located in the appendix of this chapter, or in the document library of SEIS.)
2. Referrals may be submitted by the following persons:
  - Student Study Team/Student Intervention Team comprised of teachers, specialists, etc.
  - Parents
  - Other service providers or knowledgeable persons
3. All referrals should be submitted to the pupil's Charter LEA of attendance. If the student is not of school age, the child shall be referred to the district of residence.
4. All referrals for special education and related services shall initiate the assessment process and shall be documented. When a verbal referral is made, staff of the Charter LEA or Charter Special Educational Local Plan Area (SELPA)

shall assist the individual in making a written request for assessment for special education.

5. Upon receipt of a referral, the administrator/designee must initiate one of the following actions:
  - If referral information is incomplete, contact the referral source and request additional information in order to process the referral in a timely manner.
  - If referral is complete, then take one of the following actions:
    - a. Charter LEA personnel will notify the parent that a referral was made, develop an IAP, and deliver the completed plan to the parents within **15 calendar days** from receipt of the referral.
    - b. If the referral is determined to be inappropriate, a meeting will be scheduled with parents and referring party to address their educational concerns and review the purpose and scope of Special Education. In the event the parents do not wish to meet, the Charter LEA must respond in writing with a **prior written notice** explaining why the request for assessment is not being accepted and processed.

**NOTE:** A parent's referral for special education must receive a prompt response in writing.

#### **INTERIM ADMINISTRATIVE PLACEMENTS**

1. Whenever a special education student transfers from one SELPA to another, the following shall occur:
  - The necessary paperwork is completed and signed. (See Interim Placement Form in the appendix to this chapter.)
  - The student's existing IEP is implemented to the extent possible.
  - An appropriate Individual Assessment Plan (IAP) is developed if needed.
  - Assessment is completed and an IEP is held to review the placement within 30 days.
2. Current information, records and reports from the prior district will be reviewed and utilized to make recommendations. Any additional assessment needed to determine educational needs and make program recommendations will be conducted prior to the IEP.

#### **INDIVIDUAL ASSESSMENT PLAN (IAP)**

1. An IAP will be developed within 15 calendar days of receipt of referral for special education and shall:
  - Be individualized to reflect the unique concerns and strengths of each student.

- Be provided in the primary language of the parent or another mode of communication used by the parent, unless to do so is clearly not feasible.
  - Provide an explanation of 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.
  - State that no educational placement will result from the assessment without the consent of the parent.
2. A copy of the notice of Parental Rights and Procedural Safeguards for Special Education shall be attached to the IAP. (See appendix to this chapter for a copy of the IAP and the Parental Rights and Procedural Safeguards for Special Education.)
  3. No assessment shall be conducted unless the written consent of the parent is obtained prior to the evaluation. Assessment may begin immediately upon receipt of such consent.
  4. The parent shall have at least 15 calendar days from the receipt of the proposed IAP to arrive at a decision.
  5. If a parent is not identified or the location of the parent is unknown, a surrogate parent must be appointed to represent the individual with exceptional needs.  
**See Chapter I Appendix for specific policies and procedures regarding surrogate parents.**

**NOTE: Personal contact with the parents is strongly recommended to explain the process and forms.**

### **ASSESSMENT**

1. The assessment will be completed and an IEPT meeting held to review the results of the assessment within **60 calendar days** from the **date of receipt** of the parent's written consent for assessment. The 60 day timeline does not include days between the pupil's regular school sessions, terms, or days of school vacation **in excess of five school days**.
2. Assessments must address all areas related to the suspected disability and be conducted by a multidisciplinary team, including the parent. The following areas shall be considered where appropriate:
 

* health and development	* vision, including low vision
* hearing	* motor abilities
* language function	* general ability
* academic performance	* self help
* orientation and mobility	* career and vocational abilities/interests
* social and emotional status	* developmental history

3. For pupils with suspected learning disabilities or behavior disorders, at least one member of the assessment team, other than the child's general teacher, shall observe the child's performance in the general classroom setting and document the observation.
4. The Charter LEA nurse will be the school's liaison with the pupil's primary health provider unless the assessment plan specifies otherwise.
5. All pupils being assessed for initial and three year reviews shall be screened in the areas of hearing and vision, unless parent consent is denied.
6. All pupils continuing to fail a threshold hearing test shall be assessed by appropriately trained personnel for hearing.
7. For pupils who have been medically diagnosed with a chronic illness or acute health problem, relevant information shall be included within the assessment and reviewed by the IEPT.
8. No single procedure is used as the sole criterion for determining an appropriate educational program for an individual with exceptional needs.
9. Under certain conditions, parents have the right to obtain an independent outside assessment at public expense. If a parent disagrees with an assessment obtained or conducted by the Charter LEA, the Charter LEA may:
  - offer to obtain another assessment from a professional within the Charter SELPA.
  - obtain an independent educational assessment.
  - initiate due process to show its assessment was proper.

**Note: See Appendix to Chapter I for information on Independent Educational Evaluations.**

### **TEST SELECTION AND ADMINISTRATION**

1. Testing and assessment materials and procedures used for the purpose of assessment and placement of individuals with exceptional needs are selected and administered so as not be to racially, culturally or sexually discriminatory.
2. Tests and other assessment materials must meet all of the following requirements:
  - Are provided and administered in the pupil's native language or other mode of communication, unless the IAP indicates reasons why such provision and administration are not feasible.
  - Have been validated for the specific purpose for which they are used.
  - Are administered by trained personnel in conformance with the instructions provided by the producer of such tests and other assessment materials.
  - Do not violate State Department of Education directives, including but not limited to judgment rendered in the Larry P. case.\*

\*In order to comply with the Larry P. directive from the State Department of Education, the ethnicity of each student shall be recorded on the IAP by the parent. If there is any question regarding the ethnicity of the child as it has been recorded on the form, the case manager may discuss the situation with the parent for clarification purposes. In all cases, the parents determine the ethnicity of their child.

A test of intelligence, often called an I.Q. test, is the method used to measure intellectual ability, and such a test normally would be given as part of this assessment. However, a directive of the State Superintendent of Public Instruction by an order of a federal court prohibits the use of I.Q. tests in any special education evaluation of an African American student. In all cases where standardized assessment is not permitted or is judged to be inappropriate, alternative measures will be used in accordance with recommendations set forth by the California Association of School Psychologists and will be documented on the student's IEP.

Federal Regulations and California Education Code require a pupil's intellectual ability be established in order to determine if a severe discrepancy exists between intellectual ability and academic achievement when a specific learning disability is suspected. The State of California, however, is in a transition period awaiting regulations that will clarify how RtI (Response to Intervention) will be utilized in the identification of students with a specific learning disability. Therefore, Charter LEA personnel should incorporate both discrepancy and RtI models in order to establish a specific learning disability, and use caution in using this eligibility category without exhausting all general education interventions.

### **ASSESSMENT REPORTS**

1. The assessment reports **shall** include, but not be limited to the following:
  - The student's present level of educational performance.
  - The relevant behavior noted during the observation of the student in an appropriate setting.
  - The relationship of that behavior to the student's academic and social functioning.
  - The educationally relevant medical findings, if any.
  - Whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services.
  - A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate.
  - How the student's disability affects involvement and progress in the general curriculum.
  - What is the student's historical and current functioning in the general education curriculum regardless of the setting?

- What deficits in the student's cognitive functioning, communicative functioning, social/emotional functioning and physical functioning might serve as a barrier to their successful involvement in the general education curriculum?
- What has been the impact of the student's attendance on his/her achievement?

### **PARENT PARTICIPATION**

1. Parents are specifically included as members of the IEP team, and all efforts should be made to ensure their participation.
2. Parent concerns regarding their son's or daughter's educational progress shall be noted and documented on the IEP.
3. In addition, information and reports submitted by the parents, including the results of independent assessments, must be considered by the IEP team. (See appendix at the end of this chapter for a copy of the Parent Information Request.)

### **INDIVIDUALIZED EDUCATION PROGRAM TEAM (IEPT) MEETING**

**(Copies of all IEP forms may be accessed on the [seis.org](http://seis.org) website.)**

#### **A. PARENT NOTIFICATION**

1. After the assessment has been completed, the parent must be notified and informed that an IEP Team meeting, including the parent and his or her representative, will be scheduled.
  - Parents are to be given sufficient written notice of the meeting so that they can attend. (See appendix at the end of this chapter.)
  - Scheduling should occur at a mutually agreed upon time and place.
  - The notice will indicate the purpose, time, and location of the meeting, and who will attend.
  - The Charter LEA will arrange for an interpreter if necessary.
2. In addition, it is the responsibility of the case manager to notify all appropriate IEPT members in a timely fashion to ensure their participation.
3. It should be noted that parents, Charter LEAs, and the SELPA are authorized to electronically record IEP meetings **with 24 hours notice to the IEP team**. If the recording is at the request of the Charter LEA or the SELPA, and the parent objects or refuses to attend the meeting because it will be recorded, then the meeting shall not be recorded.

## **B. IEP TEAM MEMBERSHIP**

1. Required membership of the IEP Team for purposes of developing, revising or reviewing the IEP, determining eligibility, and/or recommending placement for any pupil shall be:
  - An administrator or a designee (other than the student's teacher) who is knowledgeable of program options appropriate for the student. This person must be able to make decisions and allocate resources.
  - The student's current general education teacher. (If the student does not have a general education teacher, the teacher with the most recent and complete knowledge of the child shall attend. If no such teacher is available, a general classroom teacher qualified to teach a student of his or her age shall attend.)
  - At least one special education teacher.
  - One or both of the student's parents, an individual selected by the parent, or both.
2. When appropriate, the IEP team will also include:
  - The student.
  - Other persons who possess expertise or knowledge necessary for the development of the IEP.
  - The person(s) who conducted an assessment or who is knowledgeable about the assessment procedures used, and is familiar with the results of the assessment.
  - For students with suspected learning disabilities, at least one member of the IEP team, other than the student's general teacher, shall be a person who has observed the student's educational performance in an appropriate setting.
  - IDEA 2004 allows for the excusal of IEP team members. Follow all necessary steps and use only when absolutely necessary. (See Excusal Form in SEIS.)
3. Expanded Membership
  - When a student needs special education services for more than 50% of the school day and/or is changing from a less restrictive to a more restrictive setting, the IEP team shall include a person who is knowledgeable of the full range of program options available within the Charter LEA.
  - When an IEP team, after reviewing assessment results, determines that a child is emotionally disturbed and residential placement is recommended, the IEP team expands to include a representative of the county mental health department. A referral to County Mental Health is made through a "26.5 Referral". County Mental Health will assess and determine if the student is eligible for CMH services. The IEP will be reviewed by the IEP team, including the mental health representative, at least every six months.

4. An expanded membership meeting will also be held when transition services are under consideration.

### C. AGENDA

It is essential that a well organized and structured IEP Team meeting be conducted. The agenda which follows is recommended as a guide for conducting IEP Team meetings. Depending on the purpose of the meeting, the agenda may be amended. Efforts should be made to present information in a manner that is easily understood by all members of the IEP team, including the parents. ***(The most recent State Template IEP Manual is available in the document library of SEIS. Specific instructions for completing the IEP forms is available in this document. Check periodically for updates from the State SELPA organization.)***

#### Part I

- ***Introduction of All Persons Present*** (Record names of attendees in meeting notes.)
- ***Purpose:*** Chairperson should briefly review the purpose of the meeting.
- ***Parents' Rights:***
  - a. Verify that parents received a notice of Parental Rights and Procedural Safeguards when approval for assessment was obtained.
  - b. Chairperson may ask if any further clarification is desired, or if parents have any questions regarding their rights and procedural safeguards.
  - c. At an initial IEP and at the three year review, a complete parent folder should be offered.
  - d. Complete Family Information Checklist and obtain parents' signatures.
- ***History of the Case:*** Chairperson or designee should provide a short, pertinent history of the case, including program modifications attempted, and the student's historical and current functioning in the General Education Curriculum. Parents should have an opportunity to share their concerns and provide relevant information to the team.
- ***Review of Information:***
  - a. The IEP team shall review existing data on the child including:
    - ✓ evaluations and information provided by the parents of the child
    - ✓ current classroom-based assessments and observations
    - ✓ teacher and related services providers observation
  - b. Individuals who participated in the assessment process, or individuals qualified to interpret results should report on the assessment conducted.
  - c. Assessment reports should be restricted to relevant, functional information, and should avoid subjective observations and interpretations.



- d. The assessment reports should contain information that will assist the IEP team in determining whether the pupil has a specific disability, and shall establish the basis for making the determination.
- e. Discuss all assessments and document levels of performance on the IEP.
- ***Determine Eligibility:***
  - a. If the Team determines that the student is not eligible for special education services, document on the IEP form that “assessment results indicate that special education services are not appropriate at this time” and check the box on the form indicating “not eligible”.
  - b. If further assessment is needed to clarify eligibility, the IEP team meeting may be suspended pending further testing or evaluation, but reconvened as soon as possible.
  - c. If the student is not eligible for Special Education services, but educational concerns are present, the IEP team meeting should be concluded. **Adjourn the meeting at this time.** Then general education support options should be explored, including referral to the Student Study Team for consideration of 504 accommodations.
  - d. If the student is determined by the IEP Team to be eligible for Special Education, proceed with **Part II** of the IEP meeting agenda.

## **Part II**

- ***Develop the Individualized Education Program (IEP), including the Individual Transition Plan (ITP) for students age 16 and over.***
  - a. Identify needs based on the current evaluation and include:
    - ✓ Student needs related to involvement and progress in the general education curriculum (academic needs).
    - ✓ Other educational needs that result from the disability.
    - ✓ Transition needs for students age 16 and over.
    - ✓ If the student is identified as Limited English Proficient (LEP), the language needs of the student have been considered and noted on the IEP.
    - ✓ If the student is legally blind or visually impaired, instruction is provided in Braille OR the IEP team documents why instruction in Braille is not appropriate.
  - b. Establish Goals and Short Term Objectives: Include a statement of each measurable annual goal, including academic and functional goals, designed to do the following:
    - ✓ Meet the individual’s needs that result from the individual’s disability in order to enable the pupil to be involved in and make progress in the general curriculum.

- ✓ Meet each of the pupil's other educational needs that result from the individual's disability.
  - ✓ At annual and three year reviews, IEP teams must address the previous year's goals and objectives and note on the document whether goals were met. If previous goals were not met, document action to be taken (i.e. continue, discontinue or modify).
  - ✓ Short-term objectives are no longer required for students who are receiving accommodations only in the general education curriculum.
- c. Recommend Services Needed:
- ✓ The IEP team shall develop a list of services and/or equipment necessary to achieve the annual goals developed. Frequency, duration and location of services to be provided must be specified on the IEP. Frequency of service may reflect a range of time or sessions to allow for scheduling variability.
- d. Consider Program Alternatives:
- ✓ In considering program alternatives, the IEP team shall make recommendations based on the individual needs of the student and not on the category under which the student is determined to be eligible for Special Education (not based on label but on needs).
  - ✓ To the maximum extent appropriate, children with disabilities should be educated with children who are not disabled. The IEP team shall consider the full continuum of program options to ensure that all students are provided a free appropriate public education in the Least Restrictive Environment (LRE) and document options considered on the IEP.
  - ✓ After reviewing all program options, the IEP team shall recommend appropriate specialized academic instruction and services, calculated to offer the student's the opportunity to achieve educational benefit.
- e. Sign Appropriate Forms
- ✓ All IEP Team members, including parents and student (when student is in attendance) sign the IEP. If parents consent to the IEP and placement of their child, they will so note and sign the IEP document.
  - ✓ If the parent does not consent to all components of the IEP, then those components of the program to which the parents has consented may be implemented so as not to delay providing instruction and services to the student. The parent should be informed of their Due Process rights. (Refer to Section IV of this document for Due Process Guidelines).
- f. Distribute completed forms to appropriate individuals.

### **ANNUAL AND OTHER REVIEWS**

1. The IEP and placement of individuals in special education shall be scheduled for review by a Team at least once a year (determined by the month/day of the initial or annual IEP).
2. For emotionally disturbed students in residential placements, the IEP review and reassessment shall be conducted after six months in accordance with state law.
3. In addition, a parent may request that an IEP review be conducted at any time. When the case manager receives such a request (preferably in writing), an IEP must be held within 30 days.
4. It is appropriate to hold an IEP review if the student is not making sufficient progress towards goals and objectives.
5. Parents and members of the IEP Team must be notified by established notification procedures. The IEP team may:
  - Modify the IEP or program, including the provision of Designated Instructional Services (D.I.S.) and other support services
  - Recommend continuation of current placement.

### **THREE YEAR RE-EVALUATIONS (TRIENNIAL REVIEWS)**

1. Under IDEA, 2004, **re-evaluating a student at least every three years is still required** (date determined by the month/day of the initial or latest re-evaluation).
2. As part of this re-evaluation, the IEP Team shall review existing evaluation data, including evaluations and information provided by the parents of the student, current classroom-based assessments and observations, and teacher and related service providers' observations.
3. On the basis of that review and input from the student's parents, the IEP team must identify what additional information is needed to establish the present levels of performance and determine the educational needs of the student and to determine if the student:
  - continues to have a disability.
  - continues to need special education and related services.
  - requires any additions or modifications to the educational program in order to meet his/her annual goals and participate in the general curriculum.
4. Assessment is required in the following situations:
  - On parent request. (Document on Individual Assessment Plan)
  - When dismissal from special education is being considered.
  - When dismissal from a specific designated instruction service is to be terminated.

- When the student has less than two consistent I.Q. tests.
- OR**
- Students older than twelve who have not had one **valid** I.Q. test.
  - If there is reason to believe that there may be significant disagreement over any IEP issues.
5. Procedures for Triennial Review:
- The Case Manager will gather input from IEPT members and document on the Triennial Reassessment Worksheet. (See appendix at the end of this chapter.)
  - The IEPT shall discuss the need for a triennial assessment based on the information documented on the worksheet. This discussion can take place at:
    - a. The annual IEP prior to the three year evaluation IEP meeting
- OR**
- b. At a separate meeting convened either in person or by phone
- OR**
- c. By other informal methods used to gather input from IEPT members.

**(NOTE: A formal IEP meeting is not required to make this decision, unless requested by the parent, or agreement can't be reached.)**

- The assessment decision shall be documented by attaching the Triennial Reassessment Worksheet to the most current IEP.
- The Individual Assessment Plan will reflect the decisions documented on the Triennial Reassessment Worksheet. (If no further assessment is needed, an attached parent letter may be used to confirm this decision with parents).

## **Appendix to Chapter I**

## **SURROGATE PARENT PROCEDURES**

### **1. DEFINITION OF PARENT**

A parent is defined (34CFR §300.30) as:

- A natural or adoptive parent of a child
- A guardian but not the State if the child is a ward of the State
- A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare)
- An adult who has been appointed as a surrogate parent
- A foster parent if the natural parents' authority to make educational decisions on the child's behalf has been specifically limited by court order in accordance with subsection (b) of Section 300.30 of Title 34 of the Code of Federal Regulations.

### **2. RESPONSIBILITIES OF SURROGATE PARENTS**

- Represents an individual with exceptional needs (IWEN) regarding:
  - a. Identification
  - b. Assessment
  - c. Instructional Planning and Development
  - d. Educational Placement
  - e. Reviewing and Revising the IEP
  - f. Other matters related to a free and appropriate education
- Serves as the child's parent and has parental rights relative to the child's education under Title 20 (beginning with Section 1400) of the U.S. Code and part 300 of the Code of Federal Regulations.
- Is culturally sensitive to the needs of the child.

### **3. SURROGATE PARENT APPOINTMENT BY LOCAL EDUCATIONAL AGENCY**

- This appointment occurs when:
  - a. Child has been named a ward of the court and the parent/guardian has been denied the right to make educational decisions for the child.
  - b. No parent can be identified.
  - c. The location of the parent is unknown.
  - d. Adult student is a ward of the court and has been found to be incompetent.
  - e. Individual has no conflict of interest in representing the child (conflict of interest means interests that would restrict or bias the ability to freely advocate for all required student services- i.e. Section 56026 of the Education Code).

**4. PERSONS, OTHER THAN THOSE WITH CONFLICT OF INTEREST, WHO MAY SERVE AS SURROGATE INCLUDE, BUT ARE NOT LIMITED TO:**

- Foster care providers
- Retired teachers
- Social workers
- Probation officer not employed by child's Charter LEA or home.

**5. SURROGATE PARENT SAFEGUARDS:**

- A Surrogate Parent is held harmless by the State of California during execution of duties except when actions are found to be wanton, reckless or malicious.
- It is the practice in the El Dorado County Charter Consortium SELPA to offer regular training to potential Surrogate Parents regarding the IEP process. A list of Surrogate parents who have participated in this training is available to the Charter LEAs in the El Dorado County Charter Consortium SELPA. A Surrogate Parent Authorization form is available in the SELPA office.

## **INDEPENDENT EDUCATIONAL EVALUATIONS**

### **Policy, Procedures and Evaluator Criteria**

#### **POLICY**

##### **An Overview:**

The El Dorado County Charter Special Education Local Plan Area ("SELPA") has developed this Policy, corresponding Procedures and Criteria which govern independent educational evaluations. For purposes of this policy, the term "SELPA" also includes the appropriate Charter School LEA and/or administrative unit responsible for your child's education. Parents should be sure to read the entire document carefully. The Policy, Procedures and Criteria are intended to be read in conjunction with one another as one comprehensive document. Parents who need additional information about independent educational evaluations should contact the Director of the Charter Consortium SELPA at (530) 295-2228.

##### **Notice to Parents:**

- Before obtaining an independent educational assessment, please contact the special education administrator to discuss your assessment questions and options.
- The Charter LEA/SELPA will not automatically reimburse parents who unilaterally obtain independent educational assessments. Please review this document for further information about a parent's right to obtain independent assessments at public expense.
- An independent educational evaluation, if not obtained in accordance with SELPA's policy, procedures and criteria, may not be considered by your child's IEP team. Please ensure that any independent educational evaluation conforms to SELPA requirements.
- Upon parent request for an independent educational evaluation, the SELPA will provide the parents with a copy of its policy, procedures and criteria for independent educational evaluations.

##### **Definitions:**

"Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the responsible local educational agency.

"Public expense" means that the Charter LEA either pays for the full cost of the evaluation or evaluation components or ensures that the evaluation or evaluation components are otherwise provided at no cost to the parent.



### **Request for Charter LEA/SELPA Evaluation:**

Parents of students receiving special education services, or suspected of having a disability requiring special education services, may request that the El Dorado County Charter Consortium Special Education Local Plan Area ("Charter LEA/SELPA") complete an evaluation or reevaluation of their child at any time. The Charter LEA/SELPA will respond to such requests by either initiating the special education evaluation process or, if an assessment is not needed, parents will receive written notice of refusal to evaluate and be informed of the procedural safeguards available to parents and students. All requests for an independent educational evaluation will be handled in accordance with the Charter LEA/SELPA's Independent Educational Evaluation Policy, Procedures and Criteria.

### **PROCEDURES**

#### **Parameters for seeking Independent Educational Evaluation:**

If a parent disagrees with an evaluation by the Charter LEA and seeks an independent educational evaluation at public expense, the Charter LEA will either A) initiate a due process hearing to show that its evaluation is appropriate, or B) will provide the parent an opportunity to obtain an independent educational evaluation in accordance with this policy by arranging for the independent educational evaluation. The SELPA requires that the parent first inform the Charter LEA in writing or document at an IEP meeting that the parent:

- Disagrees with Charter LEA/SELPA's evaluation; and
- Is requesting an independent educational evaluation at public expense.

#### **Explanation of Disagreement:**

If parents request an independent educational evaluation at the expense of the Charter LEA, the parents will be asked to explain why they object to the Charter LEA's evaluation. The explanation by the parent is not required. In addition, the Charter LEA may not unreasonably delay completion of a new assessment, completion of the independent educational evaluation at public expense, or the initiation of due process hearing to defend its evaluation.

#### **Notification of Appropriate Special Education Director and SELPA Director:**

If parents request an independent educational evaluation at public expense following the parameters listed above, the appropriate Special Education Director and SELPA Director must be notified. The Charter LEA/SELPA's evaluation will be reviewed with the parents to identify any areas of disagreement. Parents will be provided a copy of the policy, procedures and criteria for independent educational evaluations. Following discussion with

the parents, the Charter LEA/SELPA will, without unnecessary delay, either A) file for due process hearing; or B) offer the parent an alternative examiner which will include one of the following:

- A staff member from another school;
- A staff member from another LEA in the SELPA;
- A staff member from another SELPA; or
- A private sector provider.

If an IEE at public expense is deemed appropriate, the Charter LEA will arrange for the alternative evaluator, contract with an independent examiner, or otherwise ensure that an independent educational evaluation is provided.

