

**UC DAVIS  
EXTENSION**

---

**CENTER FOR HUMAN SERVICES**

*Northern California Training Academy*

# Educational Advocacy

***Northern California Training Academy***

<http://humanservices.ucdavis.edu/academy/>

# UC DAVIS EXTENSION

## CENTER FOR HUMAN SERVICES

Northern California Training Academy

Written by Elizabeth Calvin,  
with contributions by Paul Porter,  
in consultation with Lalon Montgomery.

*Educational Advocacy* © UC Davis  
Extension, University of California,  
Davis, first published 2004, second  
edition 2006.

The manual was made possible through the Northern California Training Academy at UC Davis Extension.

Use of this manual is encouraged. Please call (530) 757-8643 for permission to copy the manual or to create a link to an electronic version on a Web site.

---

These materials were based, in part, on *Make a Difference in a Child's Life: A Manual for Helping Children and Youth Get What They Need in School* ©2002 TeamChild and Casey Family Programs. For more information about the TeamChild - Casey materials, see <http://www.teamchild.org>, or call (206) 381-1741. Neither TeamChild nor Casey Family Programs has reviewed or approved any portion of these materials that have been significantly modified from the copyright holders' original work, and do not bear any liability for information contained herein.

Official California Legislative Information may be found on the Web site for the State of California Legislative Counsel at <http://www.leginfo.ca.gov/calaw.html>

This manual provides basic information on education law in California. While it provides information on the law, it is not legal advice, and is not in any way intended to be a substitute for legal advice or representation. If you need legal advice, please contact a lawyer who can look at the specifics of a particular situation and apply the law.

Keep in mind that laws change and that the law explained in this manual may have changed since it was written. Consult with an attorney who knows this area of law to make certain that it is still valid.

---

Northern California Training Academy  
University of California, UC Davis Extension  
Davis, CA 95618-8727  
Telephone (530) 757-8725  
Fax (530) 752-6910  
e-mail [human@ucde.ucdavis.edu](mailto:human@ucde.ucdavis.edu)

# Contents

<b>Introduction</b>	1
<b>Overview: Structure and Services of School Districts and County Offices</b>	
I. Public school organization	6
II. Other services offered by school districts	9
<b>Chapter 1: How to Be a Good Advocate</b>	
I. Introduction to advocacy	14
II. The essential elements of advocacy	15
III. Creating relationships	16
IV. Communicating ideas: The heart of good advocacy	17
V. Being prepared: Student records, meetings, and hearings	28
VI. Confidential information and school records	38
VII. Conclusion	42
Action points: How to be a good advocate	43
Tips for youth	44
<b>Chapter 2: Basic Education Rights—Helping Children Enroll and Succeed in School</b>	
I. Introduction to basic education rights	45
II. The right to education	45
III. Enrollment	46
IV. Where to enroll?	49
V. Enrolling children and youth who are out of the home	52
VI. Attendance	61
VII. The role of caring adults in a child's education matters	67
VIII. The basic rights of students	73
IX. Student responsibilities at school	74
X. Education programs: Alternatives to regular education	74
XI. Programs and protections for special student populations	79
XII. Conclusion	81
Action points: Helping children enroll and succeed in school	82
Tips for youth	83
<b>Chapter 3: Special Education—When a Student Needs Additional Help</b>	
I. Introduction to special education rights	84

II. Legal protections for students with disabilities .....	85
III. The role of parents under the IDEA and strategies for non-parents .....	89
IV. Eligibility for special education services under the IDEA .....	97
V. Assessment for services under the IDEA .....	100
VI. Qualification for IDEA services .....	115
VII. Creating a special education program .....	122
VIII. Dispute resolution .....	140
IX. Programs for children under three who have disabilities .....	160
X. An overview of Section 504 .....	174
XI. Conclusion .....	178
Action points: Special education .....	179
Tips for youth .....	180

#### **Chapter 4: Discipline**

I. Introduction to discipline .....	181
II. Student responsibilities at school .....	182
III. Limits on discipline .....	183
IV. Grounds for being removed from school .....	183
V. Suspension .....	188
VI. Expulsion .....	195
VII. Expulsion hearings .....	200
VIII. Education while suspended or expelled .....	207
IX. Readmission to school after an expulsion or suspension .....	208
X. Involuntary and opportunity transfers .....	211
XI. Behavior charged as a crime .....	214
XII. Conclusion .....	215
Action points: Discipline .....	216
Tips for youth .....	217

#### **Chapter 5: Discipline of Special Education Students**

I. Introduction to the discipline of special education students .....	218
II. Suspension and expulsion of students in special education .....	219
III. Schools' responsibilities when removing a student with a disability from school for more than 10 days .....	224
IV. Limitations on discipline and removal of students with disabilities .....	229
V. Protections for students with disabilities who have not been found eligible for special education .....	232
VI. Behavior charged as a crime .....	233
VII. Conclusion .....	234
Action points: Discipline of special education students .....	235

Tips for youth .....	236
<b>Forms and Samples .....</b>	<b>237</b>
<b>Glossary of Terms .....</b>	<b>255</b>
<b>How to Read Citations and Find Laws .....</b>	<b>264</b>

# Introduction

This manual is a guide for how to be an advocate. It provides tools to help students get the school services they need. While the information focuses on issues faced by children in foster care, group homes, relative care, or situations where they may not have a parent helping them, it can be useful for helping any student in California.

## Why is there a need for education advocacy?

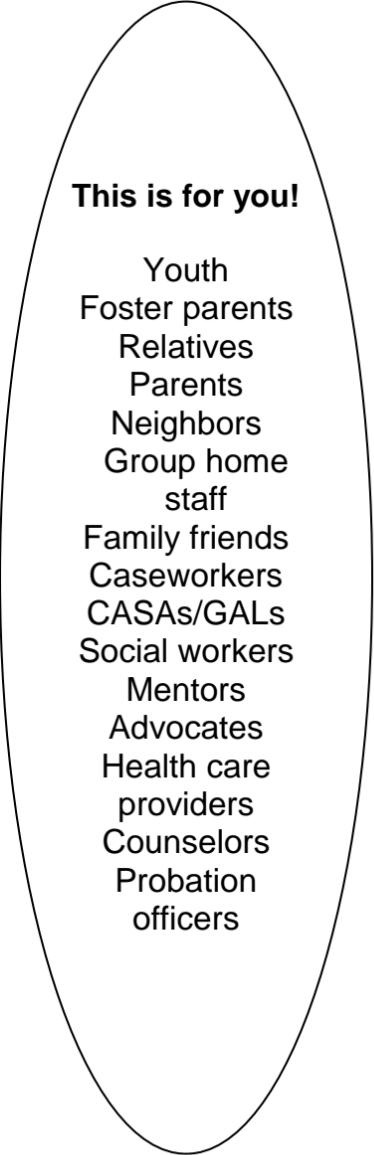
A basic education is essential for living an independent, fulfilling life. However, many children enter adulthood without this important ingredient for success. Children in out-of-home care face extra challenges.



**The need  
for  
advocacy**

- More than 50% of children in foster care drop out of school before graduation—nearly twice the overall dropout rate.
- When students change schools, they lose an average of four to six months of educational progress.
- Children in out-of-home care are two to three times more likely to have disabilities that affect their ability to learn.
- School officials often fail to identify the special needs of students who experience changes in caregivers and schools.
- The uncertainty of home and family situations can profoundly affect students' ability to focus in school.
- Many students in out-of-home care have been victims of abuse and/or neglect, affecting their ability to do well in school.

Every child needs an advocate to help overcome barriers to education.



**This is for you!**

Youth  
Foster parents  
Relatives  
Parents  
Neighbors  
Group home  
staff  
Family friends  
Caseworkers  
CASAs/GALs  
Social workers  
Mentors  
Advocates  
Health care  
providers  
Counselors  
Probation  
officers

## **Who is this manual for?**

- People who care about children and youth who are out-of-home
- People working with children and youth who are out of the home
- Children and youth who want to advocate for their own education

The goal of this manual is to help people who care

get the tools,

learn the skills, and

make the effort

to speak out on behalf of children and youth who need an advocate.

## **What makes a good advocate?**

Anyone can become an effective advocate by learning about

- Advocacy skills
- Education laws and regulations
- Resources

This manual provides an introduction to each of these topics. If you are a foster parent, a relative with children in your care, a caseworker, social worker, even a neighbor, you can play a role in helping children and youth succeed in school.

## Using the quick reference features

To make the manual easy to use, each chapter has special features that summarize information or ideas.



### Quick reference features

- **Youth pages**  
Several chapters have a summary of information for young people. These youth pages are on colored paper.
- **The three most important things**  
Each chapter starts with a list of the three most important themes of that chapter.
- **Action points**  
Each chapter will list specific actions for helping a student. Keep in mind that it is important to read the text to figure out when these actions are appropriate.
- **Forms, samples, and advocacy tools**  
Sample letters, form letters and forms are included at the end of the manual. Feel free to use them.



### A word about WORDS

## Reading the law

Laws are written with very careful attention to which words are used. The meaning of a single word in a law can spark lengthy lawsuits or legislative battles.

Because this manual is primarily for people who do not read the law every day, there is an emphasis on making the legal language simple.

For example, you may see the word “district” when the law actually says “school district, county education agency and special education local plan agency.”

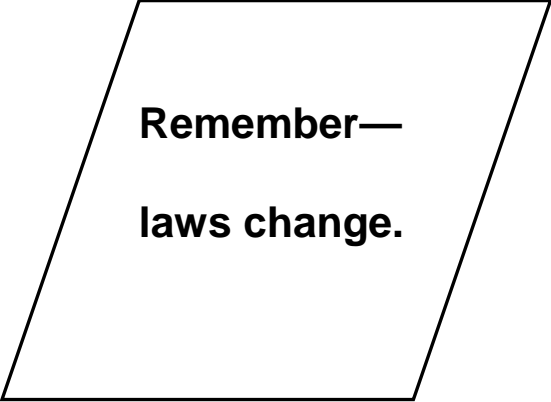
Another example is the word “parent.” The legal description of “parent” includes a long list of people who can be considered parents. For readability, this manual will simply use the word “parent.”

It is important to check the original source of the language. If you are analyzing a situation and wonder whether “district” includes a county agency, read the statute.

## **Laws change**

Laws referred to in this manual will change. The California State Legislature will enact new laws, state agencies will create new regulations, the federal government will do the same, and courts will interpret existing laws and give them new meaning.

### **Three simple ways to check if laws have changed**



**Remember—  
laws change.**

1. Consult with a lawyer who knows education law.
2. Go to the source. The best thing you can do is look at the statutes. The easiest way to do this is the Internet. Changes will appear on government websites before they are in printed or book form. For more guidance about how to read the law, see the section titled “How to read citations and find the law.”
3. Stay in contact with people who work regularly on education issues. Ask if they have heard of changes occurring.

## **Overview: Structure and Services of School Districts and County Offices**

### **The three most important things to remember about the structure and services offered by schools**

- ◇ Start with the teacher and the principal to resolve issues. Also remember that school district offices and county offices of education are excellent resources.
- ◇ There are a variety of programs and services offered by schools. Ask whether there are “other services” that might help a student.
- ◇ School district offices have several key offices that may provide assistance. These include personnel, curriculum, business, and the district superintendent.

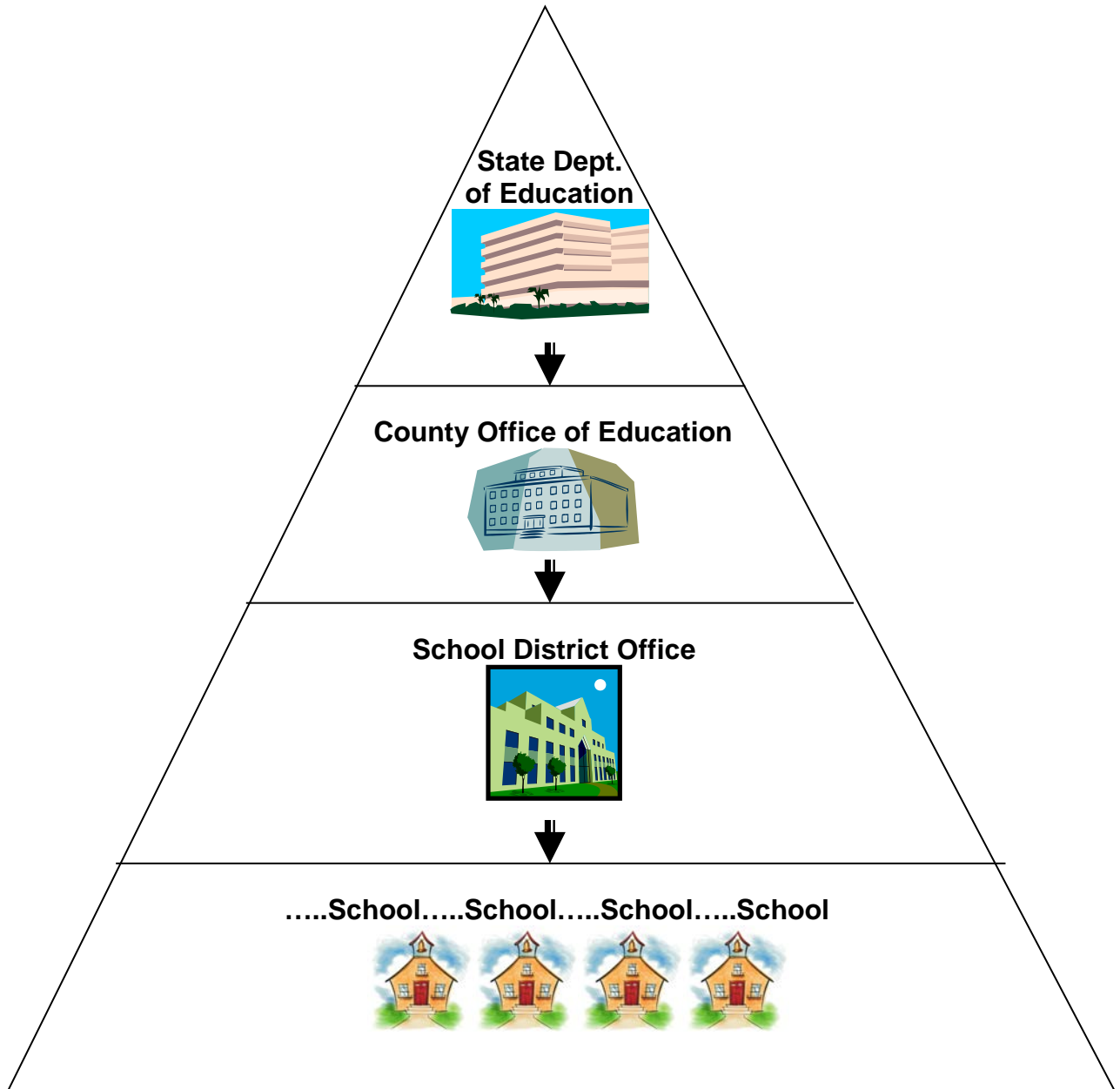
It helps an advocate to understand the structure of schools, school districts, county offices of education, and other services associated with public schools. Knowledge of the structure of educational institutions will assist the advocate in contacting the “right person” to get answers or request services.

## **I. Public school organization**

### **How are public schools organized?**

*Public school organizations consist of schools, district offices, county offices, and the State Department of Education. Some larger school districts have schools grouped together to form “areas” which have their own administrative structure within the district.*

# Public School Organization



## 1. California Department of Education



Located in Sacramento, the California Department of Education is responsible for public education in California. For information about the Department of Education's role with fair hearings and complaints, see Section VIII of Chapter 3. A complete listing of services and functions can be found at <http://www.cde.ca.gov/>.

## 2. County office of education



Every county in California has a county office of education. County superintendents are usually elected (with some exceptions—when they are appointed by the county board of education). The size of the county office varies according to the size of the county.

County offices of education do not supervise school districts or tell them what to do. This means that, with some exceptions, advocates may not productively appeal decisions to county offices. They will normally be referred back to the student's school district.

County offices of education have responsibilities for overseeing school district budgets. In addition, county offices often operate a number of special programs, such as court schools, staff development, centralized school district support, technology services, special education services not offered by districts, Regional Occupational Centers and Programs (ROCPs), and vocational education. More information on ROCPs can be found in Section II of this Overview.

There are two specific areas that advocates should be aware of in relation to county offices of education.

- First, county boards of education may hear appeals when a parent feels a child was expelled from school improperly. These appeals are limited to consideration of procedural violations.
- Second, county boards of education may consider appeals to interdistrict attendance requests that have been denied by school districts.

County offices of education often house a **SELPA** office. A SELPA is a Special Education Local Plan Area. It is an organization made up of school districts (or one very large district) which have come together to ensure that children with a variety of special education needs receive

services. The SELPA office can be a good resource when parents or advocates have more complex questions about special education.

### 3. District office



Schools are organized or grouped together to form school districts. School districts may have anywhere from one to hundreds of schools. School districts are the basic legal entity that is responsible for the overall education of school age students within the district boundaries.

School districts may encompass kindergarten (K) through 6th grade, kindergarten through 8th or 9th grade, kindergarten through 12th grade, 9th through 12th grade, or 7th through 12th grade.

When a school district does not include all grades from K through 12, it either accepts students from another school district with lower grades or “feeds into” a district with higher grades. As an advocate, this means that you must sometimes deal with more than one school district in advocating for the needs of a student or a family.

Many districts also have pre-school programs which are not required (except for special education students).

School district offices are generally organized by similar functions. Large district offices may have scores of staff performing these functions. Small district offices may have one person in charge of several. When making inquiries at the district office, you should keep the following areas in mind in order to direct your questions appropriately:

➤ **Superintendent’s office**

The office of the superintendent is responsible for all activities in the district. This office also has information about the **school board**, which is a group of elected individuals who make policy decisions for the district.

➤ **Personnel**

Hiring, benefits, grievances, evaluation, negotiations, etc. are handled through the personnel office.

➤ **Curriculum and instruction**

Curriculum selection, textbook selection, and testing are the responsibility of the curriculum and instruction office. Branches of this office usually include special education and student services, which may be separate departments.

➤ **Business services**

Payroll, accounts payable and receivable, and budget development are administered by the business services office.



**4. Schools**

Schools are the basic unit of educational services. Most schools have a principal, office staff, regular classroom teachers, special education staff, non-certificated staff, and other specialists. Secondary schools usually have vice principals and counselors, who are also good resources.

The school level is usually the place to start when advocating. Speaking with a child's teacher and with the school principal are essential first steps to becoming involved and for seeking positive resolution of issues and concerns.

Most schools have Web sites that are good resources for finding names, phone numbers, test scores, and the "School Accountability Report Card." The "School Accountability Report Card" is a document that contains vast amounts of valuable information about the school and the district.

<b>II. Other services offered by school districts</b>
-------------------------------------------------------

**What other services are offered by school districts?**

*It is helpful for advocates to be aware of the variety of other services often offered by school districts and county offices of education. These services and programs are not always offered and many times have different program names in different districts.*

Many of the programs listed below are called "categorical programs." This means that they are funded via grants or special funds that are only allocated for their specific purpose. The following list is by no means all inclusive. It is often helpful for an advocate to ask general questions about what other help or service might be available for a child rather than referring to a specific program.

➤ **Adult education**

Adult education is an excellent resource for both adults and students not yet graduated from high school. Evening and alternate hour courses are frequently offered and provide an excellent path for

individuals wanting to complete their high school education, learn English, gain vocational skills, or develop job related skills.

➤ **Advancement Via Individual Determination (AVID)**

Many junior high and high schools have an AVID program. This program reaches out to academically average students and provides advanced classes so that they may be eligible for college.

➤ **After school programs**

Many districts offer after school programs to assist students who need extra help in reading or math.

➤ **Charter schools**

A charter school is a public school usually formed as a positive alternative to existing schools in a community. It may be operated by a school district or sponsored by a school district and may provide instruction in any or some combination of grades from K through 12. A charter school may be started by parents, teachers, or community members (or some combination). Approval to operate a charter school is obtained through the local school district governing board. The law allows county boards of education and the State Board of Education to grant charters in cases where a petition has been denied by a school district governing board.

Every charter school has unique goals and operating procedures which are specified in the agreement between the school board and the organizers of the charter. A charter school is free from most state statutes and regulations that normally apply to school districts. The purpose of charter schools is to improve student learning, encourage the use of different and innovative teaching methods, create new professional opportunities for teachers, and provide parents and students with expanded educational opportunities within the public school system.

An existing private school may not be converted to a charter school. A charter school must be nonsectarian and may not discriminate, nor can it charge tuition. No pupil can be required to attend a charter school, nor can teachers be required to work in a charter school.

There are 460 charter schools and eight all-charter districts operating in California. Charter schools often choose to emphasize a particular theme such as ethnic studies, service, foreign languages, Montessori or Waldorf methods, distance learning, work experience, or fine arts. They often also develop a partnership with other agencies.

Charter schools often provide another viable alternative for students. Information about charter schools in an area can be obtained from the county office of education. Each school district also has information concerning charter schools operating within its boundaries.

➤ **Drug and alcohol services**

Many schools, particularly high schools, have programs or grants to help students with drug or alcohol problems or to prevent students from abusing substances.

➤ **Economic Impact Aid program (EIA)**

This is a program designed to provide educational services to disadvantaged students and also for bilingual education.

➤ **Gifted program**

Some school districts have special programs for gifted and talented students (called GATE for Gifted and Talented Education).

➤ **Independent study**

Some parents prefer to take the primary responsibility to educate their children at home. This program called “independent study” (often called “home schooling”) is run through the school district. The district provides materials, support, and a teacher who periodically meets with the parent and the student to review progress, make assignments, and support the parent’s efforts. All students in independent study have a contract and work toward standards like students in traditional classes.

➤ **Migrant education programs**

Programs for migrant students may be offered by local migrant education regional offices in collaboration with school districts. Other programs are administered statewide and are designed to meet specific needs of students. The Mini-Corps Program provides tutoring to migratory students. The Portable Assisted Study Sequence (PASS) program assists migratory students in grades 9 through 12 to receive credits toward graduation.

➤ **Reading programs**

Inquire at your local school to see if it offers any kind of special reading program. These programs, separate from special education, may be funded from a number of sources. They often help students in the early stages of reading problems before the problem becomes acute.

- **Regional Occupational Centers and Programs (ROCPs)**  
Regional Occupational Centers and Programs offer career and workforce preparation for high school students and adults. Individual school districts, county offices of education, or groups of school districts cooperatively operate these programs. Students must be 16 years of age or older and either enrolled in a high school or adult education program. ROCPs are designed to help students prepare to enter the workforce, pursue advanced training, or upgrade their skills.

Students receive training at a variety of locations from regular classrooms to actual business and industry facilities, such as automotive dealerships and hospitals. In addition to training, students are also provided with counseling, placement, career planning, and other services. ROCPs often form partnerships with public agencies, labor organizations, and local businesses to design and provide programs. Advocates should be aware of the opportunities offered by ROCPs in their communities and the requirements of each.

- **School Attendance Review Board (SARB)**  
Schools often operate or have access to a SARB. The SARB reviews cases of students who are truant. It also attempts to bring many services together to hold students and parents accountable and to help students succeed in school.
- **School Improvement Program (SIP)**  
This is a state program that gives schools funds to use for general school academic improvement. Each school designs a plan to use these funds.
- **School meal programs**  
Schools may offer free and reduced price lunches, and sometimes breakfasts, for students whose family income qualifies them. Inquire at the school office about these services.
- **Services to limited English proficient students**  
All districts must offer assistance to students who are limited English proficient. Ask your local district what services they offer and which children are eligible. Federal Title III funds are often available to supplement these programs.
- **Special education**  
For information on special education, see Chapter 3.

- **Summer school programs**  
Most school districts have summer school programs that provide academic remediation and enrichment to students.
- **Tenth grade counseling**  
High schools receive a small amount of extra funds to use for counseling 10th grade students in planning their high school courses and looking at their goals.
- **Title I**  
Title I refers to a federal categorical program whose purpose is to ensure that all children have a fair and equal education. It is aimed at low-achieving students enrolled in high poverty schools. These funds are used for a variety of services including counseling, reading and math help, community outreach, etc.
- **Transportation**  
Many school districts offer transportation to and from school. Schools may charge a fee for these services (except for special education transportation), and there are generally methods to request fee waivers for financial hardships.
- **Vision, hearing and scoliosis screening**  
Schools hold a number of health related screenings of students at various grades as required by law. The results of these screenings can provide excellent information to students and their families. Schools can also help with referrals for more assistance.

## Chapter 1: How to Be a Good Advocate

### The three most important things to remember about being a good advocate

- ◆ The following are keys to being a good advocate:
  - Create relationships.
  - Communicate ideas in ways that others can understand.
  - Be prepared by knowing the facts and law that apply.
- ◆ You can be an advocate on big or small things—the most important thing is just to be there, taking action on behalf of students who otherwise will have no one to advocate for them.
- ◆ There are many ways to be an advocate. Even if you don't know a lot about the law, you can help by asking questions and letting the school know about students' needs.

### I. Introduction to advocacy

#### What is an advocate?

*An advocate is a person who supports and stands up for another.*

Most people who have had some level of success can remember individuals who advocated for them. Maybe the advocacy was as simple as a small encouragement in school, a positive review of their work when they were struggling, or words that inspired them to reach beyond what they thought possible.

Most children's daily advocate is the parent or family member who takes care of them. Children and youths who are out of their homes often lack that regular and consistent advocacy. Often they have spent years living with parents who are overwhelmed by their own problems. The absence of a regular advocate can be especially devastating in school. A little advocacy can go a long way for a student struggling in school.

## II. The essential elements of advocacy

There are many ways to be a good advocate, but the following keys will help you.

- **Create relationships** with school staff and others who can help.
- **Communicate ideas** in ways that allow others to understand them.
- **Be prepared** by knowing the facts and law that apply in a situation.

You can be an advocate on major, ongoing issues, such as the creation of an educational program for a student with severe disabilities. Or, you can be an advocate on something that might take just one phone call, like making sure a student in a new district gets the chance to take part in sports.

### ***Where you can have an impact***

If you have a child or young person in your care, being active in that child's education is one of the longest-lasting gifts you can give to him or her. Your contact with school personnel builds connections between the healthy adults in this child's life. Those connections can become a web of support.

This chapter will teach you the tools you need to advocate for students. You can choose the style that fits you best, and you can decide where you can make the biggest impact in a young person's life. Whatever you decide, the most important thing is to act.

### **Do I need special training to be an educational advocate?**

*No.*

While it helps to know about education law, you can do a lot for students without special training. Even when you don't have all the answers, you can work with the school district by asking questions, providing information, and urging those working with a student to provide the best possible education.

If you hit a dead end, seek help from others who have more experience. Consider contacting other foster parents or caseworkers who have dealt with similar problems. Try calling local parent groups that work on education issues, your local legal services office, or an attorney who is experienced in education law.

### ***Where you can have an impact***

Think about and consult with others about whether it may be appropriate to involve a child in the decision making-processes relating to his or her education. A meeting can be an opportunity to model effective advocacy, and will help the child grow into an effective advocate for him or herself. In addition, a child or young person's involvement can result in important information being added to the decision-making process.

## **III. Creating relationships**

### **How do I create a good working relationship with the school district?**

*Treat it like any relationship. Remember that it's going to take a lot of work to build a successful relationship.*

In an ideal world, schools, families and communities work together to provide the best for each student. This is not always the reality, however, and relationships can go sour when difficult issues arise.

In your advocacy, you're likely to repeatedly meet with the same school district personnel. Try to figure out how to build good relationships while standing up for the child's needs.

When you help a child for the first time, make the effort to review his or her educational history and let the school know that someone new is involved. Remember that the school district may have dealt with another adult from this child's life. Bad feelings or communication problems may have already developed with others. Let the district know that you want to start off on the right foot. The district may be relieved to know there's someone who cares about the child and is willing to work on problems.

You can be an active participant in the student's education.

- Start the relationship out right: Let school officials know you respect them and will work with them.
- Attend meetings, parent teacher conferences, and school events.
- Check in with teachers regularly, not just when there's a problem.
- Follow up on reported problems.
- Respond to all school communications promptly.

- Regularly ask the student how he or she thinks things are going.
- Look for chances to help the student person communicate thoughts and feelings to teachers and others. Encourage him or her to participate in whatever way is comfortable, including attending meetings or conferences.
- Let the school know you are supporting this student and will follow up on important issues.
- If a problem arises, always ask for and listen to the school's side of the issue.
- Make sure the school has information needed to provide the right kind of education for this student. Give the school this kind of information every chance you get.
- Start with the assumption that most people mean well—but focus on what is working for the child, not people's good intentions.

#### **IV. Communicating ideas: The heart of good advocacy**

### **What's the best way to let the school know what I want for a student?**

*Communicate, communicate, communicate.*

Think about **HOW** you are communicating as much as **WHAT** you are communicating.

#### **1. The “how” of communication**

Studies have shown that people pay more attention to body language and tone of voice than to the actual words spoken.

Most people don't think much about their tone of voice or body language. But to be an effective advocate, you need to figure out the best way to get your points across, and that means being aware of things that can interfere with your message.

##### **a. Tone of voice**

Listen to your own voice and think about how you use it. Do you talk louder when you are trying to make a point or when you think someone disagrees with you? When you find yourself in that situation, slow down and take a breath. See if you can make yourself speak more softly for a few minutes.

Do you sometimes use a sarcastic or derisive tone when you feel the listener's position is stupid? Ask yourself if the way you are talking will help or hurt your efforts.

If you are going into a situation where you will be discussing a difficult topic, try practicing ahead of time the way you say things. Pick a sentence and practice saying it out loud with different tones. Soften your voice, change the pace, and try emphasizing different words. Listen to what you think would be the most effective way to get your points across.

## **b. Body language**

It's amazing what the body can say without words. The problem is that body language doesn't always say the same thing to everyone.

When someone puts her hands on her hips during a conversation, one person might think she is angry, while another assume she is committed to working on the issue, and a third person might decide that she is tired.

Actions such as crossing one's arms, slouching in a chair, standing

### ***Using tone of voice to communicate different ideas***

Try saying this sentence out loud to yourself, and make the word that is **highlighted** the strongest word. As you listen to yourself, think of how the meaning changes when you emphasize different words:

**Why** was she suspended?

Why **was** she suspended?

Why was **she** suspended?

Why was she **suspended**?

While the basic meaning of the sentence stays the same, emphasis on a particular word will convey a perspective and will often imply something that isn't said by the words alone.

very close to another person, or backing away can all be interpreted differently.

A key to good advocacy is being aware of how other people respond to you. What does the other person see and feel? Are your mannerisms getting in the way of the message?

If you are concerned that body language may be getting in the way of your advocacy goals, try these simple tricks. If you tend to clench your fists, hold a notebook in your hands; put your hands in a pocket or up on the table. If you feel like you'll soon be rolling your eyes at a speaker's comments, look down at some papers and read them for a minute.

It is important not to let your feelings affect your communication in a way that will harm your efforts. If you are frustrated, make sure that your frustration doesn't show in your body language.

## **2. The “what” of communication**

### **a. Choosing the words we use**

Choose words that invite communication, not words that turn up the heat.

State your message accurately. Be honest. Don't exaggerate. Sometimes people fall into exaggerating when they feel no one is listening to them, but overstating a fact will very likely hurt your efforts. When a person exaggerates, he or she loses credibility.

### **b. Getting your message across: Four steps**

When making an important point, four steps will increase the chances that your listener understands you:

**Step 1**      **SIMPLIFY:** *State your point simply.*

**Step 2**      **EXAMPLES:** *Give concrete examples that support your point.*

**Step 3**      **REPEAT:** *State your point again.*

**Step 4**      **QUESTION:** *Ask your listener a question to make sure he or she understands.*

***Using the four steps  
to get your message across***

In this example, a foster parent uses the four steps to talk to a math teacher about his son James.

**Step 1: SIMPLIFY**

"I feel James needs extra help in his math class."

**Step 2: USE EXAMPLES**

"James has not been doing well in math for some time. He failed five tests and got only Ds on the tests that he did pass. When I try to help him with homework, I feel like he is missing the basics."

**Step 3: REPEAT**

"James needs help in order to succeed in math."

**Step 4: QUESTION**

"Do you think extra help in math class would give James a better chance at doing well?"

**3. Understanding has to come before agreement**

Make sure that there is understanding before attempting to resolve conflicts or differences. Stop and ask yourself these two questions:

Does the listener ***understand*** your point?

Does the listener ***agree*** with your point?

The other person's responses should give you the answers to the questions.

Read below how the foster parent makes sure James's math teacher understands his point before moving on.

***Checking that both sides understand  
each other***

**Math teacher:** "I think James can succeed. All children can learn. I feel he just isn't paying attention in class."

**Foster parent:** "I'm so glad to know you feel he can succeed. I just want to make it clear that I think he needs extra help to do it. Do you know what I mean by extra help?"

Once you have determined that the other person understands your point, move on to working out disagreements.

#### **4. Questions, questions, questions**

Any time that you deal with school personnel, don't do all of the talking. Ask questions and listen to the answers. Then, ask more questions to clarify the answers.

This will help you

- Get all of the facts
- Understand and be able to respond to the district's perspective
- Communicate to the district that you're an interested party and want to work together on issues

If you need help thinking of questions, use the five Ws:

**Who? What?  
When? Where?  
and  
Why?**

### ***Using the five Ws to ask questions***

In this example, a social worker asks questions when she runs into a problem getting records for Sherita, a girl on her caseload.

**Who** is responsible for sending Sherita's records?

**What** will you send me?

**When** do you expect to have the records?

**Where** will you be looking for the records?

**Why** can't the records be sent to me sooner?

### **When I reach a point of disagreement, what do I do?**

*Try to move the discussion forward. Remember—disagreement can be temporary.*

#### **Five steps to getting around disagreement**

When you reach an impasse, try to move the discussion forward using these steps.

**Step 1**      **CLARIFY:** *Ask questions. (Remember—questions, questions, questions!)*

**Step 2**      **GET THEIR PERSPECTIVE:** *Listen to where the other person is coming from.*

**Step 3**      **FIND COMMON GROUND:** *Look for points where you agree.*

**Step 4**      **ADD INFORMATION:** *Supply additional information that might help the other person change his or her mind.*

**Step 5**      **STATE YOUR POSITION CLEARLY:** *Make sure your desired outcome is clear.*

***Using the five steps  
to get around disagreement***

In this example, James's foster parent uses the five steps to try to move toward agreement.

**Step 1: CLARIFY**

Math teacher: "I know you think he needs extra help. I think he needs to just buckle down and pay attention in class."

Foster parent: "So you don't think he needs extra help?"

Math teacher: "No, I think I can teach all of the students in my class."

**Step 2: GET THEIR PERSPECTIVE**

Foster parent: "Do you feel like I am saying you're not a good teacher?"

Math teacher: "I guess I do feel that way. I haven't had a problem teaching students before James."

**Step 3: FIND COMMON GROUND**

Foster parent: "We agree that James isn't doing well in math, right?"

Math teacher: "That's for sure. I know he is a bright child so that's how I know he's just not applying himself."

**Step 4: ADD INFORMATION**

Foster parent: "It's interesting that you have noticed him not paying attention. Last year, a teacher suggested James might have problems paying attention, and I find that he doesn't stick with things very long at home."

**Step 5: STATE YOUR POSITION CLEARLY**

Foster parent: "What I see is James having problems in math and I want to figure out the reason why. I want to make sure he gets the help he needs."

If you are not getting anywhere in your discussion, take a break and come back to the problem later.

**Foster parent:** *(Feeling like a dead end has been hit and there is no movement from the teacher)*  
"Well, thanks for your time. I'm going to head home now. Will you be here tomorrow at the same time? I'd like to talk a few minutes more then."

## How do I know when it's right to compromise?

*Know your goals.*

Think ahead to what you would be willing to give up. What is your bottom line? Recognize that in most situations, some level of compromise must be made.

