

IDENTIFICATION AND EVALUATION OF INDIVIDUALS FOR SPECIAL EDUCATION

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

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

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

Note: The Individuals with Disabilities Education Act (IDEA), 20 USC 1412(a)(3), requires that the LEA's "child find" identification system include identification of students with disabilities resident in the LEA as well as highly mobile children with disabilities, such as migrant and homeless children.

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

For assessment purposes, staff shall use appropriate tests to identify specific information about the individual's abilities in accordance with Education Code 56320.

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

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Private School:

Under 34 CFR §300.131, the LEA where the private school is located is responsible for conducting child find for parentally placed private school children. The LEA, after timely and meaningful consultation with private school representatives, must conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the LEA.

LEGAL REFERENCE:

EDUCATION CODE

44265.5 Professional preparation for teachers of impaired students

56000-56885 Special education programs, especially:

56026 Individuals with disabilities

56170-56177 Children in private schools

56195.8 Adoption of policies

56300-56304 Identification of individuals with disabilities

56320-56331 Assessment

56340-56347 Instructional planning and individualized education program

56381 Reassessment of students

56425-56432 Early education for individuals with disabilities

56441.11 Eligibility criteria, children 3 to 5 years old

56445 Transition to grade school; reassessment

56500-56509 Procedural safeguards

GOVERNMENT CODE

95000-95029.5 California Early Intervention Services Act

CODE OF REGULATIONS, TITLE 5

3021-3029 Identification, referral and assessment

3030-3031 Eligibility criteria

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act of 1974

1412 State eligibility

1415 Procedural safeguards

CODE OF FEDERAL REGULATIONS, TITLE 34

104.35 Evaluation and placement

104.36 Procedural safeguards

300.131 Private Schools

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

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COURT DECISIONS

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

Management Resources: FEDERAL REGISTER

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

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

WEB SITES

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

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

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

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

Note: Education Code 56329, as amended by AB 1662 (Ch. 653, Statutes of 2005), provides that, when making a determination of eligibility for special education and related services, the LEAs shall not determine that a student is disabled if the primary factor for such determination is a lack of appropriate instruction in reading, including the essential components of reading instruction pursuant to 20 USC 6368 of the No Child Left Behind Act, lack of instruction in math, or limited English proficiency.

All referrals for special education and related services from school staff shall include a brief reason for the referral and description of the regular program resources that were considered and/or modified for use with the student, and their effect. (5 CCR 3021)

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

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

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

1. Be in a language easily understood by the general public
2. Be provided in the native language of the parent/guardian or other mode of communication used by the parent/guardian unless it is clearly not feasible
3. Explain the types of assessment to be conducted
4. State that no individualized education program (IEP) will result from the assessment without parent/guardian consent

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

Note: Education Code 56321, as amended by AB 1662 (Ch. 653, Statutes of 2005), and 20 USC 1414(a)(1) provide that, if a parent/guardian refuses to consent to the initial evaluation, the LEAs may pursue an evaluation by utilizing the mediation and due process procedures pursuant to 20 USC 1415; see BP/AR 6159.1 - Procedural Safeguards and Complaints for Special Education. In the event that an evaluation is not authorized, 20 USC 1414(a)(1) specifies that the LEAs shall not provide special education services and shall not be considered in violation of the requirement to provide a free appropriate public education for failure to provide such services. In addition, the LEAs is not required to convene an IEP team meeting or to develop an IEP for that child.

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

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

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

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

1. Despite reasonable efforts to do so, the LEAs cannot discover the whereabouts of the parent/guardian of the student.
2. The rights of the parent/guardian of the student have been terminated in accordance with California law.
3. The rights of the parent/guardian to make educational decisions have been subrogated by a judge in accordance with California law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.

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

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

If the LEA observed the student in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a student, an equivalent opportunity shall apply to the independent educational assessment. This equivalent opportunity shall apply to the student's current placement and setting as well as observation of the LEA proposed placement and setting, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding.

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

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

4. If a parent/guardian proposes a publicly financed placement of the student in a nonpublic school, the LEA shall have an opportunity to observe the proposed placement and, if the student has already been unilaterally placed in the nonpublic school by the parent/guardian, the student in the proposed placement. Any such observation shall only be of the student who is the subject of the observation and may not include the observation or assessment of any other student in the proposed placement unless that student's parent/guardian consents to the observation or assessment. The results of any

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observation or assessment of another student in violation of Education Code 56329(d) shall be inadmissible in any due process or judicial proceeding regarding the free appropriate public education of that other student.

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

Before entering kindergarten or first grade, children with disabilities who are in a preschool program shall be reassessed to determine if they still need special education and services. IEP teams shall identify a means of monitoring the continued success of children who are determined to be eligible for less intensive special education programs to ensure that gains made are not lost by a rapid removal of individualized programs and supports for these individuals. (Education Code 56445)