If the Charter LEA/SELPA proceeds with consideration of the independent educational evaluation for payment, the Charter LEA/SELPA criteria for the locations of the evaluator(s), the minimum qualifications of the evaluator(s), the costs of the evaluation and the use of approved assessment instruments must be met.

If the Charter LEA initiates a due process hearing and the final decision is that the Charter LEA's evaluation is appropriate, the parents still have the right to an independent educational evaluation, but not at public expense.

#### **El Dorado County SELPA's Requirements for Independent Educational Evaluations:**

If the Charter LEA/SELPA agrees to pay for an independent evaluation at public expense, an evaluation plan will be developed which specifies those areas to be evaluated and who will complete each assessment. The assessment(s) completed will comply with all requirements as set out in the Criteria for Independent Educational Evaluation (See below). As a part of the evaluation, the examiner shall follow requirements for Charter LEA/SELPA evaluations which include, but are not limited to:

- The independent examiner must observe the student in an appropriate setting;
- The independent examiner shall attend the IEP team meeting by phone or in person at which time the evaluation will be discussed. The Charter LEA/SELPA will pay the independent examiner to attend the IEP team meeting as part of the evaluation responsibilities;
- The independent examiner must conduct a classroom visitation;
- The independent examiner must conduct interviews with parents and staff; and
- Parents will be required to sign consent to reevaluate and appropriate releases to exchange information between the independent educational evaluator(s) and the Charter LEA/SELPA as a condition of the Charter LEA/SELPA's agreement to pay and provide for an independent evaluation.

It is the responsibility of the Charter LEA/ SELPA to make arrangements for a new evaluation, or contract with a qualified independent examiner who is able to provide a written report for an IEP meeting, within 60 days of the date of contracting for an evaluation. If the selected evaluator cannot meet the timeline, the SELPA will inform the parent and ask for agreement to an extension of time.

#### **Release of Assessment Information and Results:**

As part of the contracted evaluation, independent evaluators must agree to release their assessment information and results directly to the Charter LEA/SELPA and parents at least one week prior to the scheduled IEP Team meeting. All reports must be received prior to any payment for services.

#### **Consideration of the Independent Educational Evaluation:**

Independent educational evaluations are designed to determine the educational needs of disabled students. The IEP Team is responsible for determining placements and services. Therefore, the IEP Team will consider recommendations obtained in independent educational evaluations completed in accordance with this IEE policy and its implementing procedures and criteria. However, independent educational evaluations will not control the IEP Team's determinations and (may not be considered if not completed by a qualified professional) as determined by SELPA policy.

### **PARENT INITIATED EVALUATIONS:**

#### **Parent Notification of Intent:**

Parents are requested but are not required to notify the special education department prior to obtaining an independent educational evaluation. However, if parents obtain an independent educational evaluation and the Charter LEA/SELPA demonstrates through a due process hearing that the evaluation completed by the Charter LEA/SELPA was appropriate or that the parents' evaluation did not meet Charter LEA/SELPA criteria, the parents will not be reimbursed for the cost of the evaluation. If the independent evaluation obtained by the parents meets the Charter LEA/SELPA criteria,

- It must be considered in any decision made with respect to the provisions of FAPE to the student; and
- It may be presented as evidence at a due process hearing regarding that student.

However, independent educational evaluations will not control the Charter LEA's decisions and may not even be considered if not completed by a qualified professional, as determined by the Charter LEA.

### **Parent Request for Payment of Completed Independent Educational Evaluation:**

When parents are requesting payment for an independent educational evaluation that has already been completed, the administrator of special education programs must be notified. Parents will be provided a copy of the Charter LEA/SELPA policy, procedures and criteria for independent educational evaluations. A determination will be made as to whether the Charter LEA/SELPA will initiate due process to establish the appropriateness of its evaluation or proceed with consideration of the Charter LEA/SELPA's obligation for payment of the independent evaluation. The Charter LEA/SELPA's evaluation and independent educational evaluation will be reviewed with the parents to identify those areas of disagreement.

### **Time Limitations:**

The parents must request payment for the independent educational evaluation within one calendar year of the date the results of the Charter LEA/SELPA's evaluation were shared with parents.

### **EVALUATIONS ORDERED BY HEARING OFFICERS:**

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at the Charter LEA's expense. All requirements as described in this document will be met.

### **CIRCUMSTANCES RESULTING IN EVALUATIONS NOT FUNDED BY EL DORADO COUNTY CHARTER SELPA:**

Because the parent must first disagree with the Charter LEA's evaluation in writing or document through the IEP, the Charter LEA/SELPA does not have an obligation to reimburse parents for privately obtained evaluations obtained prior to the date that the Charter LEA/SELPA's evaluation is completed and discussed at an IEP team meeting. The Charter LEA/SELPA is not obligated to reimburse parents for privately obtained evaluations if the parent disagrees with the Charter LEA/SELPA's evaluation and independently seeks a private evaluation without first notifying the Charter LEA/SELPA in writing of their disagreement with the Charter LEA/SELPA's assessment and requesting an independent educational evaluation from the Charter LEA/SELPA except as provided below.

### **CIRCUMSTANCES RESULTING IN PRIVATELY OBTAINED EVALUATIONS REIMBURSED BY THE EL DORADO COUNTY CHARTER SELPA:**

The Charter LEA/SELPA may reimburse parents for a privately obtained independent educational evaluation even though the policy above was not followed in any one of the following two circumstances:

- Charter LEA/SELPA's assessment has not been provided in compliance with the law.
- The privately obtained evaluation assessed the student in an area of suspected disability which was not previously assessed by the Charter LEA/SELPA and the Charter LEA/SELPA agrees that this was an area of disability in which assessments should have occurred.

Reimbursement will be in accordance with the El Dorado County SELPA policy, procedures and criteria and in an amount no greater than the actual cost to the parents.

In all cases, if the Charter LEA initiates a due process hearing to show that the Charter LEA/SELPA's evaluation is appropriate, no reimbursement shall be made unless ordered by a Hearing Officer.

<i>Legal Authority</i>	<i>20 U.S.C. 1414(a)(1)(A) - Evaluations and re-evaluations</i> <i>20 U.S.C. 1415(b)(1) - Right to independent educational evaluations</i> <i>34 CFR 300.321 - Re-evaluations</i> <i>34 CFR 300.502 - Independent Educational Evaluations</i> <i>Comments to 34 CFR 300.502 Independent Educational Evaluations</i> <i>20 U.S.C. Section 1415(b)(1)</i> <i>Education Code Section 56327</i> <i>34 CFR 300.505 - Parent Consent - Evaluation</i> <i>34 CFR 300.530.536 - Procedures for Evaluation and Determination of</i>
<i>Eligibility</i>	<i>34 CFR 300.537 - Re-evaluations</i> <i>Education Code 56329 - Independent Educational Assessments</i> <i>Education Code 56381 - Reassessments</i>

### **LIMITATIONS FOR EVALUATORS**

Costs beyond the evaluation (i.e., food, lodging, transportation, etc.) are not covered in the cost of the independent evaluation.

### **MINIMUM QUALIFICATIONS FOR EVALUATORS**

All assessments must be conducted by persons competent to perform the assessment as determined by the Charter LEA/SELPA (E.C. 56322). All assessments must be conducted in accordance with all requirements of Federal and State law including, but not limited to, observing the student in the appropriate setting (Education Code section 56327) and conducting evaluations in accordance with Education Code section 56320. Evaluators with credentials other than those listed below will not be approved.

**Type of Assessment**

Academic Achievement

Adaptive Behavior

Assistive Technology

Auditory Acuity

Auditory Perception (CAP)

**Qualifications**

Certified Special Education Teacher,  
Licensed Educational Psychologist, or  
School Psychologist (Credentialed)

Licensed Educational Psychologist,  
Certified Special Education Teacher,  
School Psychologist (Credentialed),  
Certified Behavior Specialist

Certified Speech/Language Pathologist, or  
Certified Special Education Teacher  
Certified Assistive Technology Specialist

Licensed or Certified Audiologist

Licensed or Certified Audiologist,  
Certified Speech/Language Pathologist, School  
Psychologist (Credentialed)

**Type of Assessment**

Cognitive

Health

Motor

Speech and Language

Neuropsychological

Social / Emotional / Behavioral

**Qualifications**

Licensed Educational Psychologist,  
School Psychologist (Credentialed)

Certificated School Nurse,  
Licensed Public Health Nurse,  
Licensed Physician

Licensed Physical Therapist,  
Registered Occupational Therapist,  
Adapted Physical Education Specialist  
(Credentialed)

Certificated Speech/Language Pathologist

Board Certified Neuropsychologist

School Psychologist (Credentialed),  
Social Worker (LCSW or MSW),  
Licensed Psychiatrist, or  
Licensed Educational Psychologist,  
Certified Behavioral Analyst

Functional Vision

Certificated Teacher of the Visually Impaired

Visual-Motor Integration

School Psychologist (Credentialed),  
Licensed Educational Psychologist,  
Occupational Therapist, certified

When insurance will cover all or part of the costs of the independent evaluation, the Charter LEA/SELPA will request that the parents voluntarily have their insurance pay the independent evaluation costs covered by their insurance; however, parents will not be asked to have insurance cover independent evaluation costs if such action would result in a financial cost to the parents not reimbursed by the Charter LEA/SELPA, including, but not limited to the following:

- A decrease in available lifetime coverage or any other benefit under an insurance policy;
- An increase in premiums or the discontinuance of the policy; or
- An out-of-pocket expense such as payment of a deductible amount incurred in filing a claim.

Independent evaluators must agree to release their assessment information, including protocols, and results to the Charter LEA/SELPA prior to receipt of payment for services. The results of the independent evaluation will be considered in the diagnosis, program decisions, and placement of the student with disabilities as required by the Individuals with Disabilities Education Act and/or Section 504 of the Rehabilitation Act of 1973.

### **SOURCES OF INDEPENDENT EVALUATION BY AREA OF ASSESSMENT**

The following is a non-exclusive list of public agencies and private individuals who the Charter LEA/SELPA has determined are qualified in their respective areas of assessment. The Charter LEA/SELPA does not specifically endorse any listed agencies or individuals. Other agencies and individuals will be considered if they meet Charter LEA/SELPA criteria. The Charter LEA/SELPA may use these or other providers to obtain IEE at public expense:

#### **Area of Assessment**

Academic Achievement,  
Adaptive Behavior and  
Cognitive

#### **Source**

Diagnostic Center of Northern California, California  
Department of Education;  
Alta California Regional Center

Assistive Technology

Center for Accessible Technology ([www.cforat.org](http://www.cforat.org));  
Partnership for Augmented Communication and  
Technology (Catherine Simentelli, 415-519-3128);  
Nettie Fischer, Assistive Technology Practitioner:  
(916-686-1860

Auditory Acuity and Central Auditory Processing (CAP)	Sutter Speech and Hearing
Health (including Neurological)	Shriner's Hospital
Motor	
Speech and Language	Diagnostic Center of Northern California; Sutter Speech and Hearing
Social / Emotional / Behavioral	Diagnostic Center of Northern California
Functional Vision	Berkeley School of Optometry

### **Approved Test Instruments**

Test instruments as listed on the El Dorado County Charter Consortium SELPA's Individual Assessment Plan are approved for use in all Independent Educational Evaluations. Other assessment instruments will be considered if they otherwise meet the Charter LEA/SELPA criteria. The Charter LEA/SELPA may use the instruments on the assessment plan or other assessment tools to provide an IEE at public expense.

### **IEP Forms**

The basic IEP forms may be found at [www.seis.org](http://www.seis.org). The State Template is updated on a regular basis. The most recent forms will be found there. IEPs for students who qualify for services shall include but not be limited to:

- 1.) Demographic and Eligibility Information
- 2.) Transition Pages 1 & 2 (for students who will be 16 before their next IEP Meeting)
- 3.) Present Levels
- 4.) Special Factors
- 5.) Goals
- 6.) Services
- 7.) Educational Setting
- 8.) Parent Consent
- 9.) Meeting Notes
- 10.) Excusal form (if needed and agreed to by the parent)
- 11.) Post-Secondary Exit Forms (for students ready to exit high school)
- 12.) Behavior Support Plan (See PENT website for backup information: [www.pent.gov](http://www.pent.gov))
- 13.) Assessment Reports



In addition, the following forms and parent rights (located on page 28-42 of this document) may be accessed electronically on the [www.seis.org](http://www.seis.org) website:

- Referral for Special Education
- Parent Rights
- Interim Administrative Placement
- Triennial Reassessment Worksheet
- Parent Information Request (Parent PIR)
- Meeting Notice

EL DORADO COUNTY CHARTER SELPA CONSORTIUM  
Special Education Local Plan Area

Date:

**Referral for Special Education Services**

Student Name:   
Last First Middle

Address:   
Number Street City Zip Code

Phone:  Birthdate:

Current Education Placement:  Grade:   
School District

Parent/Guardian Name:    
Father's Last First Mother's Last First

Phone:   Primary Home Language:   
Home Work

Future correspondence in  language. Interpreter services needed: ☐ Yes ☐ No

**Specific Reasons for Referral:**

- |   |   |                                  |   |
|---|---|----------------------------------|---|
| <input type="checkbox"/> Reading          | <input type="checkbox"/> Self-Help Skills | <input type="checkbox"/> Hearing | <input type="checkbox"/> Speech & Language      |
| <input type="checkbox"/> Math             | <input type="checkbox"/> Fine Motor       | <input type="checkbox"/> Vision  | <input type="checkbox"/> School Behavior        |
| <input type="checkbox"/> Spelling         | <input type="checkbox"/> Gross Motor      | <input type="checkbox"/> Health  | <input type="checkbox"/> Emotional Concerns     |
| <input type="checkbox"/> Written Language |   |                                  | <input type="checkbox"/> Voc/Career Development |

Other:

Comments:

**Attempts to Resolve:** Please indicate all attempts to resolve each of the foregoing problems within the educational program. As required by Education Code, describe modifications to general education. (Describe below or attach separate documentation.)

This child has been assessed and/or served by: ☐ Speech ☐ Psychological ☐ Other:

Please list agencies, other than public schools, that are involved with the student and should be contacted for the IEP Team Meeting.

**Person Making Referral:**  Title/Position:

Administrator/Designee:  Phone:

Representing (District/Agency/Other):  Date:

If Referral is to County, please indicate Program:

Form 7 (Rev.08/07)



EL DORADO COUNTY CHARTER CONSORTIUM  
Special Education Local Plan Area

☐ Initial Referral  
☐ Re-evaluation  
☐ Other: See below

### ASSESSMENT PLAN

To the Parents of:  Birthdate:  Date:  ☐ ELL  
School:  Teacher:  Grade:

In order to meet your student's individual education needs, the following assessment may be required. Assessment will be conducted by appropriately qualified staff; and, when appropriate, suitable interpreters or pre-recorded tests in the individual's primary language may be used. The assessment may include student observation in a group setting and/or an interview with you, plus a review of any reports you have authorized or that already exist in current school records. The result of completing these assessments may be a recommendation for special education services. All assessments have been validated for the specific purpose for which they are used.

- ☐ **ACADEMIC ACHIEVEMENT** – Purpose: These assessments measure current reading, spelling, and/or oral and written language skills. Assessments may include but are not limited to: Wechsler Individual Achievement Test; Peabody Individual Achievement Test; Brigance Inventory of Skills; KeyMath Achievement Test; and Woodcock-Johnson. Others:
- ☐ **SOCIAL/ADAPTIVE** – Purpose: This will indicate how an individual copes and how he/she gets along with other people. Assessments may include, but are not limited to: Interview; Adaptive Behavior Scales; Sentence Completion Test; Observation; and Draw-A-Person. Others:
- ☐ **PSYCHO-MOTOR DEVELOPMENT** – Purpose: Instruments in this area measure how well an individual coordinates body movements in small and large muscle activities. They may also measure visual perceptual skills. Assessments may include, but are not limited to: Bender; Berry; Brigance; Test of Gross Motor Development; Motor Maturity Evaluation; Learning-Accomplishment Profile; Cajon Valley Motor Assessment; Bruininks-Oseretsky; M.O.V.E.; The Oregon Project; Hughs; Mount Diablo Assessment; Body Skills Inventory. Others:
- ☐ **SPEECH/LANGUAGE COMMUNICATION DEVELOPMENT** – Purpose: These assessments measure the individual's ability to understand, relate to and use language and speech clearly and appropriately. Assessments may include but are not limited to: Observation; Language Sample; Clinical Evaluation of Language Functions; and Peabody Picture Vocabulary Test. Others:
- ☐ **INTELLECTUAL DEVELOPMENT** – Purpose: These assessments measure how well an individual remembers what he/she has seen and heard, how well he/she can use that information, and how well he/she solves problems, and assist in predicting how well he/she will perform in school. Tests may include but are not limited to: Wechsler Tests; Stanford Binet; Leiter International Performance Test; K-ABC; DAT; and TONI. Other:
- ☐ **BEHAVIOR** – Purpose: To determine the communicational intent or function of the individual's behavior and how it impacts his/her learning. Assessments may include: Behavior Rating Scales; Student Interview; Observations. Others:
- ☐ **HEALTH** – Purpose: Assess educationally relevant, health, developmental and medical findings. Hearing and vision screening is required for initial and 3 year re-evaluations. Assessments may include: Observation; Standard Vision/Hearing Assessment. Others:
- ☐ **OTHER** –

The professionals involved in the individual assessment outlined above may include:

☐ Special Education Teacher ☐ Psychologist ☐ Speech-Language Specialist ☐ Nurse ☐ Adapted P.E. Teacher ☐ Other:

Please check the following item, if appropriate:

☐ I will submit a written report from:   
(Name and title of person/agency who has assessed my child)

If you have any questions about this Assessment Plan, please call:

Name:  Position:  Phone:

\*\*\*\*\* THIS FORM MUST BE SIGNED BEFORE ASSESSMENT CAN BEGIN \*\*\*\*\*

PLEASE CHECK ONE OF THE FOLLOWING AND SIGN:

- ☐ I GIVE MY INFORMED CONSENT for the assessment indicated above to be made. I understand that the results will be kept confidential and that I will be invited to attend the individualized education program team meeting to discuss the results. It is also my understanding that no special educational service will result from this assessment without my written permission.
- ☐ I DENY CONSENT to conduct the assessment described.

If the student speaks other than English at home, please indicate language:

Ethnic Code: (Choose up to 4): ☐ 100 Native American ☐ 201 Chinese ☐ 202 Japanese ☐ 203 Korean ☐ 204 Vietnamese ☐ 205 Asian Indian  
☐ 206 Laotian ☐ 207 Cambodian ☐ 299 Other Asian ☐ 301 Hawaiian ☐ 302 Guamanian ☐ 303 Samoan  
☐ 304 Tahitian ☐ 399 Other Pacific Islander ☐ 400 Filipino ☐ 500 Hispanic ☐ 600 African American ☐ 700 White

Student Social Security #:

SIGNATURE: Parent/Guardian/Surrogate/Student

Date Received:

Date:

Phone verification for changes to the Assessment Plan herein documented:

Signature:  Date:

Form #8 (08/07)

**EL DORADO COUNTY CHARTER SELPA  
SPECIAL EDUCATION LOCAL PLAN AREA**

6767 Green Valley Road  
Placerville, California 95667  
(530) 295-2236

**NOTICE OF PROCEDURAL SAFEGUARDS AND PARENTS' RIGHTS**

*Special Education Rights of Parents and Children  
Under the Individuals with Disabilities Education Act, Part B  
2004 Reauthorization (H.R. 1350)*

**INTRODUCTION**

This information provides you as parents, legal guardians, persons authorized to make educational decisions, and surrogate parents of children with disabilities from 3 years of age through age 21 with an overview of your educational rights, sometimes called procedural safeguards. This notice is also provided for students who are entitled to these rights at age 18. (20 USC 1415; EC 56321) A copy of these safeguards will be given to you once a year. Additional copies may be given upon an initial referral or parent request for evaluation, upon the first occurrence of the filing of a complaint under Section 615(b) (6) of H.R. 1350, upon provision of an assessment plan to parents and at your request.

**Participation in making decision about your child's education**

You have the right to refer your child for special education services. You must be given opportunities to participate in any decision-making meeting regarding your child's special education program. You have the right to participate in an IEP meeting about the identification (eligibility), assessment, educational placement of your child and other matters relating to your child's free appropriate public education. [20 USC 1414(b)(c)(d) and (f); EC 56341(b), 56343(c)]

You also have the right to participate in the development of the IEP and to be informed of program options, and the availability of free appropriate public education.

Additionally, you have the right to electronically record the meeting on an audio tape recorder. The law requires that you notify the district at least 24 hours prior to meeting if you intend to record the proceedings. (EC 56341.1)

**Additional Assistance**

When you have a concern about your child's education, it is important that you call or contact your child's teacher or administrators to talk about your child and any problems you see. Staff in the Special Education Department can answer questions about your child's education, your rights and procedural safeguards. When you have a concern, this informal conversation often solves the problem and helps maintain open communication. Additional resources are listed at the end of this document to help you understand the procedural safeguards.

**NOTICE, CONSENT, ASSESSMENT, AND ACCESS**

**Prior Written Notice**

You have the right to receive a written notice from the school district before decisions affecting your child's special education are put into place. These include decisions to:

- identify your child as a child with a disability, or change your child's eligibility from one disability to another;
- evaluate or reevaluate your child;
- provide a free appropriate public education to your child, or change a component of your child's free appropriate public education;
- place your child in a special education program; or,
- change your child's special education placement. (20 USC 1415[b]; EC 56500.4)

You also have the right to written notice from the school district if the district refuses your request to take these actions.

The Prior Written Notice must include the following:

- a description of the actions proposed or refused by the school district;
- an explanation of why the action was proposed or refused;
- a description of other options considered and the reasons those options were rejected;
- a description of each assessment procedure, test, record or report used as a basis for the action proposed or refused;
- a description of any other factors relevant to the action proposed or refused; and
- a statement that parents of a child with a disability are protected by the procedural safeguards.

If the notice is not in regard to an initial referral for assessment, the notice must provide a statement that you have protection under procedural safeguards, information on how you can obtain a copy of described procedural safeguards, and sources of additional assistance in understanding the procedural safeguards. (20 USC 1415(c))

#### **Parent Consent**

**Parents' written approval is required for:**

- **First Evaluation:** The school district must have your informed written consent before it can evaluate your child. You will be informed about the evaluations to be used with your child. Your school district must make reasonable efforts to obtain your informed consent for a first evaluation.
- **Re-evaluation:** The school district must have your informed written consent before reevaluating your child. To avoid confusion, you should inform the school in writing if you want to refuse consent to a reevaluation. The school district may reevaluate your child without your written consent if the school district has taken reasonable measures to get your consent and you have not responded.
- **Initial and Continued Placement in Special Education:** You must give informed written consent before the school district can place your child in a special education program. You can refuse consent for an evaluation, a reevaluation or the initial placement of your child in special education. The school district may seek to evaluate or continue your child's placement in special education through a due process hearing, if it believes that it is necessary for your child's education. You and the school district may agree to first try mediation to resolve your disagreements.

(EC 56321[c], 56346, 56506[e]; 20 USC 1414[a][c])

Consent forms must describe the activity for which consent is sought and list the records (if any) that will be released and to whom. You can revoke consent at any time, except that revocation is not retroactive (does not negate actions that occurred after consent was given and before consent was revoked). (34 CFR 300.300)

#### **Surrogate Parent Appointment**

In order to protect the rights of the child, school districts must ensure that an individual is assigned to act as a surrogate parent for the parents of a child with a disability when a parent cannot be identified and the school district cannot discover the whereabouts of a parent. A surrogate parent may be appointed if the child is an adjudicated dependent or ward of the court under the state Welfare and Institutions Code and the child is referred to special education or already has an IEP. A district must make reasonable efforts to appoint a surrogate within 30 days after determining that a surrogate is needed. (20 USC 1415[b]; EC 56050)

#### **Age of Majority**

When your child reaches the age of 18, all rights under Part B of the Individuals with Disabilities Education Act (IDEA) will transfer to your child. The only exception will be if your child is determined to be incompetent under State Law.