When the need for compromise arises, take the time to think it through. What are you really giving up? Are you sacrificing something really important to get something less important? Are you holding out for something that really isn't essential to your goal?

## How do I identify and clarify my goals?

*List your goals. Break them down into smaller parts. Decide which parts are most important.*

Start with your broadest, most general goal. Then, list as many specific elements of that goal as you can. Examine each element and break it down into smaller parts. For each part, ask, "What is the most important thing here? Are there issues on which the school agrees with me?" Rank the elements of the goal accordingly.

### ***Identifying and clarifying goals***

Imagine this situation: Ellen has been expelled because she threatened another student. A social worker working with Ellen suspects that she has a disability that hasn't been addressed and that probably led to her current problem. The social worker starts listing goals and ranking them as follows:

BIG GOAL: Get Ellen back into school with appropriate services.

<u>Rank</u>	<u>Variations on the big goal</u>
#1	Ellen goes back to school. ---- same school
#4	---- before the end of the school year
#3	---- with services that she needs ---- with a different teacher
#2	Ellen has an evaluation to find out what she needs. The expulsion is removed from her record. The expulsion is changed to a lesser punishment.

By going through this process, the social worker can talk to the school about his goals for Ellen. The school might not agree to everything. Because the social worker has figured out the most important things for Ellen, he is in a better position to decide which goals to push for.

## Is there really more than one way to handle every situation?

Yes, *always*.

Looking at James's situation from earlier in this chapter, let's assume that the foster parent and math teacher have talked and can't come to an agreement about how to help James. The foster parent has options:

- The foster parent could decide to wait, get more input, and seek alliances with other teachers.

**Foster parent:** "I think it might be good for us to talk with other teachers and see if they notice the same things you do. They might have ideas about how to handle it. They might have noticed a pattern of problems. We could work together to solve them. I'm going to contact other teachers and people who work with James."

- The foster parent could decide to defer to the teacher, hoping she will have ideas on how to proceed.

**Foster parent:** "Do you have any ideas about what might help James concentrate and work harder in class? I would like to help you put those ideas to work."

- The foster parent could decide that it's time to move quickly because James needs help right away. He could use a number of options outlined later in this manual, including the following:

- Moving James to another classroom
- Finding help outside of the school
- Asking for a special education assessment
- Talking with the principal about the problem and asking the district to provide help
- Paying for a tutor
- Changing schools

**Foster parent:** "Well, you and I have different perspectives on this. I know this problem involves more than James's need to apply himself. I have worked with James on his homework and have seen him trying hard. I am going to pursue other options and try to get extra help."

Not every option will be the right one for a student. To decide what is right for a student, you need to know the priority of your goals. There will be some situations where there is no middle ground because your goals and those of the school district conflict.

## What if I feel that school personnel are being disrespectful to me or the child in my care?

*Let them know, fast.*

Let the other person know what you sense and how you feel. Address the issue immediately. The other person might not be aware of how you feel. Give him or her an idea of how to improve communication.

Tell the other person

- What you feel: “*I feel \_\_\_\_\_.*”
- What happens that makes you feel that way: “*When \_\_\_\_\_, I feel \_\_\_\_\_.*”
- What you would like to have happen differently: “*Please \_\_\_\_\_.*”

Remember, be respectful. Watch your tone of voice and body language. Talk to others the same way you want them to talk to you.

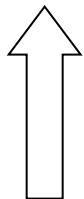
### ***Clearing the air when you feel disrespected***

Here's what a caseworker can say when he doesn't get a response to his phone calls:

**Caseworker:** “I have made three calls to your office during the last week and have not gotten a return call. I feel like you don't think this is very important. Please return my call so we can discuss this situation.”

Here's how a foster parent can deal with someone she believes is not listening to her:

**Foster parent:** “Could we stop a minute? When you keep interrupting me, I feel disrespected because it doesn't seem like you care about what I have to say. I would really like you to please listen to me before responding.”



## What do I do when I have hit a dead end?

*Don't give up.*

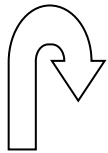
### **1. Go up**

- ⬆ If you're stuck and can't work things out with a teacher, go to the principal.

- ⬆ If you're working on a discipline issue with the vice-principal and can't get anywhere, go to the principal—even if the vice-principal tells you that discipline is solely his or her responsibility.
- ⬆ If you've reached the end of the road with the principal, go to the district superintendent.
- ⬆ If you get nowhere with the superintendent, go to the school board.
- ⬆ If the problem involves special education or a matter of discrimination, consider contacting state and federal agencies that deal with those issues.

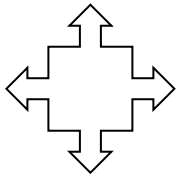
Try not to blame a teacher or other individuals. Stay focused on what the student needs. Try starting out with *"I have a concern about [student]. I have talked with [teacher, principal, etc.], and this is what happened...."*

By going up the chain of command, you involve other people who may have fresh ideas. They may also have a "bigger picture" perspective that helps resolve the issues.



## **2. Go in**

Examine your goals, review what you and the student want, and re-evaluate your tactics. Decide whether you should completely change course and approach the district with a new offer. Make sure you haven't become stuck on points that don't matter.



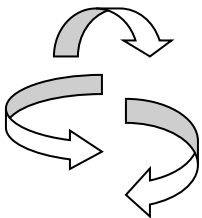
## **3. Go out**

Seek other caseworkers, foster parents, or families who have faced a similar problem. Ask how they did it and see if they have any advice for you.

If you can't find someone who has encountered this kind of problem, go to people whose opinions and perspectives you trust. Even if they are not experts, a fresh perspective can help.

Contact community groups that work on education issues.

Check with your local legal services or bar association and see if you can get free or low-cost legal advice or representation. If you can afford it, hire a lawyer.



## **4. Go over, go under, go around**

There is always, always more than one way to resolve a problem. Think through your options. Force yourself to list at least three different ways to achieve to your goal. Are you really stuck? Make yourself write down 10

different options before you judge whether they could really work. Ask yourself, “What could make this option work?”

You can find ways to achieve your goal without giving up the student’s needs. The key is not getting stuck on just one path to the goal.

## **V. Being prepared: Student records, meetings, and hearings**

### **How can I be best prepared as an educational advocate?**

*There are three areas where being prepared really helps:*

1. Student records
2. Meetings
3. Hearings

### **How can I organize student records and keep notes to help me be an effective advocate?**

#### **1. Keep everything you get.**

Don’t toss those papers! If you feel like you’re being buried in paper, put it all in one place.

#### **2. Get organized with separate education files.**

Keep a separate education file for each student you are helping. If you have a lot of papers, organize them in different categories: letters and correspondence, special education, grades and attendance, discipline notices, etc.

#### **3. Copy everything you send.**

Keep copies of all letters, notes or other written communication with the school.

#### **4. Put things in writing.**

Even if you’ve asked for something during an in-person or telephone conversation, follow it up with a note. It doesn’t have to be typed and it doesn’t have to be perfect. It is a good reminder to the other person, and having a copy will benefit you if there’s some kind of problem down the road. (See the Forms and Samples section at the back of this manual for a sample of a letter confirming a conversation.)

More importantly, *some requests must be made in writing* to ensure special legal protections. For example, a request for school records doesn't have to be in writing. If the district is slow in furnishing the records or refuses to give them to you, the timelines that apply are triggered only by a written request.

Remember to date all correspondence.

If you are worried that written communication might be lost or ignored, send your letter by certified mail and request a return receipt.

## 5. Keep a log.

When you are working on a particular issue with a school district, keep a log in the student's file that lists what's happening. (A sample blank log sheet is in the Forms and Samples section at the back of the manual.)

<b><i>How to use a log sheet</i></b>		
<b>Log sheet</b>		
<b>Date</b>	<b>Contact or action</b>	<b>What happened/notes</b>
5/4/03	Called teacher – Mr. Jones	Asked for meeting about Jenny's discipline last week. Jenny says she can't go on a field trip on May 22 because of being in trouble.
5/5/03	Mr. Jones called back	Mr. Jones said that Jenny had an in-house suspension for talking back, and she can't go on the field trip. I asked for a meeting with him and the principal, and he said he would call back within a week.
5/15/03	Called the principal	She didn't know anything about the discipline. Set a meeting to discuss the situation. Told her I wanted Jenny to be able to go on the trip because she has been trying so hard in school and has improved her behavior over the year.
5/18/03	Meeting	At first the principal said it was too late, and I should have dealt with this sooner. Mr. Jones denied that I had asked for a meeting with him and the principal. I showed them my log notes. We discussed Jenny's improved behavior and ....

## How can I be prepared and make the most of meetings?

### 1. Make sure you have all of the relevant information before you go.

Ask for the relevant records before the meeting so you have a chance to read them. Take the time to read the records and write down any questions. Find out who will be at the meeting and what their roles are. Ask for certain people to be there if you think they will help get things

done. For example, has the counselor been especially helpful to the student? Does the student's teacher from last year have good insights into what the student needs? Ask a friend or support person to attend the meeting with you.

## **2. Have a pre-meeting to clarify goals and strategies.**

Before meeting with school personnel, have a meeting with foster parents, biological family members, social workers and others caring for the child. Clarify your goals and strategies before going to the meeting. This will help send a consistent and clear message to the school.

## **3. Write down your questions and the points you want to make.**

Take a little time before the meeting to write down the questions you would like answered. Outline the points you'd like to make. Refer to your notes while in a meeting. In some situations, you may want to write a letter and read it aloud at the meeting.

## **4. Take notes during meetings and other conversations.**

Don't be shy about taking notes during meetings, while you're on the phone, or during conversations with school personnel or others. Your notes will later remind you of what happened and when. It's okay to let the conversation slow down while you catch up on your notes. When a conversation is over and you're alone, read over your notes and see if you missed anything. Check to see if you can read your own writing. Keep the notes in the student's education file.

If you don't get a chance to take notes, be sure to write things down right after the meeting when the discussion is still fresh in your mind.

## **5. Make sure you get a chance to be heard.**

You may have one perspective about the purpose of a meeting, and school district personnel may have another. Listen to and learn the school's issues, but don't forget to say what *you* think is important.

## **6. Silence is a gold mine.**

Think before talking. You will find that a few moments of silence can produce a lot of insight. Remind yourself that it is fine, and even good, to pause a moment before answering a question. Collect your thoughts. Your response will likely be clearer.

If the other person thinks that your silence means you don't understand the question, you can say, "I am just taking a minute to think about it before I respond."

## **7. Set concrete goals and assign tasks during meetings.**

A problem will get resolved only if people agree to start acting on it. Figure out as a group what tasks need to be done, who should do them, and the desired deadline.

## **8. Take a break if you need to.**

Don't sign papers or agree to a resolution unless you feel it's the right thing. Ask to take a break. Tell the people at the meeting that you would like to think things over for a few minutes, overnight, or for a week. If you are thinking about waiting for more than a day, consider what the student loses by delaying. Balance those concerns against the benefit of having the time to think things through or to talk with someone else.

### ***Making sure you are heard***

In this example, a caseworker called a meeting for one reason, but the school employee starts out on a different topic entirely. Here's how she handles it:

**School employee:** "As you know, we have concerns about Calvin's behavior. We've set times for evaluation and have scheduled an appointment for him to see a psychologist. I'd like to go over those plans today at this meeting. We need to get a consent form signed and make sure Calvin is able to make these appointments. Let's talk about scheduling an IEP meeting next time we get together."

**Caseworker:** "I'm glad you have identified that Calvin needs an evaluation and are moving forward on that. **My concern** is that the school hasn't let him start classes since he changed foster homes and moved into this district three weeks ago. He needs to start school right away. **Getting him into school is the most important thing, and I would like to resolve that issue today.**"

## **9. Recap at the end of a meeting.**

Clarify what you have discussed using your notes. Make sure everyone is aware of their next steps. If it makes sense, set a time to meet again.

## **10. Make a follow-up call to ensure things are getting done.**

Delays can be your worst enemy. If someone has promised to get something done by a certain date, call him or her and ask if it's been done. There may be a good reason for not accomplishing a task. But by following up, you make sure your priority has not been placed on someone else's back burner. Be sure to follow through on tasks you said you would take care of yourself.

### **What if a disagreement can't be resolved?**

*If a problem can't be resolved by talking it through, you may have to file for a hearing.*

Talking things through is the best way to resolve disagreements. However, sometimes you reach an impasse and must file for a hearing.

The type of hearing depends on the issue in dispute. Information on how to request a hearing is covered later in this manual. What follows here is general information that can be used in most types of hearings.

### **How do I make a plan for a hearing?**

*A hearing requires more preparation than other types of action. There are four key areas of focus when making a plan:*

- The case
- The facts
- The law
- The hearing

#### **1. Define the case.**

In no more than two sentences, answer the question "*What is this all about?*" Try starting with "This is a case about..." or "This situation is about...."

#### **Example:**

*"This is a case about a punishment that is too harsh for what the student did."*

It will be hard to make your case that short and simple, but doing so will help you focus your thoughts. You can use your summary in your opening and closing statements of the hearing.

Next, summarize your desired outcome. Make a list of your goals, in order of importance. This will help guide you in questioning witnesses and arguing your points.

## **2. Use the facts.**

Write what happened in chronological order and highlight the key points. If there are records that confirm facts, reference them in your notes and mark the pages so you can easily find them again.

## **3. Know the law.**

Read the law or policies that apply to the case. Write down key points. Write the law or laws you are relying on so you have it in front of you.

## **4. Prepare for the hearing.**

Make lists. Write out questions you have for witnesses. List key points you want to make. List the witnesses or records you need to make those points. List records you want to have the judge or hearing examiner consider.

## **What can I do to prepare for a hearing?**

There are different kinds of hearings; slightly different rules apply to each one. For more information on how to prepare for a special education hearing, refer to Chapter 3. For more information about how to prepare for a discipline hearing, refer to Chapter 4.

In general, the following are things you'll need to do to prepare.

### **1. Review suggestions above for preparing for meetings.**

A hearing is similar to a meeting, but it is more formal.

### **2. Get all relevant records.**

Getting the right records is always important, but for a hearing it is essential. Records and other information used in a hearing are called "discovery." Make sure you have all of the discovery material and read it carefully before going to a hearing. (A sample records request letter can be found in the Forms and Samples section of this manual.)

### 3. Get a list of witnesses from the district.

Find out who will be testifying at the hearing. Ask the district for a list of all of its witnesses.

### 4. Make a hearing notebook.

Experienced trial attorneys use “trial notebooks” for trials in front of judges or juries. A trial notebook is a good tool for organizing a lot of information that you’ll use in a short time.

#### ***Organizing a hearing notebook***

- ☒ Sort the records.
- ☒ Organize your own personal work on the issue and your preparation for the hearing.
- ☒ Make dividers for each section.
- ☒ Put the documents in a three-ring binder.






#### **a. Organize the hearing notebook.**

First, create the notebook as soon as possible to familiarize yourself with it.







#### **b. Sort the records.**

Group similar records together in logical groups.

#### **Example:**

-  Attendance records
-  Discipline records
-  Medical records
-  Notes from teachers
-  IEP plans

You might have to divide some into smaller subgroups.

-  Discipline records
  -  Notes from teachers
  -  Reports to the principal
  -  Suspension notices
  -  Statement of victim of assault
  -  Police report

**c. Organize your own personal work on the issue and the preparation for the hearing.**

You may want to have a separate notebook for your own work on the case. Your own work might include the following:

- Notes of conversations and meetings you've had on this issue
- A summary of the case
- An outline/summary of the facts
- An outline/summary of laws or policies
- Hearing documents
  - Questions for witnesses
  - A list of records you want the hearing examiner or judge to review

**d. Make dividers for each section of the notebook.**

Make dividers to put between sections. You can use something simple like different colored pieces of paper, but dividers with tabs sticking out are easiest to use. Label each section so you can easily tell what is in it.

**e. Put the documents in a three-ring binder.**

A notebook will keep all of the papers in order.

**5. Learn the hearing schedule.**

Hearings follow a general pattern or schedule. Learn this pattern for the type of hearing you are attending. Be aware that education hearings tend to be informal, and the usual pattern may not be followed—especially in school discipline hearings.

**6. Prepare for each part of the hearing.**

***What will happen at the hearing?***

- a. Exchange of exhibits and witness lists
- b. Preliminary issues
- c. Opening statements
- d. Presentation of evidence: Witnesses
- e. Presentation of evidence: Documents
- f. Closing arguments
- g. Decision

### **a. Exchange of exhibits and witness lists**

No later than five business days before a special education hearing, both sides should exchange any documents or records that they plan to use in the hearing, as well as a list of their witnesses. In discipline hearings, it is preferable to exchange the information before the hearing, but it often does not occur until the day of the hearing.

### **b. Preliminary issues**

The judge or hearing examiner usually begins by asking whether any business needs taking care of prior to the hearing. For example, one party might ask that witnesses leave the room during the hearing. (Otherwise, a witness' testimony may be influenced or changed by hearing another witness' story.) If you have had problems getting records from the other side, this is a good time to tell the judge or hearing examiner. Try to avoid this situation by asking for the records as early as possible, in writing.

The judge or hearing examiner will decide how the hearing will proceed. You can ask what to expect or ask about anything about which you are unclear.

The order of presentation depends on which side has the "burden," or responsibility, to prove the case. In special education cases and discipline cases, the district has the burden and therefore goes first.

### **c. Opening statements**

Normally, each side is given an opportunity to give a short statement that helps the judge or hearing examiner understand the issues in the case.

### **d. Witness testimony**

Next, one side presents its witnesses. Witnesses are usually sworn in by the hearing officer.

The party who called the witness asks its questions. This is called "direct examination." The other side can then follow with its questions. This is called a "cross examination." The party who called the witness can ask follow-up questions. This is called a "redirect."

Once one side has presented all of its witnesses and evidence, such as records, the other side does the same. (Note that the other side might not have witnesses.)

Keep in mind that the other side's witness could help your case. Rarely are witnesses' perspectives clear-cut. Listen carefully. Is the witness being consistent with things he or she has said in the past? Is the witness omitting details that would help your case? These questions should guide your follow-up questions.

A few rules: Never argue with witnesses. Let the witness finish each sentence. If you don't understand a witness' answer, chances are no one else did either. Ask a follow-up question if you want more information. If the witness doesn't answer your question, ask it again. If you think the witness doesn't understand the question, rephrase it.

### ***Take your time in the hearing***

It is easy to feel pressured to move quickly in a hearing. It feels like everyone is waiting, and sometimes an opposing party will play up that sentiment to get things moving. You should keep in mind that the goal is the best possible outcome for the student. Take your time in reviewing your notes. Ask for a few minutes' break if you need to collect your thoughts. Talk with your witnesses or review your notes.

#### **e. Exhibits**

Exhibits are records, documents, and physical items. If you want the judge or hearing examiner to consider exhibits as a part of his or her decision, you need to make sure they become a part of the hearing record. To do this, you can do either of the following:

1. Have someone connected to the exhibits testify about them.
2. Get the other side to agree that those particular documents can be a part of the hearing record; the other side must inform the judge of their consent.

#### **f. Closing arguments**

Each side gets a chance to sum up its evidence and the major points of its case in a closing argument. This is the time to bring everything together and convince the judge that your points are

valid. The side with the burden goes first. The other side then gives its closing argument. Finally, the side with the burden gets to respond with a second argument.

**g. The decision**

The decision may be made at the end of the hearing, or it may be sent to you in writing after the hearing is over.

<b>VI. Confidential information and school records</b>
--------------------------------------------------------

The issue of confidentiality is two-pronged. Ask yourself these two questions:

What information about a child should I be giving to another person or agency?

***and***

What information am I allowed to receive?

**What should be considered before releasing personal information to a district?**

*Relevance, privacy concerns, and confidentiality laws and protocols should guide the release of information.*

Caseworkers and caregivers may be able to provide information that identifies education needs and appropriate ways to meet those needs. However, some information isn't relevant to a student's education. Furthermore, some information may be sensitive and personal, such as the following:

- Mental health information about a student or his or her family
- Abuse/neglect history
- Placement history
- Sexual abuse issues
- Immigration status
- Criminal history or incarceration status of a student or parent
- Medical and health history, especially information about HIV status or other life-threatening illnesses

Before providing information to a school district, consider the following questions:

- Is the information really relevant to the education issues?
- Is the information protected by confidentiality laws?
- Is the information so personal that its release might ultimately be harmful?
- How will the information be used? Can it be limited?
- Who will have access to the information? Can that be limited?
- Will those who have access be trained in how to deal with the information, or could they unintentionally cause harm to the student by reacting in an inappropriate manner?
- What does the student think about disclosure?
- Where did I get this information? Are there limits on my releasing it to others?

Make sure you know the laws and agency protocols guiding the release of information for your profession or role.

### **What laws govern the release of school records?**

*The Family Educational Rights and Privacy Act (FERPA), as well as various state laws, govern the release of records.*

School records are confidential, but the Family Educational Rights and Privacy Act (FERPA) protects the right of students and parents to access their records. It also protects their right to keep those records from being released to others without consent. *See 20 U.S.C. §1232(g).*

California's law regarding the confidentiality of school records is found in Cal. Ed. Code §49060–49079.

### **When can school records be released?**

*The law states that a student's records cannot be released to anyone without written consent from the parent or a judicial order.*

Most of what is contained in individual student records cannot be released without written parental permission, a lawfully issued subpoena, or a judicial order. If that permission is obtained, the school district may grant access to the records. However, the recipient cannot pass the information on to others without the written consent of the parent. *See Cal. Ed. Code §49075 & §49077.*

### ***Where you can have an impact***

Remember that young people in the foster care system often have had bad experiences with adults talking about their private lives. Teenagers may be particularly sensitive to privacy issues.

Consider how you can respect the privacy of the children and youth with whom you have contact. Encourage others to act in a respectful way as well. When appropriate, involve the young person in decision-making about confidential issues.

### **Are there exceptions to this rule?**

*Yes. In some cases, records can be released without written parental consent or a judicial order.*

For example, information can be released

- To a school district into which a student is transferring
- In emergencies
- For financial aid applications
- To accrediting associations

In special instances, some people are allowed access to records without written consent or a judicial order. These exceptions may be important if you're advocating for a child who is out of the home or otherwise at a high risk for education problems. The following are some examples.

### **Foster family agencies with jurisdiction over currently enrolled or former students**

These agencies may access

- records of grades and transcripts
- any individualized education plans (IEPs) that may have been developed

*See Cal. Ed. Code §49069.3.*

### **Any county placing agency**

A county placing agency may access school records for purposes of

- completing the health and education summary required by the California Welfare and Institutions Code §16010

- fulfilling educational case management responsibilities required by the juvenile court or by law
- assisting with transfer or enrollment of a student

*See Cal. Ed. Code §49076(a)(11).*

### **A student who is 16 years old or has completed 10th grade**

- A student who is 16 years of age or older, or who has completed the 10th grade, may have access to his or her own records without parental consent.

*See Cal. Ed. Code §49076(a)(6).*

### **A probation officer or district attorney**

A probation officer or district attorney may access records for the purposes of

- conducting a criminal investigation
- conducting an investigation in regards to declaring a person a ward of the court
- conducting an investigation into a probation violation

*See Cal. Ed. Code §49076(a)(9).*

### **Judge, district attorney or probation officer in a truancy matter**

A judge, district attorney, or probation officer can access records for the purposes of

- conducting a truancy mediation program for a student
- presenting evidence in a truancy petition

*See Cal. Ed. Code §49076(a)(7) & (10).*

There are other exceptions. To read a list of most exceptions to the requirement of written parental consent or judicial order for release of records, see Cal. Ed. Code §49073–§49079.

A person or organization given access to records generally cannot pass the information on to others without the written consent of the parent. However, prior parental consent is not required when information is shared with others within the institution or organization that obtained access—so long as those people have a legitimate interest in the information. *See Cal. Ed. Code §49076.*

With each student's record, schools are required to keep a log that lists anyone who has requested or received information from the records, as well as why they requested or received the information. Parents may review this log. See *Cal. Ed. Code §49064*.

A complete list of exceptions can be found at Cal. Ed. Code §49073–§49079.

## **VII. Conclusion**

There are many ways to be an effective educational advocate. Use your concern and care for a young person to make an impact where it will really count—helping children and youth get the education they deserve.

## **Action points: How to be a good advocate**

- Ask questions.
- Remember the importance of your tone of voice and body language.
- Choose your words: Promote communication, don't turn up the heat.
- Remember the four steps to getting across your ideas:
  1. Simplify your message.
  2. Give examples.
  3. Repeat your point.
  4. Ask questions to make sure you're understood.
- Reach an understanding before you accept an agreement.
- Try the five Ws to help form questions: Who, what, where, when, and why.
- Remember the five steps to help move past disagreement:
  1. Clarify where you both stand.
  2. Make sure you understand the other person's perspective.
  3. Seek common ground.
  4. Add information to help the others change their minds.
  5. Take a break.
- Know your goals before you compromise.
- Seek help from other caseworkers, foster parents, community groups, education advocates, or lawyers.
- Keep an education file for each child.
- Keep copies of all documents or records you receive.
- Put things in writing (requests, letters, thoughts, notes of phone calls).
- Keep a log of what happens.
- Request records.
- Take notes during meetings.
- Follow up with phone calls to make sure people are doing what they said they would.
- Going to a hearing? Make a hearing notebook.
- Don't give up. Try another route. There is more than one path to every destination.

# TIPS FOR YOUTH

## What is an advocate?

An advocate is a supporter, **someone on your side**. An education advocate is someone who is there for you, helping you get what you need and want in school.

We all need someone...and, if you are on your own, not living at home, or in foster care, you probably need a little extra help getting what you need in school.

### **Anyone can be an advocate.**

A family member

A teacher

An adult friend

Someone who knows you and your situation

Ask someone to be there for you.

## **You can be your own advocate!**

Know your rights! **Read the Education Advocacy Manual or find other resources to learn about your basic rights to education.**

### **Communicate!**

- **Speak up.** Let people know how you feel and what you think is best for yourself.
- **Listen** to what others have to say. Everyone has an opinion. Respect and be open to different ideas.
- **Know what you want** and say it clearly to someone at school who can make it happen.

**Ask for help!** Find adults you trust and who can support you and your goals.

**Don't give up!** Keep trying—ask for meetings, write letters, make phone calls. Staying in school is important—your future may depend on it!

Is **ANYONE** listening?

What do you do when you feel like no one is hearing you?

- Keep your cool.
- Take a break.
- Try another way of making your point.
- Don't give up.
- Ask someone to help you get your message across.

This is not legal advice. If you need legal advice, seek the help of a lawyer.

## **Chapter 2: Basic Education Rights—Helping Children Enroll and Succeed in School**

### **The three most important things to remember about basic education rights**

- ◆ Children have the right to attend school in the district where they live—even if they are homeless, have just moved to the area, or will live in the area for only a short time.
- ◆ Schools must make prompt decisions regarding enrollment.
- ◆ Schools must make exceptions to their usual rules or take other special steps to provide equal educational opportunities to out-of-home students.

### **I. Introduction to basic education rights**

Education is a basic, constitutional right in California. Students have certain rights and responsibilities, and school districts have specific duties. There are special protections and considerations for children and youths who are out of the home. Knowing these rights and responsibilities will ensure that students get the best possible education.

The information in this chapter will help you get school officials to respond to the needs of out-of-home students in a timely and appropriate manner.

For information on how to read the references to law in this chapter, see *How to Read Citations and Find Laws*.

### **II. The right to education**

#### **Is there a right to basic education in California?**

Yes.

Education is a right in California. The California Constitution states that

*“A general diffusion of knowledge and intelligence [is]...essential to the preservation of the rights and liberties of the people....”*

Cal. Const., art. IX, §1

*“The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district....”*

Cal. Const., art. IX, §5

The California State Supreme Court has recognized that education is “the bright hope for entry of the poor and oppressed into the mainstream of American society” and that “education is the lifeline of both the individual and society.” *Serrano v. Priest*, 5 Cal. 3d 584 (1971).

### **What does this right mean for students?**

*Students cannot be denied an education without due process of law.*

A school district cannot take away a student’s right to education without providing him or her with an opportunity to dispute the removal. School districts must have a good reason to justify a removal of a student from school, and it must comply with state law. See Chapters 4 and 5 for further discussion of school discipline and student rights.

## **III. Enrollment**

### **What is needed to enroll a student in school?**

*Several basic things are needed to enroll a child in school. If a child is out of the home, read this section first; then read section V which discusses special options for enrolling children who are out of the home.*

A student should be enrolled as soon as possible. To enroll a student, you must have the following things:

#### **1. School enrollment packet or forms**

Contact the school district or the local school to ask for an enrollment packet. If you expect any problems or are otherwise curious, also request a copy of the district’s written enrollment or admissions policies.

#### **2. Proof of age and address**

A student must provide proof of age. This can be a birth certificate or another document, such as a baptismal certificate or passport.

The student will also need to provide proof of address to show that he or she lives in the district. Proof of address can be a utility bill, rental agreement, etc. If the student has previously been enrolled in another school district in the state, the district will ask for the names of prior school districts, information about the student's disciplinary history, special educational needs, and any health conditions.

Although districts can require proof of address, they may not consider citizenship as a condition of enrollment. In fact, they cannot even ask about it.

### **3. Immunizations**

Proof of immunization is required before a child can begin school. Immunization records showing completion of all required vaccinations will satisfy the requirement of proof. A list of the immunizations required in California can be found in Health and Safety Code §120335.

A student who does not have proof of immunization can be admitted to school with a "conditional admission." The student must show that he or she has started the immunizations and has a planned schedule to complete them. The timeline for completion of immunizations is specified by law. See *17 C.C.R. §6035, Table 2*.

Exceptions to the immunization requirements may apply to children who are out of the home. The only other exceptions are for reasons of medical necessity or personal or religious beliefs. See *17 C.C.R. §6051*.

Keeping track of immunization records is a problem for children who have moved a lot, and children can end up being immunized repeatedly with the same vaccinations. The California Department of Health Services is building a statewide registry system, the Statewide Immunization Information System (SIIS) to prevent unnecessary immunizations.

### ***Where you can have an impact***

If a child does not have proof of immunization, try calling a one of the child's previous schools. Even if there have been enrollment gaps, a school that the child once attended may still have records.

Also check with the local public health department to see if they have records.

## **What if I am having a problem enrolling a child in school?**

Children in foster care or who are homeless may be eligible for certain rights and protections. First, determine if this is the case. Specific information about enrolling children who are out of the home can be found later in this chapter.

If you are having a problem enrolling a child, try the following steps:

- Ensure that the school is following its own district policies and state law.
- Talk with the school principal.
- Call the district office and explain the situation.

State law requires all districts to have a complaint policy and process. Consider filing a complaint if a school is not responding, is very slow in acting, or is not following its own policies or state laws and regulations. Complaints can be appealed to the state superintendent. (See 5 C.C.R. §4600 for details about the required complaint processes.)

Additional information on the complaint process can be found in Chapter 3.

If discrimination appears to be involved, consider filing a civil rights complaint with the US Department of Education's Office of Civil Rights (OCR). An OCR complaint form can be found in the back of this manual.

### ***Where you can have an impact***

Expect timely responses to your requests from school staff. If the district delays your student's enrollment or receipt of necessary services, be the squeaky wheel.

Follow your requests by asking to meet with the principal or the district superintendent. Consider filing a complaint to get a response, when necessary.

## **IV. Where to enroll?**

### **What is considered a student's "resident" district?**

*A student's resident district is the district in which the student lives.*

The student's residence is defined as where the student lives at the location of one of the following:

- Parent or guardian's home
- Foster home
- Children's institution
- Family home, if placed there by juvenile court
- Student's home, if the student is emancipated
- Home of a caregiver adult where the student lives
- State hospital

*See Cal. Ed. Code §48200, §48204 & §48207.*

### **Does the school district have to enroll a child who lives in the district?**

Yes.

A school district *must* enroll a student who resides in that district. (Note that there are special considerations to enrolling a student who is out of the home.) *See Cal. Ed. Code §48200.*

### **What do I need to enroll a student in his or her resident district?**

*A district may ask to see proof of residency.*

Utility bills, a rental agreement or identification are examples of proof of residency. If a student is in a foster home or institution, the agency placing the student must provide the proof of residency. If the student is

living with an adult who is not a legal guardian, that person must provide proof of residency.

Keep in mind that children who are in foster care, awaiting foster care, homeless or living with a non-guardian adult have different rights and protections from the general population. In many cases, they will have additional options about where to enroll for school. Additional information can be found later in this chapter.

Special rules regarding admission to a resident district apply to students who have been expelled. More information about discipline issues can be found in Chapters 4 and 5.

### **Can a student choose to attend school in a district other than the one in which he or she resides?**

*Yes, but the school district of choice and the district of residence will have to agree to the transfer.*

Districts are not required to accept out-of-district transfers. A district can have a policy to not accept any transfer students. It can also have a policy to accept a limited number of transfer requests. See Cal. Ed. Code §46600.

If the district chooses to be an “open enrollment” or “choice” district, it must create nondiscriminatory procedures for accepting transfer students. The selection process must be random. If the district decides to limit the number of transfer students, it cannot use information like academic or athletic performance to decide which students to accept.

A district cannot deny the transfer request of a student with special needs solely because it will cost too much to address those needs. However, if the district of choice would have to develop a new program or service for the student, they may turn down the student’s request.

In most cases, a denial of a transfer request can only be challenged if the district has set up an appeals process. However, if you feel a denial is based on discrimination, you can contact the school superintendent, the US Department of Education’s Office of Civil Rights or an advocacy group.

Students who are accepted into a choice district are usually responsible for their own transportation.

A parent or guardian must submit a transfer request before January 1st of the year before the desired transfer. This time limit can be waived if the resident (current) school district and the district of choice agree. Note that if the child is in foster care or homeless, special considerations apply. Additional information can be found in Section V.

There are also special considerations regarding admission of students who have been suspended or expelled. Chapters 4 and 5 have more information about school discipline issues.

### **Which school within the district will a student attend?**

*Students typically attend their neighborhood school, but the law permits selecting a school outside of a student's neighborhood.*

School districts create "attendance areas" for their schools by drawing lines within the district boundaries. These boundaries usually determine which school a student will attend. However, school districts in California must allow "open enrollment" within the district. Regardless of the location of a student's residence, a parent or guardian can choose to send the child to any school within the district.

Students living in a school's neighborhood have first priority for attendance, so some schools may be at capacity. If a school with openings receives more transfer requests from students outside the neighborhood than it has room for, the transfer students must be chosen at random. This is often called a lottery. Academic performance or athletic ability cannot be factored in the decision process.

For specialized schools or programs, districts are allowed to use other admittance criteria.

Contact the district for its transfer requirements and enrollment forms.  
*See Cal. Ed. Code §35160.5(b)*

### ***Where you can have an impact***

Know as much as possible about the child's personal and educational history, special abilities and needs, educational goals, and preferences. Tell school officials about these issues at every contact. Communicate key points firmly and respectfully in writing.

## V. Enrolling children and youth who are out of the home

State and federal laws provide several options for enrolling children who are out of the home. The laws help an out-of-home child get enrolled in a new school more quickly, or can keep child's education from being interrupted because of a change in placement. Different laws apply to children in foster care, who are homeless, or who are in the care of a non-guardian adult or foster parent.

### 1. Enrolling children who are in foster care

Important changes in California law went into effect in January 2004. Assembly Bill 490 was enacted to protect the educational interests of children in foster care. The law affects the educational placement of children in care:

*All educational and school placement decisions shall be made to ensure that the child is placed in the least restrictive educational programs and has access to academic resources, services, and extracurricular and enrichment activities that are available to all pupils. **In all instances, educational and school placement decisions shall be based on the best interests of the child.** (Emphasis added.)*

*See Cal. Ed. Code §48853(g).*

### Where should a child residing in a group home or foster home enroll?

*The educational placement of a child in a licensed children's institution or foster family home must be in the child's best interest. This could be the local school where they currently live, former school, or another program.*

California law protects children in foster care by letting them enroll in the school that is best for them. This may not be the local school.