(34 CFR 300.517 30; EC 56041.5)

#### **Assessment**

##### **Nondiscriminatory Assessment**

You have the right to have your child assessed in all areas of suspected disability. Materials and procedures used for assessment and placement must not be racially, culturally, or sexually discriminatory. Assessment materials must be provided and the test(s) administered in your child's native language or mode of communication, unless it is clearly not feasible to do so. No single procedure can be the sole criterion for determining eligibility and developing an appropriate education program for your child. (20 USC 1414[a][b]; EC 56001[j] and 56320)

**Assessment Plan**

When the district is seeking to assess your child, you will be given a written, proposed assessment plan. Along with that plan you will receive a copy of this Procedural Safeguards document. When the assessment is completed, an individualized education program team meeting, which includes you, the parent or guardian, and or your representatives, will be scheduled to determine whether the student qualifies for special education services. The IEP Team will discuss the assessment, the educational recommendations and the reasons for these recommendations. A copy of the assessment report and the documentation of determination of eligibility will be given to you. (EC 56329 (a))

**Independent Educational Evaluation**

If you disagree with the results of the assessment conducted by the school district, you have the right to ask for one independent education evaluation (IEE) for your child, per evaluation conducted by the district, from a person qualified to conduct the assessment, at public expense. The school district must respond to your request for independent educational evaluation and provide you information, upon request, about where to obtain an independent educational evaluation. Alternatively, the school district must request a due process hearing to prove that its assessment was appropriate. If the district prevails, you still have the right to an independent assessment but not at public expense. The IEP Team must consider independent assessments.

District assessment procedures may allow in-class observation of students. If the school district observed your child in his or her classroom during an assessment, or if the school district would have been allowed to observe your child, an individual conducting an independent educational assessment must also be allowed an equivalent opportunity to observe your child in the classroom.

**Access to Educational Records**

All parents of a child enrolled in the school district have the right to inspect records under the federal Family Educational Rights and Privacy Act (FERPA), which has been implemented in California under Education Code sections 49060-49079. Under IDEA, parents of a child with disabilities (including noncustodial parents whose rights have not been limited) have the right to review all educational records regarding the identification, evaluation and educational placement of the child and the provision of a free appropriate public education and to receive an explanation and interpretation of the records. Under California statutes, the parents have the right to review and to receive copies of educational records. These rights transfer to a nonconserved pupil who is eighteen years old or attending an institution of post secondary education.

Parental consent, or the consent of an adult student, is required before personally identifiable information is released to officials of participating agencies providing or paying for transition services related to post secondary goals.

“Education record” means those records that are directly related to a pupil and maintained by an educational agency or a party acting for the agency or institutions, and may include (1) the name of the child, the child’s parent or other family member; (2) the address of the child; (3) a personal identifier such as the child’s social security number, student number, or court file number; (4) a list of personal characteristics or other information that would make it possible to identify the child with a reasonable certainty. Both federal and state laws further define a pupil record as any item of information directly related to an identifiable pupil, other than directory information, which is maintained by a school district or required to be maintained by an employee in the performance of his duties whether recorded by handwriting, print, tapes, film, microfilm, computer or by other means. Pupil records do not include informal personal notes prepared and kept by a school employee for his/her own use or the use of a substitute. If records contain information about more than one student, a parent can have access only to that portion of the record pertaining to his/her child.

Pupil records may be kept at the school site or district office, but a written request for records at either site will be treated as a request for records from all sites. The district custodian of records will provide you with a list of the types and locations of pupil records (if requested).

The custodian of the records shall limit access to those persons authorized to review the pupil record, which includes the parents of the pupil, a pupil who is at least sixteen years old, individuals who have been authorized by the parent to inspect the records, school employees who have a legitimate educational interest in the records, post secondary institutions designated by the pupil, and employees of federal, state and local education agencies. Unauthorized access will be denied unless the parent has provided written consent to release the records or the records are released pursuant to a subpoena or court order. The district shall keep a log indicating the time, name and purpose for access of those individuals who are not employed by the school district.

You have a right to inspect and review all of your child's educational records without unnecessary delay, including prior to a meeting about your child's IEP or before a due process hearing. The school district must provide you access to records and copies, if requested, within five business days after the request has been made orally or in writing. A fee for copies, but not the cost to search and retrieve, may be charged unless charging the fee would effectively deny access to the parent. (20 USC 1415[b]; EC 56501, 56504, and 49069)

Parents who believe that information in the education records collected, maintained or used by the school district is (among other things) inaccurate, misleading or violates the privacy or other rights of the pupil may request in writing that the school district amend the information. If the district concurs, the record will be amended and the parent will be informed. Should the district refuse to make the amendment requested, the district shall notify the parent of the right to and provide a hearing, if required, to determine whether the challenged information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the pupil. If it is decided by the governing board after the hearing that a record will not be amended, the parent shall have the right to provide what he/she believes is a corrective written statement to be permanently attached to the record. The district has policies and procedures governing the retention and destruction of records. Parents wishing to request the destruction of records, which are no longer necessary to the school district, may contact the District's Custodian of Records. However, the district is required to maintain certain information in perpetuity. (34CFR99; CFR300.561—573; 20USC 1415 [b](1); 34 CFR 500.567; EC 49070)

### **INDIVIDUALIZED EDUCATION PROGRAM (IEP)**

The public education agency initiates and conducts meetings for the purpose of developing, reviewing and revising the individualized education program of each child with a disability. The IEP documents the child's eligibility for special education services and parents receive a copy of each IEP for their child. These meetings are conducted by the individualized education program (IEP) team.

When the IEP has been completed and appropriate parental consent has been provided, it is implemented as soon as possible following the IEP team meeting. A copy of the IEP is provided to the parents at no cost and if necessary, a copy of the IEP will be provided in the primary language of the parent(s), at the request of the parent(s). The IEP team must consider the concerns of the parents for enhancing the education of their child.

#### **IEP Team Members and Responsibilities**

The IEP team includes:

- An administrator or a representative designated by administration who is knowledgeable about program options appropriate for the child and who is qualified to provide, or supervise the provision of special education;
- At least one general education teacher of the child, if the child is, or may be participating, in the general education environment;
- At least one special education teacher of the child, or if appropriate, at least one special education provider of the child; and,
- One or both of the child's parents, individuals selected by the parent, or both.

When appropriate, the IEP team will also include:

- The child, including when the team will discuss transition services;
- Other persons who possess expertise or knowledge necessary for the development of the IEP;
- When the child has been assessed for purposes of developing, reviewing or revising the IEP, a person who has conducted an assessment of the child or who is knowledgeable about the assessment procedures used to assess the child and is familiar with the results of the assessment; and,
- When the child is suspected to have a learning disability, at least one member of the IEP team, other than the child's regular teacher, will be a person who has observed the child's educational performance in an appropriate setting. If the child is younger than five years or is not enrolled in a school, a team member will observe the child in an environment appropriate for a child that age.

A member of the IEP team may be excused from an IEP team meeting, in whole or in part, when the LEA and the parent agree that the attendance of the member is not necessary because the member's area of curriculum or related services is not being modified or discussed at the meeting. When the member's area of curriculum or related services is being modified or discussed at the meeting, a required member of the IEP team may be excused, but only when the LEA and the parent consent to the excusal in writing, and the member submits in writing input into the development of the IEP prior to the meeting. The excusal provisions do not apply to parents, the student or persons with special knowledge or expertise.

If the child does not attend an IEP team meeting where transition services will be discussed, the district will ensure that the child's needs and preferences are considered. The district may invite representatives from other agencies that are likely to be responsible for transition services.

## HOW DISPUTES ARE RESOLVED

### Due Process Hearing

You have the right to request an impartial due process hearing regarding:

- The identification of your child for special education eligibility.
- The assessment of your child.
- The educational placement of your child.
- The provision of a free appropriate public education (FAPE) for your child.

The request for a due process hearing must be filed within two years from the date you knew or had reason to know of the facts that were the basis for the hearing request. [H.R.1350 §615(f)(3)(C)]

There is an exception to this timeline if you were prevented from requesting the hearing earlier because:

- a) the district misrepresented that it had resolved the problem
- b) the district withheld information that should have been provided to you. [H.R.1350 §615(f)(3)(D)]

### Mediation and Alternative Dispute Resolution (ADR)

You may ask the school district to resolve disputes through mediation, which is less adversarial than a due process hearing. Alternative Dispute Resolution (ADR) may also be available in your district. Mediation and ADR are voluntary methods of resolving a dispute and may not be used to delay your right to a due process hearing. The parents and the school district must agree to try mediation before mediation is attempted. A mediator is a person who is trained in strategies that help people come to agreement over difficult issues. (20 USC 1415[e]; EC 56500.3)

### Due Process Rights

You have a right to:

1. Have a fair and impartial administrative hearing at the state level with a person who is knowledgeable of the laws governing special education and administrative hearings (EC 56501[b]);
2. Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities (EC 56505[e]; 20 USC 1415[h]);
3. Present evidence, written arguments, and oral arguments (EC 56505[e]);
4. Confront, cross-examine, and require witnesses to be present (EC 56505[e]);
5. Receive a written or, at the option of the parent, an electronic verbatim record of the hearing, including findings of fact and decisions (EC 56505[e]; 20 USC 1415[h];
6. Have your child present at the hearing (EC 56501[c]);
7. Have the hearing be open or closed to the public (EC 56501[c]);
8. Be informed by the other parties of the issues and their proposed resolution of the issues at least ten calendar days prior to the hearing (EC 56505[e] and 56043[s]; 20 USC 1415[b]);
9. Receive a copy of all documents, including assessments completed by that date and recommendations, and a list of witnesses and their general area of testimony within five business days before a hearing. (EC 56505[e];
10. Have an interpreter provided at the expense of the California Dept. of Education (CCR 3082[d]);
11. Have a mediation conference at any point during the due process hearing (EC 56501[b]; and
12. Receive notice from the other party, at least ten days prior to the hearing that it intends to be represented by an attorney. (EC 56507[a])

In any action or proceeding regarding the due process hearing, the court, in its discretion, may award reasonable attorneys' fees as a part of the costs to you as the parent of a child with a disability if you are the prevailing party in the hearing. Reasonable attorneys' fees may also be awarded following the conclusion of the administrative hearing with the agreement of the parties. (20 USC 1415[i]; EC 56507[b])

Fees may be reduced for any of the following:



1. The court finds that you unreasonably delayed the final resolution of the controversy;
2. The hourly attorneys' fees exceed the prevailing rate in the community for similar services by attorneys of reasonable comparable skill, reputation and experience;
3. The time spent and legal services provided were excessive; or
4. Your attorney did not provide to the school district the appropriate information in the due process complaint.

Attorneys' fees will not be reduced, however, if the court finds that the state or the school district unreasonably delayed the final resolution of the action or proceeding or there was a procedural safeguards violation. *(20 USC 1415[i])*

Attorneys' fees may not be awarded relating to any meeting of the IEP team unless an IEP meeting is convened as a result of a due process hearing proceeding or judicial action. Attorney fees may also be denied if you reject a reasonable settlement offer made by the district/public agency ten days before the hearing begins and the hearing decision is not more favorable than the settlement offer. *(20 USC 1415[d])*

#### **Filing a Written Due Process Complaint**

To file for mediation or a due process hearing, contact:

**Office of Administrative Hearings  
Attn: Special Education Division  
2349 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833-4231  
(916) 263-0880  
(916) 376-6319 fax  
(916) 274-6035 after hours settlement line**

You need to file a written request for a due process hearing. The written notice shall be kept confidential. You or your representative needs to submit the following information in your request:

1. Name of the child;
2. Address of the residence of the child;
3. Name of the school the child is attending; and
4. A description of the nature of the problem, including facts relating to the problem(s) and a proposed resolution of the problem(s).

State law requires that either party filing for a due process hearing must provide a copy of the written request to the other party. *(20 USC 1415[h]; EC 56502[c])*

#### **Child's Placement While Due Process Proceedings are Pending**

According to the "stay put" provision of the law, a child involved in any administrative or judicial proceeding must remain in the current educational placement unless you and the school district agree on another arrangement. If you are applying for initial admission to a public school, your child will be placed in a public school program with your consent until all proceedings are completed. *(20 USC 1415[j]; EC 56505[d] and [i])*

#### **Opportunity for District to Resolve the Complaint**

If you choose to file a due process complaint as explained in the section entitled "Filing a Written Due Process Complaint," a meeting must be scheduled by the district within 15 days of receiving the notice of your due process complaint. The purpose of the meeting is to give you opportunity to discuss your due process complaint and the facts on which you based your complaint so that the district has a chance to address your concerns and work with you to reach a resolution. This meeting must be held before the initiation of a due process hearing unless you and the school district agree in writing to waive the meeting and use the mediation process. The meeting must include the parents and other members of the IEP team who have specific knowledge of the facts. The district has 30 days from the receipt of the due process complaint to resolve the due process complaint or the due process hearing may occur. These timelines are expedited if you request a hearing regarding pending disciplinary action.

If you fail to participate in the resolution session, the district may (after 30 days) seek dismissal of your complaint.

If the school district fails to convene or participate in a resolution session meeting within 15 days of receiving your complaint, you may ask a hearing officer to begin the due process timeline.

If the parents and the district are unable to resolve the due process complaint and it goes to hearing, the hearing decision is final and binding on both parties. Either party can appeal the hearing decision by filing a civil action in state or federal court within 90 days of the final decision. *(20 USC 1415[j]; EC 56505[g] and [i]; EC 56043[u])*

## **SCHOOL DISCIPLINE AND PLACEMENT PROCEDURES FOR STUDENTS WITH DISABILITIES**

Children with disabilities may be suspended or placed in other alternative interim settings or other settings to the same extent these options would be used for children without disabilities.

If a child exceeds ten days in such a placement, a meeting must be held to determine whether the child's misconduct is caused by the disability. This meeting must take place immediately, if possible, or within ten school days of the school district's decision to take this type of disciplinary action. (20 USC 1415[k])

As a parent, you will be invited to participate as a member of the team. The school district must provide you with a written notice of the required action. The school district may be required to develop an assessment plan to address the misconduct or, if your child has a behavior intervention plan, review and modify the plan, as necessary. If the team concludes that the misconduct was not a manifestation of your child's disability, the school district might take disciplinary action, such as expulsion, in the same manner as it would for a child without disabilities.

If you disagree with the team's decision, you may request an expedited due process hearing from the Office of Administrative Hearing. (20 USC 1415[k])

### **Placement in an Interim Alternative Educational Setting**

Under Federal law, a school district may place a child in an appropriate interim alternative placement for up to forty-five school days under certain circumstances. Those circumstances are when the child has a weapon, or has knowingly possessed or used illegal drugs or sold controlled substances at school or a school function, or has inflicted serious bodily injury upon another person. (20 USC 1415[k])

If you request a hearing or an appeal regarding disciplinary action or manifestation determination, your child will stay in the interim alternative setting or disciplinary setting unless the maximum time for that setting is reached, or the parents and school district agree to another placement. (34 CFR 300.526)

Alternative educational settings, when permissible, must allow the child to continue to participate in the general curriculum and receive services designed to address the behavior so it does not recur. (20 USC 1415[k])

## **CHILDREN ATTENDING PRIVATE SCHOOL**

The school district is responsible for the full cost of special education in a nonpublic, nonsectarian school, when the school district, together with the IEP Team, recommends that this would be the appropriate placement for the student. (20 USC[a][10][B]; CFR 300.401; CFR 300.349[c]; EC 56361)

### **Observation of Your Child at a Nonpublic School**

If you unilaterally place your child in a nonpublic school and you propose the placement in the nonpublic school to be publicly financed, the school district must be given the opportunity to first observe the proposed placement and your child in the proposed placement. The school district may not observe or assess any other child at the nonpublic school without permission from the other child's parent or guardian. (EC 56329(d))

### **Unilateral Parent Placement in Nonpublic or Private School**

If you unilaterally place the student in a private or nonpublic, nonsectarian school without district consent or referral of a court or hearing officer, the district may only be required to reimburse the parents if their child received special education and related services under the authority of a public agency before enrolling in the private school and the court or hearing officer finds that the school district did not make a free and appropriate education available in a timely manner.

A court or hearing officer may not reduce or deny reimbursement to you if you failed to notify the school district for any of the following reasons:

- Illiteracy and inability to write;
- Giving notice would likely result in physical or serious emotional harm to the child;
- The school prevented you from giving notice; or

- You had not received a copy of this Notice of Procedural Safeguards or otherwise been informed of this notice requirement. (20 USC 1412[a]; 34 CFR 300.403)

The court or hearing office may reduce or deny reimbursement if you did not make your child available for an assessment upon written notice from the school district. You may also be denied reimbursement if you did not inform the school district that you were rejecting the special education placement proposed by the school district and did not give notice of your concerns and intent to enroll your child in a private school at public expense.

#### **Notifying the District**

You must notify the district of your intent to place your child in a private school:

- At the most recent IEP meeting you attended before removing your child from the public school; or
- In writing to the school district at least ten business days (including holidays) before removing your child from the public school. (20 USC 1412[a]; 34 CFR 300.403)

The district is not obligated to offer a free appropriate public education to a child whose parent(s) have voluntarily enrolled that child in a private school. In such cases, the district will propose an Individual Services Plan for Private School Students. (20 USC 1412(a)(10)(A)(i))

### **COMPLAINT PROCEDURES**

#### **State Appeal Process**

*Note: Complaint procedures in this section are related specifically to the California State Appeal Process and are not the same as the due process complaint procedures covered earlier in this document.*

If you wish to file a complaint with the California Department of Education, you should submit your complaint in writing to:

**California Department of Education  
Special Education Division  
Procedural Safeguards Referral Service  
1430 N Street Suite 2401  
Sacramento, California 95814  
Attn: PSRS Intake**

Within 60 days after a complaint is filed, the California Dept. of Education will: carry out an independent investigation, give the complainant an opportunity to provide additional information, review all information and make a determination as to whether the LEA has violated laws or regulations and issue a written decision that addresses each allegation.

For complaints involving issues not covered by IDEA, consult your district's Uniform Complaint Procedures.

The District would like to work with you to resolve all complaints at the local level whenever possible. We invite you to meet with the administrator who has been designated to work with compliance issues and attempt to resolve your concern informally before a complaint is filed. S/he will maintain confidentiality as permitted by law. If your complaint cannot be resolved, a formal investigation will be initiated or you will be referred to the appropriate agency for assistance.

### **Charter LEA Contact Information**

Please contact the Special Education Administrator at the phone number listed below for your school district if you:

- Would like additional copies of the Notice of Procedural Safeguards
- Need assistance in understanding the provisions of your rights and safeguards
- Require a translation orally, by other means, in a different language or other mode of communication

<u>Charter LEA</u>	<u>Special Education Contact</u>	<u>Phone</u>
ASPIRE Summit ASPIRE University ASPIRE Millsmont ASPIRE Trinity ASPIRE Clarendon	Alice Parker, Executive Director Innovation and Dissemination for Special Education	510-251-1660 ext 1331
Edison Charter Academy	Gloria Galindo, Principal	415-970-3330, ext3050
Envision Academy Envision CAT Envision METRO Envision Impact	Sue Shalvey, Vice President Special Education/Student Support Services	415-345-9955
Lifeline Education	Paula DeGroat, Director	310-605-2510
LPS Campbell LPS Hayward LPS College Park LPS Richmond LPS San Jose	Marty Procaccio, Vice President Education	408-937-2704
Rocketship One	John Danner, CEO	650-815-5122

If you need additional assistance beyond your Local Charter or wish general information regarding Special Education program and services within the El Dorado County Charter Special Education Local Plan Area (SELPA) you may contact the SELPA, at (530) 295-2236 or visit the SELPA Website at <http://www.edcoe.org/chelpa>

EL DORADO COUNTY CHARTER CONSORTIUM  
Special Education Local Plan Area

SSN

**Interim Administrative Placement**

**PART I**

To:  , Administrator   
From:  School/District:   
(Specialist/Administrator)  
Student:  Birthdate:  Grade:  Ethnicity:   
Parent/Guardian:  Address:   
Phone: (Home)  (Work)   
CURRENT PROGRAM: (Circle) **S/L** **DIS** **RSP** **SDC** **NPS** **SOP** Handicap Condition:   
Current Program Notes:

At:   
Previous School and District Address Telephone

According to the IEP, additional materials and/or services needed (IF ANY) are:

Verification of his/her special education identified IEP needs/services and placement, to the extent possible, in this same type of program was made by (fill in appropriate space):

Inspection of school records from:  Date of Last IEP:   
A telephone call to:  Date of Initial Placement:   
Other:   
Verified by:  Date:

It is understood that this case shall be brought to the IEP Team within 30 days. Prior to that date the documents needed and process required for continued placement will be completed as thoroughly as possible. Immunization verification must be provided before this interim placement can be made.

District Administrator/Designee:  Date:   
\*\*\*\*\*  
(For District/County Office Placement Use Only)

**PART II**

**RESPONSE TO SCHOOL'S REQUEST FOR AN INTERIM ADMINISTRATIVE PLACEMENT**

To be enrolled starting:  Program:   
Location:  Teacher:   
Approved by:   Date:   
Signature School Administrator Position/Title  
Informed consent is given for the interim placement:  Date:   
I deny consent for the interim placement:  Date:

**\*DIRECTIONS TO SCHOOL PERSONNEL:**

For Administrative Placements Outside District of Residence: Complete Part I of this page and forward a copy to the agency proposed for placement  
For Administrative Placements Within the District of Residence: Complete Part I & II of this form and forward a copy to your district office

Form 10 (Rev. 08/07)

EL DORADO COUNTY CHARTER SELPA CONSORTIUM  
SPECIAL EDUCATION LOCAL PLAN AREA

**TRIENNIAL REASSESSMENT WORKSHEET**

Student Name:  Birthdate:   
 School:  Teacher:   
 Triennial Date:  Case Manager:

The professional whose name(s) are listed below, have reviewed existing evaluation data and have determined the need for further assessment in the following areas:

**Personnel to  
Complete**

**Tests to be Administered**

<input type="text"/>	Academic Achievement:	<input type="text"/>
<input type="text"/>	Social/Adaptive:	<input type="text"/>
<input type="text"/>	Psycho-motor Development:	<input type="text"/>
<input type="text"/>	Speech/Language Communication:	<input type="text"/>
<input type="text"/>	Intellectual Development:	<input type="text"/>
<input type="text"/>	Behavior:	<input type="text"/>
<input type="text"/>	Alternative Assessment:	<input type="text"/>
<input type="text"/>	Other:	<input type="text"/>

**Signature**

**Further Assessment  
Needed**

Resource Specialist	1) <input type="text"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Psychologist	2) <input type="text"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Teacher	3) <input type="text"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Nurse	4) <input type="text"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Speech/Language Specialist	5) <input type="text"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Special Class Teacher	6) <input type="text"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Adapted P.E. Specialist	7) <input type="text"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Other	8) <input type="text"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Other	9) <input type="text"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Return to Case Manager by:

Form 8a (08/07)

## PUPIL INFORMATION REQUEST/PARENT REPORT

District:			Scheduled Date:		
Student:			Time:		Place:
Birthdate:		Chronological Age:			
School:			Date Requested:		Due Date:
Teacher:		Grade:			
Phone: (H)		(W)	Requested From:		
Address:			Name	Position	
			Requested By:		

<b>Purpose:</b> <input type="checkbox"/> Initial <input type="checkbox"/> IEP Review <input type="checkbox"/> 3-Year Re-Evaluation <input type="checkbox"/> Transition		<b>Information Requested:</b> <input type="checkbox"/> Health & Development Assessment <input type="checkbox"/> Speech/Language Assessment <input type="checkbox"/> Home Observation <input type="checkbox"/> Academic Assessment		<b>Date of Assessment:</b> <input type="text"/>	
				<input type="checkbox"/> Classroom performance (basic skills/behavior) <input type="checkbox"/> Intervention tried and results <input type="checkbox"/> Update of previous information <input type="checkbox"/> Vocational/Workability	

Strengths	Concerns/Needs

Submitted By:  Date:

IEP Type: ☐ Initial ☐ Review  
☐ Behavior ☐ 3-Year  
☐ Transition

### PARENT NOTIFICATION OF MEETING

Dear:

Date:

We are planning a meeting of the Individualized Education Program Team concerning   
You are invited to attend and participate. Without your written approval we cannot initiate special education services for your student.  
In an effort to select a mutually convenient time we have scheduled the meeting for:

Date:  Time:  Location:

The purpose of this meeting is to:

- ☐ Consider or review your son's/daughter's need for special education services.  
☐ Recommend an appropriate educational placement.  
☐ Write an Individualized Educational Program, if special education is appropriate.  
☐ Develop a transition plan. Student invited? ☐ Yes ☐ No  
☐ Discuss behavior ☐ Pre-expulsion  
☐ Other

The following IEP team members have been invited to attend:

<input type="text"/> Special Education Administrator/Designee	<input type="text"/> Special Education Teacher
<input type="text"/> General Education Teacher	<input type="text"/> Psychologist
<input type="text"/> Nurse	<input type="text"/> Speech/Language Specialist
<input type="text"/> Student (if appropriate)	<input type="text"/> Other
<input type="text"/> Other	<input type="text"/> Other

Please feel free to bring a representative with you or you may designate another person to be your representative if you are unable to attend. The Individual with Disabilities Act (IDEA) 1997 requires a student age 14 or older be invited to participate in his/her own IEP. Your son/daughter may participate at any age if appropriate. A student age 18 has a right to attend and represent him/herself. Please bring your student's Social Security Number and any other relevant information concerning your son's/daughter's educational program that you feel would be helpful. If you need an interpreter, you may bring one with you or we will provide one if you let us know in advance. A summary of your rights and the due process procedures is provided on the back of this page. If you would like further information about your rights, the purpose of this meeting, or have a conflict with the meeting date, please contact:

Sincerely,  Chairperson Phone:

Please check all that apply, sign and return to the school.