According to California law,

*A pupil placed in a licensed children's institution or foster family home **shall** attend programs operated by the local educational agency unless one of the following applies:*

1. *The child has an IEP requiring another educational program, or*
2. *The parent or other person holding the right to make educational decisions determines that it is in **the best interest of the child** to be placed in another educational program or for the child to continue in his or her school of origin. (Emphasis added.)*

*See Cal. Ed. Code §48853(a).*

The “best interest” principle does not supersede other laws regarding expulsion or detention in a juvenile facility or camp. *See Cal. Ed. Code §48853(d) & (e).*

### **What is an *educational liaison* for children in foster care?**

*An educational liaison is a person who is designated to address the needs of children in foster care. Every district is required by state law to have one.*

The educational liaison’s job is to

1. Ensure and facilitate the proper educational placement, enrollment, and withdrawal of children in foster care, and
2. Assist children in foster care when transferring from one school or district to another, ensuring proper transfer of credits, records, and grades

The liaison’s role is *advisory*. The liaison does not take the place of the person who has educational authority over the child (i.e., holds the right to make educational decisions).

People who can have educational authority include the following:

- A parent or guardian who still has educational rights
- A “responsible adult” who has been appointed by the court to represent the child
- A surrogate parent appointed by the school district
- A foster parent who has authority to make educational decisions.

More information about each of these decision-making roles can be found in Section VII of this chapter and Section III of Chapter 3. *See also Cal. Ed. Code §48853(b) & (c).*

### **What is a “school of origin”?**

*The “school of origin” is the school that a foster child attended when he or she was permanently housed, or the school in which the child was last enrolled.*

What if the school the child attended when permanently housed is different from the school in which the foster child was last enrolled? What if there is some other school that the foster child attended, and the child is connected to that school?

Sometimes it might not be obvious which school should be considered the school of origin. In these situations, the educational liaison must consult with the child and the person with educational authority. Together, they must decide which school will be considered the school of origin based on the child's best interests. See *Cal. Ed. Code §48853.5(e)*.

### **Can a child in foster care stay in a school even if he or she is moved to another placement?**

Yes.

When a child is put in a new or different placement, the school of origin must allow the child to remain enrolled for the duration of the school year.

If a dispute arises regarding the educational placement of a child in a group or foster home, the child has a right to remain in the school of origin until the dispute is settled. See *Cal. Ed. Code §48853.5(d)(1) & (5)*.

### **Can a foster child's right to stay in the school of origin be waived?**

Yes.

An educational liaison can recommend waiving the right if the child and adult with educational authority agree that it would be in the child's best interest.

The best educational placement for a child depends on the circumstances. In some situations, a child and the adult with educational authority will agree that staying in the school of origin is not in the child's best interest. It may be better for a child to move to a

new school in the area where he or she lives. To do this, the child's right to remain in the school of origin must be waived.

Before making any recommendation to move a child in foster care the school of origin, the liaison must provide the foster child and the adult with a written explanation of the recommendation, including how the move would serve the foster child's best interests. *See Cal. Ed. Code §48853.5(d)(2) & (3).*

Again, if there is a dispute regarding the educational placement of a child in a group or foster home, the child has a right to remain in the school of origin until the dispute is resolved. *See Cal. Ed. Code §48853.5(d)(5).*

**Can I enroll a child in my care in a new school if I don't yet have all of the paperwork? What if I don't know much about his or her educational history?**

*If a child in foster care is changing schools, the law requires the new school to immediately enroll the child, even without required records.*

Don't delay enrolling a student because you lack information or paperwork. Ask to speak with the educational liaison right away.

If the liaison, adult with educational authority and child agree that the best interests of the child would be served by a transfer, California law requires the new school to enroll the child immediately. This immediate enrollment must happen even if the student does not have all of the required paperwork or records.

Within two business days of the request for enrollment, the educational liaison for the new school must contact the child's last school to obtain all required records. The liaison for the last school is required to provide all records within two business days of receiving the request. *See Cal. Ed. Code §48853.5(d)(4)(B)–(C).*

### ***Where you can have an impact***

If a school tells you that additional testing or an IEP must be done before allowing a student who lives in the district to start school, talk with the principal. If that does not work, request a meeting with the district superintendent, file a complaint or seek assistance from an advocacy organization. If the student already has an IEP, you can also file a civil rights complaint. See Chapter 3 for information on filing a complaint with the Office of Civil Rights.

### **What if a dispute arises about the school placement of a child in a licensed children's home or foster care?**

*If any dispute arises as to the school placement of a child in foster care, the child has the right to remain in his or her school of origin until the dispute is resolved. See Cal. Ed. Code §48853.5(d)(5).*

### **When a child in foster care moves from one school to another, what are the record-handling requirements?**

The California State Legislature recognizes that being moved from placement to placement disrupts a child's education. To address this, the legislature has enacted laws to ensure a quick and efficient transfer of a child's records. As a result, schools and caseworkers have important responsibilities.

As soon as the county placing agency becomes aware of the need to transfer a student in foster care, the agency must contact the appropriate person at the student's current district. The placing agency must notify the district of the date that the student will be leaving the school and request that he or she be transferred out.

Within two business days of receiving a transfer request from a county placing agency, a district must transfer the student and deliver the student's information and records to the new school district.

The old district is required to compile the complete educational record of the student. This includes the following:

- A determination of seat time
- Full or partial credits earned
- Current classes and grades

- Immunization and other records
- If applicable, a copy of the student's plan adopted pursuant to Section 504 or the Individuals with Disabilities Education Act (IDEA)

A district must assign someone to handle the transfer process for children in foster care. This person must be aware of the specific educational record-keeping needs of homeless, foster, and other transient children who transfer between schools. *See Cal. Ed. Code §49069.5.*

**Many children in foster care miss school because of placement changes and court dates. Can this affect their grades or credits?**

*No.*

A child in foster care cannot have grades lowered if he or she is absent from school because of

- A decision to change the placement of a student made by a court or placing agency, or
- A verified court appearance or related court-ordered activity

Furthermore, if a child misses school because of a decision to change his or her placement, the district must calculate the grades and credits of the student as of the date the student left school. *See Cal. Ed. Code §49069.5(g).*

**2. Enrolling a child who meets the definition of “homeless” under the McKinney-Vento Act**

The McKinney-Vento Homeless Assistance Act gives rights and protections to homeless children as defined by the act. *See 42 U.S.C. 11431–11434a.* A child is considered homeless if he or she lacks a “fixed, regular, and adequate nighttime residence.”

The act lists a number of circumstances that meet the criteria of homelessness for children. It includes the following situations:

- Living in a emergency or transitional shelter
- Awaiting foster placement
- Sharing the housing of others because of loss of housing, economic hardship, etc.
- Living in a motel, hotel, trailer park, or camping ground because of a lack of alternative adequate accommodations

- Being abandoned in a hospital
- Having a primary nighttime residence, public or private, that is not designed for or ordinarily used as a regular sleeping accommodation
- Living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar setting
- Migratory children who are living in circumstances described above; “migratory” is defined in §1309 of the Elementary and Secondary Education Act of 1965; see also Cal. Ed. Code §54441

*See also 42 U.S.C. §11434a(2).*

This list is not all inclusive. There are other situations in which a child may be considered homeless until a fixed, regular, and adequate residence is obtained. Whether a child fits the definition of homeless under the McKinney Act must be decided on an individual basis.

## **What are some of the important rights and protections under the McKinney-Vento Homeless Assistance Act?**

If a child meets the criteria for homelessness (see above) he or she has rights and protections under the McKinney Act, including the following:

### **District liaison for students in homeless situations**

Districts are required to have a staff person act as homeless liaison to address issues affecting homeless students. Ask to speak with your district’s liaison when working with a child who may be considered homeless under the McKinney Act. *See 42 U.S.C. 11432(g)(1)(J)(ii).*

### **Immediate enrollment**

Schools must immediately enroll students considered homeless, even if they do not have required documents (e.g., school records, medical records, proof of residency, etc.). “Enroll” is defined as attending classes and participating fully in school activities. *See 42 U.S.C. §11432(g)(3)(C)(i).*

### **Child remains in his or her original school**

If possible, a district must keep a child in his or her school of origin for the duration of the child’s homelessness, unless it is against the parent or guardian’s wishes. The school of origin is the school the child last attended when permanently housed, or the school in which he or she was last enrolled. Students can stay at the school

of origin for the duration of their homelessness, or until the end of the school year. See 42 U.S.C. § 11432(g)(3)(B)(i).

### **Enrollment in the present attendance-area school**

If a student does not want to stay in the school of origin, he or she may choose to enroll in the school attended by students living in the same attendance area.

### **Transportation provided**

The district must provide transportation to school at the parent's or guardian's request. If the child is not with parents or guardian, the liaison can request transportation. See 42 U.S.C. 1432(g)(1)(J)(iii).

### **Disputes quickly resolved**

All states must have procedures to promptly resolve disputes regarding the educational placement of homeless students. When a dispute arises, the student must be immediately admitted to the school of choice while the dispute is being resolved. See 42 U.S.C. 11432(g)(3)(E).

### **Short-term educational services in emergency shelters**

Foster children living in emergency shelters may receive educational services at the shelter for short periods of time, as necessary, for either of the following reasons:

- Health and safety emergencies
- To provide temporary, special, and supplementary services to meet the child's unique needs in the following cases:
  - a decision regarding whether it is in the child's best interest to attend the school of origin cannot be made promptly
  - it is not practical to transport the child to the school of origin
  - the child would otherwise not receive educational services

### **For more McKinney-Vento Act information**

The National Law Center on Homelessness and Poverty has several good resources on the McKinney Act. One is the *"Back to School Self Advocacy Kit."* It includes an easy-to-use flowchart for helping enroll homeless children. You can find it on the web at <http://www.nlchp.org> or call the office at (202) 638-2535.

## **3. Enrolling a child who lives with an adult who is not a legal guardian**

## What is a “caregiver authorization affidavit”?

A “caregiver authorization affidavit” gives authority to a non-relative adult caregiver to

- Enroll a child in school, and
- Consent to school-related medical care on behalf of the minor

The same form also can be used by a *relative* caregiver to enroll a child in school, as well as consent to medical and dental care and receive welfare benefits for the child. See *Cal. Fam. Code §6550–6552*; *Cal. Ed. Code §48204*.

The reverse side of the caregiver authorization affidavit has notices that should be read and then attached to the form. The person signing the form should make copies for the school and medical providers, as well as keep a copy. The affidavit is valid only for one year after the date on which it is signed. A new form must be submitted if the child continues to live with the caregiver after that one-year period. If the minor stops living with the caregiver, the caregiver must notify the school, as well as any health care plans or providers or who have received the affidavit.

The form does not grant legal custody. If a parent does not want the child to live at the caregiver’s home, this form does not override the parent’s wishes regarding where the child lives.

The following are some tips for filling out the form.

### For school enrollment

A ***non-relative*** caregiver who is caring for a minor and wants to enroll the needs to complete questions 1 through 4. This is simply name and address information.

Once the form is signed, a school district cannot demand additional documents or permission from a parent to enroll the child. The law also states that the affidavit is enough to determine the residency of a minor. However, a school district may request additional reasonable documentation of the caregiver’s address. See *Cal. Ed. Code §48204*.

### For medical and dental care

A ***relative*** caregiver needs to complete questions 1 through 8 on the form to enroll a child and consent to medical and dental care. A relative can be a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece,

nephew, first cousin, or any person denoted by the prefix “grand” or “great,” or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or divorce.

The decision of a caregiver to consent to or to refuse medical or dental care for a minor can be superseded by the parent or legal guardian, unless the decision of the parent or guardian would jeopardize the life, health, or safety of the minor.

A caregiver authorization affidavit form can be found in the back of this manual.

## **VI. Attendance**

### **Do all children and youth have to go to school?**

*Yes, but there are several exceptions.*

All children between six and 18 must attend school in the district where they live, unless they’re excused. Although children do not have to attend until age six, schools must admit into kindergarten children who are five years old on or before December 2nd, or four years and nine months on or before September 1st of the school year. See *Cal. Ed. Code §48000(a)*.

Students can be excused from attending school if they are

- In an approved home school, private school, or other alternative education program (*Cal. Ed. Code §48220–§48224*)
- Sixteen or 17 year-olds who
  - have graduated from high school (*Cal. Ed. Code §48410*)
  - have passed the *California High School Proficiency Examination* and obtained parental permission to leave school (*Cal. Ed. Code §48412*)
  - choose a full- or part-time alternative to regular high school, including “continuation” classes, regional occupational programs, and adult education courses (*Cal. Ed. Code §48400*)
- Working with a work permit, but they still must go to school part-time (*Cal. Ed. Code §48230*)
- Have arrived to the district from another state within ten days of the end of the term (*Cal. Ed. Code §48231*)
- Working in the entertainment industry (*Cal. Ed. Code §48225 & §48225.5*)

- Fifteen years old at the start of a leave of absence agreed to by the district for travel, work or study (*Cal. Ed. Code §48232*)
- Temporarily disabled, but not from a disability covered by special education, in which case they are to receive individual instruction (*Cal. Ed. Code §48206.3*)
- Excluded from school for “filthy or vicious habits” or contagious diseases (*Cal. Ed. Code §48411–§48214*)
- Absent due to illness, medical appointments, funerals of immediate family members, jury duty, the student’s child’s illness or medical appointments, or other “justifiable personal reasons” when the parent or guardian’s written request is approved by the principal (*Cal. Ed. Code §48205*)

### **What happens if a student has unexcused absences from school?**

*A student faces penalties that increase in severity as the number of absences increase.*

If a child does not attend school, he or she can be temporarily arrested or taken into custody during school hours.

The child can be taken to

- parents
- a person having control of the student
- the school

Or, before the child is returned home or to school, he or she can be provided counseling

- at a community center
- with a school counselor
- with an attendance officer at a police station
- by a probation officer

*See Cal. Ed. Code §48264 & §48265.*

If a student has additional unexcused absences, he or she will be classified as a truant and face increasing penalties with each new incident. California law also allows referral for probation or attendance review board services if a student is “irregular in attendance” or “habitually insubordinate or disorderly during school.” *See Cal. Ed. Code §48263.*

In addition to California truancy laws, each school district is permitted to have its own attendance policies. It is important to know the policies for your district. Sometimes, the school policies are different for different grade levels. Many high school attendance policies severely penalize a student's grades or credits for poor attendance.

### ***Where you can have an impact***

Ask for a copy of the school's attendance policies.

If a child has been absent from school, be sure that the absences are dealt with in the context of the specific policies. Make sure the school district has a good idea of the difficulties in the child's life so that absences are considered in a factual context.

If a child is in foster care, there are special protections for how absences affect grades and credits. More information can be found in Section V of this chapter.

## **When is a truancy report filed and what happens next?**

### **1st truancy report**

Three full-day unexcused absences or tardy/absent more than 30 minutes three times in one school year

### **First report: Truant classification**

The student is classified as "truant" if he or she has three full day unexcused absences, or has been tardy or absent for more than 30 minutes three times in one school year.

#### **What the district must do**

- The district must report the student to the district attendance supervisor or superintendent. (See *Cal. Ed. Code §48260.*)
- The district must also notify the student's parent or guardian of the following
  - a) the student is truant
  - b) the parent or guardian is obligated to make the student attend school
  - c) failing to do so could make the parent or guardian guilty of an infraction

- d) there are alternative educational programs in the district
- e) the parent or guardian has a right to meet with school staff to discuss solutions to the truancy
- f) the student could be subject to prosecution (see §48264)
- g) the student may lose driving privileges (See *Cal. Vehicle Code §13202.7*)
- h) it is recommended that the parent or guardian attend classes with the student for one day  
*See Cal. Ed. Code §48260.5.*

### **Student penalties**

For a first truancy, a student may be required to attend a makeup class on one weekend day and may be given a written warning by a peace officer. *See Cal. Ed. Code §48264.5(a).*

### **2nd truancy report**

Unexcused absence or tardy on one or more days in the same school year as the first truancy report

### **Second truancy report**

After one additional unexcused absence or tardy in a school year, the student gets a second truancy report.

### **What the district must do**

The district must again report the student as truant. *See Cal. Ed. Code §48261.*

### **Student penalties**

The second time a student is reported truant in the same school year, the student may be assigned to an after school or weekend study program within the county. If the student fails to successfully complete the assigned study program, he or she will be classified as a “habitual truant” and may face the penalties listed below. *See Cal. Ed. Code §48264.5(b).*

### **Habitual truancy**

Reported as truant three or more times in one school year

### **Habitual truancy**

The student is classified as a “habitual truant” when he or she has been reported as truant three or more times in a school year.

#### **What the district must do**

A student may be classified as a habitual truant only if an appropriate district employee has made a conscientious effort to hold at least one meeting with a parent or guardian and the student. *See Cal. Ed. Code §48262.*

#### **Student penalties**

A student who is classified as a habitual truant may be required to attend an attendance review board, a truancy mediation program, or a comparable program. If the student does not successfully complete the program, he or she will be subject to the jurisdiction of juvenile court and could end up a ward of the court, facing the penalties listed below. *See Cal. Ed. Code §48263, §48264.5(c) & (d); California Welfare and Institutions Code §601.*

### **4th truancy report**

Reported as truant four or more times in one school year

### **Fourth truancy report**

The fourth time a truancy is reported within a single school year, the student is put under the jurisdiction of juvenile court.

#### **What the district must do**

The district must again report the student as truant.

#### **Student penalties**

The student will be subject to the jurisdiction of juvenile court and could end up a ward of the court. *See California Welfare and Institutions Code §601.*

If the student is made a ward of the court, he or she will be required to do one or more of the following:

1. Twenty to 40 hours of community service
2. Pay up to a \$100 fine, (for which the parent or guardian may jointly be liable)
3. Attend a court-approved truancy prevention program
4. Lose or have suspended driving privileges. *See Cal. Ed. Code §48264.5(d).*

### **Can a parent be punished for a child's failure to attend school?**

*Yes. A "parent, guardian or other person having control or charge of a child" faces penalties for failing to make the child attend school.*

The governing board of the school district investigates and refers truancy cases to a school attendance review board (SARB). If the parent, guardian, or caretaker "continually and willfully" fails to comply with the SARB, the school district must file a request for a criminal complaint to the local prosecuting agency. A parent who is found guilty can be fined \$100, and up to \$500 for subsequent convictions. Instead of imposing fines, a court may order the person into a parent education and counseling program. *See Cal. Ed. Code §48290–§48296.*

### ***Where you can have an impact***

Remember that when a child does not want to attend school, there is a reason. Try to understand why the child is skipping school. Make sure the school is taking steps to address the reason that the child is skipping school. Offer creative suggestions about what the school can do to help the situation.

If there is a reason to suspect that the student has a disability, the student should be referred for evaluation.

Respond promptly when the school notifies you of an unexcused absence.

Follow the district rules for informing the school about excused absences.

## **VII. The role of caring adults in a child's education matters**

### **Who is considered a parent in regular education matters?**

*The definition of "parent" is not clear.*

In the laws that deal with regular education, there are numerous references to "parents" and "guardians." But for these issues, the California Code of Education does not define parent or guardian. For example, the law does not explain who is considered a parent or guardian for the purposes of

- regular education discipline matters
- attendance at teacher conferences
- giving consent for a field trip

Who is a "parent" in these situations? In our society, people who are not a child's biological parent often take on the role of parent. Without a specific definition, it is unclear whether "parent or guardian" means foster parents, kin caregivers, or others who play a parental role in a child's life.

In its policy on parents' participation in the education of children, the California State Board of Education describes "parent involvement" as "the efforts of any caregiver who assumes responsibility for nurturing and caring for children, including parents, grandparents, aunts, uncles, foster

parents, stepparents, etc.” (*California State Board of Education Policy 89-01.*)

This broad definition implies that many different types of people can play an important role in a child’s education. However, the definition is in a policy—not law. Therefore, it does not necessarily apply in all situations. Still, it is the policy of the State Board of Education to encourage the participation of a wide variety of caregivers in the education matters of children.

Local districts may have their own policies or practices on the involvement of people who are not biological parents or legal guardians. Many districts are happy to work with someone who cares for the student and who is essentially taking the place of an absent parent.

If a district refuses to allow you to participate, try to determine why. Ask to see any local district policy defining “parent or guardian.” If the district has a policy that excludes you, consider meeting with someone in the superintendent’s office to ask for an exception to the policy. If there is no policy, ask to speak to the superintendent and discuss with him or her why you should be allowed to be involved in the education issues of a particular child.

Note that in special education law, the concept of parent *is* specifically defined. See Chapter 3 for a discussion of the role of parents and others in special education.

### **If the child is a dependent or a ward of the court, who is responsible for making decisions about education?**

*A juvenile court judge determines whether the parent or guardian keeps the decision-making authority or if a responsible adult needs to be appointed to make educational decisions for the child.*

### **How is a “responsible adult” appointed?**

*When a child is a dependent or a ward of the court, the judge may limit the parents’ educational decision-making authority. If the court limits or denies the parent’s authority, it must appoint a responsible adult who will have the authority to make educational decisions for the child. See Cal. Wel. and Inst. Code §361(a), §366, §706.5 and §726.*

A social study or assessment provided to a court must include whether a parent or guardian is unwilling or unable to participate in educational decision-making. If the social worker recommends that the decision-making authority of the parent or guardian be limited, the social worker

should identify a person who could be appointed as the responsible adult decision-maker. *See Cal Wel. and Inst. Code §358.1(e).*

Children with guardians are protected when a guardian resigns or is removed. The court must appoint a responsible adult to take care of educational decision-making for a child until a new guardian is appointed. *See California Probate Code §2662.*

A court-appointed responsible adult remains in that position until one of the following events occurs:

- The child turns 18 (unless the child chooses not to make educational decisions for himself or herself or is deemed incompetent by the court)
- Another responsible adult is appointed to make educational decisions for the child
- The right of the parent or guardian to make educational decisions is fully restored
- A successor guardian or conservator is appointed
- The child is placed into a planned permanent living arrangement, at which time a foster parent, relative caretaker, or non-relative extended family member has the right to represent the child in special educational matters

*See Cal. Wel. and Inst. Code §361(a), §366, §706.5 & §726; Cal. Ed. Code §56055.*

## **What are the criteria for a court-appointed responsible adult?**

*People who have a conflict of interest cannot be appointed. A conflict of interest is anything that might restrict or bias a person's ability to make educational decisions for a child.*

Some conflicts of interest for county or city employees are described in §1126 of the California Government Code.

Foster parents are not deemed to have a conflict of interest solely because they receive payment for their services. *See Cal. Wel. and Inst. Code §361(a).*

If the court is unable to appoint a responsible adult to make educational decisions, and the child is eligible for special education services or referred for assessment, the court must refer the child to the district for

appointment of a surrogate parent. See *Cal. Wel. and Inst. Code* §361 & §726.

Again, remember that special education cases are different. See Chapter 3 for more information.

**Do social workers have special responsibilities regarding the education information of children placed in foster care?**

Yes.

When a child is placed in foster care, the social worker's case plan, court report or assessment must include a summary of the child's health and education information, including mental health. The summary may be maintained in a "health and education passport," or in a similar format designed by the agency. The health and education summary must include, but is not limited to, the following:

- The names and addresses of the child's health, dental, and education providers
- The child's grade level performance
- The child's school record
- Assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement
- A record of the child's immunizations and allergies
- The child's known medical problems, including hospitalizations
- The child's current medications
- A record of the child's relevant mental health history, including known mental health condition and medications
- Any other relevant mental health, dental, health, and education information concerning the child.

See *Cal. Wel. and Inst. Code* §16010(a) & (b).

In addition, as soon as possible, and not later than 30 days after the initial placement of a child into foster care, the child protective agency must provide the caretaker with the child's current health and education summary as described above. For each subsequent placement, the child protective agency is required to provide the caretaker with a current summary within 48 hours of the placement. See *Cal. Wel. and Inst. Code* §16010(c).

At each visit, social workers must ask the caretaker whether there is any new information relative to the child's health and education. If so, the

agency must update the summary. See *Cal. Wel. and Inst. Code §16010(e)*.

**Is the caretaker of a child in foster care responsible for maintaining education records and information?**

*Yes. A child's caretaker is responsible for obtaining and maintaining accurate and thorough information from physicians and educators for the duration of the placement.*

The information a caretaker is required to maintain is the same as that which social workers are required to put in the health and education summary. (See above.) See *Cal. Wel. and Inst. Code §16010(e)*.

**When a child is placed in a licensed children's institution or foster home what must happen to ensure someone has educational authority?**

*First, it must be determined whether the parents still have educational authority.*

When a child is placed in a licensed children's institution or foster home, each court, regional center for the developmentally disabled, or public agency must identify all of the following:

1. Whether the courts have specifically limited the rights of the parent or guardian to make educational decisions for a child who is a ward or dependent of the court
2. The location of the parents, in the event that the parents retain the right to make educational decisions
3. Whether the location of the parents is unknown

*See Cal. Ed. Code. §56156(b).*

This requirement ensures that steps are taken to identify who is the educational decision-maker for a child.

**What if a child who is potentially eligible for special education services is placed in care?**

*The district and educational agencies must be notified. See Cal. Ed. Code §56156(a).*

**Licensed children's institution's responsibility**

If a child in a licensed children's institution is potentially eligible for special education services, the institution must notify the special education

administrator of the district, special education local plan area, or county office. See *Cal. Ed. Code §56156(c)*.

**Court's, regional center's, or agency's responsibility**

Before placing a child with a disability, even if it is only suspected, a court, regional center or placing agency must notify the administrator of the special education local plan area. The administrator must give information to the court about the availability of appropriate programs. See *Cal. Gov. Code §7579(a)* & *Cal. Ed. Code §56156(c)*.

If a child who is potentially eligible for special education services is referred to or placed in a licensed children's institution, it must be reported to the special education administrator of the district, special education local plan area, or county office. This report must be made by a court, regional center, or placement agency. See *Cal. Ed. Code §56156(a)* & *(c)*.

**Responsibility of foster families, licensed children's institutions, agencies and hospitals when a child is discharged or moved**

Within 10 days of the discharge of any child who has an active IEP (individualized education program) from a

- public hospital
- proprietary hospital
- residential medical facility
- a licensed children's institution
- foster family, or
- a state hospital for the developmentally disabled or mentally disordered

either the operator of the facility or the placing agency must notify the following in writing:

- The local educational agency that is providing the special education program, and
- The receiving special education local plan area where the child is being transferred

The notification must include the following:

- A copy of the child's individualized education program
- The identity of the individual responsible for representing the interests of the child for educational and related services,
- Any other relevant information about the child that will be useful in implementing the child's individualized education program

Once the child has been discharged, it is the responsibility of the receiving local educational agency to ensure that the child receives an appropriate educational placement with no delay.

*See Cal. Gov. Code §7579.1(a) & (b).*

## **VIII. The basic rights of students**

### **What are students' basic rights?**

*A student has the basic right to an equal educational opportunity. This opportunity cannot be taken away on the basis of unlawful discrimination or without due process of law.*

In this case, “due process of law” means that a student who might lose the opportunity to go to school must be given notice and a chance to dispute the loss of that right.

Students also have the right of free speech (*Cal. Ed. Code §48907 & §48950*), assembly (gathering with others), and free exercise of religion. All of these rights are subject to reasonable limits on the time, place, and manner of the activity.

Students have the right not to be unreasonably searched, and not to have their possessions unreasonably searched or taken. But this does not mean that students can never be searched or that their possessions can't be taken. In order for the school staff to conduct a search of students or their belongings, the staff must have a “reasonable suspicion” of a violation of law or policy. This legal standard is less strict than the one a police officer must apply when searching someone. However, the search is permitted if a student agrees—even if there is no reasonable suspicion of a violation.

### ***Where you can have an impact***

Schools can be quick to discipline, suspend or expel students who break the rules. Helping a child understand the rules and showing an interest in the child's education are good ways of preventing problems.

Take time to talk with children and young people. Help them make good decisions about how to follow the rules.

Students can be questioned without schools having “reasonable suspicion,” as long as the school isn’t acting arbitrarily or questioning for purposes of harassment.

If it is a district policy to consider lockers the property of the school, then they can be searched at anytime, without reasonable suspicion.

Strip searches of students by school staff are never allowed, nor is rearranging or removing a student’s clothing to see underclothing, breasts, buttocks or genitalia. See *Cal. Ed. Code §49050*.

## **IX. Student responsibilities at school**

### **What are a student’s responsibilities?**

*Students have the following responsibilities:*

- Attend school and not be late to classes
- Follow school rules while attending, going to, or coming from a school-sponsored activity; this includes lunch, even if off campus
- Obey directions and be respectful of teachers and others in authority
- Be kind and courteous to other students
- Participate in the orderliness of the school
- Must not use profane or vulgar language
- Be diligent in study
- Come to school clean and neatly dressed
- Must not commit any of the acts listed in California Education Code §48900 (see Appendix D)

### **How do students know what behavior is expected?**

*All students should have a copy of the school rules. If the student you are working with didn’t get one, ask for it from the school office. If they are confusing, ask the school principal for clarification.*

## **X. Education programs: Alternatives to regular education**

California law provides for a number of different educational alternatives to regular education. The information below is in part a summary of the California Department of Education’s description of programs. Whether a

program is right for a child will largely depend on how the specific school is run.

### **What are alternative education programs?**

*Alternative education programs serve K–12 students. They include the following:*

- Alternative schools and programs
- Magnet schools and programs
- Independent study (an instructional strategy)

Types of schools include structured or “fundamental” schools, contrasting “open” schools, and magnet schools with a limited focus (e.g., art or science). Independent study may be used for regular and alternative education. Except for magnet schools, which are authorized by federal law, the legal authority for alternative education programs can be found in Cal. Ed. Code §35160, §58500–§58512, §46300(e), §51745–§51749.3.

### **What are compulsory continuation education programs?**

*Compulsory continuation education programs serve students between 16 and 18 who have not graduated from high school, are not exempt from attending school, and are deemed at risk of not completing their schooling.*

Students enrolled in continuation education programs sometimes lack credits. Sometimes they need a flexible educational program because they are employed or are having adjustment problems. Many students are referred involuntarily for truancy or misconduct.

Continuation high schools are intended to serve as dropout recovery and as a transitional program for students wanting to return to their regular schooling. A day of attendance in continuation education is 180 minutes, less than a regular school day. However, many continuation high schools exceed the minimum requirement to increase access to required courses. In addition to the academic courses required for graduation, the program must emphasize occupational training or career-orientation, or a work-study schedule. Supplemental programs and services can include, but are not limited to, independent study, career counseling, job placement and apprenticeships. See *Cal Ed. Code §48400–§48438*.

The process for an involuntary transfer to a continuation school is described in Chapter 4.

## **What are community day schools?**

*Community day schools are intended to serve students who are expelled, are referred by probation because they are in the juvenile justice system, are referred through the child welfare system, or are referred by a school attendance review board (SARB).*

A day of attendance in a community day school is at least 360 minutes. The curriculum includes academic programs, as well as a focus on the development of pro-social skills and student self-esteem.

Community day schools are intended to have the following:

- A low student-teacher ratio
- Individualized instruction and assessment
- Maximum collaboration with district support services, including
  - behavioral counselors and psychologists
  - academic and vocational counselors
  - student discipline personnel
- Cooperative relations with the county office of education, law enforcement, probation, and human services agencies personnel who work with at-risk youth

Independent study may not be used as a means of providing any part of the minimum instructional day. Community day schools are to be located separately from comprehensive, continuation, and opportunity schools. See *Cal. Ed. Code* §48660, §48660–§48667.

The process for involuntary transfer to a community day school is described in Chapter 4.

## **What are county community schools?**

County community schools serve students who are

- Expelled from their regular schools
- Referred by a school attendance review board (SARB)
- Referred by a parent or guardian
- Referred by probation because they are on probation or parole and not in attendance in any school (Cal. Wel. and Inst. Code §300, §601, §602, & §654)
- Homeless

Although many students graduate from county community schools, the programs are designed to transition students to an appropriate educational, training, and/or employment setting upon their release or after the court terminates its jurisdiction. See *Cal. Ed. Code §1980–§1986*.

## **What is home schooling?**

*California law defines home schooling as “home-based independent study.”*

There are several ways to home school a child or youth. Options include the following:

- If the local district or charter school has an independent study program, enroll in that program. The student would be enrolled in a public school and have his or her work supervised and supplemented through the independent study program.
- Join an approved private school independent study program.
- Establish a private school. This involves filing a private school affidavit form and following relevant statutes. Teachers in private schools are not required to have teaching credentials.
- Employ a credentialed tutor or teacher.

Students with exceptional needs (those qualified for special education services), or students with temporary disabilities may not participate in independent study unless a student’s individualized education plan specifically provides for participation.

Ask your local school district for a copy of its home school or independent study requirements. See *Cal. Ed. Code §51745–§51749.3*.

## **What are juvenile court schools?**

*Students are placed in juvenile court schools when referred by a juvenile court.*

Juvenile court schools are intended to provide an alternative educational program for students who incarcerated in juvenile halls, homes, day centers, ranches, camps, or regional youth educational facilities. A minimum day for juvenile court schools is 240 minutes.

Public schools must accept credit earned while at a juvenile court school. If a student satisfies graduation requirements while detained, the diploma will be issued from the school he or she last attended. Alternatively, the

county superintendent of schools may issue the diploma. See *Cal. Ed. Code* §48645–§48645.6.

The law assumes that a child residing in a licensed children’s institution or foster home will attend programs operated by the local educational agency. As a result, before any decision is made to place a child in foster care into a juvenile court school, the person with educational authority must first consider placement in the regular public school. If any dispute arises about the school placement of such a student, the student has the right to remain in his or her school of origin while the dispute is resolved.

This does not apply to children in foster care who are facing juvenile court school because they are detained in a county juvenile hall, or committed to a county juvenile ranch, camp, forestry camp, or regional facility. Nor does the law supersede other laws that govern student expulsion. See *Cal. Ed. Code* §48853(b)–(e).

### **What are opportunity education programs?**

*Opportunity education programs serve students who are, or are in danger of becoming, habitually truant or irregular in attendance. They also serve students who are, or are in danger of becoming, insubordinate or disorderly during attendance.*

Opportunity classes and programs may be implemented by school districts or counties for students in grades 1 through 12. Districts develop on-site classes to facilitate student transition back into the regular program. Counties establish programs throughout the region when district resources are too limited to provide the needed services.

Opportunity classes and programs are intended to provide a specialized curriculum, supportive learning environment, instructional strategies, and guidance services. They can provide comprehensive academic programs that facilitate positive self-esteem, self-confidence, and personal growth—changing a student’s behavior and conduct in school so that he or she can return to the general student population. The student-teacher ratio is to be low. See *Cal. Ed. Code* §48630–§48644.5.

### **What are nonpublic schools?**

*Under the California Education Code, a nonpublic school is one created through a contract with a district, special education local plan area or county office. In this case, it does not refer to any private school.*

Nonpublic schools are intended to provide appropriate special educational facilities, special education, or designated instruction and services

required by an individual with exceptional needs when no appropriate special education program is available.

Only an IEP team can make changes to an IEP. Responsibility for compliance with the California Education Code and the Individuals with Disabilities Education Act is still the responsibility of the district, special education local plan area, or county office of education. See Chapter 3 for more information about special education and IEPs.

A nonpublic school is one of the most restrictive educational placements available, and should only be utilized when other, less restrictive environments have been considered.

*See Cal. Ed. Code §56365–§56366.9 & §56383.*

### **What happens when a child is placed in a licensed children's institution?**

*The agency that places a child in a licensed children's institution must notify the local district at the time of placement. The agency must also provide information on immediately past educational placements to facilitate prompt transfer of records and appropriate placement.*

Information on educational options for children in a licensed children's institution must be made available by the county offices of education. The information should help agencies assist parents and children in foster care choose educational placements.

A licensed children's institution cannot require as a condition of placement that it be the provider of a resident's education program, nor can a licensed children's institution, nonpublic school, or agency require that it be given educational authority. ("Educational authority" here means representing the interests of a child for education and related services.)  
*See Cal. Ed. Code §48850–§48859.*

## **XI. Programs and protections for special student populations**

### **1. Protections and programs for students with disabilities**

Schools have a duty to provide special education and related services to students with disabilities who qualify. See Chapters 3 and 5 for more information.

### **2. Protections and programs for students who are pregnant**

Under state and federal law, pregnancy is considered a temporary disability. Pregnant students cannot be denied access to education because of their pregnancy or marital status, nor can they be discriminated against because of childbirth, false pregnancy, or recovery from these conditions.

Participation in special schools or programs designed for pregnant or parenting students must be voluntary. These programs must be comparable to programs offered to non-pregnant students.

Pregnant students may be granted a leave of absence from school for as long as it is deemed medically necessary. When she returns to school, the student must be allowed the same status she held before the leave.

The California School Age Families Education Program (Cal-SAFE) started in July 2000. Cal-SAFE was designed to increase the availability of support services for expectant or parenting students. These services are intended to help students improve academic achievement and parenting skills, and to provide a quality child care/development program.

### **3. Protections and programs for students who are migratory**

The Elementary and Secondary Education Act (ESEA) is a federal law designed to strengthen the education of low-achieving children. The ESEA guides the provision of services to students who are migratory. Students are considered migratory and eligible for programs if they have moved during the last 36 months because they or members of their family were trying to obtain temporary or seasonal employment in agricultural, dairy, fishing, or logging activities. See *20 U.S.C. §6301 et seq.; Cal. Ed. Code §54441*.

State law requires migrant programs to include an assessment of educational and relevant health needs within 30 days of a migrant student's enrollment. It also requires a comprehensive program to meet the educational, health and related needs of students who are migratory. See *Cal. Ed. Code §54443.1*.

There are both statewide and local migrant programs. Local programs are developed through collaboration with school districts and California's 23 migrant education region offices, with assistance from the state migrant education program. Statewide programs are implemented by the migrant education program, and include literacy, high school equivalency, bi-national services, college assistance, and youth leadership programs. For more information, see <http://www.cde.ca.gov/iasa/migrant.html>.

#### **4. Protections for students who are homeless**

Children who are homeless have the protection of federal law, primarily from provisions in the McKinney-Vento Homeless Assistance Act that provide for education for homeless children. This program was authorized by the No Child Left Behind Act of 2001. Important protections are described in Sections V and VIII of this chapter. See *Cal. Ed. Code* §48850.

#### **5. Protections and programs for students who are learning English**

The No Child Left Behind Act provides funding for programs to ensure that all students with limited English proficiency, or English learners

- Attain English proficiency
- Develop high levels of academic attainment in English, and
- Meet the same state academic standards as all other students

Federal and state funding support a variety of programs in California. These include English-language acquisition programs, intensive literacy programs, teacher training, and mentoring. There are also two-way immersion programs in many districts where English learners and English speakers both learn a second language.

#### **6. Programs for American Indian students**

California has one of the largest American Indian student populations in the country, with over 53,000 identified students in the 2001–2002 school year. The Department of Education manages federal grants for specialized programs across the state.

Staff at Indian education centers in California assist schools with professional development, counseling, tutorial services, or parent education. They also provide supplemental and extended-day instructional programs to meet the needs of American Indian students. (See *Cal. Ed. Code* §33380–33383.)

## **XII. Conclusion**

The California State Constitution recognizes the importance of a full education for all people who live in California. Do what you can to ensure that children get the education they deserve.

## **Action points: Helping children enroll and succeed in school**

- Pick up an enrollment packet from your local school district. It will contain the forms you need to enroll a student.
- If the child is homeless, is in or awaiting foster care, or is in the care of an adult who is not the legal guardian, special protections apply.
- If you have problems, request a copy of the district's written enrollment or admissions policies. Review them to see if the district is following its own rules.
- Don't delay! Get the student enrolled as quickly as possible, even if you do not know the student's entire education history or don't have all of the paper work needed.
- Identify a child's special characteristics or needs in writing at the time of enrollment, and ask that the school inform you of all special programs or services for which the student might qualify.
- If the student is being treated differently because of race, gender, pregnancy, disability, or any other reason, consider filing a complaint with the US Office of Civil Rights or the California Department of Education.
- If the student wants to attend a school other than his or her local school, request the district's policies and enrollment forms for another school within the same district.
- If you think that the student may have unique needs, ask about special programs for which the student may qualify.
- If the school is delaying a response to a request, consider filing a grievance under the district's policies.
- If a school tells you that additional testing or an IEP must be done before allowing a student who lives in the district to start school, request a meeting with the superintendent, file a grievance, or seek assistance from an advocacy organization.
- If the school contacts you about a student's truancy, ask the district to assist you in identifying and responding appropriately to the underlying causes of these absences. Make the request in writing.
- Get a copy of the district attendance policies, student handbook, or other materials on the rights and responsibilities of students.

# TIPS FOR YOUTH

## Your Right to Education

### YOU have rights!

You have a right to go to school in the district where you live.

You have a right to an education without discrimination. You CANNOT be denied an education on the basis of your race, national origin, or gender; or whether you are rich or poor, married or not, or have any kind of mental or physical disability.

You have a right to due process. Your right to be in school can't be taken away without due process. Due process means that you have a right to know the district's reasons for taking away your rights AND you have a chance to challenge the decision. For example, if you get suspended or expelled, the school has to tell you why, and let you explain your side of the story.

***An education means a lot. It can open doors for you. Make sure you get what you need out of school. Talk about things that are important to you. Tell adults in your life what you need to succeed. Make school work for you.***

Education is your right!

### What YOU have to do.

You have to go to school regularly. You could end up in juvenile court in a truancy case if you have too many unexcused absences or tardies.

You have to follow school rules. Ask your school to give you a copy of the rules. Read them! If you have questions, ask teachers, counselors, or the principal. If you feel the rules are unfair, let someone know—but remember to follow those rules until they are changed.

This is not legal advice. If you need legal advice, seek the help of a lawyer.

## **Chapter 3: Special Education—When a Student Needs Additional Help**

### **The three most important things to remember about special education**

- ◆ A problem that interferes with a child's or youth's ability to learn may be considered a disability under the law.
- ◆ Every youth with a disability that affects learning has a right to instruction specially designed to meet his or her needs, and in a school environment that is as much like a regular classroom as possible.
- ◆ There are strict timelines and requirements that school districts must follow in providing students with special education services.

### **I. Introduction to special education rights**

Is a child or young person in your care having a difficult time in school? If the student has a disability, or you suspect that he or she has special needs, help is available. Children between the ages of three and 21 who have an impairment that interferes with their ability to learn may be eligible for additional educational support and services. Even babies and toddlers, from birth up to 3 years old, can receive specialized services through Early Start, an early intervention services program.

In this chapter, you will find a detailed explanation of the following rights for students with disabilities:

- Assessment
- Development of an educational program
- Due process protections

Some of the laws about special education are included in the appendices of this manual. Keep in mind that an important special education law, the IDEA, was changed in 2004. It is now called the Individuals with

Disabilities Education Improvement Act, but may be commonly referred to as the IDEIA, the IDEA 2004, or just the IDEA.

## **II. Legal protections for students with disabilities**

### **What is a disability?**

*A disability is an impairment that interferes with a child's ability to learn.*

In general, the term “disabled” is used to describe a child who has mental, physical, or emotional impairments that affect his or her ability to learn. To qualify for extra services in school, a student’s impairment must also meet the criteria for disabilities under special education laws. The criteria will be explained later in this section.

It’s important to recognize that having a disability does not mean that a child isn’t smart or can’t learn. It does not mean that he or she cannot participate in and enjoy school activities, nor does it mean that he or she does not have a lot to offer. A disability means that a child needs extra help in certain areas.

### **Why do schools have to provide services for students with disabilities?**

*There are federal and state laws that protect the educational rights of disabled students.*

Two primary laws protect students with disabilities. The two laws are commonly referred to as “Section 504” and the “IDEA.” In 1973, Congress passed Section 504 of the Rehabilitation Act, which made it illegal to discriminate against people with disabilities in programs receiving federal funds, such as public schools. Two years later, Congress passed the Education for All Handicapped Children Act, now called the Individuals with Disabilities Education Improvement Act (IDEIA, or IDEA 2004). Both laws were enacted to ensure that students with disabilities be provided with meaningful educational experiences.

The IDEA starts out with an important statement:

*Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent*

*living, and economic self-sufficiency for individuals with disabilities.*

*See 20 U.S.C. §1400(c)(1).*

Prior to the enactment of these laws, many states allowed school districts to exclude children with disabilities from school. Instead of finding ways to meet the unique needs of such students, school districts refused to serve them. When students with disabilities were allowed in school, they were often placed in school programs where their special needs were ignored or misunderstood. The IDEA, Section 504, and the state laws that parallel them address these problems, and they have fundamentally changed the way public schools treat children and youth with disabilities.

### ***Where are the laws and regulations?***

#### ***Federal laws and regulations***

IDEA	20 U.S.C. §1400 ( <i>United States Code</i> )
	34 C.F.R. §300 ( <i>Code of Federal Regulations</i> )
Section 504	29 U.S.C. §794
	34 C.F.R. §104

#### ***State laws and regulations***

IDEA	5 Cal. Ed. Code §56000 ( <i>California Education Code</i> )
	5 C.C.R. §3000 ( <i>California Code of Regulations</i> )

The IDEA can be found in Appendix A of this manual. The federal regulations for the IDEA are in Appendix B. The state laws and regulations are too long to include here. Suggestions about where to find those laws are in the section *How to Read Citations and Find Laws* found in the back of this manual.

Throughout this manual, the laws will be referred to as Sec. 504 or the IDEA. At various points in the manual, the text will highlight changes enacted by the 2004 IDEA amendments.

### ***Why are there both state and federal laws and regulations on this issue?***

*Both federal and state laws and regulations play important roles in defining the rights of students with disabilities. The federal and state laws work hand-in-hand. While the federal laws provide protections for*

*disabled students, the state laws define how those protections will be carried out in California.*

The basic purpose of regulations is to clarify the details of laws. Regulations implement laws, or put them into operation. Regulations regarding students with disabilities are created by both the US Department of Education and the California Department of Education.

California laws and regulations should be consulted first for providing protections to students with disabilities. However, state laws and regulations must be consistent with the federal laws. If there is a conflict between a state and federal law or regulation, the US Constitution requires the federal law or regulation be followed. The one exception to the supremacy of federal law is when a state law grants more rights to an individual than the federal law. Then, if the state law does not conflict with the federal law in some other way, the state law is followed.

### **What is the relationship between the IDEA and Section 504?**

*Under both laws, school districts are required to provide disabled students with a free, appropriate public education, referred to as FAPE. This means that districts must provide a range of services to meet the individual needs of students who have trouble succeeding in school because of a disability.*

Section 504 provides services for a broader group of students than does the IDEA because Section 504's definition of "disability" is more expansive. If a student's disability does not meet the eligibility requirements under the IDEA, he or she still might be eligible for the protections under Section 504. Conversely, all disabled students who are entitled to special education services under the IDEA are also protected by Section 504.

### **What is considered a disability under the IDEA and Section 504?**

*Disability is defined differently under the IDEA and Section 504.*

#### **1. Disability under the IDEA**

The IDEA provides services to children and youth who fall within one or more categories of disability and need special education or related services to make academic progress. The IDEA gives a specific list of types of disabilities that can make an individual eligible.

For children ages three through 21, the categories of eligible disabilities under the IDEA include the following:

- Autism
- Emotional disturbance
- Hearing impairment (including deafness)
- Mental retardation
- Other health impairments
- Orthopedic impairments
- Specific learning disabilities
- Speech or language impairments
- Traumatic brain injury
- Visual impairment (including blindness)

This list can be found in 20 U.S.C. §1401(3)(A); 34 C.F.R. §300.8; is referenced by Cal. Ed. Code §56026(a); and is further defined in 5 C.C.R. 3030.

How a child becomes eligible for services under the IDEA is discussed beginning in Section IV of this chapter.

The IDEA also provides rights to children from birth to age three, and there are specific eligibility criteria for this age group. The special processes and rights for children from birth to age 3 are detailed in Section IX of this chapter.

## **2. Disability under Section 504**

Section 504 defines disability more broadly than does the IDEA. Section 504 provides services and accommodations if a child has a physical or mental impairment that substantially limits a major life activity. “Major life activities” under Section 504 include the following:

- Learning
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Caring for oneself
- Performing manual tasks

*See 34 C.F.R. §104.3(j).*

Section 504 is discussed in detail in Section X.

### **III. The role of parents under the IDEA and strategies for non-parents**

Many rights under the IDEA can be only asserted by a parent or someone recognized by law as the person with educational decision-making authority. However, a wide variety of caregivers can fit the definition of “parent” under the IDEA and California’s special education laws. This section explores the IDEA’s definition of parent, and the state and federal laws that allow non-parents to act in place of a parent. Keep in mind that there are many ways that a non-parent can help protect the rights of children with exceptional needs.

#### **Who is a “parent” under the IDEA?**

*Under the IDEA, “parent” is defined to include the following people:*

- The natural (i.e., biological or adoptive) parent of a child
- A guardian, but not the state (meaning, among other things, that the social worker or caseworker can not act in the role of a parent)
- A person acting in the place of a parent, such as a grandparent, stepparent or relative with whom a special education student lives, or someone who is legally responsible for the student’s welfare
- A foster parent, under certain circumstances (see below)
- A surrogate parent appointed by the district (see below)

*See 34 C.F.R. §300.30; and Cal. Ed. Code §56028(a).*

When the word “parent” is used in this chapter, it applies to anyone who fits the definition of parent as described above.

#### **Under what circumstances can a foster parent be considered a parent under the IDEA?**

*When there is a long-term foster care relationship that meets certain requirements, a foster parent can be considered a parent for special education purposes. Foster parents can also be appointed as a surrogate parent by a district or court, or as the “responsible adult” for educational decision-making by a court.*

There are three ways that a foster parent may be considered a parent for educational-decision making purposes under the IDEA.

- 1. The foster parent-child relationship is long-term and a court has limited the parent’s rights**

A foster parent can be considered a parent under the following circumstances:

- A juvenile court has limited the right of the parent or guardian to make educational decisions on behalf of the child, *and*
- The child has been placed in a planned permanent living arrangement, *and*
- The foster parent
  - has an ongoing, long-term parental relationship with the child
  - is willing to make the educational decisions required of parents under the IDEA, and
  - has no interest that would conflict with the interest of the child

*See 34 C.F.R. §300.30; Cal. Ed. Code §56028(b), §56055.*

The definition of a foster parent here includes a person who has been licensed or approved by the county welfare department, county probation department, or the California Department of Social Services, or who has been designated by the court as a specified placement.

When a foster parent is acting in the place of a natural parent and making education decisions, he or she may still consult with the natural parent or guardian. *See Cal. Ed. Code §56055(a)(2).*

### ***Where you can have an impact***

While there may be good reasons that a natural parent has had parental rights terminated or limited, it does not mean that the natural parent should not play any role at all in the child's education. If you are in an education-decision making role, consider getting input from the child's natural parent.

In many cases, a talk with the natural parent will provide important insights and information that can be used to help shape services for the child.

Ask the natural parent for his or her opinion:

- What does the child need to succeed in school?
- What has worked for the child in the past?
- What has not worked for the child?

## **2. The foster parent is appointed by the district or the court as a surrogate parent**

Either the school district or the court can appoint a foster parent to be the surrogate parent. (There is more information about surrogate parents later in this section.) A foster parent can become a surrogate parent even if he or she does not have a long-term relationship with the child.

California regulations require that when a school district is appointing a surrogate parent, it must, as a first preference, select a relative caregiver, foster parent, or court-appointed special advocate (CASA) if one of those individuals is willing and able to act as a surrogate parent.

## **3. The foster parent is appointed by a court as the “responsible adult”**

A foster parent may be appointed as the “responsible adult” for education decision-making. (There is more information on the appointment of responsible adults later in this section.) When a child is a ward or dependent of the court, the court may limit the natural parents’ right to make educational decisions and appoint a responsible adult to make those decisions. *See Cal. Wel. and Inst. Code §361 & §726.*

## **What is a surrogate parent and what does that person do?**

*A surrogate parent is a person appointed to represent the child’s interests relating to special education, just like a natural parent would.*

A surrogate parent has decision-making authority on matters relating to the identification of a child with exceptional needs, assessment of the child, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in other matters relating to the provision of a free appropriate education. A surrogate parent can be the one to give written consent relating to the individualized education program, including non-emergency medical services, mental health treatment services, and occupational or physical therapy services. The surrogate parent may sign any consent forms relating to individualized education program purposes. *See 34 C.F.R. §300.519; Cal. Ed. Code §56050; Cal. Gov. Code §7579.5.*

The surrogate parent is required by law to meet with the child at least once. An effective surrogate parent should meet with the child as often as is necessary to understand the child’s needs and desires, and to inform

the child of the process and his or her educational options. See *Cal. Gov. Code §7579.5(d)*.

A surrogate parent should attend the child's individualized education program meetings, review the child's educational records, and consult with people involved in the child's education.

California law recognizes the importance of cultural awareness and states that "[a]s far as practical, a surrogate parent should be culturally sensitive to his or her assigned child." See *Cal. Gov. Code §7579.5(e)*.

The surrogate parent also has the responsibility to follow federal and state laws on confidentiality and must use discretion when sharing information. Information should only be shared with appropriate people and only for the purpose of furthering the interests of the child. See *Cal. Gov. Code §7579.5(f)*. See *Chapter One of this manual for important information on confidentiality*.

The surrogate parent may continue representing the child until one of the following occurs:

- The child is no longer in need of special education
- The child turns 18 (unless the child chooses not to make educational decisions for himself or herself, or is deemed by a court to be incompetent)
- Another responsible adult is appointed to make educational decisions for the child
- The right of the parent or guardian to make educational decisions is fully restored

See *Cal. Gov. Code §7579.5(k)*.

A surrogate parent may resign from the appointment only after giving notice to the local educational agency. See *Cal. Gov. Code §7579.5(g)*.

### **When is a surrogate parent appointed?**

*A surrogate parent must be appointed when*

- A parent cannot be located after reasonable efforts
- A parent cannot be identified, or
- The child is under the jurisdiction of, or is a ward or dependent of the juvenile court, and the educational rights of the parent have been suspended by court order

The state must make reasonable efforts to make sure that a surrogate parent is appointed no more than 30 days after it has been determined that a child needs a surrogate. Either the school district or the judge overseeing the child's care may appoint a surrogate parent. See 20 U.S.C. §1415(2)(A); Cal. Gov. Code §7579.5 & 6.

### **Who appoints a surrogate parent, and how?**

*Surrogate parents are appointed by the school district, the county office of education, or, in the case of a child under three, the school district or the regional center. A court may also appoint a surrogate parent.*

California regulations require that, as a first preference, a relative caretaker, foster parent, or court-appointed special advocate (CASA) be selected as the surrogate parent. If none of these individuals is willing or able to act as a surrogate parent, the local educational agency must choose someone else who is qualified to be a surrogate parent. See Cal. Gov. Code §7579.5(b).

A surrogate parent must

- Not be an employee of the state or local education agency or any other state agency that is involved in the education or care of the child
- Have no conflict of interest in representing the child, and
- Have knowledge and skills that ensure adequate representation of the child

A district must terminate the appointment of a surrogate parent if he or she is not performing the required duties. See Cal. Gov. Code §7579.5(h).

If the child is moved from the home of a relative caretaker or foster parent who has been appointed as a surrogate parent, the local educational agency must appoint another surrogate parent, if necessary, to make sure that the child's interests are adequately represented. See Cal. Gov. Code §7579.5(b); 34 C.F.R. §300.519.

### **What is a “responsible adult” for education decision-making purposes? How is that person appointed?**

*When a child is a dependant of the court and the court limits the right of the parent or guardian to make educational decisions for the child, the court must appoint a responsible adult to make educational decisions for the child.*

The responsible adult will make educational decisions until one of the following occurs.

- The child turns 18 (unless the child chooses not to make educational decisions for himself or herself, or is deemed by the court to be incompetent)
- Another responsible adult is appointed to make educational decisions for the child
- The rights of the parent or guardian to make educational decisions are fully restored
- A successor guardian or conservator is appointed
- The child is placed into a planned permanent living arrangement; in this situation a foster parent, relative caretaker, or non-relative extended family member has the right to represent the child in educational matters, so there is not a need for a “responsible adult” (See *Cal. Ed. Code §56055, Cal. Gov. Code §7579.5, Cal. Wel. & Inst. Code §361.*)

A person who has a conflict of interest in representing the child may not be appointed as the responsible adult. A foster parent does not have a conflict of interest solely because he or she receives payment for the services.

### **What is the difference between a surrogate parent and a responsible adult?**

*A person appointed as a responsible adult can make decisions on all educational matters, while a surrogate parent can only make decisions pertaining to special education.*

The concept of “responsible adult” is a creation of California law. In some senses, California is a few steps ahead of federal law. California law recognizes that children in care were sometimes left with no one who had educational decision-making authority. In California, a court must appoint a responsible adult for a dependent child whenever the court limits the rights of a parent or guardian to make educational decisions. A responsible adult can have the authority to make all education decisions, whether the issue is regular or special education.

Federal law requires that states appoint surrogate parents under the circumstances described earlier in this Chapter. A surrogate parent only has authority to make decisions about special education.

It could be said that the two laws overlap, and in most cases it won’t make sense for a child to have both a surrogate parent and a responsible adult

appointed. The overlap in the law can be confusing. The following chart outlines basic information about each possible decision-making role in the life of a child who is dependent.

### Educational Decision-Making Authority

	Decision-making authority in regular education?	Decision-making authority in special education?	Appointed by judge?	Appointed by district?
<b>Parent or guardian</b>	X	X	<i>Parents have this right unless taken away by a court</i>	
<b>Responsible adult</b>	X	X		
<b>Surrogate parent</b>		X	X	X
<b>Long-term foster parent, as identified under IDEA</b>		X	<i>The court must limit parent or guardian's educational authority</i>	

### **If I am not a parent, what can I do to help protect a student's rights under the IDEA?**

There are many different things you can do to have an impact on the quality and nature of the education of a child. Social workers, foster parents, relatives, CASAs, group home workers and caseworkers can advocate to create and maintain good special education services for those students with disabilities.

There may be times when a conflict can't be resolved directly with the school district. Since many IDEA rights can be asserted only by a parent (as defined by the IDEA laws) you might find that you do not have legal authority to make educational decisions on behalf of a child.

There are ways that you or someone else in the child's life can obtain the authority to enforce special education rights when a parent is not available.

### **What you can do to make sure a child's rights are being protected**

#### **1. Make sure a surrogate parent is appointed, if appropriate.**

In certain circumstances, school districts and judges must appoint someone to make educational decisions for a child with disabilities. Foster parents, relatives, CASAs and others can be surrogate parents. Caseworkers and group home or treatment facility workers cannot.

Every school district or office of education must have a system for appointing surrogate parents. You can call the district, county or local area special education office to find out how it works in your area. If you would like to be appointed as the surrogate parent, inform the district of your relationship to the child and your willingness to be involved.

You can also request that the judge overseeing the child's dependency case appoint you as a surrogate parent.

#### **2. Request that the court appoint a responsible adult for educational decisions.**

When a child is made a dependant of the court, the court may limit the natural parents' right to make educational decisions and appoint a responsible adult to make those decisions. A caseworker can ask his or her attorney to include this as a part of a court order. A separate hearing can be requested for this specific purpose. See *Cal. Wel. and Inst. Code §361 & §726*.

#### **3. Obtain a power of attorney from the child's parents.**

A power of attorney is a simple legal document that allows a person to grant authority for someone else to act on his or her behalf. A student's natural parent or legal guardian can use a power of attorney to give someone else (e.g., a caregiver, relative, or foster parent) the authority to act as though he or she were the parent. As long as the parents' right to make educational decisions has not been limited, a parent can transfer that right by signing a power of attorney document. A power of attorney form can be purchased at most stationery or office supply stores.

You can ask the natural parents or guardian, or their lawyer, about granting power of attorney to a person who knows and cares for the child. The natural parents might be comfortable with this option if they recognize that it will allow someone to watch out for their child's educational interests. A power of attorney can be revoked at any time by the person who granted it.

**4. Help the parent or other person responsible for educational decisions take action.**

Encourage the person with educational decision-making authority to play an active role in the child's life. Help that person understand the child's rights, urge him or her to assert those rights, and assist in making a plan of action.

**5. If the person with decision-making authority is not doing a good job, explore whether he or she should be replaced.**

Consider using one of the methods described above to transfer the decision-making authority to someone else. Present your concerns to the court or school district.

## **IV. Eligibility for special education services under the IDEA**

### **What are the eligibility criteria for services under the IDEA?**

*A child or youth must be identified as an "individual with exceptional needs."*

In California, the legal term for children who are eligible for special education services is "individuals with exceptional needs." They may also be referred to as "special education students" or "children with disabilities."

An individual with exceptional needs is one who meets all of the following criteria:

- He or she fits within the age categories outlined in the law.
- He or she has been assessed as having a disability or impairment that requires instruction or services that cannot be provided with modification of the regular school program.
- He or she has been identified by an individual education program (IEP) team as a child with a disability.

*See Cal. Ed. Code §56026.*

## **At what age are children and youth eligible to receive special education services?**

*Children are eligible from birth through age 21. In some circumstances, they are eligible up to a few months past age 22.*

In California, there are four age categories for special education services eligibility:

- Birth to three years old
- Three to five years old
- Five to 18 years old, and
- 19 years old up to the 22nd birthday, and in some cases, a certain number of months after the 22nd birthday

*See Cal. Ed. Code §56026.*

Services for children from birth to three years old are called early intervention services. The California Early Intervention Services Act is found in Cal. Gov. Code §95000–95030. The eligibility process and other information specific to this age group is discussed later in this chapter, starting at Section IX.

A child between three and five is eligible for preschool special education.

A child between five and 18 is eligible for special education services.

A young person between 19 and 22 can remain eligible for special education services if he or she

- was eligible for special education services prior to age 19, *and*
- has not graduated from high school, completed his or her prescribed course of study, or met proficiency standards.

In addition, a student who turns 22 may be allowed to stay in his or her program for a certain number of months. Whether a student can continue in the program and for how long depends on when the student's birthday occurs during the year, as well as the student's individualized education program. See Cal. Ed. Code §56026(c)(4)(A)–(D) for the details of how long a student may stay in school after his or her 22nd birthday.

### ***Where you can have an impact***

Graduation from high school is an important event. Young people are eager to reach that milestone. However, for a student with disabilities, graduation also marks the point at which he or she will stop being eligible for services under the IDEA. Some schools can be in a hurry to move students on, even if they have not reached proficiency levels.

Sometimes, *not graduating*, at least right away, can be the best plan. Help a young person and his or her parent think through the options and make the right choices about services and goals to be achieved before graduating from high school.

### **What are the categories of IDEA-eligible disabilities?**

*As defined by both federal regulations and California state law, the categories of disability for ages five through 21 include the following:*

- Autism
- Deaf-blindness
- Deafness
- Emotional disturbance
- Hearing impairment
- Mental retardation
- Multiple disabilities
- Orthopedic impairment
- Other health impairment
- Specific learning disability
- Speech or language impairment
- Traumatic brain injury
- Visual impairment (including blindness)

*See 34 C.F.R. §300.8; Cal. Ed. Code §56026(a); 20 U.S.C. §1401(A)(3).*

For ages three to five, the categories are essentially the same as those listed above, although California law adds one more:

- Established medical disability

*See Cal. Ed. Code §56441.11.*

An “established medical disability” is defined as a disabling medical condition or congenital syndrome that the individualized education program team determines has a high probability of requiring special education and services. See *Cal. Ed. Code §56441.11(d)*.

California regulations define eligible disabilities for children ages three through 21 in 5 C.C.R. §3030 and §3031.

Infants and toddlers from birth to three years old are served by the early intervention services program. California’s program is called Early Start. The eligibility criteria for infants and toddlers are quite different from the criteria for children ages three and up. A description of early intervention services and an explanation of eligibility for infants and toddlers are found in Section IX of this chapter.

### **What is the process for deciding whether a child is eligible for services under the IDEA?**

*Based on an assessment, an individualized education program (IEP) team makes will determine if the child has a disability and, if so, the child’s educational needs.*

To be eligible for special education services, a child must be evaluated, or assessed. The school district is responsible for conducting the assessment.

The assessment should be based on tests and observations of the child, and should result in a written report that identifies whether the child has disability. If so, it should describe the specific educational needs of the child. See *20 U.S.C. §1414(b)*.

Once the assessment is completed, the IEP team, including the parent, meets to decide whether the child is an individual with exceptional needs. The team should discuss the assessment, the educational recommendations, and the reasons for the recommendations. See *Cal. Ed. Code §56329(a)*. This process is discussed in more detail in Section V.

## **V. Assessment for services under the IDEA**

Anyone can refer a child for an assessment for special education services. School districts are responsible for assessing a child’s need for the services and must respond to all requests. The district must provide the

assessment at no cost to the student or family. In order to begin the assessment, the district must ask for a parent's permission.

**There are three basic steps for initiating an assessment:**

- Step 1**     Someone requests that a student be assessed.
- Step 2**     The district sends a consent form to the parent, along with a proposed assessment plan and a notice of parental rights.
- Step 3**     The consent form is signed by the parent and returned to the district.

A district *must* start the assessment process for every referral in which there is a reason to suspect the existence of a disability. See *Cal. Ed. Code §56302 and 5 C.C.R. §3021(a)*.

In some circumstances, parental consent is not required for the assessment to begin. See the discussion later in this chapter under the heading "What does the district need to do the assessment?"

**Who can make a request for a special education assessment?**

*Anyone can refer a child or youth for assessment. This means a student can be referred by the following:*

- Birth parents
- Foster parents
- Group home staff
- Caseworkers/social workers
- Relatives
- CASAs
- Guardians ad litem (GALs)
- The student
- Agencies
- Other professionals
- Anyone who knows the student

*See Cal. Ed. Code §56302.*

### ***Where you can have an impact***

You may be the only person who has had enough consistent contact with the child to recognize that he or she has a disability.

By simply alerting the school to the fact that a child might have a disability, you can make sure the school isn't missing possible problems.

If you think a child has a disability, you should ask the school district to evaluate him or her for eligibility for special education services under the IDEA. At the same time, ask that the student be evaluated for Section 504 eligibility.

## **How do I make a referral for an assessment?**

### **1. Make a request in writing.**

A referral should be in writing. The district must provide someone to help make the written request if the person making the request needs assistance. See 5 C.C.R. §3021(a).

The referral can be simple—it can even be handwritten. Make sure to date it and keep a copy for your records. It is best if the letter is sent by certified mail, with a return receipt requested so you have proof of the date the district received the referral. It is a good idea to follow up a referral request with a phone call. Confirm that the referral was received, and ask how quickly the district will be acting on it. A sample referral is located at the back of the manual.

### **2. Don't worry about the referral letter being perfect.**

*Do* worry about getting it done as soon as possible. Nothing will happen until a referral is made. The timeline within which the district must act begins when they receive the referral.

### **3. Request that the district evaluate for both IDEA and Section 504 eligibility.**

If the student is not eligible for special education under the IDEA, he or she may be eligible to receive services under Section 504. Request assessment for both.

#### **4. Use examples to explain why you are making the referral.**

Before you write the letter, take the time to review the child's records. Talk with caregivers, teachers and others who work with or observe the child. Include your own observations to describe why you think the student may have a disability. When you write the letter, include details that support your areas of concern. If you can, provide documents that indicate that the student may have an impairment, such as letters from doctors or mental health providers. Review the information on confidentiality in this manual in Chapter 1. This will help you decide whether the information you have can be passed on.

#### **5. Be specific about what kinds of problems you want assessed.**

It is not uncommon for a child to have more than one kind of problem that interferes with learning. Districts are required to test in all areas related to a student's suspected disability, so make sure you describe all of the problems. For example, if you think the student has difficulty reading and has emotional problems that need to be addressed, ask that both areas be assessed.

#### **6. Send the referral to someone in the school or district who you think has authority and will act quickly.**

Because the law does not specify a particular person or office to whom a referral should be sent, send it to someone you think will act on it. For example, you might choose to send your referral letter to the school principal or the district's special education program coordinator or consultant.

### **What happens after the district receives a referral for special education assessment?**

*A referral starts the assessment process. The district has 15 calendar days to write up a proposed assessment plan and give it to the parent. There are some exceptions to the 15-day rule, such as when the referral is made during or close to a school vacation. The law spells out exactly how much time the district has to act in those situations. See Cal. Ed. Code §56321(a).*

### ***Where you can have an impact***

Nothing says a district has to take the full 15 days to put together a proposed assessment plan. You can urge the district to move more quickly by

- Providing records where appropriate
- Getting additional information from doctors and other health care providers
- Sharing your own observations about the child
- Being a “squeaky wheel” by checking in periodically to offer help and ask if the district sent the information to the parent yet

The proposed assessment plan must

- Be in language that is easily understood by the general public
- Be in the primary language of the parent, or another mode of communication used by the parent, unless it is clearly not feasible to do so
- Explain the types of assessments to be conducted
- Make clear that after the assessment special education programs will not begin without the parent's consent
- Describe any other recent assessments
- Describe any information the parent requests be considered as a part of the assessment
- Describe information regarding the student's primary language and the student's ability in that language

*See Cal. Ed. Code §56321(b) and 5 C.C.R. §3022.*

The law does not specify timelines for an assessment under Section 504. The district is allowed by law to have a policy that sets timelines. If the district doesn't have a 504 assessment policy, use IDEA timelines as a guide for determining when the district should respond to an assessment request. See Section IX of this chapter for more information about Section 504.

### ***Where you can have an impact***

If you are concerned that a child in your care needs an evaluation, work with the district to help it get what it needs to move quickly on the referral.

- You can make sure a parent signs the consent form and gets it back to the district.
- You can help locate a parent or a youth's lawyer.
- You can ask the court to give someone else the authority to consent to the assessment.
- You can press the district to ask for a hearing to override the consent process.

### **What consent does the district need to do the assessment?**

*Before the district can start testing a child, it must get permission from a parent. In addition to the written, proposed assessment plan, the district should provide a notice explaining the parent's rights, including the due process rights under the IDEA, and a form that the parent signs to give permission or consent to begin the assessment.*

If you are not the parent or guardian, you can tell the district that you would like to receive a copy of the assessment plan and be notified when the parent has been sent the request for permission to assess. The district is not required to do so by law. See 20 U.S.C. §1414(b)(4).

Once the parent receives the district's proposed assessment plan, he or she has at least 15 days to decide whether to allow the district to start the assessment. See Cal. Ed. Code §56321(c).

The consent for assessment is not consent for the district to provide a special education program—this initial consent only gives the district permission to assess the child. See Cal. Ed. Code §56321(d).

### **What if the parent refuses to consent to the assessment?**

*If the parent refuses to consent to an assessment of the child, the district may request a hearing to override the parent's refusal. See 20 U.S.C. §1414(1)(D)(ii) and Cal. Ed. Code §56501(a)(3) & §56506(e).*

### **Is parental consent always required before an initial assessment? What if the child is in foster care?**

*In general, parental consent for the initial assessment is required. Under some circumstances when a child is out of the home, parental consent for an initial assessment is not required.*

The district is not required to obtain informed consent from the parent of a child for the initial assessment if:

- Despite reasonable efforts to do so, the district cannot discover the whereabouts of the parent of the child;
- The rights of the parents have been terminated in accordance with state law; or
- The rights of the parent to make educational decisions have been limited by a judge, and the judge has appointed an individual to represent the child, and that person has given consent for the initial assessment. In California, this situation occurs when the court has appointed a “responsible adult” or surrogate parent. See the discussion earlier in this chapter on who may have educational decision-making authority. See 20 U.S.C §1414(a)(1)(D)(iii); Cal. Ed. Code §56321(d) and §56321.1.