- ☐ Yes, I plan to attend the meeting  
☐ No, I will not be attending the IEP meeting. I hereby give my permission for the meeting to be held without me (CFR 300.345d). I understand the IEP and related documents from this meeting will be provided to me for my signature, and I agree to return them in a timely manner.  
☐ I would like to reschedule.  
☐ I will need an interpreter/translator in the following language:

Signature of Parent/Guardian/Surrogate/Student(age 18) Date Student's Name

RETURN TO:    
Name Address

For Office Use only: Parent contacted by phone by: Name  Date

WHITE: District YELLOW: Teacher/School PINK: Parents

Form #9 (08/07)



**CHAPTER II**

**INTERAGENCY REFERRAL**

**AND**

**PLACEMENT PROCEDURES**

**REFERRAL, PLACEMENT AND REVIEW OF PLACEMENT**  
**PROCESS FOR STATE SCHOOLS**

**A. REFERRAL TO STATE SCHOOLS FOR FURTHER ASSESSMENT**

1. Prior to referring a pupil for further assessment to California Schools for the Deaf or Blind or the Diagnostic School or Diagnostic Center, assessments shall first be conducted at the local level within the capabilities of the Charter LEA. Results of local assessments shall accompany the referral request. The reason for the referral shall be discussed with the parents.
2. The Schools for the Deaf and Blind, and the Diagnostic Schools shall conduct assessments pursuant to the provisions of Education Code Section 56320.
3. A representative of the Charter LEA shall participate in the staffing meeting and shall receive copies of the final report and recommendations. Conference calls may be acceptable forms of participation, provided that written reports and recommendations have been received by the Charter LEA representative prior to the meeting.

**B. PROCEDURES FOR REFERRAL TO STATE SCHOOLS FOR PLACEMENT**

1. Referrals to state special schools for placement shall be made only as a result of recommendations from the IEP team, upon determining that no appropriate placement is available in the local plan area. Parents have the right to appeal any decision of the IEP team, including whether their child should be referred to a state special school.
2. Whenever a referral for placement is being considered to one of the state special schools, the IEP team shall include a representative of the Charter LEA.
3. If the IEP team (including the representative from the Charter LEA) determines that a referral to a state special school is appropriate, a case manager shall be designated to coordinate the referral process.
4. As provided within Education Code Section 59300, the Charter LEA of the parent or guardian of any pupil attending a state-operated school is responsible for 10% of the excess cost of the placement. The cost for a student placed less than a full year is prorated based on the number of days in attendance.

**C. REVIEW OF PLACEMENTS MADE AT STATE SPECIAL SCHOOLS**

1. The Charter LEA shall be notified of any upcoming review of students placed in state special schools. The Charter LEA may request assistance from the County Office of

Education (if appropriate) in attending the review, considering assessment results or any other activity needed.

**REFERRAL AND PLACEMENT PROCESS FOR  
NONPUBLIC SCHOOLS AND AGENCIES**

**Note: Before considering placement in a nonpublic, nonsectarian school, all public school programs and modifications of service components must be explored.**

1. The Charter LEA shall be responsible for conducting all assessment and convening the IEP meeting. *Prior to determining the need for a nonpublic school or agency placement, the Charter LEA shall consult with the SELPA Director to determine if an appropriate public education program is available and can be provided to the student.*
2. Following determination by the individualized education program team that the pupil requires nonpublic school or nonpublic agency placement, the Charter LEA shall:
  - In consultation with the parents and other public agencies which may have financial responsibilities for the placement, select from the “Directory of Certified Nonpublic School and Agencies” one or more nonpublic schools or agencies certified by the Superintendent of Public Instruction for the purpose of determining which nonpublic school or agency shall provide credentials, licenses or other documents when requested by the Charter LEA to determine the ability of the nonpublic school or agency to provide the services required by the individualized education program.
  - Review the certificate issued to the nonpublic school or agency to determine which services the school or agency is authorized to provide.
  - In consultation with the parent(s), select the nonpublic school or agency, which gives evidence of the ability to implement the pupil’s individualized education program. Consideration shall be given to the appropriate:
    - a. Nonpublic school or agency closest to the home of the pupil;
    - b. Nonpublic school or agency that can provide opportunities for interaction with non-handicapped pupils to the extent appropriate;
    - c. Program with the lowest total cost, given two or more appropriate nonpublic school or agency programs.
  - With the consent of the parent, provide the selected nonpublic school or agency with current assessment data, the individualized education program, and all other relevant information in the public record.
  - Contact the selected nonpublic school or agency to determine the nonpublic school or agency’s interest and ability to implement the pupil’s individualized education program.
  - Invite the identified and selected nonpublic school or agency representatives to participate in the finalization of the individualized education program.

- Ensure that after placement, the appropriate nonpublic school or agency personnel participate in subsequent meetings of the IEP team. Review of the pupil's IEP shall be conducted at least annually by the public education agency. The public education agency shall ensure that review schedules are specified in the IEP and contract for the pupil.
  - An elementary Charter LEA shall notify a high school district of all pupils placed in nonpublic school or agency programs prior to the annual review of the IEP for each pupil who is age appropriate to transfer to the high school district.
  - When an individual with exceptional needs meets public education agency requirements for completion of prescribed course of study and graduation requirements, the public education agency that developed the IEP shall award the diploma.
3. A master contract shall be used for contracting purposes. The term of the contract shall not exceed one year. The contract shall specify the administrative and financial agreements between the Charter LEA and the nonpublic school or agency.
- The nonpublic school or agency shall not charge parents for services covered in the contract with the public education agency. No contract with the public education agency shall be contingent upon nonpublic school or agency individual contracts or agreements with parents.
  - If specified in the contract, the nonpublic school may subcontract with other State-certified agencies for services.
  - The contracting Charter LEA and nonpublic school or agency shall notify parents of their responsibility to report each change in residence. Such notice by the contracting Charter LEA shall be in writing and given at the time nonpublic school or agency placement is recommended at the IEP. The notice may be documented in the minutes of the IEP. Such notice shall include an explanation that the contract for services is between the contracting Charter LEA and nonpublic school or agency and obligates no other public agency in the event of a residence change.
  - When the parents of an individual receiving services under this article change residences, and such change constitutes a change of public education agencies, the following shall occur:
    - a. The parent shall immediately report the change of residence to the administrator of both the former and new public school and the nonpublic school or nonpublic agency. Parents must be notified of this obligation at the IEP meeting in which a nonpublic school is recommended. Notification of this obligation should be documented in the minutes of the IEP meeting.
    - b. The contracting nonpublic school or nonpublic agency shall immediately notify the Charter LEA.
    - c. The Charter LEA making payment to the nonpublic school or agency shall immediately notify the new public education agency of the individual's change of residence. This notice shall include a copy of the individual's records,

including the IEP and the contract for services with the nonpublic school or nonpublic agency.

- The pupil's individualized program shall be reviewed by the new public education agency as soon as possible. The new public education agency may make an interim placement if it has a comparable public school program that it reasonably believes can meet the student's needs for services, including frequency and other considerations as identified in the student's IEP, or it may allow the student to remain at the nonpublic school or agency during the time necessary to complete the IEP review.
  - a. If the student was placed in a nonpublic school as a residential student, the placing Charter LEA is responsible for the placement costs through the end of the current school year. However, if the student was placed in a nonpublic school as an educational placement only, the cost of the placement becomes the responsibility of the LEA in which the parents now reside if the student is disenrolled from the Charter LEA.
- The following factors shall be considered by the IEP team in determining the continued appropriateness of the nonpublic school or agency:
  - a. No appropriate public education program is available.
  - b. To move the individual at the time of the change of residence would be harmful to the health, welfare or educational progress of the individual.
  - c. The nonpublic school or agency continues to be within a reasonable distance and /or travel time from the home of the individual.
  - d. Other contingencies, which necessitate the individual remaining at the nonpublic school as determined by the IEP team.
- If the individual remains in the nonpublic school or agency during the period required to review the pupil's IEP, and the individual is registered in the new public education agency, the per diem rate in effect in the prior Master Contract shall be honored by the receiving public education agency and continued until a new contract is negotiated. (For specifics refer to the Master Contract).
- After the review has been conducted and if the IEP team determines that no appropriate public education program is available, the new public education agency shall negotiate a new contract for nonpublic school services.

#### **PLACEMENT PROCESS FOR OUT OF STATE NONPUBLIC SCHOOLS**

Every effort should be made to locate programs within the state before going outside of California. Should an IEP team determine that the only appropriate placement for a pupil is in an out of state facility, documentation of these efforts must be reviewed by the SELPA Director.

## **CHAPTER III**

### **ELIGIBILITY CRITERIA**

## **ELIGIBILITY CRITERIA**

**(In this section, C.C.R. refers to the California Code of Regulations;  
C.F.R. refers to the Code of Federal Regulations)**

**NOTE:** According to Supplement 1 [Assembly Bill 1663 (Evans & Romero) effective October 10, 2007], Section 56329 of the Education Code is amended to read:

**56329(a)(2)** In making a determination of eligibility under paragraph (1), a pupil shall not, pursuant to Section 1414(b)(5) of Title 20 of the United States Code, and Section 300.306(b) of Title 34 of the Code of Federal Regulations, be determined to be an individual with exceptional needs if the determinant factor for the determination is of the following in subparagraphs (A) to (C), inclusive, plus subparagraph (D):

- (A) Lack of appropriate instruction in reading, including the essential components of reading instruction as defined in Section 6388(3) of Title 20 of the United States Code.
- (B) Lack of appropriate instruction in mathematics.
- (C) Limited-English proficiency.
- (D) If the pupil does not otherwise meet the eligibility criteria under Section 300.8(a) of Title 34 of the Code of Federal Regulations.

### **A. Overview of Eligibility Criteria**

1. A pupil shall qualify as an individual with exceptional needs pursuant to Section 56026 of the Education Code if the results of the assessment demonstrate that the degree of the pupil's impairment requires special education in one or more of the program options authorized by Section 56361 of the Education Code. Program options include, but are not limited to: Regular Education Programs; Designated Instruction and Service; Resource Specialist; Special Day Class; Nonpublic and/or State Schools; Instruction in settings other than classrooms where specially designed instruction may occur; Itinerant instruction in classrooms, resource rooms and settings other than classrooms where specially designed instruction may occur to the extent required by federal law or regulation; and Instruction using telecommunication, and instruction in the home, in hospitals, and in other institutions to the extent required by federal law or regulation.
2. The IEP team, including assessment personnel, shall make the decision as to whether or not the assessment results demonstrate that the degree of the student's impairment requires special education.
3. The IEP team shall take into account all of the relevant material which is available on the student.
4. No single score or product of scores shall be used as the sole criterion for the decision of the IEP team as to the student's eligibility for special education.
5. After the IEP team determines eligibility based on the criteria specified in Title V of the California Code of Regulations, a program recommendation is made based on the

needs of the student and the goals and objectives developed by the IEP team. The IEP team is required to consider all program options with an emphasis on placement in the least restrictive environment.

**NOTE:** See C.C.R. Title 5, Section 3030 (Eligibility Criteria)

**B. The following eligibility categories are identified in C.C.R. Title 5, Section 3030:**

1. Mental Retardation (MR)
2. Hard of Hearing (HH)
3. Deafness (DEAF)
- 4a. Speech or Language Impairment - Articulation Disorder (SLI)
- 4b. Speech or Language Impairment - Abnormal Voice (SLI)
- 4c. Speech or Language Impairment - Fluency Disorder (SLI)
- 4d. Speech or Language Impairment - Language Disorder (SLI)
5. Visual Impairment (VI)
6. Emotional Disturbance (ED)
7. Orthopedic Impairment (OI)
8. Other Health Impairment (OHI)
9. Specific Learning Disability (SLD)
10. Deaf-Blindness (DB)
11. Multiple Disabilities (MD)
11. Autism (AUT)
12. Traumatic Brain Injury (TBI)

**1. Mental Retardation (MR) - Eligibility Summary**

C.C.R. Title 5, Sec. 3030(h): A pupil has significantly below average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affect a pupil's educational performance.

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8 "*Child with a disability* means a child evaluated in accordance with Sec. 300.304-300.311 as having mental retardation...and who, by reason thereof, needs special education and related services."

**NOTE:** As cited in 34 C.F.R. Part 300 Section 300.8(c)(6) "*Mental retardation* means significantly sub average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance."



## 2. Hard of Hearing (HH) - Eligibility Summary

C.C.R. Title 5, Sec. 3030(a): A pupil has a hearing impairment whether permanent or fluctuating, which impairs the processing of linguistic information through hearing, even with amplification, and which adversely affects educational performance. Processing linguistic information includes speech and language reception and speech and language discrimination.

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8 “*Child with a disability* means a child evaluated in accordance with Sec. 300.304-300.311 as having a hearing impairment...and who, by reason thereof, needs special education and related services.”

**NOTE:** As cited in 34 C.F.R. Part 300 Section 300.8(c)(5) “*Hearing impairment* means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child’s educational performance but that is not included under the definition of deafness in this section.”

Please refer to “**Programs for Deaf and Hard of Hearing Students, Guidelines for Quality Standards**”, for specific information on assessment of students in this category of disability. Published by the California Department of Education, this document can be found online at:

<http://www.cde.ca.gov/sp/ss/dh/documents/proguidlns.pdf> .

## 3. Deafness (DEAF) - Eligibility Summary

C.C.R. Title 5, Sec. 3030(a): A pupil has a hearing impairment whether permanent or fluctuating, which impairs the processing of linguistic information through hearing even with amplification, and which adversely affects educational performance. Processing linguistic information includes speech and language reception and speech and language discrimination.

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8 “*Child with a disability* means a child evaluated in accordance with Sec. 300.304-300.311 as having a hearing impairment (“including deafness”)...and who, by reason thereof, needs special education and related services.”

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8(c)(3) *Deafness* means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child’s educational performance.”

Please refer to “**Programs for Deaf and Hard of Hearing Students, Guidelines for Quality Standards**”, for specific information on assessment of students in this category of disability. Published by the California Department of Education, this document can be found online at:

<http://www.cde.ca.gov/sp/ss/dh/documents/proguidlns.pdf> .

#### **4. Speech or Language Impairment-General Eligibility Summary**

C.C.R. Title 5, Sec.3030(c): A pupil has a language or speech disorder as defined in Section 56333 of the Education Code, and it is determined that the pupil's disorder meets one or more of the following criteria.” (See **4a, 4b, 4c, 4d** below.)

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8 “*Child with a disability* means a child evaluated in accordance with Sec. 300.304-300.311 as having a speech or language impairment...and who, by reason thereof, needs special education and related services.”

**NOTE:** As cited in 34 C.F.R. Part 300 Section 300.8(c)(11) “*Speech or language impairment* means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child’s educational performance.”

**NOTE:** As cited in California Education Code **56333**, “A pupil shall be assessed as having a language or speech disorder which makes him or her eligible for special education and related services when he or she demonstrates difficulty understanding or using spoken language to such an extent that it adversely affects his or her educational performance and cannot be corrected without special education and related services. In order to be eligible for special education and related services difficulty in understanding or using spoken language shall be assessed by a language, speech, and hearing specialist who determines that such difficulty results from any of the following disorders:

- (a) Articulation disorders, such that the pupil’s production of speech significantly interferes with communication and attracts adverse attention.
- (b) Abnormal voice, characterized by persistent, defective voice quality, pitch, or loudness. An appropriate medical examination shall be conducted, where appropriate.
- (c) Fluency difficulties which result in an abnormal flow of verbal expression to such a degree that these difficulties adversely affect communication between the pupil and listener.
- (d) Inappropriate or inadequate acquisition, comprehension, or expression of spoken language such that the pupil’s language performance level is found to be significantly below the language performance level of his or her peers.

- (e) Hearing loss which results in a language or speech disorder and significantly affects educational performance.”

#### **4a. Speech or Language Impairment (SLI) - Articulation Disorder - Eligibility Summary**

C.C.R. Title 5, Section 3030 (c)(1)(A) The pupil displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention. Significant interference in communication occurs when the pupil’s production of single or multiple speech sounds on a developmental scale of articulation competency is below that expected for his or her chronological age or developmental level, and which adversely affects educational performance. (B) A pupil does not meet the criteria for articulation disorder if the sole assessed disability is an abnormal swallowing pattern.

#### **4b. Speech or Language Impairment (SLI) - Abnormal Voice - Eligibility Summary**

C.C.R. Title 5, Section 3030(c)(2): A pupil has an abnormal voice which is characterized by persistent, defective voice quality, pitch or loudness.

#### **4c. Speech or Language Impairment (SLI) - Fluency Disorder - Eligibility Summary**

C.C.R. Title 5, Section 3030(c)(3): A pupil has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the pupil and listener.

#### **4d. Speech or Language Impairment (SLI) - Language Disorder - Eligibility Summary**

C.C.R. Title 5, Sec. 3030(c)(4): The pupil has an expressive or receptive language disorder when he or she meets **one** of the following criteria:

- (A) The pupil scores at least 1.5 standard deviations below the mean, or below the 7<sup>th</sup> percentile, for his or her chronological age or development level on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics or pragmatics. When standardized tests are considered to be invalid for the specific pupil, the expected language performance level shall be determined by alternative means as specified on the assessment plan, **or**
- (B) The pupil scores at least 1.5 standard deviations below the mean or the score is below the 7<sup>th</sup> percentile for his or her chronological age or developmental level on one or more standardized tests in one or the areas listed in Subsection (A) and displays inappropriate or inadequate usage of expressive or receptive language as

measured by a representative spontaneous or elicited language sample of a minimum of fifty utterances. The language sample must be recorded or transcribed and analyzed, and the results included in the assessment report. If the pupil is unable to produce this sample, the language, speech and hearing specialist shall document why a fifty utterance sample was not obtainable and the contexts in which attempts were made to elicit the sample. When standardized tests are considered to be invalid for the specific pupil, the expected language performance level shall be determined by alternative means as specified in the assessment plan.

## 5. Visual Impairment (VI) - Eligibility Summary

C.C.R. Title 5, Sec. 3030(d): A pupil has a visual impairment which, even with correction, adversely affects a pupil's educational performance.

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8 "*Child with a disability* means a child evaluated in accordance with Sec. 300.304-300.311 as having a visual impairment (including blindness)...and who, by reason thereof, needs special education and related services."

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8(c)(13) *Visual impairment including blindness* means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

Please refer to "**Program Guidelines for Students Who Are Visually Impaired**" published by the California Department of Education for specific information on assessments for visually impaired students' eligibility criteria.

<http://www2.cde.ca.gov/scripts/taxis.exe/webinator/search?pr=default&prox=page&order=750&rprox=750&rdfreq=250&rwfreq=0&rlead=750&sufs=1&order=r&rdepth=0&query=VI+guidelines&cq=>

## 6. Emotional Disturbance (ED) - Eligibility Summary

C.C.R. Title 5, Sec. 3030(i): Because of a serious emotional disturbance, a pupil exhibits **one or more** of the following characteristics over a long period of time and to a marked degree, which adversely affect educational performance:

- (1) An inability to learn which cannot be explained by intellectual, sensory or health factors.
- (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (3) Inappropriate types of behavior or feelings under normal circumstances exhibited in several situations.
- (4) A general pervasive mood of unhappiness or depression.

(5) A tendency to develop physical symptoms or fears associated with personal or school problems.

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8 “*Child with a disability* means a child evaluated in accordance with Sec. 300.304-300.311 as having a serious emotional disturbance (referred to in this part as ‘emotional disturbance’)...and who, by reason thereof, needs special education and related services.”

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8(c)(14)(ii) “Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.”

## **7. Orthopedic Impairment (OI) - Eligibility Summary**

C.C.R. Title 5, Sec. 3030(e): A pupil has a severe orthopedic impairment which adversely affects the pupil’s educational performance. Such orthopedic impairments include impairments caused by congenital anomaly, impairments caused by disease, and impairments from other causes.

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8 “*Child with a disability* means a child evaluated in accordance with Sec. 300.304-300.311 as having an orthopedic impairment...and who, by reason thereof, needs special education and related services.”

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8(c)(8) “*Orthopedic impairment* means a severe orthopedic impairment that adversely affects a child’s educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations and fractures or burns that cause contractures).”

## **8. Other Health Impairment (OHI) - Eligibility Summary**

C.C.R. Title 5, Sec. 3030(e): A pupil has limited strength, vitality, or alertness, due to chronic or acute health problems including but not limited to a heart condition, cancer, leukemia, rheumatic fever, chronic kidney disease, cystic fibrosis, severe asthma, epilepsy, lead poisoning, diabetes, tuberculosis and other communicable infectious disease, and hematological disorders such as sickle cell anemia and hemophilia which adversely affect a pupil’s educational performance. In accordance with Section 56026(e) of the Education Code, such physical disabilities shall not be temporary in nature as defined by Section 3001(v).

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8 “*Child with a disability* means a child evaluated in accordance with Sec. 300.304-300.311 as having an other health impairment...and who, by reason thereof, needs special education and related services.”

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8(c)(9) “*Other health impairment* means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

(i) Is due to chronic or acute health problems such as asthma, \* attention deficit disorder or \*attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a child’s educational performance.”

**\*See Appendix to Chapter III for Attention Deficit Disorder Guidelines.**

#### **9. Specific Learning Disability (SLD) - Eligibility Summary**

**NOTE: Federal Law (IDEA 2004) and the California Education Code differ in their definitions of Specific Learning Disability from that which is currently found in the California Code of Regulations, Title 5, Section 3030 (as listed in Barclays Official California Code of Regulations dated 11/23/2007).**

**Both of the above references are included in this Procedural Guide. Until the State of California decides how RtI (Response to Intervention) will be utilized as a determiner of Specific Learning Disability, Charter LEAs need to consider both the discrepancy model and the RtI model in determining eligibility for special education under this disability category.**

#### **Eligibility—(Discrepancy Model)**

**California Code of Regulations, Title 5, Section 3030(j) (as listed in Barclays Official California Code of Regulations dated 11/23/2007:)**

C.C.R. Title 5, Sec. 3030(j): A pupil has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an impaired ability to listen, think, speak, read, write, spell, or do mathematical calculations, and has a **severe discrepancy** between intellectual ability and achievement in one or more of the academic areas specified in Section 56337(a) of the Education Code. For the purpose of Section 3030(j):

- (1) Basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, cognitive abilities including association, conceptualization and expression.
- (2) Intellectual ability includes both acquired learning and learning potential and shall be determined by a systematic assessment of intellectual functioning.
- (3) The level of achievement includes the pupil's level of competence in materials and subject matter explicitly taught in school and shall be measured by standardized achievement tests.
- (4) The decision as to whether or not a severe discrepancy exists shall be made by the individualized education program team, including assessment personnel in accordance with Section 56341(d), which takes into account all relevant material which is available on the pupil. No single score or product of scores, test or procedure shall be used as the sole criterion for the decisions of the individualized education program team as to the pupil's eligibility for special education. In determining the existence of a severe discrepancy, the individualized education program team shall use the following procedures:
  - (A) When standardized tests are considered to be valid for a specific pupil, a severe discrepancy is demonstrated by: first, converting into common standard scores, using a mean of 100 and standard deviation of 15, the achievement test score and the ability test score to be compared; second, computing the difference between these common standard scores; and third, comparing this computed difference to the standard criterion which is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests. A computed difference which equals or exceeds this standard criterion, adjusted by one standard error measurement, the adjustment not to exceed 4 common standard score points, indicates a severe discrepancy when such discrepancy is corroborated by other assessment data which may include other tests, scales, instruments, observations and work samples, as appropriate.
  - (B) When standardized tests are considered to be invalid for a specific pupil, the discrepancy shall be measured by alternative means as specified on the assessment plan.
  - (C) If the standardized test do not reveal a severe discrepancy as defined in subparagraphs (A) or (B) above, the individualized education program team may find that a severe discrepancy does exist, provided that the team documents in a written report that the severe discrepancy between ability and

achievement exists as a result of a disorder in one or more of the basic psychological processes. The report shall include a statement of the area, the degree, and the basis and method used in determining the discrepancy. The report shall contain information considered by the team which shall include, but not be limited to:

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

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

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8(a) "*Child with a disability* means those children evaluated in accordance with Sec. 300.530-300.534 as having...specific learning disability...and who because of those impairments need special education and related services."