### **What should the parent consider before giving consent to the district?**

*The parent should get the signed consent form back to the district as quickly as possible, because the assessment will not begin the district receives the consent form. The sooner the assessment is completed, the sooner the child will begin to receive any needed services. However, before agreeing to the plan, the parent should read it carefully and make sure the assessment plan is appropriate.*

When reviewing the proposed plan, keep in mind that the special education assessment has two purposes:

1. To determine eligibility for services
2. To identify the needs and strengths of the student so that an individualized education program can be developed

The first thing to look for is whether the district’s proposed plan will assess the child in all areas of suspected disability. This is crucial.

Often, a child will experience problems in more than one area. A district might want to stop the assessment once a child is found eligible for special education in one area. If a school district representative suggests expediting a student’s services by finding him or her eligible in one category and addressing other areas of disability later, you should say no. It is important to assess the student in all areas of suspected disability. If the assessment deals with only one suspected disability, there might not be enough information about the student’s needs when developing the

individualized plan. Additionally, different areas of disability need to be fully understood and addressed because each will have an impact on the other. See *20 U.S.C. §1414(b)(3)(B)*.

It is important to look at what types of tests and procedures the district has proposed. The plan might just give a list of possible tests, leaving it up to the person administering the test to decide which is best. This is not necessarily bad—the person administering the test may be able to pick the test or procedure that will be right for the student once he or she becomes familiar with the child.

The law requires that testing and assessment materials and procedures be

- Conducted by qualified persons and those knowledgeable about a particular disability
- Selected and administered so as to not be racially, culturally or sexually discriminatory
- Administered in the student's primary language or other mode of communication, unless the proposed plan indicates why this is not clearly feasible
- Validated for the specific purpose for which they are used
- Administered correctly by trained people in a manner that produces accurate results

See *Cal. Ed. Code §56320(a), (b) & (g)*.

Consider whether the proposed tests are tailored to assess the child's specific educational needs. For example, the Wechsler Intelligence Scale for Children (called the WISC) is a common test designed to measure general intelligence (i.e., IQ). An IQ test should not be used to test for reading comprehension problems, and it is not going to give the definitive answers about behavioral problems. By law, no single test can be the basis for determining whether a child is an individual with exceptional needs. See *34 C.F.R. §300.304; Cal. Ed. Code §56320(c) & (e)*.

It may be difficult to tell whether a proposed assessment plan contains the right tests, if the test administrators are sufficiently qualified, or whether the tests are discriminatory. The way to effectively judge a proposed assessment plan is to start with what you do know: the child. Review the plan with the child's needs in mind. Write out questions for the district and those conducting the assessment. Although the jargon of assessments can be intimidating, the following questions can help you understand a test's purpose:

- What is the name of this test? (What do these initials stand for?)
- What does it test for?
- Does it test for X, or Y?
- What other tests or procedures are used to assess this problem?
- Is this test appropriate for this child, given the child's age, cultural background, race, sex, and combination of suspected disabilities?
- Is the person conducting the assessment qualified to give this test?

Ask someone on the assessment team to explain the tests to you in plain language. Make sure that the test can accurately measure what it is supposed to measure. For example, some tests have age, reading skill and language ability criteria for valid results. If a student is too young for a particular test, can't read at the level necessary for the test, or if the test is not given in the student's first language, then the results of the test might not be useful and might be invalid.

### ***Where you can have an impact***

The assessment will end up being the foundation for the development of an education program if the child is found eligible for services.

You can help a parent, or person with educational authority, decide whether to consent to the assessment by reviewing the proposed plan together. Help identify areas of concern, write down questions to ask the district and devise a plan for getting the questions answered. Impress the importance of both a good plan and reducing delay.

### **I have heard that IQ tests can *never* be used to assess children referred for special education services. Is this true?**

*No, but in California an IQ test cannot be used to assess African-American children referred for special education services.*

The 1971 court case *Larry P. v. Riles* found that African-American children had been wrongly placed in "educable mentally retarded" classes. The court determined that IQ tests were racially biased and discriminatory. That case led to the banning of IQ tests for assessment of African-American children referred for special education services. Since then, some districts have decided to not use IQ tests to assess any child. However, the law does not ban the use of IQ tests for all children—only African-American children.

The California Department of Education forbids districts to administer IQ tests to African-American children in any circumstance. It directs districts to use alternative means of assessment for special education identification and placement. This may have created a positive effect for all children, since it has resulted in more specialized assessments.

California law specifically states that IQ tests *alone* are not enough to determine *any* suspected disability of *any* child.

### **What may be assessed?**

*The district must evaluate in all areas related to the suspected disability. This includes the following, if appropriate:*

- Health and development
- Vision
- Hearing
- Motor abilities
- Language function
- General intelligence
- Academic performance
- Communicative status
- Self-help, orientation and mobility skills
- Career and vocational abilities and interests
- Social and emotional status
- Developmental history

*See 20 U.S.C §1414(b)(3)(B) and Cal. Ed. Code §56320(f).*

### **Who will do the assessment?**

*The assessments are conducted by professionals qualified to conduct testing in the suspected area of disability.*

A school psychologist can conduct many tests. A school nurse may be able to do some health-related assessments. Other areas of disability will require a psychologist with special training, a psychiatrist, a physical therapist or speech therapist, a medical doctor, or some other person with expertise. The law requires that assessment and testing be done by qualified persons.

If district staff are not able to do a complete assessment, the district will need to seek outside expertise to complete the assessment process. These outside evaluations will be paid for by the district. The district might ask if the student or family has private insurance or other funding that would cover the cost of outside assessments. If the student or family

doesn't want to use insurance benefits or other sources of funding, the district must arrange and pay for the outside testing necessary to complete the assessment.

A school district may use Medi-Cal or other public insurance benefits programs in which a child participates to provide or pay for services under the IDEA, if it is allowed by the public insurance program. However, a district cannot require a parent to sign up for or enroll in public insurance programs, nor can it require a parent to incur out-of-pocket expenses.

In addition, a district may not use a child's benefits under a public insurance program if that use would do any of the following:

- Decrease available lifetime coverage or any other insured benefit
- Result in the family paying for services that would otherwise be covered by the public insurance program, and that are required for the child when the child is away from school
- Increase premiums or lead to the discontinuation of insurance
- Risk loss of eligibility for home and community-based waivers

The assessment process can rely on information from other qualified sources (e.g., a recent psychiatric evaluation). A district must consider the results of an outside assessment, even if it is not an assessment for which the district has paid. *See 34 C.F.R. §300.305 and Cal. Ed. §56329(b).*

In addition to professional competency to conduct assessments, the law requires competency in language and knowledge of the cultural and ethnic background of the child. Assessments must be administered by qualified people who are competent in both the oral and written skills of the child's primary language or mode of communication. For example, if the child's primary language is Spanish, assessments must be given in Spanish by someone who speaks and writes the language well. The same is true if the child communicates with sign language—the person conducting the tests must be able to communicate competently in sign language.

If it clearly is not feasible to have a person who is competent in the child's language conduct the assessment, an interpreter can be used. However, the report must document that the validity of the assessment may have been affected by the use of an interpreter.

Finally, those who assess children must have a knowledge and understanding of the cultural and ethnic background of the student. *See 20 U.S.C. §1412(a)(6) & §1414(b); 34 C.F.R. §300.304(c); Cal. Ed. Code §56320, §56322, & §56324; 5 C.C.R. §3023.*

### ***Where you can have an impact***

The evaluation should be free to students and their families. If the school district doesn't have staff to do a complete evaluation (e.g., a particular assessment must be performed by a medical doctor), the district must still pay for it. Make sure that the evaluation is complete.

### **What other ways can the district gather information about a student's eligibility and need for special education?**

*The district must use a variety of assessment tools and strategies to gather relevant functional and developmental information about the student. This information may include observation of the student and interviews of family, caregivers, and caseworkers. See 20 U.S.C. §1414(b)(2).*

### ***Where you can have an impact***

You may be the only person who can provide complete information on a child's medical and developmental history. Can you talk to the natural parents and other relatives about the child's early development? Look in your files for evaluations and medical records that describe the child's development. Useful records include EPSDT evaluations, family reports on a child's early development, and medical or mental health records. Remember to assess confidentiality issues before releasing information.

### **What happens once the district gets the parent's consent to do the assessment?**

*Once the district has received parent consent to assess the child's eligibility for special education, it must do all of the following within 60 calendar days:*

- Fully evaluate the child
- Decide whether the child has a disability
- Determine if he or she needs special education services

*See Cal. Ed. Code §56344 & §56023.*

**Are there exceptions to the 60-day timeline for completion of the evaluation? What if a child changes districts before the assessment is finished?**

*There are only two exceptions to the 60-day timeline.*

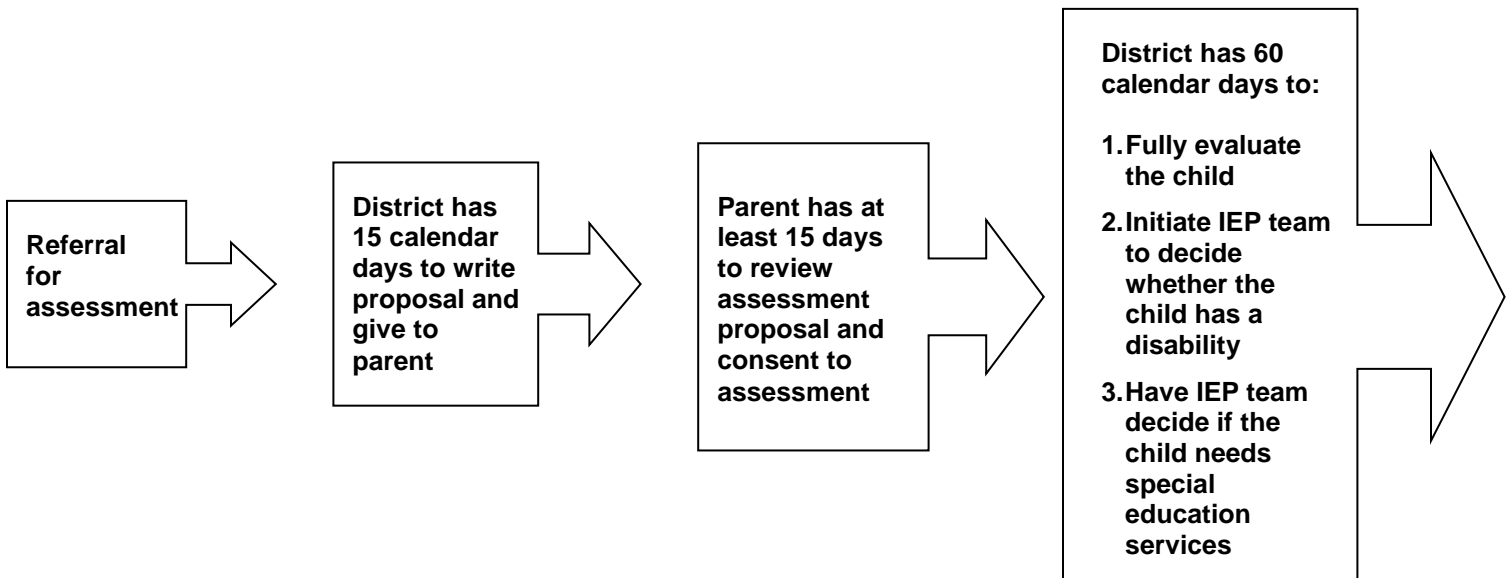
The 60-day timeline does not apply in two circumstances:

1. If a child enrolls in a new school after the evaluation timeline had begun in the previous school (but before a decision about eligibility had been made), the original timeline of 60 days will not apply if
  - the new district is making sufficient progress to ensure a prompt completion of the evaluation, and
  - the parent and new district agree to a specific time when the evaluation will be completed

Or

2. The parent of a child repeatedly fails or refuses to produce the child for the evaluation. See 20 U.S.C. §1414(a)(C)(ii)(I) and (II).

**Assessment Timeline**



## **What happens if a student moves during the evaluation process?**

*Districts must coordinate to make the evaluation happen quickly.*

If a student moves to a different district in the same academic year, the student's prior and new school must coordinate as quickly as possible to ensure the special education evaluations are completed promptly. See 20 U.S.C. § 1414(b)(3)(D).

## **What if a parent disagrees with the assessment?**

*If a parent disagrees with the assessment, he or she can request an independent assessment at public expense.*

A parent who disagrees with the results of an assessment has a right to an independent assessment at public expense. An independent assessment is an evaluation conducted by a qualified examiner who is not an employee of the district. "At public expense" means that the education agency either pays for the independent assessment or makes sure that assessment is done at no cost to the parent.

If the district observed the child as a part of its assessment, or if the district assessment procedures permit in-class observation, the independent assessment can also include an observation of the child in the current education placement and setting, and observation of any educational placement and setting proposed by the district.

Upon request, the district must give parents information about where an independent assessment can be obtained. See 34 C.F.R. §300.502(a)(2). The school board can define "qualified" in terms of who can conduct the assessment, but the criteria must be the same as that used by the district when it does assessments. See 34 C.F.R. §300.502(e).

The parent gets to choose who does the independent assessment. See 34 C.F.R. 300.502 & Cal. Ed. Code §56329(b). The results of the independent assessment must be considered by the IEP team, and can be used in a due process hearing.

### ***Where you can have an impact***

Upon request, the district must provide parents with information on where to go for an independent evaluation. Keep in mind that the independent evaluation can be done by someone who is not on the district's list.

Once an independent evaluator is chosen, make a point to talk to the evaluator about areas of concern. Ask that the evaluation results include concrete recommendations for educational programming.

### **What happens when an independent assessment at public expense is requested by a parent?**

*The district must either grant the request or initiate a hearing to show that its own assessment was appropriate.*

When a parent requests an independent assessment at public expense, the law states that “without unnecessary delay” the district must either request a due process hearing to show that its own assessment was appropriate, or it must make sure that the independent assessment is provided. See *C.F.R. §300.502(b)(2)*.

If the district disagrees with the request for an independent assessment at public expense, it must request a hearing. The hearing officer will decide whether the district's assessment was appropriate or whether an independent assessment at public expense is warranted. If the hearing officer decides that the district's assessment was appropriate, the parent still has a right to an independent assessment. However, the district does not have to pay for it. The district must consider the results of the independent assessment even if didn't pay for it. See *34 C.F.R. §300.502(c) and Cal. Ed. §56329(c)*.

A district can ask a parent for the reason he or she objects to the public assessment, but the parent is not required to explain the objection. The district cannot unnecessarily delay providing the assessment at public expense or initiating a due process hearing. See *34 C.F.R. §300.502(b)(4)*.

## **What if I am not a parent under the law, but I disagree with the result or scope of the assessment?**

*People not recognized as parents under the IDEA can take other steps to ensure a complete, accurate assessment.*

If you have concerns about the scope or results of the assessment, try the following:

- Talk with the district and voice your concerns. Ask the district to perform additional or further assessment.
- Find some other means for an assessment to be performed. Is the child covered by private medical insurance or Medi-Cal that may cover the cost of an assessment? Is the child eligible for assistance from the Department of Mental Health, regional centers, or local clinics? Are there local hospitals, support groups or other organizations that might provide testing, or assistance with the cost of testing? A district *must* consider the results of an outside assessment, even if is not an assessment for which the district has paid. See 34 C.F.R. §300.502(c) and Cal. Ed. §56329(c).
- Ask for an independent assessment at the district's expense, even though this is a right that belongs solely to the parent. Alternatively, you can try to get a parent to request an independent assessment. Or, consider whether it is appropriate for you to obtain the legal status to request an independent assessment. (See Section III of this chapter for suggestions on obtaining status to assert IDEA rights.)
- You may be able to convince the district to agree to an additional assessment at public expense by explaining that more information is needed to fully understand this student's needs.
- If all else fails, consider more formal dispute resolution options such as mediation, a complaint, or a due process hearing. At a due process hearing, a hearing officer can order an independent assessment at public expense. In a mediation, the parties can agree to one. See Section VIII of this chapter for more information on dispute resolution.

## **VI. Qualification for IDEA services**

### **Who decides whether a child is eligible for special education?**

*The IEP team makes the decision based on the assessment report and other information.*

Once the assessment is completed, the people who conducted the assessment(s) must write a report (or reports) describing the results. The purpose of the report is to state the opinions of those who conducted the assessment. The report should answer the following questions:

- Does the child have a disability?
- How does the disability affect the child's progress in school?
- What services are recommended to address the child's individual needs?

The law specifies that the report(s) must, at minimum, state the following:

- (a) Whether the child may need special education and related services
- (b) The basis for making the determination
- (c) The relevant behavior noted during the observation of the child in an appropriate setting
- (d) The relationship of that behavior to the student's academic and social functioning
- (e) The educationally relevant health, development, and medical findings, if any
- (f) For students with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services
- (g) A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate
- (h) The need for specialized services, materials, and equipment for students with low-incidence disabilities, consistent with guidelines established pursuant to Cal. Ed. Code §56136.

*See Cal. Ed. Code §56327.*

The report(s) must be given to the parents, along with a notice of a meeting to discuss the assessment, and information about due process rights (including the right to an independent assessment at public expense).

A meeting must be scheduled to discuss the assessment, the educational recommendations, and the reasons for those recommendations. The people at the meeting comprise the IEP team. (See below for a description of the IEP team.) This group makes the decision regarding the child's eligibility for special education and whether the child is an individual with exceptional needs. *See Cal. Ed. Code §56329 & 34 C.F.R. §300.306, §300.321 and §300.324.*

If the parent and school district agree, meetings can be held by telephone or video conference. See 20 U.S.C. §1414(f).

In addition to discussing the assessment tests, the IEP team should consider other information in determining whether a child is an individual with exceptional needs. Information from a variety of sources, including the following, should be carefully considered and documented:

- aptitude and achievement tests
- parent input
- teacher recommendations
- physical condition
- social or cultural background
- adaptive behavior

See 34 C.F.R. §300.306(c).

### **Who is on the IEP team?**

*The IEP team is made up of people who can help design the student's education program. The law states that the following people are a part of the IEP team and generally should be present at all IEP team meetings:*

- The parent or parents (see Section III of this chapter for the definition of a parent)
- No fewer than one of the child's regular education teachers, if the child is or may be participating in a regular education environment
- No fewer than one of the student's special education teachers or providers
- A representative of the district qualified to provide or supervise the special education instruction; this person must be knowledgeable about the general curriculum and the availability of resources in the local educational agency
- An individual who can interpret assessment data (this could also be one of the above people)
- Others who have knowledge or special expertise regarding the child, at the discretion of the parent or district
- The child, if appropriate; in most cases, by middle school it is appropriate
- If the child is suspected of having a specific learning disability, at least one member of the IEP team must be qualified to conduct individual diagnostic examinations, and at least one member of the IEP team must have observed the child's performance in a regular classroom setting; for younger children or children out of school, the observation can take place in an age-appropriate environment

- Starting at least when the child is 16 years old, the district must invite (and take steps to get the participation of) a representative of the agency that is likely to be responsible for paying for or providing transition services
- In the case of a child with exceptional needs who has been placed in a group home by a juvenile court, the district must invite a representative of the group home

*See 20 U.S.C. §1414(d)(1)(B); Cal. Ed. Code §56341 & §56341.2*

### ***Where you can have an impact***

The eligibility decision-making group might not include people other than those listed. BUT, the law requires the district to seek input from people who know the child or who have special expertise. Ask the parent or district to invite you to be a part of the eligibility determination team.

Other people can be on the IEP team as well. The law specifically allows the participation of those who “have knowledge or special expertise regarding the child.” This means that the IEP team can include foster parents, caseworkers, therapists, relatives, family friends, and advocates. The parent or district can invite individuals to be team members. The party who invites someone to become a member of the IEP team decides if that individual has knowledge or expertise regarding the child. *See Cal. Ed. Code §56341(b)(6).*

### **Are all members of the IEP team required to attend all IEP team meetings?**

*An IEP team member may be excused from attendance, but only under certain circumstances, and the parent and school district must agree to the absence. The parent’s agreement must be in writing.*

The 2004 changes to the IDEA allow for an IEP team member to be excused from attending a meeting under two circumstances and only when the district and parents agree. The two circumstances in which a team member may be excused are:

1. The IEP team member’s presence is not necessary because that person’s area of curriculum or related services will not be discussed or modified in the meeting.

Or

2. The IEP team member's area of curriculum or related services will be discussed or modified, but the team member submits in writing to the parent and the IEP team input about the development of the IEP before the meeting.

In either case, the parent must give consent for the absence *in writing*.

*See 20 U.S.C. §1414(d)(1)(C) and Cal. Ed. Code §56341(f)(g)(h).*

This situation could arise, for example, if an IEP meeting has been scheduled and the only topic that will be discussed is the child's occupational therapy and modifications to those services. The school district may ask the parent to agree that the child's speech therapist does not need to attend the meeting because those services will not be modified or discussed at the meeting. The parent must agree in writing to the speech therapist's absence.

In this same situation, where the planned meeting is about occupational therapy services, if the district asked the parent to consent to the occupational therapist's absence from the meeting, the occupational therapist must submit a report in writing so that he or she gives input to the meeting. The parent must agree in writing to the occupational therapist's absence.

Parents should consider carefully whether to give consent for an IEP team member to be absent. Even when a member's area of expertise is not being discussed, there is value in having all of the people working with a student present at the meeting. Team members learn from each other about a child's needs and what works for a child in different situations. In the example above, it is very likely that the speech therapist will learn important things about a particular child's needs, strengths, and progress from the occupational therapist. This information will inform the speech therapist's efforts with the child.

Of course, there will be times when it just won't make sense to have someone come to a meeting. A parent can weigh the importance of the member's presence against time constraints. However, everyone is busy, and parents may feel pressure to consent to an absence even when it doesn't seem like a good idea. Keep in mind that IEP team meetings are meant to be dynamic exchanges of ideas, where professionals with different areas of expertise and others who know the child from a variety of perspectives can understand the student as a whole and work together on the child's education program. In addition, a parent should consider whether a team member is a strong ally for the child, and whether that person's presence will help others see the student's potential.

If a team member is allowed to be absent, but once the meeting starts it appears that it was a mistake to consent to the absence, parents should consider asking that the meeting be moved to another time so that the absent member may attend.

## **What can I do if a child is denied eligibility for special education?**

*You can challenge the district's decision.*

If you think a child has been wrongly denied eligibility for special education services, you can try to change the district's decision by doing one of the following:

- Discussing the situation with school personnel
- Requesting a mediation conference
- Filing a complaint
- Requesting an IDEA due process or 504 hearing

Talking things through with school officials—including the principal, the student's teachers and counselor—is the best way to start dealing with any problem.

If discussing the issue doesn't get you anywhere, consider using more formal dispute resolution. *Only parents fitting the IDEA definition of a parent can request mediation or an IDEA due process hearing.* If you are not a parent as defined under the IDEA, locate a parent and suggest that he or she should request a hearing or mediation. Or, consider whether it would be appropriate for you to obtain educational authority so you can do it. Refer to Section III of this chapter for more information on obtaining legal authority to request a hearing or mediation. The mediation and hearing procedures are described later in this chapter.

### ***Where you can have an impact***

Ask that a person from the district's Section 504 program be made part of the eligibility determination group. If the group decides that the student is not eligible for special education under the IDEA, but may be eligible under Section 504, this person can help identify services that can be provided under Section 504.

## VII. Creating a special education program

### **What is an individualized education program, or IEP?**

*An IEP is a detailed description of the instruction and services needed for an individual with exceptional needs to achieve a meaningful education. An IEP should be tailored to a child's educational needs. It can include creative strategies for delivering services.*

### **Who decides what is in a child's IEP? What is considered?**

*The IEP team decides what the child's individualized education program should be. The IEP team is required by law to consider several important factors.*

In developing the IEP, the team must consider the following:

- The strengths of the child
- The concerns of the parents for enhancing the education of the child
- The results of the initial assessment or most recent assessment of the child
- The academic, developmental, and functional needs of the child
- As appropriate, the results of the child's performance on any general or district assessment programs

*See 20 U.S.C. §1414(d)(3)(A); 34 C.F.R. 300.324; Cal. Ed. Code §56341.1.*

The IEP team is also required to consider the following issues.

**Behavioral problems:** The team must provide positive behavioral interventions, strategies, and supports to address the behavior problems.

**Limited English proficiency:** The team must consider the language needs of a student as those needs relate to the IEP.

**Visual impairment:** If appropriate, the team must provide instruction in Braille.

**Communication needs:** For a child with a hearing impairment, the team must consider the child's language and communication needs, opportunities for direct communication with peers and professionals in the child's language or mode of communication.

**Devices and services:** The team must consider whether the child needs assistive technology devices or services.

*See Cal. Ed. Code 56341.1(b).*

When the IEP team considers these issues and concludes that the child needs services, devices or other program modifications, it must be stated in the written IEP.

### **What can I contribute to the IEP?**

*An important part of your role as an advocate is to analyze the educational program and services being offered by the school district. For example, are the goals and objectives reasonable given your understanding of the child's abilities? Are the kinds of services recommended by the district going to make a difference for the child? If you have suggestions for improving the education plan, you should voice them in the IEP team meeting.*

You can add a fresh perspective and creativity to the process. Think about ways to engage the student that the educators may not have considered. For example, if the reward of a special activity or sports time motivates a child to do chores at home, then a similar reward for completing assignments could be put in place at school. Or, maybe you have observed that a youth has a difficult time when there are a lot of distractions. You could suggest that he or she change classes before or after the rest of students.

Input from people who know the student and care about his or her success is key to creating an effective special education program. When creating a plan, the IEP team must consider the student's strengths, as well as his or her needs and limitations.

### **How do I know when the IEP team is meeting?**

*Parents must be notified of an IEP meeting. The district convening the meeting must take steps to ensure that at least one parent attends. The notice must be given early enough to give parents an opportunity to attend, and the location of the meeting must be scheduled at a mutually agreed upon time and place. If you are not a parent as defined by the IDEA, but you are part of the student's IEP team, ask that you be given notice and an opportunity to participate in the meetings.*

The notice of the IEP meeting must state the purpose of the meeting, the time and location, and who will be attending. The notice must also inform

parents that they have the right to bring people who have knowledge or special expertise regarding the child.

For children 16 years old and older (or younger if appropriate), the notice must also explain that the purpose of the meeting will be the development of a statement of postsecondary transition services needs. The note must explain that the child may attend as well.

*See 34 C.F.R. §300.322(b)(2); Cal Ed. Code §56341.5.*

### **When does an IEP have to be developed?**

*Within 50 calendar days of the parental consent for assessment, the district must have completed the assessment and have developed an IEP at an IEP meeting.*

Once a parent gives written consent for a child to be assessed, the clock starts ticking. The education agency must complete the assessment and, if the child is eligible for services, must have an IEP developed at an IEP meeting within 60 days. These are *calendar days*, not school days, so weekends are counted. However, days between regular school sessions or terms do not get counted. School vacations in excess of five days also are not counted; instead, the timeline resumes when students return to school. There is a safeguard for referrals made near the end of a school year—if a *referral* is made in the last 20 days of a school year, an IEP must be developed within the first 30 days of the new school year. See *Cal. Ed. Code §56344(a)*.

### ***Where you can have an impact***

Urge the district to hold an IEP meeting as soon as possible.

Be a squeaky wheel...again. By the time a student is found eligible for special education services, a lot of time may have passed. Aside from how long it takes to determine eligibility, this student may have not been receiving services he or she should have in years past. There is no reason to wait to put a special education program in place once the data has been gathered.

### **What must be in an IEP?**

*The law is specific about what must be in an IEP. It must include, but is not limited to, the following:*

- A statement of the child's present level of achievement and functional performance, including
  - ◆ the manner in which the child's disability affects involvement and progress in the general education curriculum; or, if preschool-aged, appropriate activities
  - ◆ for individuals with exceptional needs who take alternative assessments with alternative achievement standards, a description of benchmarks or short-term objectives
- Measurable annual goals, including academic and functional goals designed to
  - ◆ meet the child's needs (which result from the disability) so that he or she is able to be involved in and progress in the general curriculum
  - ◆ meet each of the child's other educational needs that arise from his or her disability
- A description of the manner in which the child's progress toward these annual goals will be measured, and when periodic progress reports will be provided; for example, quarterly reports issued with regular report cards
- A statement of the special education, related services, and supplementary aids or services that will be provided to the student, and a statement of the program modifications or support for school district staff that will be provided so that the child will
  - ◆ advance toward attaining annual goals
  - ◆ be involved in and make progress in the general education curriculum
  - ◆ participate in extracurricular and nonacademic activities
  - ◆ be educated and participate with other individuals with exceptional needs, as well as nondisabled students in educational, extracurricular and nonacademic activities
- An explanation of the extent, if any, to which the child will not participate with nondisabled students in the regular class and extracurricular and nonacademic activities with nondisabled students
- A statement of accommodations necessary to measure the academic progress and performance of the child in state and district assessments
- If the IEP team decides that the child shouldn't take an alternative assessment for a statewide or district assessment, a statement explaining why the child cannot participate in the regular assessment and why the alternative assessment chosen for the child is appropriate

- The date for the start of services and the frequency, location and duration of the services
- Beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter, appropriate postsecondary goals related to training, education, employment, and, where appropriate, independent living skills, and the transition services needed to help the child reach those goals
- If appropriate, for children in grades 7 through 12, a statement of alternative ways to meet the district's prescribed course of study and standards for graduation
- For children whose primary language is not English, a statement of linguistic goals, objectives, programs, and services
- If determined to be appropriate by the IEP team, an extended school year program (such as summer school)
- Transition activities, if the child is to be transferred from a special education or nonpublic school into a regular education class
- For children with low-incidence disabilities, the provision of specialized services, materials, and equipment
- A statement, starting at least at age 17, confirming that the student has been informed of his or her rights under the IDEA when he or she turns 18 years old

*See 20 U.S.C. §1414(d)(1) & 1414(d)(3); 34 C.F.R. §300.320; Cal. Ed. Code §§56345 & 56345.1.*

### **How does the IEP address behavior issues?**

*For a student whose behavior gets in the way of his or her learning or that of other students, the IEP should provide positive behavioral interventions, strategies, and supports to address the problem behavior. It is important to remember that a student's behavior may be related to his or her disability. The IEP should anticipate behavior problems and create effective ways to respond to those problems before they occur. See Cal. Ed. Code §56341.1(b)(1).*

### ***Where you can have an impact***

Behavior problems are a red flag!

If a child's behavior is not responding to the services and strategies provided the IEP, it may mean that further assessment is needed. Ask for an IEP team meeting to be called. (An IEP meeting is appropriate any time a child is not progressing as expected.) Ask that there be added to the IEP team a member who has training in positive behavioral interventions.

Discuss the behavior problems with the team and determine whether additional information would help formulate a better IEP. Get advice from experts about what type of further assessment could be helpful in figuring out what is going on with the child. Ask that assessments be done as quickly as possible.

Help figure out a plan to address the problems before they get worse.

For a child with serious behavioral problems, California regulations specify an assessment and intervention plan. However, even if a child's behavior does not meet the criteria of serious behavior problem, a functional analysis assessment can be requested as a part of the IEP process. See 5 C.C.R. §3052(b).

### **What if a child has serious behavioral problems that are not addressed by an IEP?**

*There are specific guidelines for assessment of the child's needs and the development of a positive intervention plan to help the child.*

### **Serious behavioral problems and behavioral intervention plans**

When a child receiving special education services under the IDEA has serious behavioral problems, a specific analysis of the problems and plans to resolve them must be implemented. A behavioral intervention plan is a written document that becomes a part of a child's IEP. It is developed when an individual with exceptional needs exhibits a serious behavior problem that significantly interferes with the goals and objectives of the IEP. See 5 C.C.R. §3001(f). A "serious behavior problem" means that the child's behavior is self-injurious, assaultive, causes serious property damage, or otherwise causes the instructional or behavioral approaches specified in the student's IEP to be ineffective. See 5 C.C.R. §3001(aa).

**Behavioral case manager**

The development of a behavioral intervention plan is facilitated by the child's IEP team. The IEP team must include a behavioral case manager. This person must be a certified school or agency staff member who has documented training in behavior analysis, with an emphasis on positive behavior interventions. See 5 C.C.R. §3001(e) & §3052(a)(1). A new person does not have to be added to the team if there is already someone who meets those qualifications.

**Functional analysis assessment**

The behavioral intervention plan, like everything else in an IEP, must be based on relevant data. A functional analysis assessment can determine what kinds of behavioral problems are interfering with a child's education, and can then be used to build a behavioral intervention plan. The functional analysis assessment must gather information from three sources: direct observation of the child, interviews with significant people, and a review of available data (e.g., assessment reports prepared by other professionals, or other individual records). See 5 C.C.R. §3052(b). It must be conducted or supervised by someone who has training in behavioral analysis, with an emphasis on positive behavioral interventions.

California regulations give very specific guidelines for the procedures to be used in a functional analysis assessment. See 5 C.C.R. §3052(b)(1).

Once the assessment data have been collected, a report is written and considered by the IEP team. At that time, the team decides whether a behavioral intervention plan is needed.

Regulations specify what may be in a behavioral intervention plan, and what types of responses to inappropriate behavior are acceptable. See 5 C.C.R. §3052(d) & (e) for information on how an intervention plan should be designed.

In no way is this process intended to be a situation where adults sit around a table and speculate about what might motivate a child to behave better. The law intends that a thoughtful, well-researched assessment (and, if appropriate, plan) is implemented with specially trained professionals. See *Cal. Ed. Code §56520(b)*; 5 C.C.R. §3052(b).

**What if the child needs mental health services as a part of his or her IEP?**

*Mental health services can be a part of any IEP—not just the IEP of a child whose disability is in the category of emotional disturbance.*

Mental health services (e.g., counseling, group therapy, family therapy) may play an important role in helping a child succeed in school. A child's disability does not have to be in the "emotionally disturbed" category for mental health services to be a part of his or her IEP. If a child needs mental health services in order to benefit from education, mental health services should be a part of the IEP.

In some cases, the mental health services should be provided through the county mental health (CMH) agency. This is often called an "AB 3632 referral."

### **What is AB 3632 and how does it affect mental health services, occupational, and physical therapy in an IEP?**

*Assembly Bill 3632 is a California law that requires state agencies to coordinate services for children with disabilities.*

When a child with a disability needs services such as mental health therapy, occupational therapy, physical therapy, residential treatment, or rehabilitation services, AB 3632 requires state and local agencies to work together to meet the child's needs. AB 3632 is found in the law at Cal. Gov. Code §7570–7588.

#### **Occupational and physical therapy**

If a child's IEP contains occupational or physical therapy services, and those services are *medically* necessary for the child to be able to benefit from special education, a referral to the California Children's Services (CCS) agency should be considered. CCS is California's medical program for treating children with certain physical limitations and chronic health conditions. See *Cal. Gov. Code §7575(a)(1)*.

To be eligible for assessment and services from CCS, the child must have a medically diagnosed qualifying condition.