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8(10):

(i), the term "*Specific Learning Disability*" includes such conditions as "perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia."

(ii) *Disorders not included.* "Specific learning disability does **not** include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

#### **Eligibility—"RTI Model"**

#### **California Education Code 56337:**

- (a) A specific learning disability, as defined in paragraph (3) of Section 1401 of Title 20 of the United States Code, means a disorder in one or more of the basic



psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or perform mathematical calculations. The term “specific learning disability” includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. That term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

- (b) Notwithstanding any other provision of law and pursuant to paragraph (6) of Section 1414 of Title 20 of the United States Code, in determining whether a pupil has a specific learning disability as defined in subdivision (a), a local educational agency is **not** required to take into consideration whether a pupil has a severe discrepancy between achievement and intellectual expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.
- (c) In determining whether a pupil has a specific learning disability, a local educational agency **may** use a process that determines if the pupil responds to scientific, research-based intervention as a part of the assessment procedures described in paragraphs (2) and (3) of subsection (b) of Section 1414 of Title 20 of the United States Code.

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8(a) “*Child with a disability* means those children evaluated in accordance with Sec. 300.530-300.534 as having...specific learning disability...and who because of those impairments need special education and related services.”

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8(10):

(i), the term “*Specific Learning Disability*” includes such conditions as “perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.”

(ii) *Disorders not included.* “Specific learning disability does **not** include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

## **10. Deaf-Blindness (DB) - Eligibility Summary**

C.C.R. Title 5, Sec. 3030(b): A pupil has concomitant hearing and visual impairments, the combination of which causes severe communication, developmental and educational problems.

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8 “*Child with a disability* means a child evaluated in accordance with Sec. 300.304-300.311 as having concomitant hearing and visual impairments ...and who, by reason thereof, needs special education and related services.”

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8(2), “*Deaf-blindness* means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.”

## **11. Multiple Disabilities (MD) - Eligibility Summary**

C.C.R. Title 5, Sec. 3030(h): “A pupil has significantly below average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affect a pupil’s educational performance.”

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8 “*Child with a disability* means a child evaluated in accordance with Sec. 300.304-300.311 as having multiple disabilities...and who, by reason thereof, needs special education and related services.”

**NOTE:** As cited in 34 C.F.R. Part 300 Section 300.8(c)(7), “*Multiple disabilities* means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does **not** include deaf-blindness.”

## **12. Autism (AUT) - Eligibility Summary**

C.C.R. Title 5, Sec. 3030(g): “A pupil exhibits any combination of the following autistic-like behaviors, to include but not be limited to: (1) An inability to use oral language for appropriate communication; (2) A history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood; (3) An obsession to maintain sameness; (4) Extreme preoccupation with objects or inappropriate use of objects or both; (5) Extreme resistance to controls; (6) Displays peculiar motoric mannerisms and motility patterns; (7) Self-stimulating, ritualistic behavior.”

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8 “*Child with a disability* means a child evaluated in accordance with Sec. 300.304-300.311 as having autism...and who, by reason thereof, needs special education and related services.”

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8(c)(1):

- (i) “*Autism* means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.
- (ii) Autism does not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance, as define in paragraph (c)(4) of this section.
- (iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.”

### **13. Traumatic Brain Injury (TBI) - Eligibility Summary**

34 C.F.R. Part 300 Sec. 300.8(12): “Traumatic Brain Injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.”

**NOTE:** As cited in 34 C.F.R. Part 300 Sec. 300.8(1) “*Child with a disability* means a child evaluated in accordance with Sec. 300.304-300.311 as having traumatic brain injury...and who, by reason thereof, needs special education and related services.”

## **Appendix to Chapter III**

## ATTENTION DEFICIT DISORDER GUIDELINES

A student whose educational performance is adversely affected by a suspected or diagnosed attention deficit disorder or attention deficit/hyperactivity disorder and after other interventions have proven unsuccessful, may meet eligibility requirements under the following categories:

**Specific Learning Disability [SLD]** with a significant discrepancy between ability and achievement and a deficit in attention which is one of the five basic psychological processes; or

**Emotionally Disturbed [ED]** when the lack of attention is causing a severe emotional condition so pervasive that it adversely affects educational performance; or

**Other Health Impaired [OHI]** when a student has a limited alertness due to ADD/ADHD as a chronic, acute health problem which adversely affects educational performance.

**The purpose of this document** is to clarify how Charter LEAs should apply OHI eligibility criteria as outlined in the 2003 document published by the U.S. Office of Special Education Programs (OSEP) entitled, *Identifying and Treating Attention Deficit Hyperactivity Disorder: A Resource for School and Home*, in regard to students with suspected ADD/ADHD.

“In order to receive special education and related services under Part B of IDEA, a child must be evaluated to determine **(A)** whether he or she has a disability, and **(B)** whether he or she, because of the disability, needs special education and related services. The initial evaluation must be a full and individual evaluation that assesses the child in all areas related to the suspected disability and uses a variety of assessment tools and strategies.

**A) Identification of the disability ADD/ADHD:** The criteria set forth by the fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)* are used as the standardized clinical definition to determine the presence of ADHD (see DSM-IV Criteria for ADHD). A person must exhibit several characteristics to be clinically diagnosed as having ADHD:

**Severity.** The behavior in question must occur more frequently in the child than in other children at the same developmental stage.

**Early onset.** At least some of the symptoms must have been present prior to age seven.

**Duration.** The symptoms must also have been present for at least six months prior to the evaluation.

**Impact.** The symptoms must have a negative impact on the child’s academic or social life.

**Settings.** The symptoms must be present in multiple settings.

**B) Need for Special Education and Related Services:** The need for Special

Education and Related Services is determined by the adverse affect of the disability on educational performance, **despite consistently applied and documented regular education accommodations\***. Adverse affect on educational performance must be demonstrated (documentation needed) by the **pervasive\*\*** nature of **three** of the following:

- (1) The student is not making satisfactory progress towards grade level standards.
- (2) On grade reports, there is an overall pattern of poor or failing grades (equivalent of D's or F's) present for at least six months.
- (3) Quality and degree of task completion is significantly below the range of the class.
- (4) On **standardized achievement tests**, the student demonstrates a significant difference between ability and achievement.

**The relationship between the above indicators and ADD/ADHD should be documented in the IEP.**

Even if a student has symptoms of ADD/ADHD, the IEP Team should attempt to differentiate indicators that would be more closely associated with substance abuse, mood disorders (i.e.: anxiety/depression), conduct disorders and oppositional defiant disorder from those that are primarily the result of the ADD/ADHD condition. Although these conditions may coexist, the IEP Team should attempt to identify the cause/effect relationship each of these conditions may be having on the student's academic achievement level, basic skill development, and social functioning in order to make proper eligibility decisions and to design effective intervention strategies.

**\*general education accommodations** may include the following as examples: extra time for assignments or tests, repeated directions, note takers, alternate responses for class work or tests, preferential seating, abbreviated assignments.

**\*\*pervasive** is defined as present in over 80% of subjects and across various types of assignments and settings (individual seat work, cooperative learning, written and oral work, and timed tests, etc.).

Adopted by El Dorado County SELPA Steering Committee, September 15, 2004.

## **CHAPTER IV**

### **DUE PROCESS HEARING AND COMPLAINT PROCEDURES**

### **Due Process Hearing**

Under IDEA, due process hearings are the principal vehicle for resolving disputes between parents of children with disabilities and Charter LEAs concerning identification, evaluation, placement or provisions of FAPE. Parents, students who have reached the age of majority and Charter LEAs are the only parties who may request a due process hearing. A Charter LEA may initiate due process in the following instances:

1. Parents refuse to consent to an action for which parental consent is required
2. When a Charter LEA is aware that a parent disagrees with the placement
3. In response to a parent request for a publicly funded Independent Educational Evaluation (IEE)
4. In the event a multidisciplinary team can not agree on any aspect of a student's educational program, including placement, and the Charter LEA requests that a hearing officer design the IEP

Due process procedures include the option of a mediation conference, the right to examine pupil records, and the right to a fair and impartial administrative hearing at the state level. Specific procedures and timelines are delineated in the following pages to assist you in complying with legal requirements.

The El Dorado County Charter SELPA is implementing a local mediation process following extensive training in alternative dispute resolution as an alternative to formal mediation and fair hearing. This local alternative dispute resolution (ADR) process seeks to build positive relationships, encourages flexibility and creative problem solving and promotes a sense of ownership in the outcome. Parents may opt to meet with a "solutions panel" comprised of parents and educators to resolve the issue(s) of concern. This process does not preclude the option of formal mediation or fair hearing, but is offered as a positive alternative. For more information on the ADR process, contact the SELPA office at (530) 295-2289.

To initiate a due process hearing, the parents or public educational agency files a written request with the Office of Administrative Hearings. The requesting party also submits a copy of the hearing request to the other party. The hearing is to be completed and a decision reached within 45 days from receipt of the request, unless a continuance has been granted. If both parties agree to a mediation conference, it is held and completed within 15 days after hearing receipt. If the parties then proceed to the due process hearing, it is held and completed within 30 days after the mediation conference is held. To file for mediation or a due process hearing, contact:

**Office of Administrative Hearings  
Special Education Division  
2349 Gateway Oaks, Suite 200  
Sacramento, CA 95833-4231  
Telephone: 926-263-0880; Fax: 916-263-0890**



**Note: These timelines are important to the outcome of the hearing. Often when timelines are violated, a hearing is lost based on a denial of due process rather than on the issues.**

Nothing in the due process procedures described in this chapter is to be construed as prohibiting or preventing the parent and the public education agency from meeting informally and resolving any issue or issues of concern.

<u>EVENT</u>	<u>PROCEDURES</u>	<u>DOCUMENTATION</u>
<b>1.</b>	<b>INITIATING A DUE PROCESS HEARING</b>	
	If any parent desires a due process hearing on any educational decision by a Charter LEA, covered under due process guidelines (Ed.Code §56501), parent submits written hearing request to Office of Administrative Hearings and the Charter LEA.	Receipt of due process hearing request
	If the hearing request is submitted to the Charter LEA, the request is immediately forwarded to the Office of Administrative Hearings (OAH) who informs both parties of request receipt and schedules a mediation conference which can be waived by either party.	Reply letter informs parent/Charter LEA of informal review, ADR, Resolution Session, mediation conference and due process hearing.
	OAH determines if the complaint meets the requirements of IDEA 2004: (1) child's name, address and school of attendance; (2) a description of the problem with specific related facts; and (3) a proposed resolution with specific related facts.	Within 15 days of receipt of complaint, either schedule a Resolution Session or file a motion to dismiss the complaint (if the Charter LEA deems the complaint to be insufficient).
	If the complaint is deemed to be valid, the Charter LEA must, within 10 calendar days, provide a written response to the complaint which specifically addresses: (1) why the action subject to dispute was proposed or rejected; (2) includes a description of the other options considered and the reason for rejection; (3) the basis of the action; and (4) all relevant factors related to the decision.	Written response to parent
	If the Charter LEA requests a hearing, the chairperson of the IEP Team informs parent and forwards written hearing request to the OAH, who informs both parties of request receipt and schedules mediation conference which can be waived by either party.	Written communication from the Charter LEA with both parent and OAH

	<b>Schedule a Resolution Session within 15 days of receipt of the complaint.</b>	Notice to parent and other attendees of proposed Resolution Session
<b>2.</b>	<b>INFORMAL REVIEW</b>	
	In the interest of avoiding a costly due process hearing, administrator or designee may meet informally with parents as soon as possible after receipt of hearing request to resolve parent concerns.	Notification of informal review
	Schedule IEP team meeting, if needed, to document program change.	IEP; Results of informal review
	If parent concern(s) is unresolved, administrator or designee may inform parent: (1) that Charter LEA will participate in a Resolution Session; (2) that Charter LEA waives the mediation conference and is proceeding directly to the due process hearing before State Hearing Officer.	Notification of Resolution Session or intent to proceed to due process hearing.
<b>3.</b>	<b>RESOLUTION SESSION</b>	
	The Charter LEA is required to schedule a resolution session within 15 days of their receipt of the complaint. This resolution session must include the parents, an administrator, and relevant members of the IEP team. The purpose of this session is to foster early resolution of special education disputes. Attorneys are not permitted, unless the parent brings an attorney. If a parent brings an attorney, that attorney is not entitled to recover fees for attending the resolution session. The resolution session is like mediation, without the assistance of a mediator. Any information discussed at that meeting is confidential. The outcome of the resolution session should be a legally binding settlement agreement.	Notification of Resolution Session  Documentation of Resolution Agreement
	Schedule IEP team meeting, if needed, to document program change.	IEP
	If parent concern(s) is unresolved, administrator or designee may inform parent: 1) that Charter LEA will participate in mediation conference; or 2) that Charter LEA waives the mediation conference and is proceeding directly to the due process hearing before State Hearing Officer.	Letter to parent with decision to participate in Mediation or in due process hearing.
	If agreement is reached at the Resolution Session, OAH must be notified to remove the matter from hearing. If agreement is not reached, the matter will proceed to mediation and/or hearing.	Letter to OAH to remove matter from hearing

<b>4.</b>	<b>MEDIATION CONFERENCE</b>	
	Mediation conference is held if Charter LEA or parents do not waive conference.	Reply letter from OAH informs parent and Charter LEA regarding mediation conference and due process hearing.
	If the parties to the mediation come to agreement, the decisions are documented in the mediation agreement.  An IEP team meeting is scheduled as soon as possible to incorporate these agreements into the IEP.	Completed mediation conference form documents action taken  IEP
	If parent concern(s) is unresolved, OAH lists unresolved issue(s) as basis for due process hearing and sets hearing date and place convenient for both parties.	Completed mediation conference documents unresolved issues.
<b>5.</b>	<b>DUE PROCESS HEARING</b>	
	Hearing must be completed within 30 days after mediation conference or within 45 days after receipt of hearing request if mediation conference is waived.	OAH Process; Assignment of date, time, place by OAH
	OAH assigns Hearing Officer who is knowledgeable of administrative hearing procedure.	
	<b>All evidence (written and list of witnesses) exchanged by parent and Charter LEA 5 days prior to hearing</b>	All Documentation
	Hearing proceedings must be recorded verbatim and both parties given access to the recording.	
	Hearing admits any relevant evidence on which responsible persons are accustomed to rely in conduct of serious affairs; all testimony under oath or affirmation.	
	Hearing is conducted in English with interpreter when necessary.	
	Decision written in English and, as appropriate, the primary language of parent and mailed to both parties to the hearing.	Completed decision form
	Both parties given notice of rights and explanation of procedure for appealing hearing decision to court of competent jurisdiction.	Notification of appeal rights

<u>EVENT</u>	<u>PROCEDURES</u>	<u>DOCUMENTATION</u>
<b>6.</b>	<b>STUDENT PLACEMENT DURING HEARING (STAY PUT)</b>	
	During the hearing proceedings, the student is to remain in his or her present educational placement unless the public education agency and the parent agree otherwise. Present educational placement is usually defined as the current education and related services provided in accordance with the most recently approved IEP. A student applying for initial admission to a Charter LEA, shall, with consent of the parents, be placed in the public school program until the completion of all proceedings.	IEP and OAH Decision
<b>7.</b>	<b>IEP REVIEWS</b>	
	A Charter LEA must keep its proposed educational planning for a student current during the hearing process so that it remains ready to serve the student whenever he or she returns to the public Charter LEA. This means that a Charter LEA must continue to offer FAPE by developing and reviewing annual IEPs while litigation is pending, even though the parents may not consent.	IEP
<b>8.</b>	<b>IMPLEMENTING THE DECISION OF THE HEARING OFFICER</b>	
	If a Charter LEA does not intend to appeal the decision made in a due process hearing, it should implement the decision as soon as possible, and in any event, within a reasonable amount of time.	Written Decision from OAH

\*\*\*See the Appendix to this chapter for:

1. "Special Education Due Process Hearings Procedural Safeguards" from the Office of Administrative Hearings
2. "El Dorado County Charter SELPA Resolution Session Process"

## **California Department of Education Complaint Procedures**

Any individual, public agency or organization may file a written complaint with the superintendent of the concerned local public education agency alleging a matter, which if true, would constitute a violation by that public education agency of a federal or state law or regulation governing special education and related services. In some instances, the complaint may be filed directly with the State Superintendent of Public Instruction. (see CCR 4650). For complaints relating to special education, the following shall be conditions for direct state intervention if the complainant alleges:

- 1. A public agency, other than an LEA fails or refuses to comply with an applicable law or regulation relating to the provision of FAPE.**
- 2. The LEA or public agency fails or refuses to comply with the due process procedures or failed or refused to implement a due process hearing order.**
- 3. Facts that indicate that the child or group of children may be in immediate physical danger or that the health, safety or welfare of a child or group of children is threatened.**
- 4. That a student is not receiving the special education or related services specified in his or her IEP.**
- 5. The complaint involves a violation of federal law governing special education.**

If the complainant files a complaint directly with the State, they shall identify the basis upon which the direct filing is being made.

Each person or organization filing a complaint shall specify all relevant facts in their possession and provide any additional information that the complainant believes will support the complaint.

The public education agency shall annually notify individuals of their local educational agency complaint procedures and of their right to a hearing regarding the complaint. The notice shall include the identities of the person responsible for processing complaints, the civil remedies available and of the appeal and review procedures.

### **Local Complaint Procedures**

When a complaint is filed directly with the local educational agency, the Charter LEA shall complete the following within 60 days from receipt of the complaint:

- 1. Investigate the complaint. The investigation shall provide an opportunity for the complainant, or the complainant's representative, and local educational agency representatives to present information relevant to the complaint. The**

investigation may include an opportunity for the parties to meet to discuss the complaint or question each other's witnesses.

2. Prepare a report of the facts, findings and disposition of the complaint and rationale for such disposition. The report shall include corrective actions (if any).
3. Provide a copy of the report to the complainant, together with a copy of the complainant's right to appeal the Charter LEA's decision to the Department of Education.

Charter LEAs may establish procedures for attempting to resolve complaints through mediation prior to the initiation of a formal compliance investigation. Conducting local mediation shall not extend the local timelines for investigating and resolving complaints at the local level, unless the complainant agrees, in writing, to the extension of the timeline. In no event shall mediation be mandatory in resolving complaints.

If the Local Educational Agency Decision is appealed to the state level, the LEA shall forward the following to the State Superintendent of Public Instruction:

- a. The original complaint
- b. A copy of the Charter LEA Decision
- c. A summary of the nature and extent of the investigation conducted by the Charter LEA (if not covered in the Decision)
- d. A report of any action taken to resolve the complaint
- e. A copy of the LEA complaint procedures; and
- f. Such other relevant information as the Superintendent may require.

Any complainant may appeal a LEA Decision to the State Superintendent by filing a written appeal within 15 days of receiving the LEA Decision. Extensions for filing appeals may be granted for good cause.

#### **Direct State Intervention**

When the State Superintendent of Public Instruction (Superintendent) receives a complaint requesting direct State intervention, the Superintendent shall determine whether the complaint meets one or more of the criterion specified in the California Code of Regulations (Section 4650), and shall immediately notify the complainant of his or her determination. If the complaint is not accepted, it will be referred for local investigation.

When direct state intervention is warranted, the following procedures shall be used to resolve the issues of complaint:

1. The Department shall offer to mediate the dispute which may lead to a state mediation agreement; and
2. The Department shall conduct an on-site investigation if either the Charter LEA or the complainant waives mediation or mediation fails to resolve the issues. Mediation shall not exceed thirty days unless the parties agree to an extension.

### **Mediation Procedures**

1. Each party in the dispute shall be notified by the Department and offered the mediation process as a means of resolving the complaint. Should the parties agree to mediate, written confirmation shall be sent indicating the time and place of the mediation conference.
2. Upon acceptance of the Department's offer to mediate, the allegations to be addressed shall be sent by certified mail to each party.
3. A trained mediator is appointed.
4. The mediation results are documented in a mediation agreement and signed by the involved parties.
5. The mediator confirms that the agreement is consistent with all applicable laws and regulations.
6. A copy of the mediation agreement is sent to each party.

The compliance status of the Charter LEA will revert to noncompliance if they do not perform the provisions of the mediation agreement within the time specified.

### **Investigation Procedures**

If either party waives mediation, or mediation fails, in part or in whole, those remaining unresolved issues shall be addressed through the investigation process.

1. At least two weeks prior to the date of an investigation, each party in the dispute will be notified of the name(s) of the investigator(s) and the investigation dates
2. The investigator will request all documentation regarding the allegations and will interview the complainant and all involved persons as appropriate to determine the facts of the case
3. The investigation will be completed within 60 days after receiving a request for intervention or an appeal, unless the parties agree to extend the timelines.
4. An investigation report shall be mailed to the parties within 60 days from receipt of the request.

Within 35 days of receipt of the report, either party may request reconsideration by the Superintendent. The Superintendent may, within 15 days, respond in writing to the parties either modifying the conclusions or required corrective actions of the Department report, or

denying the request. Pending the Superintendent's reconsideration, the Department's report remains in effect and enforceable.

(For specific enforcement provisions see CCR Section 4670.)



## **Appendix to Chapter IV**

## **SPECIAL EDUCATION DUE PROCESS HEARINGS PROCEDURAL SAFEGUARDS**

### DUE PROCESS HEARING RIGHTS INCLUDE THE FOLLOWING:

1. The right to request a mediation conference at any point during the hearing process. The mediation process is not to be used to deny or delay a parent(s) or guardian(s) right to a due process hearing, or to deny any other rights afforded to parties. Attorneys and advocates are permitted to participate in mediation conferences scheduled after the filing of a request for due process hearing. (20 U.S.C. § 1415(e) (1); 34 C.F.R. § 300.506; Ed. Code § 56501, subd. (b)(2).)
2. The parent has the right to examine all school records of the child, and to receive copies of the records within five days of an oral or written request by the parent. A public educational agency<sup>1</sup> may charge no more than the actual cost of reproducing the records, but if the cost effectively prevents the parent from exercising this right, then the parent is entitled to receive a copy or copies at no cost. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(a)(1)(i); Ed. Code § 56501, subd. (b)(3).)
3. The parents' right to have the pupil who is the subject of the state hearing present at the hearing. (34 C.F.R. § 300.509(c)(1)(i); Ed. Code § 56501, subd. (c)(1).)
4. The parents' right to open the state hearing to the public. (34 C.F.R. § 300.509(c)(1)(ii); Ed. Code § 56501, subd. (c)(2).)
5. The parents' right to an interpreter at no cost if their primary language or mode of communication is other than English. (20 U.S.C. § 1415 (b)(4); 34 C.F.R. § 300.501(c)(5).)

### MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT (STAY PUT)

A child shall remain in his/her current educational placement while due process hearing proceedings are pending, unless the parents and the State or local educational agency, agree to a different placement. This provision is subject to certain exceptions in disciplinary matters involving the child. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.514; Ed. Code § 56505 subd. (d).)

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<sup>1</sup> Public educational agency includes, but is not limited to, a school district, SELPA or LEA.

## RESOLUTION SESSION

Prior to the setting or conduct of any due process hearing, and within 15 days of receiving notice of the complaint, the public educational agency shall convene a resolution meeting. The meeting shall include the parent(s), a public educational agency representative, and relevant member(s) of the IEP team who have specific knowledge of the facts of the complaint. The purpose of the meeting is to provide an opportunity for the parent(s) to discuss their complaint and its factual basis, and to provide the public educational agency an opportunity to resolve the complaint. If the complaint is unresolved 30 days after its receipt by the public educational agency, a due process hearing may be held and the applicable timelines shall begin. (20 U.S.C. § 1415(f)(1)(B)(i-iv).)

The resolution session may be waived only under two circumstances; (1) a written waiver signed by the parent(s) and public educational agency representative, or (2) agreement by the parties to participate in mediation. (20 U.S.C. § 1415(f)(1)(B)(i)(IV).)

## CONDUCT OF THE HEARING AND RIGHTS OF PARTIES AT HEARING:

1. The hearing shall be held at a time and place reasonably convenient to the parent or guardian and the pupil. (Ed. Code § 56505, subd. (b).)
2. All parties to the hearing have the following rights consistent with state and federal statutes and regulations:
  - A. The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of children with disabilities. (20 U.S.C. § 1415(h)(1); 34 C.F.R. § 300.509(a)(1); Ed. Code § 56505, subd. (e)(1).)
  - B. The right to present evidence, as well as written and oral argument. (20 U.S.C. § 1415(h)(2); 34 C.F.R. § 300.509(a)(3).)
  - C. The right to confront, cross-examine, and compel the attendance of, witnesses. (20 U.S.C. § 1415(h)(2); 34 C.F.R. § 300.509(a)(2); Ed. Code § 56505, subd. (e)(3).)
  - D. At their option, parent(s) or guardian(s) have the right to receive a written or electronic verbatim record of the proceeding at no cost to the parent or guardian. (20 U.S.C. § 1415(h)(3); 34 C.F.R. § 300.509(a)(4); Ed. Code § 56505, subd. (e)(4).)
  - E. At their option, parent(s) or guardian(s) have the right to receive the written or electronic findings of fact and decision, at no cost to the parent(s) or guardian(s). The findings and decision shall be made available to the public after any personally identifiable information has been deleted consistent with confidentiality requirements. (20 U.S.C. §

1415(h)(4)(A); Ed. Code § 56505, subd. (e)(5); 34 C.F.R. § 300.509(a)(5).)