The following is a partial list of conditions that may make a child eligible for CCS services:

- Certain neuromuscular, musculoskeletal, or muscular diseases
- Some diseases of the nervous system (e.g., epilepsy, cerebral palsy)
- Some infectious diseases
- Abnormal growths, benign or malignant (e.g., leukemia and cancer)
- Some diseases of the endocrine, metabolic, or immune systems
- Certain diseases of the blood (e.g., anemia)

- Some diseases of the eye, or visual impairment
- Some auditory problems or hearing impairments
- Certain cardiac, respiratory, digestive, renal, or lymphatic diseases
- Some diseases of the skin
- Some injuries (e.g., certain severe fractures, burns, organ injuries)

*See 2 C.C.R. §60300(j), 22 C.C.R. §41800–§41876 and Cal. Gov. Code §7575(a)(1).*

In addition to having a qualifying condition, the services must also be medically necessary. Medically necessary occupational or physical therapy services are “those... directed at achieving or preventing further loss of functional skills, or reducing the incidence and severity of physical disability.” *See 2 C.C.R. 60300(n).*

If a school district decides that a child does not have an eligible condition, it must assess the child’s needs itself, and follow the assessment plan timelines, notification and other rules described above in Sections V through VII.

If the district refers the child to CCS, the referral must include the medical diagnosis, current medical records and parental consent for exchange of information between the agencies. If the child is new to CCS, a CCS application must also be included.

If CCS decides that the child *does not* have an eligible condition, it has five days from the date it determines ineligibility to notify the district and the parent.

If, based on the information provided, CCS *cannot* make a determination as to whether the child has an eligible condition, it must seek additional information.

If CCS determines that the child *does* have an eligible condition, CCS must propose an assessment of the need for medically necessary physical or occupational therapy. CCS must obtain parental consent for the assessment. The assessment must be started within 15 days of the decision that the child has an eligible condition. *See 2 C.C.R. §60320(f).*

### **Mental health**

If the initial assessment of a child indicates that the child will be found eligible for special education and may need mental health services in order to benefit from special education, a referral to the county mental

health (CMH) agency for an assessment should be considered. Make the referral as early as possible so that time is not lost waiting for the CMH agency to complete its process. (See the timelines below.)

Under AB 3632, a variety of mental health services may be provided, including individual or group psychotherapy, collateral services, medication monitoring, intensive day treatment, day rehabilitation, and case management. See 2 C.C.R. §60020(i).

There are eligibility requirements for services from the CMH agency. Before making a referral to the CMH agency, qualified educational staff must observe the child and decide that he or she has emotional or behavioral characteristics that meet the following conditions:

- They interfere with the child benefiting from educational services.
- The frequency and intensity of the problems are significant.
- They are not solely the result of social maladjustment or a temporary adjustment problem.
- They cannot be resolved with short-term counseling.

In addition, the child needs to have sufficient cognitive abilities to be able to benefit from mental health services.

Finally, the school must have already tried to provide counseling, psychological, or guidance services that did not meet the child's educational needs, unless those services were clearly not appropriate. See *Cal. Gov. Code §7576; 2.C.C.R. 60040*.

A child's disability category under the IDEA does not have to be "emotionally disturbed" in order to be eligible to receive most mental health services. One exception is residential treatment.

The CMH agency has five days to consider the referral and decide if the assessment is appropriate. If the referral is incomplete, the CMH agency must notify the school within one working day.

If the CMH agency decides that the eligibility criteria have not been met, it must notify both the school and the parent within one working day.

If it is determined that the referral *is* appropriate, the agency must give a consent form and assessment plan to the parent within 15 calendar days.

Once the CMH agency receives written consent from the parent, it has one day to contact the district to set up an IEP meeting to discuss the

results of the assessment. The meeting must occur within 50 days. See 2 C.C.R. 60045.

For more information on how to write an IEP with mental-health-related services under AB 3632, see 5 C.C.R. §60050.

### **The responsibilities of the CDE and local education agency**

If a child is not eligible for assessment or services through the CMH agency or CCS, the California Department of Education (CDE) and the local education agency (such as your district) remain responsible. Federal law makes the local school district, and ultimately the CDE, responsible for all aspects of special education—even programs or services administered by other agencies.

If another agency refuses to provide services required under an IEP, the district, and ultimately the CDE, are responsible for providing the services. For example, if a child's IEP includes occupational therapy services, but the CCS refuses to provide the service because the child's condition does not qualify, then the local district must provide those services. See 20 U.S.C. §1412(a)(11) & (a)(12).

#### ***Where you can have an impact***

If there is an interagency disagreement about who should provide a particular service to a child, remember that the district and the CDE are ultimately responsible for ensuring that children with disabilities get the educational services they need.

While an interagency disagreement is being resolved, the district should provide to the child the services required in the IEP.

See 20 U.S.C. 1412(a)(12)(A) & (B).

### **Where will the student with disabilities receive services described in the IEP?**

*Children with disabilities must be educated in the least restrictive educational environment. The presumption is that the child will be in a regular education class.*

### **What does “least restrictive environment” mean?**

*An essential principle of the IDEA is that children with disabilities should be included in the regular education program as much as possible and not*

*excluded or educated separately. Individuals with disabilities should be educated in the most regular education and least restrictive environment possible. The IEP team must first consider placing the child in the same setting as children without disabilities for academic, non-academic, and extracurricular activities.*

The law states that children with disabilities should be put in special classes or separate schools only if they can not be satisfactorily educated in regular classes with supplementary aids or services. See 20 U.S.C. §1412(a)(5); 34 C.F.R. §300.114; Cal. Ed. Code §56001(g).

## Least restrictive

Regular classes	Not all individuals with exceptional needs can succeed in a regular classroom without support. Before a child can be placed outside of the regular education classroom, the IEP team must consider providing a full range of supplementary aids and services to make it possible for the child to be educated in a regular education classroom. Some students need individual help from a teacher's aide, assistive equipment, or modifications of curriculum, materials, or methods of instruction. Other students require a different setting entirely, such as a special day school or home instruction.
Regular classes with support services and/or modifications	
Regular classes with the consultation of special ed staff	
Regular classes with related services	Every school district must make sure that a range of educational settings is available for special education students since some children with disabilities need more than can be offered in a regular education setting. Individuals with exceptional needs must be educated in the setting that is closest to the regular classroom, but will still allow the student to make academic progress.
Regular class with resource specialist program	
A combination of regular and special education classes	This range of educational settings is sometimes called a continuum of placements and can include the options described in the chart to the left.
Special ed class, full-day	
Special (district) school	A child with disabilities can be removed from the regular classroom setting only if the nature or severity of the disability is such that even with extra support and services in the regular classroom, the child cannot make satisfactory educational progress.
Nonpublic school	
Residential placement	
Hospital	See 20 U.S.C. §1400(c)(5)(A)–(G); Cal. Ed. Code §56360–56363.

## Most restrictive

## **Can an individual with exceptional needs get special education services during the summer?**

*Yes. An individual with exceptional needs may receive special education services during the summer if the IEP team decides that the services are necessary in order for the student to get a meaningful education.*

Extended school year (ESY) services are special education services provided during the time between the end of one academic year and the beginning of another (usually during the summer break). ESY services must be provided when an IEP team decides they are needed and includes them in a child's IEP. See 34 C.F.R. §300.106; 5 C.C.R. §3043.

An individual with exceptional needs is eligible for ESY services if

- The child has a disability that is long-term or likely to continue indefinitely
- The interruption of educational services will cause the child to lose progress and the child has limited ability to regain the lost progress, and
- These factors make it unlikely that the child will reach the level of self-sufficiency and independence expected in view of his or her disability

California law specifically states that “the lack of clear evidence” of the factors listed above cannot prevent a child from receiving ESY services if the IEP team decides that the child needs ESY services and puts it in his or her IEP. See 5 C.C.R. §3043.

If ESY services are provided, the special education and related services offered must be comparable in standards, scope, and quality to the special education program provided during the regular academic year. In other words, participation in the regular summer school courses offered to all students may not be enough. If a student's IEP provides for a one-on-one aide during the school year, he or she must be provided with one-on-one help during the summer as well. California regulations state that schools are not required to provide an IEP program in which the child is integrated into a regular education class setting if there are no regular education programs being offered by that district. See 5 C.C.R. §3043(g)(2).

California regulations specify the minimum number of days and minutes per day that must be provided in order for the district to be funded for ESY programs by the state. This is not a limit on the number of days or hours a

child may receive ESY services. The amount and type of services a particular child needs is always decided by the IEP team.

An ESY program must be provided at no cost to the student. If the district does not have an appropriate summer program for a student who qualifies for ESY services, the district should create one or pay for the student to participate in a program offered by another school district or a private organization. The district must pay transportation and other costs associated with the extended school year program. *See 34 C.F.R. §300.106.*

### **Can special education help a student transition from school into adult life?**

*Yes, special education must provide transition services starting when the student is 16 years old, or earlier, if appropriate.*

The IDEA requires that special education include services for helping students prepare for adult life. These are called transition services. Beginning not later than the IEP that will be in effect when the child is 16 years old, the IEP must be updated annually to include appropriate, measurable postsecondary goals based on the age-appropriate assessments related to training, education, employment, and where appropriate, independent living skills. The IEP must also include a statement of the transition services (including a course of study, such as vocational school, college, etc.) needed to assist that child in reaching those goals, and the transition services needed to help the child reach those goals. *See 20 U.S.C. §1414(d)(1)(A)(viii); 34 C.F.R. § 300.320(b); Cal. Ed. Code §56341.5(e).*

The law specifically requires that if a student does not attend the IEP meeting, steps should be taken to ensure that his or her preferences and interests are represented. *See Cal. Ed. Code §56341.5(e).*

The IEP must design transition services as “a coordinated set of activities” that are outcome-oriented, promoting movement from school to post-school activities, including college and other post-secondary education, vocational training programs, supported employment, continuing and adult education, adult services, independent living programs, and community participation.

The kinds of transition services a student receives should take into account the student’s interests and preferences and the skills he or she needs to acquire.

Transition services can include the following:

- Instruction

- Related services
- Community experiences
- The development of employment and other post-school adult living objectives
- If appropriate, the acquisition of daily living skills and vocational assessment

*See 20 U.S.C. §1401(34); 34 C.F.R. §300.320(b); Cal. Ed. Code §56345.1.*

### ***Where you can have an impact***

Remember that transition services must be identified in a student's IEP by the time he or she turns 16 years old—this means the IEP team meeting needs to happen while the student is 15 years old.

Equally important is the fact the law allows transition service planning to start earlier than age 16, "if appropriate." For many children, it is appropriate to start transition planning and services when the child is very young.

Whenever possible, schools should coordinate their transition efforts with services offered through other agencies. For example, as part of a special education program, a student might attend an independent living skills class sponsored by the Department of Rehabilitation. When multiple agencies are involved, the IEP should include a statement of each agency's responsibilities to the student. If an agency other than the school district fails to provide the services, the IEP team must meet to develop an alternative plan to address the student's needs.

Advocates can be especially helpful in creating useful transition plans. Your creativity and knowledge about a child's needs and interests can result in services that effectively prepare him or her for life after school.

### ***Where you can have an impact***

Help a child prepare for life after foster care by coordinating your transition efforts with those of the school and other agencies.

Use your knowledge of other agencies, and talk with the IEP team about plans for housing and other support services that can be arranged for the youth when they leave DCFS care.

## **How soon will a child start receiving services after the IEP team has met?**

*The IEP should start as soon as possible after the IEP team has met. See 34 C.F.R. §300.323(c)(2); 5 C.C.R. §3040.*

### ***Where you can have an impact***

There are many reasons an IEP team meeting should be requested between annual reviews, such as the following:

- A student is not making progress.
- Services identified in the IEP are not being delivered.
- The student's needs have changed.
- The student's placement has changed.

Ask for an IEP meeting if you feel that the IEP team needs to discuss or change the student's program.

## **Does the parent have to consent to special education services before the IEP is started?**

*Yes, except in limited circumstances in which a hearing officer overrides that lack of consent.*

Parents must agree to the services before a district can begin providing special education. If the parents of a child refuse to consent to the start of services, then the district cannot do anything about it. Districts cannot request a hearing to ask a hearing officer to override the parent's refusal to start special education services. Keep in mind that a district *is* allowed to request a hearing to seek to override a parent's refusal to consent for assessment. This means a child may be assessed and found eligible for services by the IEP team—but if the parent refuses to consent to having the services start, then the IEP will not happen. A non-parent can consider requesting that the district provide services under Sec. 504 if the parent is refusing services under special education. See Section X of this manual for more information on Section 504 services.

The situation is very different if the child is an individual with exceptional needs and the parent refuses all services in the IEP after having consented to those services in the past. Then the district is required to request a hearing so that a hearings officer can make the decision about services.

The district may also be required by law to request a hearing if the parent consents to special education but doesn't agree to all of the components of the IEP. If the district determines that the part of the IEP that the parent

did not consent to is necessary to provide an appropriate education, then it must bring the matter before a hearing officer by requesting a hearing.

*See 20 U.S.C. §1414(a)(1)(D)(ii); Cal. Ed. Code §56346.*

### **What happens if a student with an IEP moves to another school district during the school year?**

*The new school must provide comparable services to the student until and IEP is put in place.*

There are three circumstances in which a child may move to a new district during the academic year, each with slightly different district requirements under state and federal law.

- **The child moves to a new district not within the same Special Education Local Plan Area (SELPA) as the old district.**  
If a child who has an IEP in effect moves to a new district that is within California but does not operate programs under the same SELPA as the old district, then the new district must provide the student with comparable services to those in his or her existing IEP. Those services must be provided for not longer than 30 days, by which time the new district shall have either adopted the previous IEP or developed, adopted, and implemented a new IEP. *See Cal. Ed. Code §56325(a)(1).*
- **The child moves to a new district within the same SELPA as the old district.**  
If a child who has an IEP in effect moves to a new district that operates programs under the same SELPA as the old district, then the new district must continue, without delay, to provide services comparable to those in the existing IEP, unless the parent and the new district decide to adopt, develop and implement a new IEP. *See Cal. Ed. Code §56325(a)(2).*
- **The child moves from out of state to a district within California.**  
If a child with an IEP moves from out of state, the new district must provide the student with comparable services to those in his or her existing IEP until it conducts an assessment, if necessary, and develops a new IEP. *See 20 U.S.C. §1414(d)(2)(C); Cal. Ed. Code §56325(a)(3).*

Regardless of the circumstances of the move, the district must determine what “comparable services” are in consultation with the parents. In addition, in all circumstances, the new district must take reasonable steps to promptly obtain the child’s special education records and the old school

district must promptly reply to requests for records. See 20 U.S.C. §1414(d)(2)(C)(ii).

Remember that children who are out of the home have special rights with regards to the transfer of school records. In most cases, when a child in foster care enrolls in a new district, the school must request records within two days, and the old district must respond quickly too. For more information, review Section V in Chapter 2, “Enrolling Children and Youth Who Are Out of the Home.”

### **When does an IEP get reviewed or revised?**

*At least once a year, and more often if needed.*

An IEP should be reviewed periodically—but never less frequently than once a year. Within a year, the IEP team must meet to review the education program and to determine whether the student’s annual goals are being achieved. At the annual review, the IEP team should look at the child’s progress and the appropriateness of the placement and make any necessary revisions to the IEP. See 20 U.S.C. §1414(d)(4); 34 C.F.R. §300.324(b); Cal. Ed. Code §56380 & §56343.

The IEP must be revised before the annual review to address the following:

- Any lack of expected progress toward the annual goals described in the IEP or in the general curriculum
- New or additional assessment results
- The parent or teacher request a meeting

The IEP can also be reviewed any time when a parent or teacher requests a meeting to develop, review or revise the IEP. When a parent requests an IEP meeting, it must be held within 30 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 receipt of the parent’s written request. See Cal Ed. Code §56343.5.

### **Can changes be made to an IEP without an IEP team meeting?**

*Yes, if the parent and district agree and create a written document to reflect the changes.*

In making changes to a child’s IEP after the annual IEP meeting for a school year, the parent of a child and the district may agree not to have an IEP meeting for the purpose of making changes, and instead may develop a written document to change the child’s IEP. Parents must be provided a copy of the revised IEP.

Although the law permits changes to be made without a meeting, a parent should still think through whether it is a good idea or not. Review the discussion earlier in this chapter about whether IEP members may be excused from IPE meetings. Those same issues should be considered in deciding what the child will lose or gain by not having a meeting to amend his or her IEP. See 20 U.S.C. §1414(d)(3)(D) & (F).

### ***Where you can have an impact***

If a student's performance is consistently low, or a new problem is discovered, you should request an IEP team meeting to discuss the need for a re-evaluation.

A reassessment must occur every three years unless the parent and school district agree that a reassessment is not necessary. These reassessments can provide valuable information on how a student is doing and any developments in his or her disabilities. A lot of change can happen for children during a three-year period. Think carefully before agreeing that a child does not need to be reassessed.

A student can be reassessed before three years if the district determines that the educational or related services needs of the child warrant an evaluation, or if the parent or teacher requests a reassessment. However, reassessments may not occur more than one time per year unless both the parent district agree that it is necessary. See 20 U.S.C. §1414(a)(2)(A) & (B); Cal. Ed. Code §56381.

### **Once a student qualifies for special education, is there any further assessment?**

*Yes, special education students must be assessed at least once every three years, and more often if necessary.*

Although the IEP must be reviewed at least once a year, a reassessment of individuals with exceptional needs is required only every three years. The purposes of a reassessment are to determine the following:

1. Whether the child continues to have a disability under the IDEA
2. The child's current performance levels and educational academic needs
3. Whether the child continues to need special education and related services, and
4. Whether any additions or modifications to the special education and related services are needed to enable the child to meet the

measurable annual goals set in the IEP and to participate in the general curriculum

The IEP team must review the existing assessment data (including information provided by the parents, classroom-based information, and teacher and service provider observations) and decide if any additional data, including assessments, are needed to address the four issues listed above. *See Cal. Ed. Code §56381.*

## **VIII. Dispute resolution**

In the course of advocating for a child, you may at some point find yourself disagreeing with the school district. When possible, it is a good idea to try to first solve the problem by talking with members of the IEP team and other district officials. (Refer back to Chapter 1 of this manual for tips on effective negotiation.)

If talking through a problem doesn't work, the law provides several methods for resolving disputes:

1. Formal complaint procedures
2. Mediation
3. Due process hearings

The disagreement could involve the following:

- The identification of a child as an individual with exceptional needs
- The assessment of a child
- The delivery of special education services
- The educational placement of a child

### **1. Complaints**

There are three formal complaint processes that are available to help resolve disagreements about IDEA and 504 services:

- Compliance complaints
- Notification of failure to provide services
- Civil rights complaints

Compliance complaints and civil rights complaints can be filed by anyone. Therefore, they are especially useful if you do not have the legal authority of a parent to request a mediation or due process hearing.

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

*A compliance complaint is an assertion that a public education agency has failed to implement or has violated a federal or state special education law or regulation. It can also allege unlawful discrimination. States are required by federal law to develop a complaint procedure. See 5 C.C.R. §4600(c) & §4610; 34 C.F.R. §300.151.*

A compliance complaint is for situations when a district is out of compliance with a law. If you can define the problem in terms of a law or regulation being broken, then a compliance complaint may be appropriate. For example, if a district does not provide the services required under a child's IEP (e.g., the child is supposed to receive one hour of specialized tutoring, but is only getting 30 minutes), that could be considered a violation—the district is failing to comply with the law that requires implementation of the IEP. However, if a district is refusing to even put services into a child's IEP, then the issue may be more appropriate for a mediation or due process hearing. (See the discussion later in this section.)

For disputes regarding children under three (early intervention services and the Early Start Program), there is a different complaint process established through the Department of Developmental Services. See Section IX of this chapter for more information on how to file a complaint for a child under three.

### **a. Where to file a compliance complaint**

Most special-education-related compliance complaints can be filed either with the district or the California Department of Education (CDE).

A compliance complaint can first be filed with the local district and, if the local district does not satisfactorily deal with the problem, appealed to the CDE. However, most situations involving special education cases allow for filing directly with the CDE, skipping the step of going to the local district first.

### **b. Types of compliance complaints that can be directly filed with the CDE**

The law lists the following situations in which a special-education-related compliance complaint can be filed directly with the CDE.

**Compliance complaint about AB 3632 services**

The complaint is against a public agency (other than a school district) for failing or refusing to comply with a law or regulation relating to the provision of public education to children with disabilities.

**Compliance complaint about a due process violation**

The complaint is against a district or public agency for failing or refusing to comply with the due process procedures in federal and state law and regulation, or for failing or refusing to carry out a due process hearing order.

**Compliance complaint about the health, safety or welfare of students**

The complaint is that a 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.

**Compliance complaint about not receiving specified IEP services**

The complainant alleges that a child with a disability is not receiving the special education services specified in his or her IEP.

**Compliance complaint about violation of IDEA laws or regulations**

The complaint involves a violation of federal law governing special education, 20 U.S.C. §1400, or its regulations.

*See 5 C.C.R. §4650(a)(viii).*

If the compliance complaint is filed directly with the CDE, and the CDE determines that the complaint should have been filed with the district, the law requires the CDE to immediately send the complaint to the district and notify the complainant. *See 5 C.C.R. §4640.*

A compliance complaint should be sent to

California Department of Education  
Special Education Division  
Procedural Safeguards Referral Services Unit  
P.O. Box 944272  
1430 N Street, Suite 2401  
Sacramento, CA 94244-2720  
Telephone: (800) 926-0648  
Fax: (916) 327-3704

Again, complaints regarding children three and under have different procedures. See Section IX of this chapter for more information.

### **c. Who can file a compliance complaint**

Any person, public agency or organization can file a compliance complaint on behalf of a child or group of children.

### **d. Information that should be in a compliance complaint**

The complaint should

- Be in writing
- Be signed by the person making the complaint
- Include a statement that the educational entity has violated a law or regulation
- State the facts of the violation and the law or regulation violated
- If the complaint is to be filed directly with the CDE, it should state the grounds for direct file
- List the name and address of the person making the complaint

The complaint can be a letter, or you can request the CDE's complaint form, Request for Complaint Investigation. This form also can be found on the CDE website at: <http://www.cde.ca.gov>.

### **e. Time restrictions on filing a compliance complaint**

A compliance complaint regarding a violation of state or federal special education laws must be made within one year of the alleged violation. A longer period may be considered reasonable if the violation is ongoing, or if the complainant requests compensatory services for a violation that occurred within the previous three years. See *34 C.F.R. §300.152*.

A compliance complaint regarding unlawful discrimination must be filed within six months of the alleged discrimination (or the date the person making the complaint first learned of the discrimination). This deadline may be extended for up to 90 days through a request to the district superintendent. See *5 C.C.R. 4630(b)*.

### **f. Resolution of a compliance complaint filed with the district**

If the complaint is filed with the district, the district must complete its investigation and provide a written decision to the complainant within 60 days of receipt. Each district should have written policies about how it will conduct the investigation. See 5 C.C.R. §4621 & §4631.

The investigation must include some way for the complainant to give information. There may also be opportunities to meet or to question the other side's witnesses. The district may also suggest mediation as a way of resolving the dispute. See 5 C.C.R. §4631(b) & (d).

If the complainant does not agree with all or part of the district's decision, it can be appealed to the CDE. See 5 C.C.R. §4631(c). The appeal must be done within 15 days of receiving the district's decision. The appeal should include a copy of the original complaint and a copy of the district's decision. See 5 C.C.R. §4652.

Appeal of a district's decisions should be sent to

California Department of Education  
PO Box 944272  
1430 N Street  
Sacramento, CA 94244-2720

#### **g. Resolution of a compliance complaint filed with the CDE**

If the complaint is filed directly with the CDE, the department will first offer to mediate the issue. If the mediation does not work, or if the complainant or the district do not want to participate in a mediation, the CDE must conduct an independent investigation. The complainant and the district will have a chance to provide additional information, either orally or in writing, about the allegations. Within 60 days of receiving the complaint, the CDE must write a report outlining the complaint, each side's position, the facts and evidence, and the department's decision. If the CDE finds that the district or agency is not in compliance, the report must include corrective actions and a timeline to complete those actions. See 5 C.C.R. §4660–§4664.

## **What is a notification of failure to provide services under AB 3632?**

*A notification of failure to provide services is another complaint process. It can be used when an agency fails to provide or pay for AB 3632 services that are in a child's IEP, agreed to through a mediation, or ordered by a hearing officer in a due process hearing. It is also referred to as an "interagency dispute resolution." See Cal. Gov. Code 7585(a) & 2 C.C.R. §60600. Section VII above describes AB 3632 services.*

When an agency fails to provide these services, both a notification of failure to provide services and a compliance complaint can be filed at the same time.

### **a. Where to file a notification of failure to provide services under AB 3632**

AB 3632 complaints can be filed either with the California Superintendent of Public Instruction or the California Secretary of Health and Welfare.

State Superintendent of Public Instruction  
California Department of Education  
1430 N Street, Executive Suite  
Sacramento, CA 95814

Secretary  
California Health and Human Services  
1600 9th Street  
Room 460  
Sacramento, CA 95814

### **b. Who can file a notification of failure to provide services under AB 3632**

A parent, adult student, or any local education agency can make a complaint under the AB 3632 law. See Cal. Gov. Code 7585(a).

### **c. Information that should be in a notification of failure to provide services under AB 3632**

*The notification of failure to provide services should*

- Be in writing

- Include a statement that an agency has failed to provide services
- State the facts showing that there has been a failure to provide services
- Include a copy of the child's IEP, or, if appropriate, the mediation agreement or order of a hearing officer
- List the name and address of the person making the complaint

No special form is required.

#### **d. Time restrictions on an AB 3632 complaint**

The law does not specify a time period in which a notification must be filed.

#### **e. Resolution of an AB 3632 complaint**

When the State Superintendent of Public Instruction or Secretary of the Health and Human Services Agency receives a complaint, they must first send a copy to the other party. The Superintendent or Secretary must meet to resolve the issue within 15 days of receipt of the complaint. A copy of the resolution must be mailed to the parent, the district and affected agencies within 10 days of the meeting. See *Cal. Gov. Code §7585(b)*.

In some cases, the Superintendent and Secretary will not be able to resolve the matter to their satisfaction within 15 days. In those cases they are required to submit the dispute to the Office of Administrative Hearings (OAH). The OAH must issue a decision on the dispute within 30 days of the receipt. See *Cal. Gov. Code §7585(c) & (d)*.

If the parent or district disagrees with the resolution, they can also appeal to the Office of Administrative Hearings. See *Cal. Gov. Code §7585(e)*.

When a notification of failure to provide services is filed, important protections are triggered. If an agency was already providing services when the notification was filed, it must continue to do so until the dispute is resolved. If no agency has provided services yet, the filing of the notification will require the State Superintendent of Public Instruction to ensure that the district provides the services specified in the IEP until the dispute is resolved. See *Cal. Gov. Code 7585(f); 2 C.C.R. §60610*.

## **What is a civil rights complaint?**

*Section 504 of the Rehabilitation Act of 1973 is an anti-discrimination law that aims to eliminate disability discrimination in all programs that receive federal funds. Because public schools and districts receive federal money, they are subject to Section 504 requirements and cannot discriminate based on a disability. See 29 U.S.C. §794; 34 C.F.R. §104.4.*

The US Office for Civil Rights (OCR) for the US Department of Education enforces the protections of Section 504 and is responsible for investigating complaints. A student who is eligible for special education services under the IDEA is also protected by the provisions of Section 504, and so could file a complaint with the OCR.

If a matter is being investigated by another agency or a due process hearing is pending, the OCR will likely decide to not investigate the complaint until the other investigation or hearing is complete. It will close the OCR complaint case and tell the complainant to refile it within 60 days of the other agency's decision.

### **a. Where to file a civil rights complaint**

A civil rights complaint should be sent to

Office for Civil Rights  
US Department of Health and Human Services  
50 United Nations Plaza, Room 322  
San Francisco, CA 94102

Telephone: (415) 437-8310  
Fax: (415) 437-8329

### **b. Who can file a civil rights complaint**

*Anyone* can file a complaint with the OCR when a student with disabilities does not receive educational benefit from a program that is comparable to the benefit received by non-disabled peers.

For example, if a student with a behavioral disability is told that he or she cannot go on field trips and must stay at school or home while the rest of the class is on the trips, this may be unlawful discrimination. OCR complaints can also include access issues, such as the lack of a ramp for a child in a wheelchair, or a district's failure to provide accommodations or services that should be or are in a student's 504 plan. See 34 C.F.R. §104.4.

For the OCR to fully investigate a complaint, it is likely that a review of the child's records will need to take place. In order to do that, the OCR will need a parent's consent to get the records.

### **c. Information that should be in a civil rights complaint**

*The complaint should*

- Be in writing
- Describe the facts of the discrimination, including the basis of discrimination (race, disability, national origin, etc.) and when and where the discrimination took place
- Include copies of written materials, data, or other documents that support the complaint
- List the name, address and phone number of the person filing the complaint
- Make a statement of the relationship between the person filing the complaint and the person on whose behalf the complaint is filed (e.g., parent, friend, caseworker, etc.)
- State the signature of the person filing the complaint
- List the name, address, and phone number of the person(s) discriminated against, and
- List the name and address of the school, district, or person that discriminated

You can include this information in a letter, or use the complaint form provided by the OCR. The OCR complaint form can be found in the Forms and Samples section in the back of this manual, or at <http://www.ed.gov/ocr>.

### **d. Time restrictions on a civil rights complaint**

A civil rights complaint must be filed within 180 days (6 months) of the date of the discrimination. The time period may be extended if there is a good reason. See 34 C.F.R. §100.7(b).

### **e. Resolution of a civil rights complaint**

The OCR should promptly review the complaint and decide whether it is going to investigate. Within 15 days of receiving a complaint, the OCR will send a letter to the complainant acknowledging that the complaint has been received and stating that a review of the complaint is taking place. That letter will give a target date for a decision about whether the complaint will be investigated, and will also give the name and phone number of the specialist assigned to

the case. At this time, OCR may also ask for parental consent for the release of the child's records.

The OCR will not investigate all complaints. It may decide to not investigate the complaint in the following cases:

- The allegation has already been decided elsewhere
- The same or a similar allegation is pending elsewhere
- The alleged discriminatory action took place too long ago
- The allegations are weak
- The same or similar allegations have been addressed in a resolved OCR complaint

If OCR does investigate the allegations, it will issue a letter describing its findings. Decisions are usually issued within 180 days of receipt of the complaint.

The OCR can use a variety of methods to resolve a violation of Section 504, including the following:

- Attempting to facilitate a resolution between the student and the district
- Negotiating with the district to voluntarily correct the problem
- Issuing a letter of its findings, informing the district of the violation and requesting voluntary compliance

If the district does not comply, the OCR can enforce the law through administrative enforcement (which could result in the loss of federal funds) or a referral to the Department of Justice for judicial enforcement.

A complaint of discrimination can also be filed with the California Department of Education under the compliance complaint procedures described above. However, as discussed above, if a compliance complaint has been filed, OCR may not proceed with an investigation.

## **2. Mediation**

Mediation can be an excellent way to improve services for the student, resolve conflict, and repair relationships between the school and the parent or guardian.

Under the IDEA, states are required to provide free mediation services to parents/guardians and school districts for resolving conflicts about a

student's special education program. See 20 U.S.C. §1415(e); 34 C.F.R. §300.506.

### **What is mediation in special education cases?**

*The mediation process brings the district and parent together with a neutral third person—the mediator. The mediator meets with both sides to try to come to an acceptable agreement on the educational needs of the student. The process is voluntary, so both the parent and the school district must agree to participate. The process is intended to be informal and non-adversarial. It should be held at a time and place reasonably convenient to the parent and student. See Cal. Ed. Code §56500.3.*

If mediation is successful, the parties sign a legally binding agreement that can be enforced in state or federal court. See 20 U.S.C. §1415(e)(2)(F); Cal. Ed. Code §56500.3(f).

In California, mediation on special education issues can be requested either before or after a due process hearing is requested. Parties are encouraged to first try to resolve the dispute through mediation. However, requesting or participating in a mediation conference is not required before requesting a due process hearing. See Cal. Ed. Code §56500.3 & §56501(b)(2).

There are slight differences between mediations requested before and after the request for a due process hearing. Those differences are described later in this section.

#### **a. Where to send a request for mediation**

Requests for mediation should be sent to

Office of Administrative Hearings  
Special Education Unit  
1102 Q Street  
4th Floor  
Sacramento, CA 95814

Tel (916) 323-6876  
Fax (916) 322-8014

The person requesting the mediation must also send a copy of the request to the other party at the same time.

## **b. Who can request a mediation**

Parents, adult students and public education agencies can request mediation in special education cases. (“Parent” is defined in Section III of this chapter.)

## **c. Information that should be in a request for mediation**

*The request for mediation should*

- Be in writing
- Include the name and address of the student
- Include the name of the school the student attends
- Include the name of the student’s resident district
- Include the name and address of the parent
- Include the name and address of the person requesting the mediation

A brief description of the dispute and a proposed resolution can be included, but they are not required.

The CDE has a form that can be used, but it is not mandatory. It can be found at <http://www.cde.ca.gov>.

## **d. Resolution through mediation**

Mediation conferences are slightly different, depending on *when* the request for mediation is made.

### ***Pre-hearing request mediations***

A *pre-hearing request mediation* is a mediation requested before a due process hearing is requested.

A pre-hearing mediation must be scheduled within 15 days of the request. It must be completed within 30 days of the original request, unless the parties agree to extend the time. A copy of the written resolution agreed to by the parties must be mailed no later than 10 days after the mediation conference. If the pre-hearing mediation conference fails to resolve the issue, the party who requested the mediation can file for a due process hearing. See *Cal. Ed. Code §56500.3(e)–(g)*.

### ***Post-hearing request mediations***

A *post-hearing request mediation* is a mediation requested at the same time as, or after, a request for a due process hearing.

When a due process hearing has been requested, a mediation conference will first be set. However, a mediation conference can only take place if all sides agree to participate.

Due process hearings must be completed and a decision issued within 45 days of the request for the hearing, unless both parties agree to an extension. If a mediation is to be attempted, it must take place during that same 45-day time period. See *Cal. Ed. Code §56502(d)*.

### ***Pre-hearing request mediations vs. post-hearing request mediations***

There are some important differences between a pre-hearing request mediation and a mediation that takes place after a due process hearing has been requested.

One difference is that there is a specific timeline for the hearing and decision in a pre-hearing request mediation, while the timeline for a post-hearing request mediation is subject only to the time limits for the due process hearing.

Another important difference is whether attorneys are allowed to attend the mediation conference. California law states that attorneys or other contractors who provide legal advocacy services *may not be present* at pre-hearing request mediation conferences. Non-attorney representatives, however, are allowed to assist a party during pre-hearing request mediations. See *Cal. Ed. Code §56500.3(a) & (b)*.

Attorneys and other advocates *are* allowed to be present at post-hearing request mediations. See *Cal. Ed. Code §56501(b)(2)*.

Third, once a due process hearing has been requested, a student has the right to stay in his or her current educational placement, pending the outcome of the hearing. This is an important safeguard that may be lost if a mediation is requested *before* a due process hearing is requested. (An explanation of “stay put” and its importance can be found below.)

### **3. Due process hearings**

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

*A due process hearing is a formal administrative proceeding much like a trial. The parent and the school district each have the opportunity to present evidence and witnesses and to cross-examine the witnesses presented by the opposing side. A hearing officer makes a written decision based on the facts and the law.*

A due process hearing can be used to resolve disputes about

- A proposal to initiate or change the assessment, educational placement, or identification of a child with exceptional needs
- A refusal to initiate or change the assessment, educational placement, or identification of a child with exceptional needs
- The parent's refusal to consent to an assessment of a child
- The availability of a program appropriate for a child, including questions of financial responsibility

Requests for a due process hearing regarding children under three are covered in Section IX of this chapter.