- F. The right to receive from the other parties, **at least five (5) business days prior to the hearing**, a copy of all documents and a list of all witnesses and their general area of testimony, which the parties intend to present at the hearing. This shall include all assessments completed by that date and any recommendations based on those assessments that the parties intend to use at the hearing. (20 U.S.C. § 1415(f)(2)(A); 34 C.F.R. § 300.509(b)(1); Ed. Code § 56505, subd. (e)(7).)
- G. The right to prohibit the introduction of any evidence at the hearing not disclosed **at least five (5) business days prior to the hearing**. (20 U.S.C. § 1415(f)(2)(B); 34 C.F.R. § 300.509(a)(3); Ed. Code § 56501, subd. (f).)

#### REPRESENTATION AT DUE PROCESS HEARING

If either party to a due process hearing intends to be represented by an attorney at the state hearing, notice of that intent shall be given to the other party at **least ten (10) calendar days prior to the hearing**. Failure to provide the required notice shall constitute good cause to grant a continuance. (Ed. Code § 56507, subd. (a).)

#### WRITTEN DECISION UPON COMPLETION OF HEARING

Upon completion of the due process hearing, the Administrative Law Judge shall prepare a written, reasoned decision. The decision shall include reason(s) for any nonpublic school placement or agency services or reimbursement for any nonpublic school placement or agency services. The decision shall be mailed to all parties to the hearing within 45 days from the receipt of the request for a hearing. (20 U.S.C. § 1415(g)(2); 34 C.F.R. § 300.511(a).)

Either party to a hearing may request an extension from the Administrative Law Judge, which request shall be granted upon a showing of good cause. Any extension shall extend the time for rendering a final administrative decision for a period only equal to the length of the extension. (34 C.F.R. § 300.511(c).)

### Mediation Only Request Form

Important information you need to know before requesting a Mediation Only:

- Participation in a prehearing request mediation is voluntary. If one of the parties declines the opportunity to participate, the mediation cannot occur. However, either party still has the option of requesting a state level hearing.
- The law provides that attorneys and other independent contractors who provide legal advocacy services shall not attend or otherwise participate in a "prehearing request mediation." However, they may participate during all stages of the hearing process. This means that by requesting a mediation only you may not have an attorney or advocate present at mediation.
- The Special Education Hearing Office will assign your request to a specific mediator. All mediators are under contract with the Special Education Hearing Office and are experienced in the area of Special Education Mediation.

If you wish to file a request for Mediation only, complete and print a copy of this Mediation Only Request Form (NOTE: The required information must be provided for request to be processed.) and mail or fax to:

Office of Administrative Hearings, Special Education Unit  
2349 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833  
Phone: (916) 263-0880 - Fax: (916) 263-0890

As soon as the completed request has been processed you will be notified by mail.

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#### STUDENT INFORMATION:

NAME, First and Last (Required) \_\_\_\_\_

ADDRESS (Required) \_\_\_\_\_

\_\_\_\_\_

DATE OF BIRTH \_\_\_\_\_

GRADE LEVEL \_\_\_\_\_

SCHOOL OF ATTENDANCE \_\_\_\_\_

(Required) \_\_\_\_\_

DISTRICT OF RESIDENCE \_\_\_\_\_

(Required) \_\_\_\_\_

### Mediation Only Request Form

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**PARENT INFORMATION:**

NAME, First and Last (Required) \_\_\_\_\_

ADDRESS (Required) \_\_\_\_\_

\_\_\_\_\_

HOME PHONE ( ) \_\_\_\_\_

WORK PHONE ( ) \_\_\_\_\_

FAX ( ) \_\_\_\_\_

LANGUAGE \_\_\_\_\_

---

**PARTIES TO BE NAMED:**

DISTRICT OF RESIDENCE

(Required) \_\_\_\_\_

ADDITIONAL PARTIES

(Required) \_\_\_\_\_

(Any other school district, including school of attendance, or public agency that is responsible for providing services that should be a party in the mediation and hearing.)

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**REQUESTING PARTY (Circle) (Required)**

PARENT

PARENT REPRESENTATIVE

SCHOOL DISTRICT

SCHOOL DISTRICT REPRESENTATIVE

OTHER AGENCY

If the requesting party is not the parent, please complete the following:

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

\_\_\_\_\_

ORGANIZATION \_\_\_\_\_

PHONE ( ) \_\_\_\_\_

FAX ( ) \_\_\_\_\_

### **Mediation Only Request Form**

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**BRIEF SUMMARY OF REASON FOR REQUEST** (Describe the nature of the problem including all relating facts.)

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**PROPOSED RESOLUTION OF PROBLEM STATED ABOVE**

## **El Dorado County Charter SELPA Resolution Session Process**

Beginning July 1, 2005, Charter LEAs are required by IDEA 2004 to follow a new set of procedures to provide parents access to due process and the protections of the procedural safeguards required of federal law.

### **Complaint Requirements:**

Under the reauthorized IDEA there is no right to a due process hearing without a valid complaint. In order to be considered valid, a complaint must contain (1) the child's name, address and school of attendance; (2) a description of the problem with specific related facts; and (3) a proposed resolution with specific related facts. No longer will a general assertion of a denial of FAPE be sufficient to initiate a due process hearing.

### **Motion to Dismiss Complaint: (15 days)**

Charter LEAs now have an affirmative duty to file a motion to dismiss those complaints that do not meet the requirements of the new IDEA. Such motions must be filed within 15 days of receipt of the complaint. If the Charter LEA fails to address the contents of the complaint, it may be assumed that the Charter LEA accepts the complaints as is and a charter LEA could be forced to defend an improperly asserted claim at a due process hearing. Therefore, it is important to evaluate each new complaint as it is received.

### **Respond to Complaint: (10 days)**

Once a valid complaint is received, the Charter LEA must, within 10 calendar days, provide a written response to the complaint which specifically addresses: (1) why the action subject to dispute was proposed or rejected; (2) includes a description of the other options considered and the reason for rejection; (3) the basis of the action; and (4) all relevant factors related to the decision.

### **Resolution Session: (15 days)**

The Charter LEA is required to schedule a Resolution Session with 15 days of their receipt of the complaint. This Resolution Session must include the parents, an administrator, and relevant members of the IEP team. The purpose of this session is to foster early resolution of special education disputes. Consequently, attorneys are not permitted, unless the parent brings an attorney. If a parent brings an attorney, that attorney is not entitled to recover fees for attending the resolution. The Resolution Session is like mediation, without the assistance of a mediator. Any information discussed at that meeting is confidential. The outcome of the resolutions session should be a legally binding settlement agreement.

Once a Charter LEA receives a Due Process Complaint from the Office of Administrative Hearings they should notify the SELPA office immediately. OAH does not inform the



SELPA of filings and it is important to date stamp the date of receipt and fax a copy to the SELPA. The Charter LEA will respond to the parent's complaint in writing. The Charter LEA may also file a letter of insufficiency with OAH. The Charter LEA will offer a Resolution Session and the parents can choose to accept or waive. When a Charter LEA files for Mediation or Hearing, a Resolution Session is not required.

**Contact the SELPA Director immediately upon receiving a notice of filing from a parent or from the OAH to obtain sample letters of response and assistance from the SELPA.**

The SELPA Director will assist a Charter LEA with their responses to the parent and/or OAH. If a Resolution Session is required, staff from the El Dorado County SELPA can serve as the neutral facilitator. The SELPA Director will work with the Charter LEA to locate an available facilitator.

If agreement is reached at the Resolution Session, OAH must be notified to remove the matter from hearing. If agreement is not reached, the matter will proceed to mediation and or hearing.

**CHAPTER V**

**SPECIAL EDUCATION**

**RECORDS**

### **Special Education Records**

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

#### **1. Access:**

- Special education records are subject to the same privacy and access right as other Mandatory Interim pupil records. In addition, parents have the right to examine all school records of their child that relate to the identification, assessment, and educational placement of the child. Even though records may be stamped “confidential” or contain sensitive information, the parent or eligible student has full rights of access. Parents have the right to receive copies within **five business days** of making the request, either orally or in writing. A public educational agency may charge no more than the actual cost of reproducing the records, but if this cost prevents the parent from exercising their right to receive the copies, the copies shall be reproduced at no cost to the parents.
- The LEA will not permit access to any child’s records without written parental permission except as follows:
  - a. Charter LEA officials and employees who have a legitimate educational interest including a school system where the child intends to enroll
  - b. Certain state and federal officials for audit purposes
  - c. Certain law enforcement agencies for purposes listed in Education Code and Federal Law
  - d. A pupil 16 years of age or older, having completed the 10<sup>th</sup> grade who requests access
- The LEA may release information from the student’s records for the following:
  - a. in cases of emergency when the knowledge of such information is necessary to protect the health or safety of the child and/or others
  - b. to determine the child’s eligibility for financial aid
  - c. to accrediting organizations to the extent necessary to their function
  - d. in cooperation with organizations conducting studies and research that does not permit the personal identification of children or their parents by persons not connected with the research and provided that their personally identifiable information is destroyed when no longer needed
  - e. to officials and employees of private schools or school systems in which the child is enrolled or intends to enroll.

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

(See appendix to this chapter for The Special Education Records Request Process form.)

## 2. Confidentiality of Records

- All procedural safeguards of the Individuals with Disabilities in Education Act shall be established and maintained. A custodian of records must be appointed by each LEA to ensure the confidentiality of any personally identifiable student information. This is usually the case manager, but may be another person who has been trained in confidentiality procedures.
- The custodian of records is responsible for ensuring that files are not easily accessible to the public. Records of access are maintained for individual files, which include the name of party, date, and purpose of access.

## 3. Transfer of Records

- When a student moves from one school to another, records should be transferred in accordance with state and federal law. Unfortunately, federal law requires the district from which the student moves to notify the parent of the transfer of records along with the parent's right to review, challenge and/or receive a copy of the transferred record. California law specifies that the district which receives the student shall be responsible for the notification. Procedurally, both requirements can be met if the district provides an annual notification to the parents of every student which specifies that records will be transferred and outlines the other rights cited above. This notice should be provided to all parents each fall and to the parents of every new student upon enrollment.
- **CALIFORNIA SCHOOLS ARE NOT REQUIRED TO OBTAIN PARENT PERMISSION TO FORWARD RECORDS - IN FACT, THEY ARE REQUIRED TO FORWARD RECORDS TO ANY CALIFORNIA SCHOOL OF NEW OR INTENDED ENROLLMENT "WITHIN FIVE (5) DAYS. \*** Records cannot be withheld for nonpayment of fees or fines. (Education Code §49068)
- Mandatory Permanent Pupil records must be forwarded to all schools. (The original, or a copy, also must be retained by the sending district.) Mandatory Interim Pupil records must be forwarded to California public schools and may be

forwarded to any other schools. Permitted pupil records may be forwarded at the discretion of the custodian of the records. Private schools in California are required to forward Mandatory Permanent Pupil Records.

- If an agency or person provides a written report for the school's information, it becomes a part of the pupil's record and, as such, is available to the parent even though it may be marked "confidential." (Technically, it becomes a part of the record only when it is filed or maintained. The custodian of the records should give serious consideration to the educational value of sensitive information before routinely including it as a pupil record. As alternatives, the report may be summarized in a more useful form, it may be returned for revision, or it may be rejected and destroyed before it becomes a record.)

**\*Added 6/89**

#### **4. Correction or Removal of Information**

- Parents have the right, on request, to receive a list of the types and locations of education records collected, maintained and used by the educational agency. Parents may challenge the content of the student's record if they believe the information in education records collected, maintained or used is inaccurate, misleading, or in violation of the privacy or other rights of the child. This right to challenge becomes the sole right of the student when the student turns 18 or attends a post-secondary institution. The request to remove or amend the content of the student record must be made in writing.
- Within 30 days of receiving the request, the superintendent or designee shall meet with the parent/student and with the employee (if still employed) who recorded the information in question. The superintendent shall then decide whether to sustain the allegations and amend the records as requested or deny the allegations. If the allegations are sustained, the superintendent shall order the correction or removal and destruction of the information.
- When a student grade is involved, the teacher who gave the grade shall be given an opportunity to state orally, in writing, or both, the reasons why the grade was given before the grade is changed either by the superintendent or at the decision of the board. Insofar as practical, the teacher shall be included in all discussions relating to the changing of the grade.
- If the superintendent disagrees with the request to amend the records, the parent/student may write within 30 days to appeal this decision to the local school

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

- If the final decision of the governing board is unfavorable to the parent or if the parent accepts an unfavorable decision by the Charter LEA, the parent shall have the right to submit a written statement commenting on the record or explaining any reasons they disagree with the decision of the superintendent or the board. This explanations shall be included in the records of the child for as long as the record or contested portion is maintained by local educational agency. If the records of the child, or contested portion, is given by the agency to any party, the explanation must also be given to the party.
- At the beginning of each school year, parents shall be notified of the availability of the above procedures for challenging student records.
- In order to avoid potential challenges, it is recommended that Charter LEA staff receive training which alerts them to the requirements of privacy and access laws. To the degree that a statement describes a student's behavior, the statement can withstand challenges. Ambiguous terms should be avoided, and staff members should restrict their comments to areas of training. In addition, only those observations which have educational relevancy should be recorded. Statements describing unrelated family incidents or unsubstantiated claims are inappropriate for a student's record.

## **5. Record Classification and Destruction**

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

- Other pupil-related records are defined within the three categories: **mandatory permanent, mandatory interim, and permitted**. (See below for a full explanation of each category.)
- **Mandatory permanent** pupil records become Class I permanent records when their usefulness ceases, and thus are never destroyed. *Caveat:* These records or a copy, are retained for every pupil who was ever enrolled in the Charter LEA. A copy of the mandatory permanent records is forwarded for students who transfer.
- **Mandatory interim** records can be classified as Class 1 permanent or Class III disposable when their usefulness ceases. The Charter LEA is responsible for the classification subject to governing board approval. If mandatory interim records are classified as disposable, they are to be destroyed in accordance with CCR Title 5, §16029. This requires that they be retained for three years beyond the date of origination and that the state historian in the Secretary of State's office be notified of the pending destruction. If a mandatory interim record is no longer useful but a decision cannot be made as to whether it should be Class I permanent or Class II disposable, then it may be classified as Class II optional record and reviewed for classification a year later.
- The third category of pupil records – **Permitted** - may be destroyed whenever their usefulness ceases without the waiting period. However, if a student transfers, graduates or otherwise terminates attendance, such records shall be held six months and then destroyed.
- **As Mandatory Permanent pupil records, special education records may be classified as Class III, disposable, when they are deemed as no longer useful.** This could occur only after transfer or withdrawal from a special education program. Even after classified as disposable, Mandatory Interim records must be retained for **at least three years** beyond the date of the record's creation.
- An important exception applies to those records which were used in assessment for a special education candidate who does not become a special education student. In such cases the records are Permitted pupil records and can be classified as Class III, disposable, and destroyed whenever their usefulness ceases.

## **Appendix to Chapter V**



## **Special Education Records Request Process**

\_\_\_ 1. When a parent requests copies of a student's special education file, please ask them to put the request in writing.

\_\_\_ 2. When received, date stamp the request.

\_\_\_ 3. Notify your principal, director, program specialist and/or SELPA director.

\_\_\_ 4. Provide parents with requested materials within 5 business days. The school may charge parents no more than the actual costs for making the parent copy. If the parent cannot afford to pay, they shall not be charged.

\_\_\_ 5. Courts have ruled that test protocols may be given to parents. (if requested)

\_\_\_ 6. Once you have provided copies, document what you did:

\_\_\_ a) Enclosed are your requested special education files provided to you on \_\_\_\_\_(date) .  
(Have parent(s) sign that they received.)

OR

\_\_\_ b) Special Education files received on \_\_\_\_\_ (date)  
by \_\_\_\_\_ (parent name).

AND

\_\_\_ c) Make a copy of the receipt, keep the original and provide the parent with the copy.

## **CHAPTER VI**

### **STUDENT DISCIPLINE AND BEHAVIOR**

## Suspension and Expulsion of Special Education Students

### Manifestation Determination Guidelines

#### 1. General Definition:

- When a Charter LEA proposes to sanction the misconduct of a student with a disability (IDEA or Section 504 qualified) by expulsion, suspension for an indefinite period, or suspension for more than ten school days, this constitutes a change of placement for the student. The Charter LEA then must determine whether the misconduct was directly caused by the student's disability and/or whether the IEP was being properly implemented. This determination is made during a "Manifestation Determination IEP Meeting". If it is determined at the meeting that the disability had no direct causal effect on the misconduct, and the IEP was being properly implemented, then the student may be disciplined in the same manner as a non-disabled student.
- *These protections may extend to students "not yet eligible" for special education if it is shown that the Charter LEA had knowledge that the child had a disability before the behavioral incident occurred. In such a case, or when a parent requests an evaluation of a general education child who is suspended or expelled, the evaluation must be expedited.*

#### 2. Process:

- A Manifestation Determination IEP Meeting must occur no later than **10 school days** of the decision to change the student's education placement by removing the student from school for more than 10 days due to a violation of the school's code of conduct.
- The IEP Team must consider the following factors:
  - a. The most recent diagnostic evaluations. If the last evaluation is more than 1 year old, a new evaluation must be completed.
  - b. Any teacher observations of the student
  - c. Any discipline incident reports
  - d. Relevant information supplied by parent
  - e. The most recent IEP (including Positive Behavior Supports already in place)
  - f. Any other relevant information in the student's file, including health records
- Using the above information, the IEP Team must determine the answers to two questions:
  - a. Was the conduct in question caused by the student's disability or did it have a **direct** and substantial relationship to the disability?
  - b. Was the conduct in question the **direct** result of the Charter LEA's failure to implement the IEP?

- If the IEP Team determines that answer to both questions above is “no”, the determination is made that the behavior was not a manifestation of the disability. The student’s records are then forwarded for further disciplinary action.
- If the IEP Team determines that answer to **either or both** questions above is “yes”, the determination is made that the behavior was a manifestation of the disability. The student’s records are forwarded for termination of the disciplinary action; student is reinstated into his/her school placement that was in effect prior to the removal unless the school and the parent agree otherwise. A functional behavior assessment/behavior intervention plan is initiated or reviewed for revision.
  - a. Exceptions:
    - ✓ Special circumstances necessitate an interim alternative educational setting for not more than 45 days, because the behavior involved one of the following special circumstances: drugs, weapons, or infliction of serious bodily injury.
    - ✓ Parent and Charter LEA agree to a change in placement.

### 3. Manifestation Determination Requirements

- Must be made by a group of persons knowledgeable about the student and the meaning of the evaluation data.
- Within 10 days after the date on which the decision to take the action is made.
- Must be a reasoned, impartial evaluation of the relatedness of the student’s misconduct to the disability and the appropriateness of the student’s placement.
- If at all possible, the parent should be involved in the determination process, although they are not “entitled” to participate if they outright refuse to nor display reasonable willingness to participate. The Charter LEA should make and document reasonable yet substantial efforts/accommodations to allow for parent participation.
- When making a decision regarding appropriateness of placement, by law, an appropriate placement is one that is “reasonably calculated to confer educational benefit” and is not the same as “the very best possible placement”. The placement, to be appropriate, should be one that was based on a careful consideration of academic, emotional and behavioral needs/concerns and has provided a program and structure, including related services, that addresses these needs/concerns to a reasonable degree.
- This analysis should consider such factors as:
  - a. Behavior intervention strategies that were or should have been employed.

- b. The home/Charter LEA communication that has or should have occurred.
- c. The general progress that has been made on IEP goals and objectives.

#### 4. Recommended Procedures for a Manifestation Meeting

- Parents should be well advised ahead of time regarding the purpose of the meeting and the procedural safeguards available to them.
- All information that comes out of the evaluation process and/or is provided by parent should be carefully considered by the team. What information/data was considered to make a determination should be documented.
  - a. In actuality and by all appearances the process should be an “impartial” one where decisions are made objectively based on all information available. “Moralizing” or making value judgments about the way the law “ought to be” or about the student should not be engaged in during the context of the decision making process. Members should objectively state their decision and reason for their decision without trying to emotionally persuade other members or expressing reasons for their decisions that are beyond the scope of the lawful purpose for/objective of the meeting.
  - b. All members should clearly understand the misconduct and all factors related to it that are necessary to make a decision about manifestation and/or appropriate placement.
  - c. All members should clearly understand the nature of the student’s disability thoroughly enough to make decisions regarding manifestation and/or appropriate placements. This understanding should be based on how the disability would most likely be manifested by the student as an individual.
  - d. The parent of a child with a disability who disagrees with any decision regarding the manifestation determination, or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by filing for due process.
  - e. The decision of the IEP Team shall be forwarded to the Charter LEA’s Board of Education for appropriate action.
  - f. **It is the recommendation of the El Dorado County Charter SELPA that IEP Teams utilize the Manifestation Determination Discussion Guide developed by PENT (Positive Environment Network of Trainers) to guide *preparation* for the Manifestation Meeting as well as during the Manifestation Meeting itself. (See Appendix to this chapter as well as the following website link:**

<http://www.pent.ca.gov/forms.htm> (Fillable template format) In addition, if a Functional Behavioral Analysis is warranted, see the following PENT Website link for a Functional Behavioral Assessment Summary: <http://www.pent.ca.gov/law.htm> as well as the Appendix to this chapter (page

## **Behavioral Interventions for Students with Disabilities**

The Hughes Bill (California Education Code Section 56520) and its implementing regulations provide a framework for developing positive behavior plans and interventions for students with “serious behavior problems”. In accordance with California Code of Regulations, the El Dorado County Charter SELPA has developed policies and procedures to govern the systematic use of behavioral interventions. These policies are in keeping with the SELPA’s philosophy that when a special education student’s behavior is inappropriate, staff shall use behavioral interventions that are developmentally appropriate and respect the student’s dignity and privacy.

A functional analysis assessment must be conducted and a positive behavior intervention plan developed if appropriate, for a student with exceptional needs who is identified as having a serious behavior problem. A “serious behavior problem” is identified by the regulations as behaviors which are self injurious, assaultive, or cause serious property damage and other severe behaviors that are pervasive and maladaptive and for which instructional/behavioral approaches specified in the IEP are found to be ineffective.

In determining whether a Functional Analysis Assessment and Positive Behavior Intervention plan are indicated, the IEP Team is advised to consider the following:

- Was an emergency intervention used to address the problem behavior?
- Have instructional/behavioral approaches specified in the IEP been ineffective?
- Does student have an existing behavior plan?
- Is the behavior limiting the student’s access to learning, the community or social events?

## **Functional Analysis Assessment**

All assessment, intervention and evaluation activities related to a special education student’s Behavior Intervention Plan shall be facilitated and supervised by the IEP team. Although in most cases a functional analysis is initiated by the IEP team, as with any other special education assessment of a student with an existing IEP, this can be accomplished with or without a formal IEP provided parent consent is obtained. Before a functional analysis assessment begins, parents shall be notified and consent obtained.

A functional analysis assessment must be conducted by, or under the supervision of a person who has documented training in behavior analysis with an emphasis on positive behavioral interventions. The Behavior Intervention Case Manager (BICM) shall coordinate and assist in conducting the functional analysis assessment.

Once it is determined that a student with a disability requires a functional analysis assessment, the regulations require that the following elements be included:

- An accurate definition and description of the frequency, duration and intensity of the problem behavior including baseline data

- A history of the problem behavior, including the effectiveness of previously used interventions
- A summary of all relevant educational records
- Health and medical factors which may influence behavior
  - a.) Medication
  - b.) Sleep cycles
  - c.) Health
  - d.) Diet
- An ecological analysis of the settings in which the behavior occurs including, but not limited to:
  - a.) Physical setting
  - b.) Social setting
  - c.) Nature of instruction/ degree of participation
  - d.) Scheduling
  - e.) Degree of independence/choice
  - f.) Quality of the communication between the individual and staff and other students
  - g.) Amount of social interaction
- Reinforcers must be identified that are specific to the student.
- An analysis of the antecedents and consequences of the behavior based on data collected across all appropriate settings.
- A description of the rate of alternative behaviors, including their antecedents and consequences

Information to complete the functional analysis assessment must be obtained from all of the following:

- A review of all available data including individual records and assessment reports
- Direct and systematic observation
- Interviews with significant others

Based on the information gathered from the functional analysis assessment, a hypothesis is generated regarding the **function** of the behavior.