#### **a. Where to send a request for a due process hearing**

Requests for due process hearings should be sent to

Office of Administrative Hearings  
Special Education Unit  
1102 Q Street  
4th Floor  
Sacramento, CA 95814

Tel (916) 323-6876  
Fax (916) 322-8014

*When filing a request for a due process hearing, the person making the request must give a copy to the other party. See 20 U.S.C. §1415(b)(7); Cal. Ed. Code §56502(c).*

#### **b. Who can request a due process hearing**

A due process hearing can be requested by any of the following:

- An educational agency
- A parent (as defined by the IDEA)

- An emancipated student
- A student who is a ward or dependant of the court or a student for whom no parent or guardian can be identified or located, when the hearing officer determines that either
  - 1) either the district has failed to appoint a surrogate parent, or
  - 2) the surrogate parent does not meet the surrogate parent criteria; if a surrogate parent is appointed after a hearing has been requested by a student, that cannot be the basis of dismissing the hearing

*See Cal. Ed. Code §56501(a); Cal. Gov. Code §7579.5.*

### **c. Information that should be in a request for a due process hearing**

*The request for a due process hearing must*

- Be in writing
- Include the name and address of the student
- State the district and school a child attends
- Explain the problem and the facts
- Suggest a resolution, to whatever a degree a resolution can be known at the time

The CDE has a form that can be used for requesting a due process hearing, but it is not required. It can be found on the web at: <http://www.cde.ca.gov/spbranch/sed>. Or, you can request that the form be sent to you. (The CDE form is titled “Mediation and Due Process Hearing Request Form.” It is the policy of the CDE to set a mediation conference every time that a due process hearing is requested. However, participation in a mediation conference is voluntary, and not a prerequisite to a due process hearing.)

At the same time that a hearing request is filed, the person filing it must notify the other party. Contact the district’s special education office for its procedure for providing notice of a due process hearing request. *See Cal. Ed. Code §56502(c).*

It is important to list in the request for a hearing all the issues that need to be addressed. The person who requested the hearing will not be allowed to raise issues in the hearing that were not in the hearing request, unless the other party agrees or the hearing officer allows it. A hearing officer may only grant permission to add a new

issue no later than five days before the scheduled hearing. After that, the only way to add an issue is if the other party agrees. See *20 U.S.C. §1415(f)(3)(B)*; *20 U.S.C. §1415(c)(2)(E)*; *Cal. Ed. Code §56502(e) & (I)*.

**d. Time restrictions for requesting a due process hearing**

In most cases, a request for a due process hearing must be filed within two years of the date that the person filing it knew or had reason to know of the problem.

A request for a due process hearing can be filed regarding a violation that occurred more than two years ago if one of the following questions is met:

1. The parent was prevented from requesting a due process hearing within two years because the district misrepresented that it had resolved the problem;

Or,

2. The parent was prevented from requesting a due process hearing within two years because the school district withheld information it was required by law to share.

See *20 U.S.C. §1415(f)(3)(C) & (D)*; *Cal. Ed. Code §56505(I)*.

**e. School district response to a request for a due process hearing**

Within ten days of receiving the parent's request for a due process hearing, the school district must reply to it, explaining why it took action or did not take action, what other options were considered by the IEP team and why those options were rejected, a description of the information relied on by the district in making its decision, and other information relevant to the district's decisions. If the district had already sent a notice in writing to the parent about this issue, then it is not required to reply to the request for a due process hearing. See *20 U.S.C. §141(c)(2)(B)*; *Cal. Ed. Code §56502(d)(2)*.

**f. Districts may object to the parent's hearing request within 15 days.**

A district may object to the parent's request for a hearing because it believes that the parent's request does not meet the requirements

under 20 U.S.C. §1415(b)(7)(A). This could be because the parent's request is unclear or is incomplete. If the district decides to object to the hearing request, it must do so within 15 days of the request. See 20 U.S.C. §1415(c)(2)(C); *Cal. Ed. Code §56502(d)*.

**g. Resolution session must happen before due process hearing.**

The law requires a resolution session between the district and the parent before a due process hearing can occur, unless the district and the parent agree in writing not to have the session, or unless they can agree to go to mediation instead.

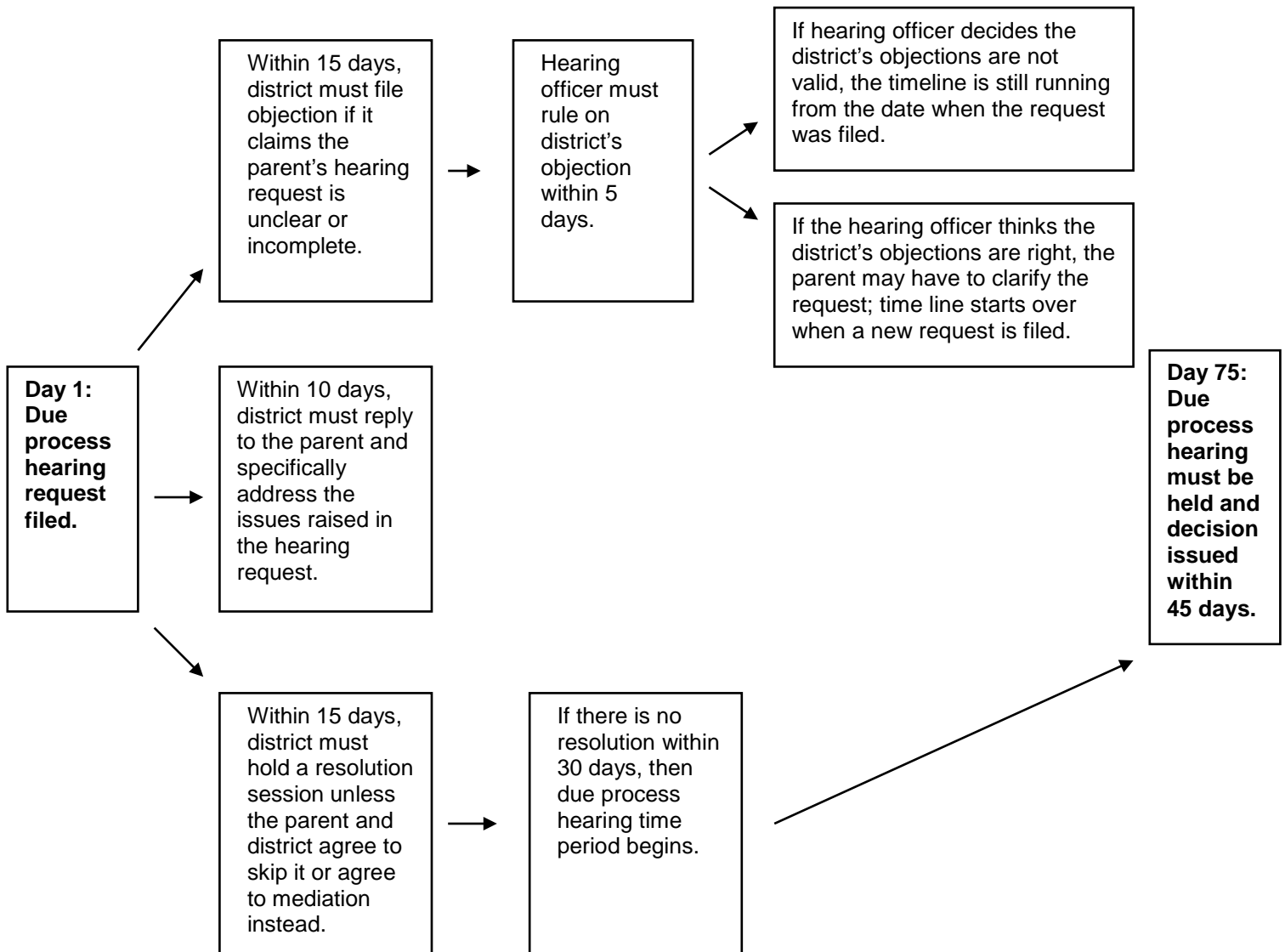
The district must hold a resolution session within 15 days of receiving the due process hearing request from the parent. A resolution session is a meeting, like an IEP meeting, at which the district may not have an attorney unless the parent brings an attorney. See 20 U.S.C. §1415(c)(2)(C); *Cal. Ed. Code §56501.5*.

If the district and the parent can resolve the issues, they must create a legally-binding document. (See *Cal. Ed. Code §56501.5(d)*.) If the district does not resolve the problem to the parent's satisfaction within 30 days of receipt of the complaint, then the due process hearing may occur. See 20 U.S.C. §1415(f)(1)(B)(ii); *Cal. Ed. Code §56501.5*.

A hearing must occur and a decision must be issued by a hearings officer within 45 days. Because the 45-day period does not begin until after the 30-day resolution period, it could be 75 days before a hearing decision is made. See *Cal. Ed. Code §56502(f)*.

The timing of these events can be confusing. See the flowchart on the next page to understand how the various time requirements interact.

## Timelines for District Responses to Parent Request for Due Process Hearing



## **What are the parties' rights in a special education due process hearing?**

All parties have the right to

- Be accompanied and advised by an attorney and by individuals with special knowledge or training regarding children with disabilities
- Present evidence and confront, cross-examine, and compel the attendance of witnesses
- Be informed by the other parties, at least 10 days before the hearing, about the other side's issues and their proposed resolution
- Receive, at least five business days before the hearing, a copy of all documents (including assessments and recommendations) the other party intends to use in the hearing, as well as a list of witnesses and their general area of testimony
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing
- Obtain a verbatim written record of the hearing, provided at no cost to the parent (or an electronic record)
- Obtain written findings of fact and decisions, provided at no cost to the parent (or an electronic copy of the findings)
- Request a mediation conference at any point
- Examine student records
- A fair and impartial administrative hearing before a person knowledgeable in special education and administrative law
- Appeal the hearing officer's decision

A parent involved in a hearing has the additional right to

- Have the child present
- Open the hearing to the public
- Examine all of the child's records and receive copies of them within five days of requesting them, either orally or in writing; a public agency may charge no more than the actual cost of making copies of the records, but if that cost is so high that it would, in effect, prevent the parent from getting the records, then the records must be provided at no cost

*See 20 U.S.C. §1415(f)–(h); Cal. Ed Code §56501, §56504, §56505.*

## **What can a due process hearing accomplish for a student?**

*The district can be ordered to provide services, give the student compensatory education, and pay for the parent's legal fees.*

A due process hearing can help the student obtain appropriate services and make up for education that was lost due to the district's failures. A hearing officer can help resolve disagreements about a student's eligibility, the IEP, changes in educational settings, and assessments and reassessments.

The hearing officer can also order compensatory education, meaning that the district must provide services to make up for time or opportunities missed because of the district's failures. For example, the district might be ordered to pay for the student to participate in a community college course, provide tutoring in addition to the special education program, or make summer programs available, even if the student wouldn't otherwise qualify for extended school year services.

Compensatory education requests ought to be related to the goals and objectives of the IEP. However, you can be creative when asking for compensatory education services. Think about what the student likes to do (art, music, science) and suggest a program or service that provides it.

If you win at the hearing, the district may have to pay for your legal costs and attorney's fees. Keep track of your costs, such as paying for an educational consultant or specialist to testify.

## **What is "stay put"? Where does the student go to school when a hearing is requested?**

*When a hearing is requested, the student has a right to continue to stay in the same educational setting until the hearing is completed and a decision is made. The IDEA calls this the "stay put" rule.*

A student who is applying for initial admission to a public school must be placed in the school until the hearing proceedings are completed, unless the parent and school agree otherwise. See 34 C.F.R. §300.518 & §300.526; Cal. Ed. Code §56505(d).

There are some exceptions to "stay put." For more information on the exceptions, see Chapter 5.

If the school district loses a hearing, it may be ordered by a court to pay fees to the parent's attorney. A court may order a parent to pay the attorney's fees of the district only if the hearing request was frivolous,

unreasonable, without a basis in law, or filed for any improper purpose, such as harassment, to cause unnecessary delay, or to drive up the cost of defending the case. Most experts agree that this provision will be used rarely across the country. As long as the parent's case has *some* basis in fact or law and the parent or parent's attorney does not do things that are intended only for some improper purpose, then the parents do not need to worry about being charged the district's attorney fees. See 20 U.S.C. §1415(l)(3)(B)(i)(III); Cal. Ed. Code §56507(b)(2).

### **Do I need a lawyer for a due process hearing?**

*No, but both parties have a right to be represented by a lawyer.*

The parent or guardian of a special education student can be advised or represented by a lawyer in a due process hearing. Having a lawyer is not required, and you can be successful in a hearing without one. However, it is often a good idea to consult with a lawyer or another knowledgeable person to help prepare for the hearing.

## **IX. Programs for children under three who have disabilities**

### **Are services available to a child before he or she qualifies for special education at three years old?**

*Yes. Early intervention services are available from birth to age 3.*

Early intervention services are for infants and toddlers who have disabilities or are at risk of having disabilities. The right to early intervention services is based on the IDEA, the same federal law that protects children who are three and older. The protections for children under three are found in Part C of the IDEA. See 20 U.S.C. §1431–§1444; 34 C.F.R. §303.1–§303.670.

In order to receive certain federal funding, each state must show that it has policies and systems that meet the federal requirements and that it makes available early intervention services. See Cal. Gov. Code §95000–§95030; Cal. Ed. Code §56425–§56435; 17 C.C.R. §52000–§52175.

California's statewide early intervention system is called "Early Start." It is intended to provide coordinated, comprehensive, family-centered, multidisciplinary interagency programs for eligible infants, toddlers, and their families. See Cal. Gov. Code §95002.

The system is based on interagency coordination. Six departments are required to work together to provide services:

- The Department of Developmental Services
- The Department of Education
- The Department of Health Services
- The Department of Social Services
- The Department of Mental Health
- The Department of Alcohol and Drug Programs

The Department of Developmental Services coordinates the service system. *See Cal. Gov. Code §95012.*

### **What are the eligibility requirements for early intervention services?**

*The child must be evaluated and determined to have a significant developmental delay, or factors that create a high probability of causing developmental delay as the child gets older.*

To be eligible for early intervention services, a child under three must be evaluated and determined to need early intervention services. A multidisciplinary team, including the parents and persons qualified to make the determinations, must determine that the child has one of the following conditions:

#### **1. Developmental delay**

An infant or toddler has a developmental delay when there is a significant difference between the current level of functioning and the expected level of development for that age. The developmental delay must occur in at least one of the following five categories:

- a. **Cognitive** (e.g., thinking and making sense of one's experience)
- b. **Communication** (e.g., using age-appropriate language)
- c. **Physical** (e.g., vision and hearing; fine and gross motor skills needed for body control; and skills like standing, walking, or climbing)
- d. **Social or emotional** (e.g., age-appropriate feelings and behaviors)
- e. **Adaptive behaviors** (e.g., self-help skills, including feeding and dressing)

*See Cal. Gov. Code §95014; 17 C.C.R. §52022(a).*

## 2. Established risk condition

An established risk condition exists if the child has one of the following conditions:

- A physical or mental condition known to have a high probability of causing developmental delay (even if the delay is not yet evident and will only become evident as the child grows older)
- A “solely low-incidence disability,” which is a severe, disabling condition that occurs in less than 1% of the student population

*See Cal. Gov. Code §95014; Cal. Ed. Code §56026.5; 17 C.C.R. §52022(b).*

## 3. High risk for developmental delay

An infant or toddler has a high risk for developmental delay when a combination of two or more of the following factors exist:

- **Premature birth:** Less than a 32-week pregnancy
- **Low birth weight:** Approximately three pounds, or less
- **Assisted ventilation:** For at least 48 hours of the first 28 days of life
- **Small size:** Below the 3rd percentile for growth
- **Insufficient oxygen at birth:** Usually an Apgar score of 5 or below at five minutes
- **Severe and persistent metabolic abnormality**
- **Seizures:** Other than those due to fever
- **Central nervous system lesion or abnormality**
- **Central nervous system infection**
- **Biomedical insult:** Including but not limited to an injury, accident or illness that may seriously affect development
- **Multiple congenital anomalies or genetic disorders**
- **External factors that affect fetal development**
- **Prenatal substance exposure:** As shown in a positive neonatal toxicology screen or symptomatic neonatal toxicity or withdrawal
- **Clinically significant failure to thrive**
- **Persistent or excessive diminished muscle tone or tension**

A high risk for developmental delay also exists when the multidisciplinary team determines that a parent of an infant or toddler has a developmental disability. *See Cal. Gov. Code §95014; 17 C.C.R. §52022(c).*

A developmental delay cannot be based on a temporary physical disability, a cultural or economic factor, the normal process of second language acquisition, or the manifestation of dialect and sociolinguistic variance. See 17 C.C.R. §52022(d).

### **Who can refer a child under three for an early intervention services evaluation? How is a referral made?**

*Anyone can make a referral for assessment to see if an infant or toddler is eligible for early intervention services.*

Every child who is suspected to be in need of early intervention services can be evaluated. Anyone can make a referral. The referral can be made orally or in writing. If you think a young child in your care may have developmental delays or disabilities, or has factors in his or her life that may lead to developmental delays in the future, make a referral for assessment.

Referral for an assessment should be made to the local regional center or school district. A service coordinator will be assigned to help during the eligibility determination process. See *Cal. Gov. Code §95018*.

#### ***Where you can have an impact***

You can make valuable contributions to the evaluation by providing information in the form of medical records and personal observations of the child's development.

An assessment will evaluate the child's progress in the five areas of development listed above. In addition, the assessment must address the unique strengths and needs of the infant or toddler, and identify the services necessary to meet those needs. Input from the family must be considered, including the family's priorities and concerns about the child and the provision of services. See 20 U.S.C. §1436(a).

### **How long will it take to determine if a child is eligible for early intervention services?**

*An assessment can only take place with a parent's consent. The assessment for services must be completed within 45 days of the initial request, and a meeting to share the results of the evaluation must also be held within that period. If the child is found to be eligible, a plan for services must also be developed in the 45-day timeframe. Only when*

*there are exceptional circumstances can the 45-day deadline be extended. See Cal. Gov. Code §95020(b); 17 C.C.R. §52162 & §52086.*

### **What is an individualized family service plan (IFSP)?**

*An individualized family service plan (IFSP) is the plan for services created for an eligible child under three years old. The plan is created by a multidisciplinary team that includes the parent or parents. See 20 U.S.C. §1436(a) & (c).*

The IFSP must be in writing and contain the following:

- Current levels of child's development, including
  - vision, hearing, and health status
  - cognitive development
  - communication development
  - social and emotional development
  - adaptive development, based on evidence measured or observed by a qualified professional
- A statement of the family's concerns, priorities and resources related to meeting the needs of the child (the family may choose not to include this information)
- Expected outcomes
- The criteria, procedures, and timelines used to determine the progress toward the outcomes, and whether revisions are needed
- Specific early intervention services needed to meet the unique needs of the child, including information about
  - how often and for how long the services should be provided
  - where the services should be provided
  - the method of delivering the services
  - ways of providing services in a natural environment (settings that would be normal for the child's non-disabled peers)
- The agency or agencies responsible for providing the identified services
- Timelines for the beginning and ending of services
- Identification of the service coordinator
- A plan for transitioning the child to preschool or other services

*See 20 U.S.C. §1436(d); Cal. Gov. Code §95020; 17 C.C.R. §52106.*

Before services can be provided, the child's parent must give informed, written consent. Parents may consent to some services and not to others. They can also agree to services, but disagree about the frequency, or where services are to be delivered. See 20 U.S.C. §1436(e); 17 C.C.R. §52102(j).

The IFSP must be reviewed at least every six months and rewritten every year. See 20 U.S.C. §1436(b); Cal. Gov. Code §95020(f); 17 C.C.R. §52102.

***Where you can have an impact***

Be creative when asking for services for a child in your care. A vast array of services is available, but you should be prepared to make a good argument for why a particular service is essential.

**What kinds of services are provided through the early intervention services?**

The individualized family service plan may include the following:

- Family training, counseling, and home visits
- Special instruction
- Speech-language pathology and audiology services
- Occupational therapy
- Physical therapy
- Psychological services
- Service coordination services
- Medical services for diagnostic or evaluation purposes
- Early identification, screening, and assessment services
- Health services necessary for the child to benefit from the other early intervention services
- Social work
- Vision services
- Assistive technology devices and services
- Transportation and related costs necessary for the family and child to receive early intervention services
- Nursing
- Nutrition

See 20 U.S.C. §1432(4)(E) & (F); 34 C.F.R. §303.12(d).

**What does the service coordinator do?**

*The service coordinator implements the individualized family service plan.*

The service coordinator is responsible for making sure that the plan is followed, and for coordinating with other agencies and individuals to

ensure that services are provided. Service coordinators must be trained to work with infants and toddlers and meet competency requirements set by federal regulations. The law is specific about the duties of a service coordinator. The coordinator must

- Provide notice to the parent and obtain consent to evaluate and provide services
- Serve as the primary point of contact for coordinating services
- Serve as the primary contact for assistance to the parent, service providers and public agencies
- Inform the parent of the availability of additional non-required services
- Facilitate the delivery of services
- Continuously seek the appropriate services and service providers necessary to enhance the development of each child, for the duration of the child's eligibility
- Coordinate the performance of initial and subsequent evaluations and assessments
- Participate in the development and review of the IFSP
- Monitor the delivery of services and the progress toward the outcomes through the periodic review of the IFSP
- Inform the parent of advocacy services and procedural safeguards made available by the regulations
- Facilitate the exchange of information between service providers including health providers, medical case managers, regional centers and schools
- Facilitate the development of transition steps in the IFSP

Service coordination may include medical case management services provided by another agency, such as the High-Risk Infant Follow-up Program, California Children Services or Medi-Cal Managed Care.

*See 20 U.S.C. §1436(d)(7); Cal. Gov. Code §95018; 17 C.C.R. §52121.*

Another potential source of support is one of California's 55 Family Resource Centers and Networks. These centers are staffed by parents of children who have special needs. The Family Resource Centers and Networks are designed to provide information and support to parents, families, and children. You can learn more at <http://www.dds.ca.gov/EarlyStart/ESFamResource.cfm>.

## **How does a toddler move from an early intervention program into special education at three years old?**

*The child must be re-evaluated for a disability, and a transition planning conference must be held.*

Once a child turns three, he or she is no longer eligible for early intervention services, but may be eligible special education services. The local education agency, usually the school district, has responsibility for providing services to eligible children ages three and older. For a child to be eligible for special education services, he or she must be evaluated and an IEP must be developed.

A new evaluation, the development of a new plan, or a change in the agencies involved can create problems, including the interruption of important services. In order to create a smooth transition between the early intervention programs and special education preschool programs, the law requires that steps be taken to support the transition of a toddler with a disability to preschool or other appropriate services. See 20 U.S.C. §1436(d).

The local education agency must participate in the transition planning for toddlers served under the early intervention services. This must happen before the child is 2 years and 9 months old (or as early as 2-½, if agreed to by the parties). See 17 C.C.R. §52112(a).

When the child is 2-½ years old, the service coordinator must

- Inform the parent that transition planning will occur within the following three to six months
- Notify the district that there will be a IFSP meeting, and that a representative must attend
- Set up a meeting to specify transition steps in the IFSP within 30 days of notifying the above parties

See 17 C.C.R. §52112(b).

The law also outlines very specific steps for transition. These must be in the IFSP by the time the toddler is 2 years and 9 months old. The steps can be found in 17 C.C.R. §52112(c)–(e). They ensure that a toddler has a smooth transition to the next stage of services.

Regional centers may continue providing services after a child turns three, but only until the beginning of the school term after the toddler's 3rd birthday. This can *only* happen if the district's special education preschool

program is not currently in session, and the multidisciplinary team decides that the services should be provided until the district's special education program resumes. See 17 C.C.R. §52112(f).

## **How are disagreements about early intervention services resolved?**

*Discussion with the service coordinator is the best way to resolve a disagreement. If that approach doesn't work, a parent can make a complaint, or request mediation conference or administrative hearing. The disagreement could regard a child's assessment, the IFSP, the delivery of services, or the environment in which the services are delivered.*

It is always a good idea to try talking with others, especially the family services coordinator. If that doesn't work, you may need to try dispute resolution. Dispute resolution for issues regarding children under three differs from dispute resolution for special education students over three.

### **1. Early intervention services complaint**

#### **What is an early intervention services complaint?**

*An early intervention services complaint alleges that a service provider has violated a federal or state law or regulation governing the provision of early intervention services under the IDEA. The service provider could be a regional center, educational agency or private provider. The complaint is filed with the Department of Developmental Services.*

#### **a. Where to send a complaint about early intervention services**

The complaint should be made in writing to:

Department of Developmental Services  
Office of Human Rights  
Attn: Early Start Complaint Unit  
1600 Ninth Street, Room 240, M.S. 2-15  
Sacramento, CA 95814

Tel. (916) 654-1888  
Fax (916) 651-8210

#### **b. Who can file a complaint about early intervention services**

Any person or organization can make a complaint about a child's early intervention services.

**c. Information that should be in a complaint about early intervention services**

The complaint should

- Be in writing
- Include the name and address of the person making the complaint
- State that a regional center, educational agency or any private service provider receiving funds under Part C of the IDEA has violated a federal or state law or regulation governing the provision of early intervention services
- State of the facts supporting the allegation
- List the name of the party who is allegedly responsible for the violation
- Describe the voluntary steps taken at the local level to resolve the complaint, if any

The service coordinator can assist in the writing of the complaint if help is needed. *See 17 C.C.R. §52170.*

**d. Time restrictions on making a complaint about early intervention services**

A complaint must be filed within one year of the date that the alleged violation occurred, unless the violation is ongoing. If the complainant is requesting reimbursement or corrective action, the complaint must be filed within three years of the date of the alleged violation. *See 17 C.C.R. §52170(c).*

**e. Resolution of an early intervention services complaint**

Within 60 days of receiving a complaint, the Department of Developmental Services must do the following:

- Conduct an investigation.
- Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
- Review all relevant information.
- Determine whether there has been a violation of a statutory or regulatory requirement.
- Provide a written decision to all parties, with findings and timelines for corrective actions, along with a provision of

technical services for the agency and the award of any monetary reimbursement or other corrective action.

*See 17 C.C.R. §52171.*

## **2. Mediation and due process hearings for early intervention services**

### **What are mediations and due process hearings in early intervention services?**

*Mediation and due process hearings are two ways to resolve disputes about the provision of early intervention services. The structure of mediations and hearings is similar to that used in cases involving children ages three and older. (See Section VIII of this chapter.)*

Due process hearings regarding early intervention services are also called “fair hearings.”

When a request for a due process hearing is made, the DDS will encourage the parties to first try mediation. However, mediation is a voluntary process, and can only take place if all parties agree to participate. Participation in a mediation is not a prerequisite to a due process hearing.

Regardless of whether the process is a mediation conference, a due process hearing, or both, the same timelines apply.

A mediation or due process hearing can be requested by a *parent* if a district or regional center

- Proposes to initiate or change the identification, assessment, placement or provision of services for a child, or
- Refuses to initiate or change the identification, assessment, placement or provision of services for a child

A mediation or due process hearing can be requested by a *district or regional center* if the parent

- Refuses to consent to an assessment or any part it

#### **a. Where to send a request for an early intervention services mediation and/or due process hearing**

A request should be sent to the regional Office of Administrative Hearings.

If you live in Inyo, Kern, Los Angeles, Mono, Orange, San Luis Obispo, Santa Barbara, or Ventura counties, mail or fax the request to

Office of Administrative Hearings  
320 West Fourth Street, 6th Floor, Suite 630  
Los Angeles, CA 90013

Tel. (213) 576-7200  
Fax (213) 576-7244

If you live in Riverside, Imperial, San Bernardino, or San Diego counties, mail or fax the request to

Office of Administrative Hearings  
1350 Front Street, Suite 6022  
San Diego, CA 92101

Tel. (619) 525-4475  
Fax (619) 525-4419

For all other counties, mail or fax the request to

Office of Administrative Hearings  
560 J Street, Suite 300  
Sacramento, CA 95814

Tel. (916) 445-4926  
Fax (916) 323-6439

**b. Information that should be in a request for mediation and/or a due process hearing for an early intervention services case**

The request for a due process hearing should

- Be in writing
- State the name, address, and phone number of the person filing the request
- Include the name and address of the child
- State the name, address, and phone number of the party with whom there is a disagreement
- Explain the problem and the facts supporting it

- Suggest resolution to the problem, to whatever degree a resolution can be known at that time
- State in the request whether you are interested in attending a mediation conference
- List a public place convenient for you to attend the conference or hearing
- Be signed and dated

The DDS has a form that can be used for requesting a mediation and /or due process hearing. The form can be found at [http://www.dds.cahwnet.gov/complaints/complt\\_eshr.cfm](http://www.dds.cahwnet.gov/complaints/complt_eshr.cfm), or you can request that the form be sent to you.

**c. Timelines for early intervention services mediation or due process hearings**

Within 30 calendar days of the receipt of the written request by OAH, the mediation conference and/or the due process hearing must be conducted and a written copy of either the mediation agreement or the hearing decision must be mailed to both parties. *See 17 C.C.R. §52172(d).*

The time and place of the hearing must be reasonably convenient for the parent.

The length of the hearing will depend on what issues and how long each side takes to present its case.

**What are the procedures for a mediation conference and/or due process hearing regarding early intervention services?**

*First, the OAH will notify the parties of the date and place of the mediation and/or due process hearing. Procedures that apply to both mediation conferences and due process hearings include the following:*

- The mediation conference and due process hearing should be conducted at a time and place reasonably convenient for the parent or person filing the complaint. *See 17 C.C.R. §52172(e).*
- Both meetings must be conducted in the language or other mode of communication of the family's choice, unless clearly not feasible to do so. *See 17 C.C.R. §52172(g).*
- The proceedings must be conducted by an impartial person knowledgeable in the laws governing early intervention services and administrative hearings. *See 17 C.C.R. §52173(e) & §52174(b).*

- The same administrative law judge will not be assigned to both the mediation conference and the hearing. See 17 C.C.R. §52173(d).
- Until an agreement is reached in a mediation or a decision is made by a hearing officer, the child will continue to receive the early intervention services currently being provided, unless the parties agree otherwise.

### **What are the parties' rights in a mediation conference and/or due process hearing regarding early intervention services?**

Any party to a mediation conference has the right to

- Be accompanied by any representative(s) of their choice
- Present relevant information about the issue of disagreement
- Obtain a written copy of the mediated agreement, signed by both parties

See 17 C.C.R. §52173.

Any party to a due process hearing has the right to

- Be accompanied by counsel and/or by individuals with special knowledge relating to the needs of infants/toddlers with disabilities
- Present evidence and confront, cross-examine, and compel the attendance of witnesses
- Prohibit the introduction of any evidence that has not been disclosed to the party at least five days before the hearing
- Obtain a written or electronic verbatim transcription of the proceedings
- Obtain written findings of fact and the decision
- Appeal the decision

See 34 C.F.R. §303.422-424; 17 C.C.R. §52174.

### **What is the “stay put” rule? What happens to services for an infant or toddler while any kind of dispute resolution is pending?**

*Once a complaint has been filed, or a mediation and/or due process hearing has been requested, the child has a right to continue to receive the early intervention services currently being provided, unless the parties agree otherwise. If the child is applying for services, he or she shall receive the services not in dispute, unless the parties agree otherwise. This is called the “stay put” rule. See 20 U.S.C. §1439(b).*

For children three years and older, the “stay put” rule might apply only when a due process hearing has been requested, not when a complaint is filed or only a mediation is requested. (See Section VIII of this chapter.)

## **X. An overview of Section 504**

Students who are not eligible for services under the IDEA may be eligible for services under Section 504 of the Rehabilitation Act of 1973. This was the first law enacted to protect people with disabilities.

The Act states that no program receiving federal funds can discriminate or excluded based solely on disability. Schools receive federal funding, and therefore must ensure that students with disabilities are not treated differently. School districts must also take steps that range from accommodating special needs to providing special instruction and related services.

The intent of Section 504 is to remove barriers so that people with disabilities can fully participate in “life activities,” such as learning in school. See 29 U.S.C. §794(a)–(b); 34 C.F.R. 104.4(a).

The definition of disability under Section 504 is much broader than under the IDEA, so many students who are not eligible under the IDEA may be eligible for support under Section 504. As discussed earlier in this chapter, Section 504 defines disability as a *physical or mental impairment that substantially limits a major life activity*. Learning is a “major life activity” for children. Therefore, impairments that affect a student’s ability to learn may qualify him or her for services under Section 504.

Eligibility under Section 504 is not confined to the impact of disability on education. Learning is just one major life activity. Walking, seeing, hearing, breathing, speaking are others. If a student has an impairment that substantially limits any major area of life activity, he or she may receive accommodations at school. This is not true for the IDEA; eligibility under the IDEA requires that a disability affects a child’s ability to learn and benefit from education.

School districts are required to create procedures and systems for implementing Section 504. In addition, each district must designate at least one person to coordinate the district’s compliance efforts. Ask for a copy of the district’s procedures and for the name of the person designated as the Section 504 compliance officer. See 34 C.F.R. §104.7.

### **How does a student become eligible for 504 services?**

*Districts are required to identify students who may have disabilities, and evaluate whether they need extra support in order to get a meaningful education. Caregivers, foster parents, caseworkers, and other education advocates all may request an assessment for 504 services. The assessment must be done at no cost to the student.*

As under the IDEA, districts must use valid assessment tools administered by trained professionals. The assessment tools must also be tailored to test specific needs and accurately reflect the student's abilities. Unlike the IDEA, there are no specific timelines for the district to finish an evaluation. See 34 C.F.R. §104.35.

### **Is parental consent required for assessment under Section 504?**

*No.*

Section 504 does not have a provision requiring parental consent prior to an initial assessment. If a district representative states that the district will not do an assessment because it lacks parental consent, ask to see the district's policy on consent and on who has authority to make decisions and requests for Section 504 services.

### **How often does the district have to re-evaluate students?**

*The law does not specify how frequently a student must be re-evaluated.*

Section 504 requires only periodic reassessment of students with disabilities. The law does not state clearly how often this must occur. It does say that a policy requiring evaluation at least once every three years (like under the IDEA) would satisfy this requirement.

Like the IDEA, Section 504 also requires a reassessment when the district proposes to make significant changes to a student's program. See 34 C.F.R. §104.35(a) & (d).

### **Is the district required to develop a plan for the student?**

*Yes. Section 504 requires a plan for meeting the student's special needs, but it doesn't require that the plan be written. See 34 C.F.R. §104.35.*

### ***Where you can have an impact***

*Urge the district to move quickly to finish the evaluation.  
If the district doesn't have a policy or set timelines for  
completing the evaluation, ask that the district use the  
IDEA evaluation timelines as a guide.*

### **Who develops the 504 plan?**

*There is no clear guidance in the law about who specifically should be involved in the development of the 504 plan. It does say that decisions about placement and services must be made by a group of people who know the child, understand the assessment data, and know about the support available within the district.*

You can ask to be on the 504 team to share your information about the student's strengths and needs. See 34 C.F.R. §104.35(c)(3).

### **What kind of services can be put into a 504 plan?**

*Section 504 provides regular or special education, and related aids and services, that are designed to meet an individual student's needs. This could be anything from seating a student near the teacher for extra help, allowing extra time to take tests, or providing specialized instruction and related services. See 34 C.F.R. §104.33, §104.34, §104.35, & §104.36.*

For a student who has challenging behavior, a behavior plan, counseling, or an aide may be necessary in order for him or her to participate in school. For a student who is hearing impaired, a signing interpreter or written lectures might be included in the plan.

In 1991, the US Department of Education issued a joint policy memorandum that gave specific examples of some adjustments that could be made in regular education programs to help students with additional needs. Those adaptations include the following:

- Providing a structured learning environment
- Repeating and simplifying instructions about in-class and homework assignments
- Supplementing verbal instructions with visual instructions
- Using behavioral management techniques
- Adjusting class schedules
- Modifying test delivery

- Using tape recorders
- Providing computer-aided instruction
- Using other audio-visual equipment
- Selecting modified textbooks or workbooks
- Tailoring homework assignments
- Consulting on special resources
- Reducing class size
- Use of one-on-one tutorials
- Using classroom aides and note takers
- Involving a services coordinator to oversee implementation of special programs and services
- Modifying nonacademic settings, such as lunch, recess, and physical education

These are examples; this list is not an all-inclusive. Be creative! Your suggestions about how a student can participate in school can provide important insights into what will help this child.