### **Behavior Intervention Plan**

The behavior intervention plan is a written document that is developed by the IEP team, including the BICM. Behavior interventions are designed to provide the student with greater access to a variety of community settings, social contacts and education programs.

The behavior intervention plan must include the following information:

- A summary of information gathered from the functional analysis assessment (report);
- An objective and measurable description of the targeted “maladaptive” behavior(s) and **functionally equivalent replacement positive behavior(s) (FERB)**;
- Individual goals and objectives specific to the behavioral intervention plan;



- A detailed description of the behavioral interventions to be used and the circumstances for their use;
- Specific schedules for recording the frequency of the use of interventions and the frequency for the targeted replacement behaviors; including specific criteria for discontinuing the use of the interventions for lack of effectiveness or replacing it with an identified and specific alternative;
- Criteria by which the procedure will be faded or phased out or less intense/frequent restrictive behavioral intervention schedules or techniques will be used;
- Those behavioral interventions which will be used in non-educational settings;\*
- Specific dates for periodic review by the IEP team of the program's effectiveness;
- The frequency of consultation to be provided by the behavior intervention case manager to the staff and parents who are responsible for implementing the plan.

\*A copy of the plan shall be provided to the person or agency responsible for implementation in non-educational settings.

Behavior intervention plans **must** also include the following elements:

- Environmental changes needed prior to or during plan implementation;
- Direct treatment strategies for positive replacement behaviors including reinforcement systems;
- Positive programming/teaching techniques and strategies;
- Reactive strategies for problem behaviors.

**The Behavior Intervention Plan shall become a part of the student's IEP and shall be sufficiently detailed so as to direct the plan's implementation.**

### **Evaluation**

As specified in the Behavior Intervention Plan, a schedule for reviewing the effectiveness of the plan is part of the original document. The frequency of the periodic review is determined by the type of plan and the support needed by on-site staff. The periodic review will make use of ongoing measurement data in determining the appropriateness of the intervention. The following elements should be included when the IEP team evaluates the effectiveness of the plan:

- Document that program implementation occurred;
- Obtain data on the frequency, duration and intensity of the behavior at intervals determined by the IEP team;
- Evaluate plan effectiveness (compare baseline data with current data).

The method of contact and schedule for reviewing the plan must be agreed upon by the IEP team, including the parent. The review process may occur by any of the following means:

- Telephone contact and/or email;
- Notes/report to parents;
- Meetings.

### **Making Changes to the Behavior Intervention Plan**

If the IEP team determines that changes to the plan are necessary to increase program effectiveness, additional assessments shall be conducted, and changes to the behavior intervention plan shall be proposed based on the outcomes. The BICM (or designee) and the parent may make minor modifications to the plan, as long as the parent can review any data that changes are based on and the parent is informed of their right to question modifications through the IEP process.

**The recommended forms/procedures for developing a Positive Behavioral Intervention Plan for Severe Behavior (Self-Injurious, Assaultive, Serious property Damage and Other Pervasive, Maladaptive Behavior) are located on the PENT (Positive Environment Network of Trainers) website at: <http://www.pent.ca.gov/forms.htm> , (1 - Coversheet | 2 - FAA Data Collection | 3 - Core Plan | 4 - PBIP Data Collection) or in the appendix to this chapter (pages 109-118).**

### **Behavior Intervention Case Manager (BICM)**

- Qualifications and Training

The BICM is a designated **certificated** Charter LEA staff member or other qualified personnel contracted by the Charter LEA, with training in behavior analysis with emphasis on positive behavioral interventions. The duties may be performed by any existing staff member who is appropriately trained in positive behavior analysis, including, but not limited to, a teacher, resource specialist, Charter LEA psychologist or program specialist.

- The BICM must meet the following criteria:
  - a.) He or she is a qualified Charter LEA staff member and meets federal and state certification, licensing, registration or other comparable requirements which apply to the area in which he/she is providing special education or related services.
  - b.) He or she has had training in the following areas:
    - ✓ Context of the Hughes Bill and implementing regulations
    - ✓ Requirements of the legislation
    - ✓ Definition of key terms
    - ✓ Knowledge of what constitutes a legally acceptable functional analysis and behavior intervention plan
    - ✓ Role of the BICM in educational settings
- Conducting an Ecological Analysis
  - a.) Environmental variables that may influence behavior
  - b.) Knowledge of how consequences and antecedents effect behavior

- c.) Knowledge of curriculum (including functional and critical skills) and developmentally appropriate practices
  - d.) Knowledge of teaching strategies
- Assessing Behavior
  - a.) Analysis of antecedents and consequences
  - b.) Data collection techniques
  - c.) Data analysis
  - d.) Determining the communicative function of the behavior (developing hypothesis)
  - e.) Knowledge of multiple factors affecting behavior and behavior change
- Developing a Behavior Intervention Plan
  - a.) Essential components of BIP including
    - ✓ Designing environmental interventions to support behavior change
    - ✓ Direct treatment strategies
    - ✓ Positive programming
    - ✓ Reactive strategies
  - b.) Selecting replacement behaviors
  - c.) Principles of reinforcement
  - d.) Strategies for ongoing data collection
- Emergency Interventions
  - a.) Definition of behavioral emergencies
  - b.) Guidelines for responding to behavioral emergencies including restrictions on use of aversive techniques
  - c.) SELPA policies governing the use of emergency interventions
  - d.) Timelines and legal requirements of emergency interventions

#### **Responsibilities of the Behavior Intervention Case Manager (BICM)**

- Consulting with staff on possible referrals.
- Training or assisting in the training of staff in data collection procedures, functional analysis and behavior intervention strategies.
- Delegating and overseeing data collection, functional analysis, and intervention.
- Monitoring timelines for the IEP at which the functional analysis assessment is presented.
- Monitoring the implementation of the intervention strategies and the follow up meetings of the team.
- Meeting with other case managers on a regularly scheduled basis.
- Developing or assisting in the documentation of the intervention process.

#### **Behavior Intervention Planning Team**

The Charter SELPA recognizes that the IEP/Behavioral Intervention Planning Team may need to involve when appropriate, classroom aides, general education teachers, Charter LEA psychologists, lunchroom or playground supervisors, or other interested credentialed staff, in addition to the

classroom teacher, the child's parents and the BICM. Active involvement of the site administrator may also be a critical factor in the program's success. A successful IEP team capitalizes on the experience and expertise of all its members.

- Qualifications and Training

- a.) Behavior Aides (under the direct supervision of professional staff)

- ✓ knowledge of introductory child development
    - ✓ training in positive behavioral interventions
    - ✓ understanding of individual differences and environmental effects on behavior
    - ✓ knowledge of and ability to apply acceptable emergency procedures according to direction, law, and SELPA policy and positive behavioral interventions
    - ✓ ability to relate positively to children

- b.) Credentialed staff who could potentially be involved in supporting a student with a behavior plan (e.g., general education teachers or other credentialed staff)

- ✓ knowledge of child development
    - ✓ knowledge of individual differences, impact of medical, emotional and psychosocial factors on behavior and various teaching techniques to meet these differences
    - ✓ understanding of which emergency procedures are allowed by law
    - ✓ all of the above mentioned skills

- c.) Credentialed staff that is supporting a student with a behavior plan (e.g., special education teachers, Charter LEA psychologists, program specialists or other interested credentialed staff):

- ✓ ability to define key concepts and components of behavioral intervention regulations
    - ✓ ability to give examples of good practice to each step in developing and implementing a behavioral intervention plan
    - ✓ ability to use key concepts to discuss student behavior
    - ✓ ability to demonstrate mastery of SELPA-approved emergency behavioral interventions
    - ✓ all of the above mentioned skills

- d.) Credentialed staff directly responsible for implementing a behavior plan (e.g., special educators or other interested credentialed staff):

- ✓ completion of supervised experience in positive behavioral interventions with students with disabilities who exhibit maladaptive behaviors
    - ✓ ability to collaborate with all IEP team members in positive behavioral plan development and implementation
    - ✓ all of the above mentioned skills

## **Behavioral Emergency Procedures**

- **Definition of a Behavioral Emergency:**

A behavioral emergency is the demonstration of a serious behavior problem:

- 1) which has not previously been observed and for which an intervention plan has **not** been developed; or
- 2) for which a previously designed behavioral intervention is not effective.

- **Emergency Behavioral Interventions**

Behavioral emergency interventions shall not be used as a substitute for behavioral intervention plans. (Title 5, Section 3052)

Emergency interventions may only be used to control unpredictable, spontaneous behavior which poses clear and present danger of serious physical harm to the individual or others or serious property damage and which cannot be immediately prevented by a less restrictive response (Title 5, Section 3052).

The following emergency interventions, included in “management of assaultive behavior” training, are approved by the SELPA for use by **CPI (Crisis Prevention Institute) trained staff only** and may only be used as a **last resort when a person is a danger to self or others:**

- a.) Use of CPI’s Personal Safety Techniques
- b.) Nonviolent Physical Crisis Intervention and Team Intervention:
  - ✓ “children’s control position” for students who are considerably smaller than the staff person
  - ✓ “team control position” utilizing at least two team members
  - ✓ “transport position” utilizing at least two team members
  - ✓ “interim control position”
- c.) **Prone restraints of any type are not approved by SELPA, and are not a part of CPI training.** Force shall never exceed what is reasonable and necessary under the circumstances, and the duration of the intervention shall not be longer than is necessary to contain the dangerous behavior.

Emergency interventions **may not** include:

- a.) Any intervention that is likely to cause physical pain.
- b.) Releasing noxious, toxic or otherwise unpleasant sprays, mists or substances near a student’s face.
- c.) Any intervention that is used to subject, or likely to subject, the individual to verbal abuse, ridicule or humiliation, or which can be expected to cause emotional trauma.
- d.) Physical intimidation or threats given verbally, physically, or through body language.

- e.) Using any material or objects which simultaneously immobilize all hands and feet, except that techniques such as prone containment may be used as an emergency intervention by trained staff.
- f.) Locked seclusion, or the isolation of an individual in a locked room as an emergency procedure.
- g.) Locked time out.
- h.) Face in lap, or similar positions.
- i.) Any intervention that precludes adequate supervision of the individual.
- j.) Any intervention which deprives the individual of one or more of his senses (facial screening, blindfolds, helmet, talk back, etc.)

### **Behavior Emergency Report**

- Parents/guardians shall be notified within one school day whenever an emergency intervention is used that is defined above under approved emergency procedures. A Behavioral Emergency Report shall immediately be completed and maintained in the student's file. The report shall include all of the following:
  - a.) The name and age of the student.
  - b.) The setting and location of the incident.
  - c.) The name of the staff or other persons involved.
  - d.) A description of the incident and the emergency intervention.
  - e.) A statement of whether the student is currently engaged in a systematic Behavior Intervention Plan.
  - f.) Details of any injuries sustained by the student or others, including staff, as a result of the incident.
- All Behavioral Emergency Reports shall immediately be forwarded to, and reviewed by, a designated responsible administrator.
- Anytime a Behavioral Emergency Report is written regarding a student who does **not** have a behavior intervention plan, the designated responsible administrator shall, **within two days**, schedule an IEP team meeting to review the emergency report and decide if a functional analysis assessment and/or interim behavior intervention plan is needed. The IEP must document its reasons if it decides not to perform the functional analysis assessment or develop an interim plan.
- Anytime a Behavioral Emergency Report is written regarding a student who **has** a behavioral intervention plan, any incident involving a previously unseen, serious behavior problem or where a previously designed intervention is not effective, should be referred to the IEP team to review and determine if the incident constitutes a need to modify the plan.
- Behavioral Emergency Report data shall be collected annually by the SELPA, and submitted to the California Department of Education and the Advisory Commission on Special Education.

## **FEDERAL REQUIREMENTS FOR ADDRESSING BEHAVIOR** **IN STUDENTS WITH EXCEPTIONAL NEEDS**

In addition to the State requirements for addressing severe behaviors, Federal law requires that Behavior Plans (Behavior Support Plans) be developed for students who evidence behaviors which “impede learning” and that a Functional Behavioral Assessment be conducted in response to certain disciplinary actions. Specifically, a Functional Behavioral Assessment is required any time suspensions are over 10 cumulative days or there is an involuntary change in placement.

Federal requirements are general: to conduct a Functional Behavioral Assessment and develop a Behavior Plan. This appropriately allows teams to develop assessment plans individualized to the student’s needs and functioning level and to conduct individualized assessment. Extensive materials are available on conducting “functional” behavioral assessment, but the basic assumption is that all behaviors occur within a particular context and serve a specific purpose. The only specific provided for in federal law is the definition of behavioral assessment as being “functional”. This means that IEP teams are charged with determining the **purpose** of the behavior.

Functional behavior assessment is considered to be a problem solving process. A variety of techniques and strategies are available to identify the purpose of the behavior, but unlike the California State Title V requirements that specify all the elements that must be present in a Functional Analysis Assessment, professionals make this determination based on individual student needs. Variables that will affect the choice of methods and sources used may include the functioning level of the student, including the student’s ability to self report and degree of self awareness, the frequency and severity of the behavior, the history of the behavior and the circumstances under which the behavior is observed.

Educators are required to address behaviors that interfere with the student’s learning or the learning of others, to identify these problems early and to intervene appropriately. In most instances, there is in fact a pattern of behavior that lends itself to functional assessment. However, functional assessment is more problematic when an isolated behavior results in a disciplinary action, thereby triggering the requirement for Functional Behavioral Assessment. In these instances, where additional behaviors have not been observed that interfere with learning, the resulting Behavior Plans may identify supports and services that target the skill deficits or address larger social deficits. Replacement behaviors are considered only in the abstract, and may be addressed in the context of skill building or self-management training (anger management training, substance abuse programs, etc).

Functional Behavioral Assessments and Behavior Plans may vary significantly in style and content. The following are critical elements that should be addressed when conducting a Behavioral Assessment and developing a Behavior Plan:

- a) Was the assessment individualized based on student need?
- b) Were multiple sources and methods used to gather information?
- c) Was the information analyzed to determine if patterns of behavior are present?
- d) Was an attempt made to identify the function of the behavior?
- e) Was a replacement behavior identified, *if appropriate*?

- f) Does the proposed BP address both the source of the problem and the problem itself?
- g) Does the BP identify a variety of strategies and supports?
- h) Does the BP emphasize the development of positive behaviors?
- i) Are the interventions appropriate to the developmental levels of the student? (including cognitive development, communication ability and emotional functioning).

### **OVERVIEW OF DIFFERENCES BETWEEN FAA and FBA**

(The Differences between State and Federal Requirements  
for Behavior Assessment and Planning)

At the present time, there appears to be some confusion regarding the use of the terms Functional Analysis Assessment (FAA) and Functional Behavioral Assessment (FBA). Both types of assessments are based on determining the **function** of a behavior with the goal of using this information to develop appropriate behavior plans. However, they are very different types of assessments, with one (FAA) being highly prescribed and regulated primarily for use with severely disabled students (California Hughes Bill) and the other (FBA) being a requirement for addressing behaviors in a disciplinary context.

The specific requirements for conducting Functional Analysis Assessment (FAA) were developed and signed into law in California in 1990 in the context of addressing the appropriate treatment of students with severe disabilities in educational settings. An FAA is appropriate for students with severe disabilities who evidence serious behavior problems and students who exhibit a pattern of maladaptive behavior that has been resistant to other behavioral interventions.

Federal law does not specify any requirements for conducting Functional Behavioral Assessments (FBA). Under Federal law, behavioral assessment could appropriately consist of a record review, interview or direct observation. When behavioral assessment is being conducted in a disciplinary context, the specific behavior may have occurred only once. The function of the behavior is likely to be established as part of a retrospective analysis. In most cases it is not possible to satisfy the requirements for conducting a Functional Analysis Assessment with behaviors that occur infrequently, such as bringing drugs or weapons to Charter LEA/school.



### **Positive Behavior Support Plans**

***Current Federal and State Law require LEAs to develop Positive Behavior Support Plans (PBSP) as a preventative intervention for students who begin to evidence behavior that is impeding the learning of self or others. These PBSPs can and should be developed as part of General Education interventions before a student is referred for special education. If an IEP is developed for a student, the need for possible Positive Behavioral Interventions must be addressed in the IEP. (CFR §300.324)***

**\*\*\*It is the recommendation of the El Dorado County Charter SELPA that IEP Teams utilize the Positive Behavior Support Planning materials developed by PENT (Positive Environment Network of Trainers) to guide development of an effective positive behavior support plan. (See Appendix to this chapter (pages 119-123) as well as the following website links:**

**<http://www.pent.ca.gov/behBbsps.htm>**

**<http://www.pent.ca.gov/forms.htm> ) (Fillable template format)**

## **Appendix to Chapter VI**

## Positive Behavioral Intervention Plan for Severe Behavior: Self-Injurious, Assaultive, Serious Property Damage, and other Pervasive, Maladaptive Behavior

### Coversheet for FAA & PBIP Development – Section 1 of 4

Student  
Current Teacher

Date of Birth:  
Current School

#### THE POSITIVE BEHAVIORAL INTERVENTION PLAN PROCESS AND CONTENT

##### ☒ Step One:

If a student with an IEP has behavior that meets the California Education Code's definition of "serious behavior," that team will expand to include a Behavior Intervention Case Manager's (BICM) designated by the SELPA as having sufficient training in positive behavioral interventions. The BICM assists the team in developing a positive behavioral intervention plan.

Serious behavior as defined in California Education Code is: *(check one and define)*

- ☐ Assaultive
- ☐ Self-injurious
- ☐ Serious property damage
- ☐ Other pervasive maladaptive behavior

*Step One Results:* IEP team date when BICM services were determined to be required

Behavior Intervention Case Manager appointed:

##### ☒ Step Two:

The BICM, at the request of the IEP Team, will conduct or supervise the conducting of a Functional Analysis assessment (FAA) and report back to the team. An FAA consists of documenting methods of data collection (Section 2) combined with observation and analysis summaries shown on sections of the BSP (Section 3).

*Step Two Results:* FAA was conducted: Date(s)

##### ☒ Step Three:

The IEP team, including the BICM, reconvenes to determine if a positive behavioral intervention plan is required. The BICM presents the FAA Data Collection during FAA (Section 2) and the Observation & Analysis section of the Core Behavior Plan (portions of Section 3). If a plan is to be developed, the team then develops the interventions portion of PBIP Core Plan (Section 3) and the data collection that shall occur during the plans implementation (Section 4).

*Step Three Results:* IEP team met to consider developing a positive behavioral intervention plan Date(s)

If PBIP was developed, next IEP team review PBIP date

For additional review dates if plan is ineffective, see PBIP Data Collection Form (Section 4).

**Summary:** At the conclusion of these steps, a decision about developing a behavior plan will have been made. **If the IEP team concludes the student does NOT have serious behavior**, but does have "behavior interfering with learning," a behavior support plan (BSP) may be suggested by any member of the IEP team to specify positive behavioral interventions and supports. This BSP does not require the addition of the BICM, nor the use of the supplementary forms. **If the IEP team determines the behavior is serious and requires a Positive Behavioral Intervention Plan**, four sections are required for a complete PBIP.

**Positive Behavioral Intervention Plan for Severe Behavior: Self-Injurious, Assaultive, Serious Property Damage, and other Pervasive, Maladaptive Behavior**

Data Collection during Function Analysis for "Serious Behavior," CA Ed. Code – **Section 2 of 4**

**SUMMARY OF DATA COLLECTION PRIOR TO  
POSITIVE BEHAVIORAL INTERVENTION PLAN DEVELOPMENT**

Student Name:

Date of Birth:

Date of Report:

**IEP Team Documentation: All four conditions have been met prior to assessment**

- ☐ Student has an IEP
- ☐ IEP team has determined instructional/behavioral approaches in IEP are ineffective
- ☐ Behavior is "serious" by Ca. Ed. Code definition
  - ☐ self-injurious ☐ assaultive ☐ serious property damage ☐ other pervasive, maladaptive
- ☐ Parent has signed assessment plan for this functional analysis assessment

Date:

**Behavior Intervention Case Manager Assigned by IEP Team**

(This analysis may only be conducted by or supervised by a BICM that has been specifically authorized to perform this function by the SELPA.)

BICM completing this report:

**Documentation: All three required data collection methods were conducted or supervised by the BICM**

- Interview(s) with:
  
- Direct observation(s) to determine relationship of behavior to antecedents and consequences conducted on Date(s):  
Location(s):
- Review of data (check all that apply):
  - ☐ Previous assessments
  - ☐ Discipline records
  - ☐ Classroom behavioral data
  - ☐ Reports from other settings:

**Additional Baseline Data Analysis (all areas below are required)**

- ☐ **Method** of systematically gathering data on antecedents/consequences (BICM must specify):
  - ☐ Using Functional Observation Form (see attached)
  - ☐ Using other data collection form (see attached)
  - ☐ Other (describe)

**Positive Behavioral Intervention Plan for Severe Behavior: Self-Injurious, Assaultive, Serious Property Damage, and other Pervasive, Maladaptive Behavior**

- ☐ **Frequency, Intensity, duration** of targeted behavior was determined across all required components:
  - ☐ activities (specify):
  - ☐ settings (specify):
  - ☐ people present (specify):
  - ☐ times of day (specify):
  - ☐ summary:  
Frequency:                      Intensity:                      Duration:
- ☐ **Rate of occurrence of targeted (problem) behavior:**  
Associated antecedents and consequences:
- ☐ **Rate of occurrence of alternative behavior:**  
Associated antecedents and consequences:
- ☐ All settings in which problem behavior occurs:

**Additional Requirement: Analysis of history of behavior and effectiveness of previous interventions (gathered through review records, verbal reports)**

- ☐ INEFFECTIVE previous interventions include:
- ☐ EFFECTIVE previous interventions include:

**Additional Requirement: Review of records for health and medical factors which may influence behavior**

(Consider medication effects, sleep difficulties, health, diet, behavioral correlates of specific disabilities, etc.) Findings to consider:

**Conclusion: Positive Behavioral intervention Plan Necessity (Both criteria must be met)**

- ☐ Student exhibits a serious behavior problem
- ☐ This behavior problem significantly interferes with the implementation of the goals and objectives of the student's IEP.

**Conclusion: BICM recommendations for IEP team consideration**

*Choose one finding:*

- ☐ Develop a positive behavioral intervention plan based on the Functional Analysis Assessment (The complete positive behavior intervention plan includes 4 sections: 1) coversheet that establishes the need for PBIP; 2) this form which documents data collection procedures and BICM and subsequent IEP team recommendations; 3) the core behavior plan developed by the IEP team; 4) additional requirements during implementation of plan. A PBIP **must** include all four sections.)
- ☐ No PBIP required, Develop BSP
- ☐ No plan required  
Rationale for recommendation:

# Positive Behavioral Intervention Plan for Severe Behavior: Self-Injurious, Assaultive, Serious Property Damage, and other Pervasive, Maladaptive Behavior

Note: Numbers correspond with the scoring system on the BSP Quality Evaluation Guide

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## POSITIVE BEHAVIORAL INTERVENTION PLAN – SECTION 3 OF 4

For Behavior Defined as "Serious" in California Ed Code; Requires all four sections

This PBIP is a part of this student's IEP. The IEP team developed it based on data conducted or supervised by a BICM (see Section 2).

Student Name Today's Date Next Review Date

1. The behavior impeding learning is (describe what it looks like)
2. It impedes learning because
3. The need for a Behavior Support Plan ☐ early stage intervention ☐ moderate ☐ serious ☐ extreme
4. Frequency or intensity or duration of behavior  
☐ reported by ☐ and/or ☐ observed by

### PREVENTION PART I: ENVIRONMENTAL FACTORS AND NECESSARY CHANGES

Observation & Analysis	<p>What are the predictors for the behavior? (Situations in which the behavior is likely to occur: people, time, place, subject, etc.)</p> <p>5.</p>
	<p>What supports the student using the problem behavior? (What is missing in the environment/curriculum or what is in the environment curriculum that needs changing?)</p> <p>6.</p>
Intervention	<p style="text-align: center;">Remove student's need to use the problem behavior</p> <p>What environmental changes, structure and supports are needed to remove the student's need to use this behavior? (Changes in Time/Space/Materials/Interactions to remove likelihood of behavior)</p> <p>7.</p>
	<p>Who will establish?      Who will monitor?      Frequency?</p>

**Positive Behavioral Intervention Plan for Severe Behavior: Self-Injurious, Assaultive, Serious Property Damage, and other Pervasive, Maladaptive Behavior**

## ALTERNATIVES PART II: FUNCTIONAL FACTORS AND NEW BEHAVIORS TO TEACH AND SUPPORT

Observation & Analysis	<p>Team believes the behavior occurs because: (<i>Function of behavior in terms of getting, protest, or avoiding something</i>)</p> <p><b>8.</b></p> <div style="text-align: center;">Accept a replacement behavior that meets same need</div> <p>What team believes the student should do <b>INSTEAD</b> of the problem behavior? (<i>How should the student escape/protest/avoid or get his/her need met in an acceptable way?</i>)</p> <p><b>9.</b></p>
	<p>What teaching Strategies/Necessary Curriculum/Materials are needed? (<i>List successive teaching steps for student to learn replacement behavior/s</i>)</p> <p><b>10.</b></p>          <p>Who will establish?      Who will monitor?      Frequency?</p>
Intervention	<p>What are reinforcement procedures to use for establishing, maintaining, and generalizing the replacement behavior(s)?</p> <p><b>11.</b></p>          <p>Selection of reinforcer based on:</p> <p><input type="checkbox"/> reinforcer for using replacement behavior    <input type="checkbox"/> reinforcer for general increase in positive behaviors</p> <p>By whom?      Frequency?</p>

## Positive Behavioral Intervention Plan for Severe Behavior: Self-Injurious, Assaultive, Serious Property Damage, and other Pervasive, Maladaptive Behavior

### EFFECTIVE REACTION PART III: REACTIVE STRATEGIES

What strategies will be employed if the problem behavior occurs again?

**12.** 1. Prompt student to switch to the replacement behavior

2. Describe how staff should handle the problem behavior if it occurs again

3. Positive discussion with student after behavior ends

*Optional:*

4. Any necessary further classroom or school consequences

Personnel?



# Positive Behavioral Intervention Plan for Severe Behavior: Self-Injurious, Assaultive, Serious Property Damage, and other Pervasive, Maladaptive Behavior

## OUTCOME PART IV: BEHAVIORAL GOALS

Behavioral Goal(s)

**13.**

### Required: Functionally Equivalent Replacement Behavior (FERB) Goal

By when	Who	Will do X behavior	For the purpose of y	Instead of Z behavior	For the purpose of y	Under what conditional conditions	At what level of proficiency	As measured by whom and how

### Option 1: Increase General Positive or Decrease Problem Behavior

By when	Who	Will do what, or will NOT do what	At what level of proficiency	Under what conditions	Measured by whom and how

### Option 2: Increase General Positive or Decrease Problem Behavior

By when	Who	Will do what, or will NOT do what	At what level of proficiency	Under what conditions	Measured by whom and how

The above behavioral goal(s) are to: ☐ Increase use of replacement behavior and may also include:

☐ Reduce frequency of problem behavior ☐ Develop new general skills that remove student's need to use the problem behavior

### Observation and Analysis Conclusion:

Are curriculum accommodations or modifications also necessary? Where described: ..... ☐ yes ☐ no  
 Are environmental supports/changes necessary? ..... ☐ yes ☐ no  
 Is reinforcement of replacement behavior alone enough (no new teaching is necessary)? ..... ☐ yes ☐ no  
 Are both teaching of new replacement behavior AND reinforcement needed? ..... ☐ yes ☐ no  
 This BSP to be coordinated with other agency's service plans? ..... ☐ yes ☐ no  
 Person responsible for contact between agencies ..... ☐ yes ☐ no

# Positive Behavioral Intervention Plan for Severe Behavior: Self-Injurious, Assaultive, Serious Property Damage, and other Pervasive, Maladaptive Behavior

## COMMUNICATION PART V: COMMUNICATION PROVISIONS

Manner and content of communication

14.

1. Who?	2. Under what condition(s) (Contingent? Continuous?)	3. Delivery Manner	4. Expected Frequency?	5. Content?	6. How will this be two-way communication

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1. Who?	2. Under what condition(s) (Contingent? Continuous?)	3. Delivery Manner	4. Expected Frequency?	5. Content?	6. How will this be two-way communication

## PARTICIPATION PART VI: PARTICIPANTS IN PLAN DEVELOPMENT

- ☐ Student
- ☐ Parent/Guardian
- ☐ Parent/Guardian
- ☐ Educator and Title
- ☐ Educator and Title
- ☐ Educator and Title
- ☐ Administrator
- ☐ Other
- ☐ Other

**Positive Behavioral Intervention Plan for Severe Behavior: Self-Injurious, Assaultive, Serious Property Damage, and other Pervasive, Maladaptive Behavior**

**Data Collection during PBIP for “Serious Behavior,” CA Ed. Code – Section 4 of 4**

**POSITIVE BEHAVIORAL INTERVENTION PLAN ADDITIONAL REQUIREMENTS DURING IMPLEMENTATION OF PLAN**

*For a complete PBIP document for “serious behavior,” include coversheet (Section 1), data collection during functional assessment (Section 2), the core behavior plan (Section 3), and this form (Section 4).*

**Additional Requirement: Specified data collection during behavior intervention plan implementation**

(All components must be specified)

- ☐ **Schedules for recording the frequency of the use of the interventions**
  - ☐ How often:
  - ☐ By whom:
  - ☐ Method of recording:
- ☐ **Schedules for recording frequency of targeted (problem) behavior**
  - ☐ How often:
  - ☐ By whom:
  - ☐ Method of recording:
- ☐ **Schedules for recording frequency of replacement behaviors**
  - ☐ How often:
  - ☐ By whom:
  - ☐ Method of recording:
- ☐ **Criteria for discontinuing the use of the interventions:**
  - ☐ **If ineffective**, discontinuation criteria and next steps:  
If           (condition),  
then       (next steps).
  - ☐ **If alternative interventions required**, discontinuation criteria and next steps:  
If           (condition),  
then       (next steps).

**Additional Requirement: Evaluation of program effectiveness-personnel, frequency, method, data to evaluate**

**Designated Frequency** of scheduled intervals to evaluate the behavior plan determined by IEP team:

Daily:

Weekly:

Monthly:

Report card periods:

Other:

**Positive Behavioral Intervention Plan for Severe Behavior: Self-Injurious, Assaultive, Serious Property Damage, and other Pervasive, Maladaptive Behavior**

**Program Effectiveness Conducted** between/by: (teacher, BICM, parent(s), other(s):  
(Specify)

**Designated Method** of conducting program effectiveness review:

Meetings at (location/times):

Telephone conferences (times):

Email (time sent):

Other:

**Data to Evaluate:** measures of frequency, duration and intensity of targeted behavior to be evaluated by comparison with baseline

**Modifications without IEP Team meeting**

Minor modifications may be made by BICM or qualified designee if parent is notified of the need and reviews evaluation data prior to changes.

- ☐ Parent notified of right to question any modification through IEP procedures
- ☐ Anticipated changes include increasing and decreasing (Check all that apply)
  - ☐ Frequency of reinforcement
  - ☐ Prompting of alternative behavior
  - ☐ Frequency of teaching of new behavior
  - ☐ Environmental structure

**Other settings receiving copies of this plan**

- ☐ Notification only. Setting(s):
- ☐ Implement across setting(s):  
Personnel responsible for implementing in other sites include:

Note: Numbers correspond with the scoring system on the BSP Quality Evaluation Guide

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## BEHAVIOR SUPPORT PLAN

*For Behavior Interfering with Student's Learning or the Learning of His/Her Peers*

This BSP attaches to: ☐ IEP date: ☐ 504 plan date: ☐ Team meeting date:

**Student Name**

**Today's Date**

**Next Review Date**

- 1.** The behavior impeding learning is (*describe what it looks like*)
- 2.** It impedes learning because
- 3.** The need for a Behavior Support Plan ☐ early stage intervention ☐ moderate ☐ serious ☐ extreme
- 4.** Frequency or intensity or duration of behavior  
☐ reported by ☐ and/or ☐ observed by

### PREVENTION PART I: ENVIRONMENTAL FACTORS AND NECESSARY CHANGES

Observation & Analysis

**5.** What are the predictors for the behavior? (*Situations in which the behavior is likely to occur: people, time, place, subject, etc.*)

**6.** What supports the student using the problem behavior? (*What is missing in the environment/curriculum or what is in the environment curriculum that needs changing?*)

Intervention

#### Remove student's need to use the problem behavior

**7.** What environmental changes, structure and supports are needed to remove the student's need to use this behavior? (*Changes in Time/Space/Materials/Interactions to remove likelihood of behavior*)

Who will establish?

Who will monitor?

Frequency?

# BSP

## ALTERNATIVES PART II: FUNCTIONAL FACTORS AND NEW BEHAVIORS TO TEACH AND SUPPORT

Observation & Analysis

Team believes the behavior occurs because: *(Function of behavior in terms of getting, protest, or avoiding something)*

8.

Accept a replacement behavior that meets same need

What team believes the student should do **INSTEAD** of the problem behavior? *(How should the student escape/protest/avoid or get his/her need met in an acceptable way?)*

9.

Intervention

What teaching Strategies/Necessary Curriculum/Materials are needed? *(List successive teaching steps for student to learn replacement behavior/s)*

10.

Who will establish?

Who will monitor?

Frequency?

Intervention

What are reinforcement procedures to use for establishing, maintaining, and generalizing the replacement behavior(s)?

11.

Selection of reinforcer based on:

☐ reinforcer for using replacement behavior ☐ reinforcer for general increase in positive behaviors

By whom?

Frequency?

## EFFECTIVE REACTION PART III: REACTIVE STRATEGIES

What strategies will be employed if the problem behavior occurs again?

**12.**

1. Prompt student to switch to the replacement behavior
2. Describe how staff should handle the problem behavior if it occurs again
3. Positive discussion with student after behavior ends

*Optional:*

4. Any necessary further classroom or school consequences

Personnel?

# BSP

## OUTCOME PART IV: BEHAVIORAL GOALS

Behavioral Goal(s)

**13.**

**Required: Functionally Equivalent Replacement Behavior (FERB) Goal**

By when	Who	Will do X behavior	For the purpose of y	Instead of Z behavior	For the purpose of y	Under what conditional conditions	At what level of proficiency	As measured by whom and how

**Option 1: Increase General Positive or Decrease Problem Behavior**

By when	Who	Will do what, or will NOT do what	At what level of proficiency	Under what conditions	Measured by whom and how

**Option 2: Increase General Positive or Decrease Problem Behavior**

By when	Who	Will do what, or will NOT do what	At what level of proficiency	Under what conditions	Measured by whom and how

The above behavioral goal(s) are to: ☐ Increase use of replacement behavior and may also include:

☐ Reduce frequency of problem behavior ☐ Develop new general skills that remove student's need to use the problem behavior

### Observation and Analysis Conclusion:

Are curriculum accommodations or modifications also necessary? Where described: ..... ☐ yes ☐ no  
 Are environmental supports/changes necessary? ..... ☐ yes ☐ no  
 Is reinforcement of replacement behavior alone enough (no new teaching is necessary)? ..... ☐ yes ☐ no  
 Are both teaching of new replacement behavior AND reinforcement needed? ..... ☐ yes ☐ no  
 This BSP to be coordinated with other agency's service plans? ..... ☐ yes ☐ no  
 Person responsible for contact between agencies ..... ☐ yes ☐ no



**COMMUNICATION PART V: COMMUNICATION PROVISIONS**

Manner and content of communication

**14.**

1. Who?	2. Under what condition(s) (Contingent? Continuous?)	3. Delivery Manner	4. Expected Frequency?	5. Content?	6. How will this be two-way communication

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**PARTICIPATION PART VI: PARTICIPANTS IN PLAN DEVELOPMENT**

- ☐ Student
- ☐ Parent/Guardian
- ☐ Parent/Guardian
- ☐ Educator and Title
- ☐ Educator and Title
- ☐ Educator and Title
- ☐ Administrator
- ☐ Other
- ☐ Other

## **CHAPTER VII**

### **MISCELLANEOUS**

## Special Education Transportation

The IEP team for any special education student must clearly specify how the child's transportation needs will be met. Transportation may be a required service if it is needed in order for the child to receive a free and appropriate public education. Therefore, IEP teams should consider the disability of each individual student, the need for a student to participate with non-disabled peers to the extent possible, and the student's safety when recommending one of several different transportation options.

1. The student, though enrolled in a Special Education program, is attending his/her neighborhood school. The IEP team determines that no special transportation is required. This student would be treated as a regular student for transportation purposes and would either walk or take district bus transportation to their school. Regular bus transportation would include walking to and waiting at a designated bus stop.

IEP documentation: The notes of the IEP should reflect discussion regarding transportation needs and the finding that specialized transportation is not required.

2. If specialized transportation is required in order for the student to receive an appropriate education, the following options should be discussed by the IEP team:
  - a. The disability of the student does not significantly interfere with locomotion or judgment. The IEP team determines that the student could safely walk to the end of a driveway or to some other designated and approved bus stop to wait for transportation.
  - b. The disability of the student is such that door to door transportation is required in order for the student to receive an appropriate education.

IEP documentation: The IEP team shall document that transportation will be required. Notes of the meeting should reflect discussion.



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## Special Education Transportation Guidelines

Guidelines for use by Individualized Education Program (IEP) Teams when determining required transportation services.

*California Education Code (EC)* citations, including Code content, and *Code of Federal Regulations (CFR)* citations have been updated to reflect changes since October 18, 1993. Changes made in October 2002, are noted by italics.

### Preface

*EC* Section 41851.2 (Assembly Bill 876 [Canella], Chapter 283, Statutes of 1991), required the State Superintendent of Public Instruction (SSPI) to develop special education transportation guidelines for use by individualized education program (IEP) teams that clarify when special education services are required.

The State Board of Education, Advisory Commission on Special Education, Special Education Local Plan Area (SELPA) Administrators, Special Education Administrators of County Offices (SEACO), Protection & Advocacy, Inc., Team of Advocates for Special Kids (TASK), school districts, County Offices of Education (COE), transportation offices, California Department of Education staff and other interested parties provided valuable contributions to the development of the 1993 Guidelines For Use By Individualized Education Program (IEP) Teams When Determining Required Transportation Services.

The guidelines should be utilized to plan and implement transportation services to pupils that require this service to benefit from special education instruction and/or related services.

### Introduction

*EC* Section 56040 states: "Every individual with exceptional needs, who is eligible to receive educational instruction, related services, or both *under this part* [ Part 30 ] shall receive such educational instruction, services, or both, at no cost to his or her parents or, as appropriate, to him or her." Special education transportation is defined in federal regulation (34 *CFR*. Section 300.24 ) as a related service. Transportation is required to be provided if it is necessary for the student to benefit from special education instruction. In addition, as required for any special education program, the service must be provided to meet the criteria for a free, appropriate public education.

*EC* Section 41851.2 (Assembly Bill 876 (Canella), Chapter 283, Statutes of 1991), required that the SSPI develop special education transportation guidelines for use by IEP teams that clarify "when special education services, as defined by *Education Code* Section 41850, are required." *EC* 41850(d) defines "special education transportation" as:

"The transportation of severely disabled *special day class* pupils, and orthopedically impaired pupils who require a vehicle with a wheelchair lift, who received transportation in the prior fiscal year, as specified in their individualized education program.

"A vehicle that was used to transport special education pupils."

*EC* 41850(b) (5) defines "home-to-school transportation services" for pupils with exceptional needs as:

"The transportation of individuals with exceptional needs as specified in their individualized education programs, who do not receive special education transportation as defined in subdivision (d)"

Examples that IEP teams may consider under *EC* 41850(b) include pupils with severe disabilities who are not placed in special day classes or otherwise enrolled in programs serving pupils with profound disabilities, pupils with orthopedic disabilities who do not use wheelchairs or require lifts, students beginning special education who did not receive transportation under an IEP in the

prior fiscal year, pupils with other health impairments, learning disabilities or other cognitive disabilities, or pupils who live beyond reasonable distance to their school and would not, without transportation, have access to appropriate special education instruction and related services at no cost.

### **Considerations for Use by Local Education Agencies, Special Education Local Plan Areas, County Offices Of Education and/or Transportation Cooperatives**

It is recommended that these issues and concepts be taken under consideration by all LEAs, SELPAs, COEs and/or transportation cooperatives that provide any special education transportation in preparation for organizing a transportation system and providing services that will allow for students' placement in the least restrictive environment while also allowing for the most cost-effective special education transportation system.

### **Transportation Policies**

Each LEA providing special education is required to adopt policies for the programs and services it operates, consistent with agreements with other districts or county offices and/or agreements stated as part of the local plan for special education (*EC 56195.8*). These policies describe how special education transportation is coordinated with regular home-to-school transportation and set forth criteria for meeting the transportation needs of pupils receiving special education (*EC 56195.8(b)(5)*). It is recommended these policies focus upon pupil needs as the primary consideration for determining transportation services and that these policies also address the needs of pupils who may be eligible for transportation services as required by the Rehabilitation Act of 1973, Section 504.

### **Delivery of Services**

Districts/SELPA/COEs responsible for implementation of IEPs should be knowledgeable of transportation policies and/or procedures that address the responsibilities of the IEP team in regard to transportation and the delivery of services to eligible students in their least restrictive environment.

This includes consideration of services that are provided in the setting appropriate to the needs of the student at the pupil's neighborhood school, or within the district or SELPA; regional and/or magnet programs and services may also be appropriate to the needs of the pupil. Consideration should be taken regarding the effect that the location of a placement will have on the length of time that a student has to or from school each day. Placements should not be made solely on a "space available" basis. If a student is receiving services outside of his/her residence area, the placement should be reviewed at least annually in order to determine if a placement closer to the student's residence would be appropriate.

### **Location of Programs, Placement of Pupils**

The efficiency of a transportation system for special education is partially dependent on the location of the program sites and the placements of students. A demographic and geographic review that analyzes the present locations of programs, program needs, and population served should take place. Program service regions with clearly defined service areas can then be established, using residence areas of the neighborhood schools. While this also involves the issue of available facilities, a mission statement and policies developed by the agency may promote the comprehensive commitment to all pupils and the acceptance of pupils with exceptional needs in a broad variety of settings.

### **Additional Policy Considerations**

Other subjects that need policy and procedure directives may include control of pupil medicine transported between home and school on a vehicle; student suspension; physical intervention and management; authority to use special harnesses, vest, and belts; early closing of school due to inclement weather or other emergencies; authority to operate special equipment; when no adult is home to receive pupils; when and how to involve community emergency medical and/or law enforcement personnel; use of mobility aides; control and management of confidential information; use of bus aides; and other.

### **Coordination of Calendars and Schedules**

Coordination of student attendance calendars at all school sites that provide special education services is necessary to fully utilize transportation services and to minimize the number of required days of transportation service.

In unified districts, multi-track districts, multi-district SELPAs, COEs and/or in transportation cooperatives, standardization of calendars should include the coordination of starting and ending dates of school years, bell schedules (starting and ending times), vacation/intersession breaks, staff development days (School Improvement Program, School Based Coordinated Program, other), minimum day schedules, etc. This coordination should be done so that all significant transportation implications are addressed and transportation resources are effectively utilized.

### **Length of School Day, Related Services, Extracurricular Events**

It should be noted that the use of alternative starting times for all special education students at a site can lead to program compliance concerns. Pupils receiving special education and related services must be provided with an educational program in accordance with their IEP for at least the same length of time as the regular school day for their chronological peer group, unless otherwise stated in a student's IEP. In addition, there may be occasions where the needs of the pupil require receiving therapy or some other related service that cannot be provided during the "established" school day. If provisions for "early" or "late" transportation are made for pupils within the general education program due to extra curricular events, provisions for equal opportunity to these events for pupils with exceptional needs who require special transportation must also be made.

### **Use of Policy and Resource Information**

An overview of all available transportation resources should be provided to all administrators, IEP team leaders/case managers or chairpersons and other IEP team members who are authorized to recommend the type of special education service and the location where the service will be provided.

## **Guidelines For Use By The Individualized Education Program (IEP) Team**

### **Local Education Agency Rules and Policies**

All pupils, including those receiving specialized instruction and services, are subject to the rules and policies governing regular transportation offerings within the local education agency, unless the specific needs of the eligible pupil or the location of the special education program/service dictate that special education transportation is required.

### **Primary Consideration: Pupil Needs**

The specific needs of the pupil must be the primary consideration when an IEP team is determining any transportation needs. These may include, but are not limited to:

1. Medical diagnosis and health needs consideration of whether long bus rides could affect a certain pupil's health (duration, temperature control, need for services, health emergencies); general ability and/or strength to ambulate/wheel; approximate distance from school or the distance needed to walk or wheel oneself to the school; consideration of pupil needs in inclement or very hot weather, other.
2. Physical accessibility of curbs, sidewalks, streets, and public transportation systems.
3. Pupil capacity consideration of a pupil's capacity to arrive at school on time, to avoid getting lost, to avoid dangerous traffic situations, and to avoid other potentially dangerous or exploitative situations on the way to and from school.
4. *Behavioral* Intervention Plans (Title 5, CCR 3001 (f)) specified by the pupil's IEP and consideration of how to implement such plans while a pupil is being transported.
5. Other transportation needs mid-day or other transportation needs as required on a pupil's IEP (for example, occupational or physical therapy or mental health services at another site, community based classes, etc.) must also be taken into consideration when the IEP team discusses a pupil's placement and transportation needs.

### **Transportation Staff and IEP Team Meetings**

Effective practice requires that procedures are developed for communication with transportation personnel and that transportation staff are present at IEP team meetings when the pupil needs the use of adaptive or assistive equipment, when school bus equipment is required to be modified, when the pupil exhibits severe behavioral difficulties and a behavior intervention plan is to be implemented, when the pupil is medically fragile and requires special assistance, and/or when the pupil has other unique needs.

## Transportation Options

Considering the identified needs of the pupil, transportation options may include, but not be limited to: walking, riding the regular school bus, utilizing available public transportation (any out-of-pocket costs to the pupil or parents are reimbursed by the local education agency), riding a special bus from a pick up point, and portal-to-portal special education transportation via a school bus, taxi, reimbursed parent's driving with a parent's voluntary participation, or other mode as determined by the IEP team. When developing specific IEP goals and objectives related to the pupil's use of public transportation, the IEP team may wish to consider a blend of transportation services as the pupil's needs evolve. Specialized transportation as a related service must be written on the pupil's IEP with specificity and should be approved by the transportation administrator. It is recommended that services be described in sufficient enough detail to inform the parties of how, when and from where to where transportation will be provided and, where arrangements for the reimbursement of parents are required, the amount and frequency of reimbursement.

## Suspension from the School Bus

Occasionally pupils receiving special education services are suspended from bus transportation (*EC 48900-48900.7*, Grounds for Suspension). The suspension of a pupil receiving special education services from California transportation can constitute a significant change of placement if the district: 1) has been transporting the student; 2) suspends the student from transportation as a disciplinary measure; and 3) does not provide another mode of transportation (Office of Civil Rights, Letter of Finding Complaint No. 04-89-1236, December 8, 1989).

A significant change in placement requires a meeting of the IEP team to review the pupil's IEP. During the period of any exclusion from bus transportation, pupils must be provided with an alternative form of transportation at no cost to the pupil or parent in order to be assured of having access to the required special education instruction and services (*EC 48915.5*).

*EC 48915.5(j) reads: "If an individual with exceptional needs is excluded from schoolbus transportation, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent." (Effective through 12/31/2002.)*

*EC 48915.5(c) reads: "If an individual with exceptional needs is excluded from school bus transportation, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent or guardian provided that transportation is specified in the pupil's individualized education program." (AB 1859, Chapter 492, Statutes of 2002. Effective 01/01/2003.)*

## Summary

The LEA providing special education is required to adopt policies for the programs and services it operates, consistent with agreements with other districts or county offices stated as part of the local plan for special education. These policies describe how special education transportation is coordinated with regular home-to-school transportation and set forth criteria that are consistent with these Guidelines for meeting the transportation needs of pupils receiving special education.

These policies and an overview of all available transportation resources should be provided to all administrators, IEP team leaders/case managers/chairpersons and other IEP team members who are authorized to recommend the type of special education service and the location where the service will be provided.

The specific needs of the pupil must be the primary consideration when an IEP team is determining transportation services. It is often beneficial to have transportation staff present at IEP team meetings. The combination of planning and providing information to IEP teams maximizes appropriate placements and efficient cost-effective transportation systems.

Notice
The guidance in the Special Education Transportation Guidelines is not binding on local education agencies (LEAs) or other entities. Except for the statutes, regulations, and court decisions that are referenced herein, the Guidelines are exemplary and compliance is not mandatory. [ <i>Education Code</i> Section 33308.5]
Please direct questions to the <u>Special Education Division's Focused Monitoring and Technical Assistance Consultant assigned to your county</u>