### **Is the district required to educate the student in a regular classroom?**

*Yes, if possible. Unless an IEP or 504 plan requires another arrangement, a child must be educated in the school that he or she would otherwise attend and be with non-disabled classmates as much as possible. See 34 C.F.R. §104.34(a).*

### **How are disputes resolved in Section 504 matters?**

*Section 504 requires that school districts develop dispute resolution procedures. The law requires districts to have procedural safeguards, including the following:*

- Notice regarding any plans or actions school officials are considering for a child
- An opportunity for parents to review the child's records
- An impartial hearing with opportunity for participation by parents and representation by an attorney
- The right to appeal a decision

The law is not specific about how the procedural safeguards are to be enacted, although the law states that compliance with the IDEA procedures would be sufficient. See 34 CFR §104.36.

## **What if the district refuses to develop a 504 plan, or there appears to be some other sort of discrimination against the student?**

*Dispute resolution may be necessary.*

If an individual wants to challenge the district regarding the identification, assessment, or educational placement of a child, he or she should request a hearing. Ask for a copy of your district's 504 procedures to determine your next step. Many districts have chosen to use the same due process procedures for both the IDEA and Section 504.

Remember that a parent has the right to be represented by an attorney or a non-attorney advocate.

Another route for addressing problems under Section 504, particularly if there is an allegation of discrimination on the basis of disability, is to file a complaint with the US Office of Civil Rights. (See Section VIII in this chapter for more information.)

## **XI. Conclusion**

All students are entitled to an education that helps prepare them for life. If a student has some type of disability, he or she may have a right to a vast array of services and accommodations.

If you know a child who needs more help than he or she is getting in school, advocate for special education services that address the child's individual needs.

## Action points: Special education

- Ask (in writing) for a special education assessment if you suspect a child or youth has a problem that is interfering with his or her ability to learn.
- Remember to ask for an assessment under both the IDEA and Section 504.
- Make sure the district evaluates in all areas of suspected disability.
- Be the *squeaky wheel that gets the grease*. Make sure the district follows the required timelines and does everything necessary for a student.
- If things are not going well, ask for a meeting.
- Share your knowledge about the child with the school district.
- Become an active member of the IEP team.
- Invite people to the IEP team who can help you advocate for the student.
- Involve the student in the planning process.
- Make suggestions for how the school can best serve the student.
- Scrutinize all aspects of the IEP to make sure the program will really help the student.
- Ask for summer special education services if the child needs them.
- Make sure that transition services are part of a child's IEP beginning at age 14.
- If you think a student is being discriminated against, file an OCR complaint.

# TIPS FOR YOUTH

## Need extra help in school?

Are you

- Failing classes?
- Having a hard time understanding or concentrating in school?
- Getting in trouble all the time and can't help it?
- Having trouble reading, writing, or understanding math?
- Feeling depressed or stressed and not doing well in school?

You might be eligible for **extra help** that can help you **do better in school**. Special education helps all sorts of students—students with learning difficulties, physical impairments, and behavior or emotional problems.

## What can YOU do to get more help?

**Ask for an assessment** if you're having problems, but are not sure why. Ask the school to test you to find out why you are having trouble. The assessment will also help the school decide if you are eligible for special education and other supportive services.

**Ask for a meeting** to talk about your education program. Use the meeting to talk about the problems you're having and ways to make your school program work for you. If you already have an IEP (special education plan), ask that your IEP team participate in the meeting.

**Ask an adult or parent for help** in challenging a school's delay or denial of services.

This is not legal advice. If you need legal advice, seek the help of a lawyer.

## Chapter 4: Discipline

### The three most important things to remember about discipline

- ◆ Students have a right to an education, even if they misbehave at school.
- ◆ If students face being removed from school, they have a right to know why and to tell their side of the story.
- ◆ Students have a right to due process.

#### I. Introduction to discipline

Every child has a right to education. Along with that right, students have responsibilities, including following rules. If rules are broken, school districts can impose punishment to try to correct the behavior or to prevent it from happening again. However, schools must make sure that students have a chance to tell their side of the story and to voice an opinion about whether the punishment is fair.

This chapter provides information about the ways that a school district can correct or punish behavior. It also describes tools for challenging discipline when students believe it's not fair or right.

A student with a disability has additional rights when facing discipline. In a few situations, those rights may exist even when a student with a disability has not yet been found eligible for special education services. See Chapter 5 for more information on the rights of students with disabilities.

Remember that “parent” can mean more than just a biological parent or legal guardian. Keep in mind too, that in discipline matters, the rights mostly flow to the student. For example, the student has a right to notice of discipline. A parent may also have that right, but in discipline situations, students have an independent right.

For information on how to read the references to law in this chapter, see *How to Read Citations and Find Laws*.

## **II. Student responsibilities at school**

### **What are a student's responsibilities at school?**

*Students must*

- Attend school and not be late to classes
- Follow school rules while attending, going to, or coming from a school-sponsored activity; this includes lunch, even if off campus
- Obey directions and be respectful of teachers and others in authority
- Be kind and courteous to other students
- Participate in the orderliness of the school
- Not use profane or vulgar language
- Be diligent in study
- Come to school clean and neatly dressed
- Not commit any of the acts listed in California Education Code §48900 (see Appendix D)

### **How do students know what behavior is expected?**

*All students should have a copy of the school rules. If the student you are working with didn't get one, ask the school office for it. If the rules are confusing, ask the school principal for clarification.*

### **What happens if a student misbehaves at school?**

*Teachers, the principal, and the superintendent can use a variety of methods to discipline a student.*

For example, districts can

- Take away privileges
- Contact a parent or guardian
- Require a conference with the teacher or principal
- Impose an in-school suspension or detention that separates the student from other students
- Refer the student for outside help, such as counseling, anger management or a drug and alcohol program
- Immediately remove the student from school in an "emergency situation"—one where there is danger to students or school personnel

- Suspend the student from a class or school for a certain number of days
- Expel the student up to the end of the next semester, or in some cases, up to a year
- Call the police or make a referral to juvenile court if a crime is alleged

### **III. Limits on discipline**

#### **Are there limits to the discipline that a school district can impose?**

Yes.

Teachers and other school staff may not verbally or physically abuse students.

Students are entitled to an opportunity to hear why they are being punished and to challenge the punishment, or at least tell their side of the story.

#### **What is corporal punishment? Is it allowed in schools?**

*Corporal punishment means intentionally causing physical pain to a student. School staff or others engaged in a public school may not use corporal punishment against a student.*

Using a reasonable amount of physical force to stop a situation where there is a threat of physical injury to people or damage to property is not considered corporal punishment. Physical force can also be used in self-defense, or to obtain possession of weapons or other dangerous objects in the control of a student. See *Cal. Ed. Code §49000–§49001*, which can be found in *Appendix D*.

### **IV. Grounds for being removed from school**

#### **On what grounds can a student be removed from school?**

*Removing a child from school is the most severe form of punishment, and can only be used if the behavior warrants it. In California, a student may not be suspended or expelled unless it is determined that he or she has committed one of the acts listed in California Education Code §48900.*

The following are summaries of prohibited acts found in Cal. Ed. Code §48900

- (a) **Injuring another**  
Causing, attempting to cause, or threatening to cause physical injury to another person
  - Willfully using force or violence against another person, except in self-defense
- (b) **Weapons**
  - Possessing, selling, or otherwise providing any firearm, knife, explosive, or other dangerous object (unless the student obtains *written permission* from a certificated school employee to possess the item, and the principal or the designee of the principal agrees)
- (c) **Drugs or alcohol**
  - Unlawfully possessing, using, selling, otherwise providing, or being under the influence of any controlled substance (as defined in the California Health and Safety Code §11053), alcoholic beverage, or an intoxicant of any kind
- (d) **Providing fake drugs or alcohol**
  - Unlawfully offering to provide any controlled substance, alcoholic beverage, or intoxicant, *and* either selling, delivering, or otherwise providing to any person a fake drug, alcoholic beverage or other intoxicant.
- (e) **Robbery and extortion**
  - Committing or attempting to commit robbery or extortion
- (f) **Property damage**
  - Causing or attempting to cause damage to school or private property
- (g) **Theft**
  - Stealing or attempting to steal school or private property
- (h) **Tobacco**
  - Possessing or using tobacco or any products containing tobacco or nicotine (e.g., cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel)

- (i) **Profanity and obscene acts**
  - Committing an obscene act or engaging in “habitual” profanity or vulgarity
- (j) **Drug-related equipment**

Unlawfully possessing or offering, or arranging or negotiating to sell any drug paraphernalia (as defined in Health and Safety Code §11014.5)
- (k) **Disruptive behavior**
  - Disrupting school activities or otherwise willfully defying the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties
- (l) **Possession of stolen property**
  - Knowingly receiving stolen school or private property
- (m) **Possession of a look-alike gun**
  - Possessing an imitation firearm (a fake gun that looks so much like a real firearm that most people would think that it is real)
- (n) **Sexual assault**
  - Committing or attempting to commit a sexual assault (as defined in California Penal Code §§261, 266c, 286, 288, or 289) or committing a sexual battery (as defined in P.C. §243.4)
- (o) **Harassing a witness**
  - Harassing, threatening, or intimidating a student who is a witness in a school disciplinary proceeding for the purpose of either preventing that student from being a witness and/or retaliating against that student for being a witness
- (p) **The prescription drug Soma**
  - Unlawfully offering, arranging to sell, negotiating to sell, or selling the prescription drug Soma
- (q) **Hazing**
  - Engaging in or attempting to engage in hazing (as defined in Cal. Ed. Code §32050)
- (r) **Sexual harassment**
  - Committing sexual harassment (as defined in Cal. Ed. Code §§212.5 & 48900.2); this only applies to grades 4 through 12

- (s) **Hate violence**
  - Causing, attempting to cause, threatening to cause, or participating in an act of hate violence (as defined in Cal. Ed. Code §§233 & 48900.3)
- (t) **Harassment, threats or intimidation**

Intentionally engaging in harassment, threats, or intimidation directed against school district personnel or students, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting class work, creating substantial disorder, and invading the rights of either school personnel or students by creating an intimidating or hostile educational environment; this only applies to grades 4 through 12. See Cal. Ed. Code §48900.4.
- (u) **Terroristic threats**
  - Making terroristic threats against school officials, property, or both (including written or oral statements threatening death, great bodily injury, or property damage of more than \$1,000); the person making the threat does not need to intend to carry it out, but the nature of the threat must be such that it causes another person to reasonably be afraid it *will* be carried out. See Cal. Ed. Code §48900.7.

None of the sections regarding drugs prohibit the use or possession of a student's own prescription products.

**Important:** The list above is a summary of the law. If you are helping a child accused of one of these acts, be sure to read the law so you can determine whether it applies to your case. See Cal. Ed. Code §48900 in Appendix D.

### **Does the bad behavior have to occur *at* school to be punishable?**

*No. A student can be suspended or expelled for one of the above listed acts if it is related to attendance at school or a school activity. An offense does not have to occur on school grounds or during regular school hours.*

This includes, but is not limited to, acts committed in the following instances:

- While on school grounds
- While going to or coming from school
- During the lunch period, whether on- or off-campus

- During, going to, or coming from a school-sponsored activity See *Cal. Ed. Code §48900(r)*.

## **Can a student be suspended or expelled for missing school?**

*No.*

Schools must use alternatives to suspension or expulsion for a student who is truant, tardy, or otherwise absent from school. See *Cal. Ed. Code §48900(v)*.

## **Must the student be removed from school for one of the above listed acts?**

*There are a few acts for which suspension and expulsion are mandatory. However, for most violations, the discipline is up to the superintendent or principal, and the law allows alternatives to suspension and expulsion.*

In most cases, suspension or expulsion can be imposed only when other means of correction fail to bring about proper conduct. California law allows the superintendent or principal to decide whether an alternative to suspension or expulsion is appropriate. See *Cal. Ed. Code §48900(u) & §48900.6*.

There are some serious acts for which removal from school is mandatory, and other acts which allow suspension or expulsion for a first time offense, with no attempt at other corrective means. These are described in the sections below on suspension and expulsion. Keep in mind, however, that most student misbehavior should be addressed with alternatives to removal from school.

## **Are acts alleged to involve sexual assault, battery or harassment treated differently?**

*A student accused of sexual misconduct has the same basic rights as a student accused of another offense. The complaining witness has more protections when there are allegations of sexual misconduct than he or she would if some other accusation were being made. See *Cal. Ed. Code 48918(b)(5)*.*

## **What are a student's general rights when kicked out of school?**

*A student's rights depend on the punishment the district proposes.*

In general, the student has a right to

1. Be notified that he or she faces the possibility of suspension or expulsion
2. Be told the reasons why he or she is being kicked out of school and be given an explanation of which rule was broken
3. Tell his or her side of the story

The rest of this chapter discusses specific rights and procedures regarding suspension and expulsion.

## **V. Suspension**

### **What is a suspension?**

*A suspension is a short-term removal from class or school.*

There are three types of suspension, each with different durations:

- **Suspension by a teacher**  
Up to two days (see *Cal. Ed. Code §48910(a)*)
- **Suspension by a principal, the principal's designee or the superintendent of schools**  
Up to five days (see *Cal. Ed. Code §48911(a)*)
- **Suspension by the governing board of a school district**  
Up to 20 days in a school year (see *Cal. Ed. Code §48912(a) & §48903*)

There are exceptions to these time limits; in certain situations, the duration can be longer than what is listed above. Exceptions will be explained below.

### **In what circumstances can a student be suspended from school?**

*Any suspension must be based on the behavior listed in Cal. Ed. Code §48900. This list is summarized above in Section IV of this chapter, and the law can be found in Appendix D.*

### **Can a student be suspended for a first-time offense?**

*Schools must try to use other means of correcting a student's behavior before using suspension to punish a student. This means that for a first offense a teacher or principal should use alternatives to removing the student from school.*

Alternatives include, but are not limited to, counseling, anger management programs and community service. See *Cal. Ed. Code §48900(u) & §48900.5*.

There are exceptions to this rule. Students determined to have committed some types of assaults, drug violations, weapon possession, or serious crimes like robbery or extortion can be removed from school for a first time offense.

Violations of (a) through (e) in Section IV may result in removal for a first offense, even when other forms of behavior correction have not been tried. See *Cal. Ed. Code §48900(a)–(e) & §48900.5*.

In addition, if the principal or superintendent of schools determines that a student's presence at school causes a danger to people or property, or threatens to disrupt the instructional process, a student can be suspended for a first offense for one of the acts above. See *Cal. Ed. Code §48900.5*.

Finally, there are five acts for which suspension and expulsion are mandatory. These are referred to as “zero-tolerance” acts.

The zero-tolerance acts are

- Possessing, selling, or otherwise furnishing a firearm
- Brandishing a knife at another person
- Unlawfully selling a controlled substance
- Committing or attempting to commit a sexual assault
- Possession of an explosive

See *Cal. Ed. Code §48915(a)*.

A more detailed explanation of mandatory expulsion can be found in Section VI of this chapter.

Note also that even mandatory expulsions can be put on hold. See “suspended expulsions” below.

## **1. Suspension by a teacher**

A teacher may remove a student from his or her class for the day of the offense and the day after. A teacher may suspend a student for one of the acts in *Cal. Ed. Code §48900*. A teacher can only suspend for his or her class, and only for two consecutive days. See *Cal. Ed. Code §48910*.

**What is the process for a suspension by a teacher?**

*The teacher must immediately send the student to the principal or the principal's designee. As soon as possible the teacher must ask the parent or guardian to come to a parent-teacher conference regarding the suspension. When possible, a school counselor or psychologist must attend the conference; a school administrator must attend as well, if a teacher, parent or guardian requests it. See Cal. Ed. Code §48910.*

**Can a teacher require that a parent or guardian attend part of a school day?**

*Yes. Districts can have a policy allowing teachers to require a parent or guardian attend a part of a school day with his or her child.*

A notice to attend can be sent if the child has been suspended by a teacher for an obscene act, engaging in habitual profanity, disruption of school activities, or otherwise willfully defying the valid authority of school personnel. See Cal. Ed. Code §48900(i) & (k).

The district's policy must take into account reasonable factors that may prevent a parent or guardian from attending. See Cal. Ed. Code §48900.1.

**2. Suspension by a principal, principal's designee or the superintendent of schools**

A principal or superintendent can suspend a student from school for up to five days.

The principal, principal's designee, or the superintendent of schools may suspend a student for up to five consecutive days for behavior listed in Cal. Ed. Code §48900. See Cal. Ed. Code §48911(a). If a recommendation for expulsion is being processed by the district governing board, the suspension period can be extended.

**What is the process for a suspension by a principal or superintendent?**

*In most cases, students have the right to a conference with school district administration before serving the suspension.*

The student has a right to give his or her side of the story at an informal conference with the principal, the principal's designee, or the superintendent. The law states that "whenever practicable," the teacher or

school staff person who referred the student for suspension should be present at the conference.

At the informal conference, the school must give the student an oral or written description of

1. The alleged problem behavior
2. The school district rule that was broken
3. An explanation of the facts showing that the problem behavior happened

A student must be given the opportunity to tell his or her side of the story, and can present evidence in his or her defense at the informal suspension conference. See *Cal. Ed. Code §48911(b)*.

### **Is a parent or guardian required to attend the informal conference?**

*No, but the school must make efforts to reach to a parent or guardian.*

At the time of suspension, a school is required to make a reasonable effort to reach the parent or guardian by phone or in person. A parent or guardian is required to respond to a request to attend the informal conference. In most cases, it is better for the student if the student's parent or guardian attends the informal conference, although the law specifically states that a school cannot penalize a student if the parent or guardian does not come to the conference.

A student cannot be kept out of school for the failure of a caregiver to attend a meeting. This means a school administrator cannot say, "You're suspended until your parent comes in to talk with me."

Whenever a student is suspended from school, the school must notify the parent or guardian in writing. See *Cal. Ed. Code §48911(d) & (f)*.

### **3. Emergency situation suspensions**

Where an "emergency situation" exists, a school can suspend a student before there is an informal conference.

An emergency situation is one that presents an immediate danger to the life, safety, or health of students or school personnel. If the principal, the principal's designee, or the superintendent determines that there is an emergency situation, a student can be suspended *before* there is an informal conference.

If a student is immediately suspended in an emergency situation, an informal conference must be held within two school days. Both the parent and the student must be notified of this right, as well as the right to return to campus for the purpose of the conference. See *Cal. Ed. Code §48911(c)*.

#### **4. Suspension by a school district governing board**

A governing board may suspend a student for up to 20 days in a school year.

A school district governing board may suspend a student for up to 20 days in a school year, or up to 30 days if the student has transferred to another school during that year. See *Cal. Ed. Code §48912 & §48903*.

These days are cumulative, not consecutive. If a student has been suspended other times during the year, those days are counted as well. The board cannot suspend a student for more than a total of 20 days (or 30, if the student has moved) in a school year.

#### **What is the process for a suspension by a governing board?**

*The school district governing board will hold a session to consider suspension. These sessions are to be closed to the public if private information about a student will be presented. As a result, most hearings for suspension and other discipline matters (except expulsion) should be scheduled as closed to the public. A request can be made to have the session open to the public.*

Before calling a closed session to consider a discipline matter, the governing board must send a written notice to the student, parent, or guardian. The notice must be delivered by registered or certified mail or by personal service. The notice should explain that a closed session is planned, and should give 48 hours to request in writing that the session be open. Issues of confidentiality and the privacy rights afforded other students who may be involved will determine whether some parts of the meeting must remain closed. See *Cal. Ed. Code §48912(b) & (c)*.

#### **In what situations can a suspension be longer than 5 days?**

*There are three situations in which a suspension can be longer than five consecutive days.*

**Suspension imposed by governing board**

A governing board can suspend a student for up to 20 days in a school year, or even up to 30 if the student has changed school districts. See above. See *Cal. Ed. Code §48903 & 48912*.

**Danger to people or property and expulsion decision pending**

If an expulsion is being processed and there has been a determination that the student's presence at school would cause a danger to people or property, or a threat of disrupting the instructional process, the student can be suspended for more than five days. See *Cal. Ed. Code §48911(g)*.

Sometimes when a student is suspended, the school recommends to the governing board that the student be expelled. The school district governing board makes decisions about expulsion. If the governing board is in the process of deciding whether to expel a student and it will not have its decision before the end of the suspension period, the superintendent can extend the suspension. An extension can only be granted if the superintendent or his or her designee holds a meeting in which the student and parent or guardian are invited to participate. If, following that meeting, the superintendent decides that the student's presence at school (or in an alternative school setting) would cause a danger to people or property or a threat of disrupting the instructional process, the suspension can be extended.

The suspension can last for as long as it takes the governing board to make a decision about the expulsion. There are time limits on how long a governing board can take to make a decision. See Section VII of this chapter for more information.

**Continuation schools or classes**

If a student is in a continuation school or class, the governing board of the district can suspend a student for the remainder of the semester. See *Cal. Ed. Code §48912.5*.

**What should I do after a student is suspended?**

*Set a meeting with school officials. At the very least, it is an opportunity for communication.*

School districts can have a policy allowing a meeting between school officials and a parent or guardian of a suspended student. It is an opportunity to discuss the cause of the suspension, the length of the suspension, school policies, and other related matters. The law also states that a parent or guardian "shall respond without delay to any request from school officials to attend a conference regarding his or her child's behavior." No penalties can be imposed on the student for a parent

or guardian's failure to attend a conference. Remember that a student cannot be kept out of school for the failure of a caregiver to attend a meeting.

### ***Where you can have an impact***

Always count the days in a year that a student has been suspended.

A student may not be suspended for more than 20 days TOTAL in a school year. There are two primary exceptions: (1) if the student has transferred to another school, the total number of suspension days in a year can go up to 30. (2) The suspension can be properly extended while an expulsion decision is pending. Other exceptions are listed later in this chapter.

There is a clear limit on the number of days a student may be suspended in a year. This is a rule that, in some districts, is often broken. Help a student keep track of how much school they have missed because of suspension.

A meeting with school officials after a suspension is a good time to try to head off future suspensions and problems at school. If the school doesn't call a meeting, a parent, guardian, or the student should consider asking for meeting. Use the time to explore what led up to the incident, and see if there are things that can be done to avoid similar problems in the future. See *Cal. Ed. Code §48911(f) & §48914*.

### ***Where you can have an impact***

Attend informal suspension conferences. Ensure that the student's side of the story is heard. Make sure the alleged act is one listed in Cal. Ed. Code §48900.

Help the school be creative about alternatives to removing the student from school. Remind school personnel that children who are out of the home often miss school for other reasons and can have disrupted lives. Being excluded from school removes them from an important positive setting. Falling farther behind makes it more likely that the child will fail at school. Request that class work be provided during the suspension time, and help make a plan for the child to stay caught up in class work. Ask for a conference to plan for dealing with future behavior problems before they escalate.

## **VI. Expulsion**

Expulsion is the removal of a student from school until the governing board readmits the student. A date for review by the governing board must be set by the end of the semester following the expulsion, or, in the case of zero-tolerance acts, after one year. A student must be readmitted at that time, unless he or she has not followed the rehabilitation plan.

An expulsion means that a student cannot attend any of the regular schools in the district. See Cal. Ed. Code §48916(a).

### **In what circumstances can a student be expelled?**

*A student may only be expelled for acts listed in Cal. Ed. Code §48900(a)–(n) and §48900.2, §48900.3, or §48900.4. Expulsion is the most extreme form of punishment a school can impose and should be reserved for the most serious situations.*

The following are offenses that may result in expulsion:

- a. Injuring another
- b. Weapons
- c. Drugs or alcohol
- d. Providing fake drugs or alcohol
- e. Robbery and extortion
- f. Property damage
- g. Theft
- h. Tobacco use
- i. Profanity and obscene acts
- j. Drug-related equipment
- k. Disruptive behavior
- l. Possession of stolen property
- m. Possession of a look-alike gun
- n. Sexual assault
- o. Sexual harassment
- p. Hate violence
- q. Harassment, threats, or intimidation

A principal or a superintendent of schools can make a recommendation to expel a student, but only the board can make the decision to expel. See Cal. Ed. Code §48915.

Whether a student is recommended for expulsion depends, in part, on the reason the recommendation. For some serious acts, a principal or superintendent is required by law to recommend expulsion. For others, a

principal or superintendent can use his or her discretion to decide whether to recommend expulsion. See *Cal. Ed. Code §48915(a)–(f)*.

In most cases, schools must try other ways to correct the behavior of a student before resorting to expulsion. The only exceptions are for the five types of acts that result in mandatory expulsion. (See below.) For all other acts, expulsion is an appropriate punishment *only* if the circumstances warrant expulsion and if

- Other means of correction are not feasible or have repeatedly failed to bring about proper conduct, or
- Because of the nature of the act, the presence of the student creates a situation of continuing danger to the student or others

See *Cal. Ed. Code §48915(b) & §48915(e)(1) & (2)*.

In most situations, even if there is a recommendation for expulsion, the governing board is not *required* to expel a student. A decision still must be made about whether it is appropriate to expel a student.

### **When is expulsion mandatory?**

*The principal or superintendent is required by law to recommend expulsion and the governing board is required by law to expel a student who commits one of the following five types of acts.*

1. Possessing, selling, or otherwise furnishing a firearm
2. Brandishing a knife at another person
3. Unlawfully selling a controlled substance
4. Committing or attempting to commit a sexual assault, or committing a sexual battery as defined in §48900(n)
5. Possessing an explosive

See *Cal. Ed. Code §48915(a)*.

Districts do *not* have to try other means of correction before expelling a student for one of these five offenses. The rest of the expulsion process is the same as in other offenses. See *Cal. Ed. Code §48915(c) & (d)*.

Even a mandatory expulsion can be suspended, or put on hold. “Suspended expulsions” will be explained later in this chapter.

Sometimes these mandatory expulsion acts are referred to as “zero-tolerance” offenses. This list of offenses is based on state law, but is in response to the federal mandate for states to enact such laws. See *Federal Gun-Free Schools Act of 1994*.

***Opportunities suspended: The devastating consequences of zero-tolerance and school discipline policies***

Harvard's Civil Rights Project studied the effects of zero-tolerance and school discipline policies. The study found that students are being unfairly suspended and arbitrarily kicked out of school for incidents that could have been very easily handled using alternative methods. In addition, the study concluded that zero tolerance policies disproportionately affect minority children and children with disabilities.

**What can be done?**

- When advocating for a child who has been expelled, make sure the alleged incident really is one of the limited number of mandatory-expulsion acts.
- Talk with others in your area to see if the law disproportionately affects minority children or children with disabilities. If so, explore legal action.
- Seek changes that will make the application of the law fair.

**Serious acts for which expulsion is *not* mandatory**

There is a second level of serious charges that do not require expulsion. This is often misunderstood. The offenses are

1. Causing serious physical injury to another person, except in self-defense
2. Possession of any knife or other dangerous object of no reasonable use to the student
3. Unlawful possession of any controlled substance, except for the possession of not more than one ounce of marijuana
4. Robbery or extortion
5. Assault or battery upon any school employee

For these acts, the law states that the principal or superintendent "shall recommend" expulsion *unless* he or she finds that expulsion is inappropriate due to the particular circumstances. This means that for these offenses, a principal can decide to not recommend expulsion if something about the incident or the student's situation makes expulsion inappropriate. See *Cal. Ed. Code §48915(a)*.

Additionally, for this second level of serious charges, the governing board must only expel if other means of corrective action have been tried, are not feasible or the presence of the student causes a continuing danger.

Remember that the only time the governing board is not required to take these factors into consideration is for that first level of most serious acts. See *Cal. Ed. Code §48915(b)*.

### **What is a “suspended expulsion”?**

*An order of expulsion can be put on hold and the student can attend regular district schools.*

If a student is expelled, that order can be put on hold, or suspended for a year. “Suspended expulsion” has nothing to do with suspension—it just means that an expulsion is put on hold or “suspended” for a period of time. During that time, a student can be assigned to a school, class, or program that the district decides will help with rehabilitation of the student. It is a second chance, and it means having probationary status for a year. If the student completes the program of rehabilitation, the governing board must reinstate the student and may take the expulsion off of the student’s record.

If the student violates any of the district’s rules while the expulsion is suspended, the student will be expelled under the original order. See *Cal. Ed. Code §48917*.

A mandatory expulsion for a zero-tolerance act can be suspended.

## EXPULSION: VIOLATIONS AND DISTRICT RESPONSE

VIOLATION	PRINCIPAL OR SUPERINTENDENT	GOVERNING BOARD	BEFORE EXPELLING, BOARD MUST FIND...
1. Possessing, selling, or otherwise furnishing a firearm 2. Brandishing a knife at another person 3. Unlawfully selling a controlled substance 4. Committing or attempting to commit a sexual assault, or committing a sexual battery as defined in Cal. Ed. Code §48900(n) 5. Possessing an explosive	➤ Must immediately suspend, and ➤ Must recommend expulsion to the board	➤ Must expel if it finds that the student committed one of these acts	➤ Expulsion is mandatory; no additional findings required
1. Causing serious physical injury to another person, except in self-defense 2. Possession of any knife or other dangerous object of no reasonable use to the student 3. Unlawful possession of any controlled substance, except for the possession of not more than one ounce of marijuana 4. Robbery or extortion 5. Assault or battery upon any school employee	➤ Must recommend expulsion to the board, <i>unless</i> he or she finds that due to the particular circumstances, expulsion is inappropriate	➤ Upon recommendation for expulsion, the board <i>may</i> order the student expelled if it finds that the student committed one of these acts or one of the acts listed in Cal. Ed. Code §48900(a)–(e)	1. Other means of correction are not feasible or have failed, or 2. Due to the nature of act, the student's presence causes continuing danger
Any of the acts listed in Cal. Ed. Code §48900(f)–(m) and §48900.2, §48900.3, or §48900.4	➤ <i>May</i> recommend expulsion to the board	➤ Upon receiving recommendation for expulsion, the board <i>may</i> expel the student if it finds the student committed one of these acts	1. Other means of correction are not feasible or have failed, or 2. Due to the nature of act, the student's presence causes continuing danger

### What is the process for expulsion?

As described earlier, a district governing board makes the decision about whether to expel a student. Principals and superintendents can only make a recommendation for expulsion.

California law allows each school district to establish its own rules for the process of expelling students, but there are certain elements that must be included in every district's rules. While the procedures may be somewhat different from district to district, a student has important basic rights that all districts must protect. *See Cal. Ed. Code §48918.*

One of these rights is a hearing to determine whether a student should be expelled. The California Education Code gives specific guidelines about hearings and what level of due process must be provided by districts.

## **How long is an expulsion?**

*An expulsion order remains in effect until the governing board reviews it and readmits the student.*

At the time of the expulsion, a date must be set for the board to review readmission of a student to regular school programs. In most cases, that date cannot be later than the last day of the semester after the semester in which the expulsion occurred. See *Cal. Ed. Code §48916(a)*.

In cases involving mandatory expulsion, the date to review readmission is set one year from the date of the expulsion. However, even then the governing board can set an early date for readmission. The board can consider each case and decide if an earlier readmission date is warranted. See *Cal. Ed. Code §48916(a)*.

At the time set for review of readmission, the board will decide whether a student has met the conditions of the rehabilitation plan. If the student has done what he or she was supposed to do during the expulsion time, and the student is not considered dangerous, then the board must readmit the student. See *Cal. Ed. Code §48916(c)*. If the board does not allow a student to be readmitted to regular schools, it must give the reasons in writing and provide for a continued education program. See *Cal. Ed. Code §48916(c)*.

## **VII. Expulsion hearings**

The purpose of an expulsion hearing is to determine whether the student should be expelled. An expulsion hearing is an opportunity for the student and/or parent to challenge allegations of misconduct. Even if the student admits to the wrongdoing, the hearing can be used to make sure that the punishment is fair.

### **When will a hearing be scheduled?**

*An expulsion hearing must take place within 30 days of the date of the alleged act.*

### **Can a hearing be postponed?**

Yes.

A student can request that the hearing be postponed. In some cases, the student may need additional time to prepare for the hearing, or find an attorney or advocate to help. A request to postpone a hearing must be in writing. School district policies must allow for one postponement at the

request of the student, for a period of up to 30 calendar days. Additional postponements are at the discretion of the board. See *Cal. Ed. Code §48918*.

The superintendent is allowed to postpone the hearing in some limited circumstances. Cal. Ed. Code §48918(a) lists the types of situations in which a governing board may postpone a hearing to a later time.

### **What happens when a hearing is requested?**

*The district must provide the student with a written notice of the hearing 10 calendar days before the hearing date.*

The notice must include the following:

1. The date and location of the hearing
2. A statement of what the student is alleged to have done
3. A copy of the disciplinary rules related to the alleged violation
4. Notice of the student's or parent's obligation to, upon enrollment in a different district, inform the new district of expulsion status
5. Notice of opportunity for the student or the parent or guardian to be at the hearing, and to
  - have an attorney or non-attorney advisor at the hearing
  - get copies of all of the documents to be used by the school district at the hearing
  - ask questions of the district's witnesses at the hearing, and question any other evidence
  - present his or her own witnesses, documents, or other evidence

*See Cal. Ed. Code §48918(b).*

### **Who will conduct the hearing?**

*In some school districts, the governing board conducts the hearing. In others, the board appoints an administrative panel, or may contract with the county hearing officer or state Office of Administrative Hearings.*

If the board chooses to use an administrative panel, it must be an impartial group. There must be at least three people with teaching certificates on the panel, none of whom can be on the governing board or on the staff of the student's school. See *Cal. Ed. Code §48918(d)*.

### **Is the hearing open to the public?**

*In most cases, not unless the student requests it to be open.*

A hearing is closed to the public unless the student requests it to be open. A request for the hearing to be open to the public must be made in writing at least five days before the hearing. Even if the hearing is open, the decision-making process can be closed. This means that the governing board or administrative panel can meet without the student to discuss the decision. (This will most likely happen only after a hearing has been held.) However, if anyone else is allowed into a closed discussion session, then the student (and parent and counsel) must also be allowed into the session. See *Cal. Ed. Code §48918(c)*.

## **What can I expect at the hearing?**

The hearing can be formal or informal depending on how the governing board (or whomever they have assigned to conduct the hearing) wants to handle it. The hearing must be recorded in some way. Typically, a district will choose to use a tape recorder. See *Cal. Ed. Code §48918(g)*.

Usually, the district will go first and present documents, witnesses, and reasons why the student should be expelled. The student and family will then get an opportunity to present documents, witnesses, and reasons why the student should not be punished in the way proposed by the district.

## **What will the decision be based on?**

*The decision must be based on substantial evidence showing the student committed the act.*

Evidence can be in the form of testimony, written statements, documents (e.g., school records), or objects (e.g., a pocket knife or allegedly stolen property). Evidence is allowed into the hearing only if it is

- Relevant to the charges
- The kind of evidence that a reasonable person would usually rely on in a serious matter

*See Cal. Ed. Code §48918(h).*

Evidence cannot be based only on hearsay. Hearsay is a statement made by someone who is not at the hearing. A written statement is hearsay. A statement that someone says he or she heard someone else say is usually hearsay.

Hearsay is considered to be less reliable than a statement coming directly from the person. The person's demeanor cannot be seen, and there is no

opportunity to question the person about what he or she meant in the statement.

Sometimes hearsay is allowed in a hearing. If a witness would suffer from psychological or physical harm from testifying, a sworn statement may be allowed. *See Cal. Ed. Code §48918(f) to see whether a sworn statement should be allowed in your case.*

### **When will the decision be made?**

*The time frame for a decision depends on who holds the hearing—the governing board, or an administrative panel or hearing officer.*

#### **Hearings held by governing boards**

A decision must usually be issued within 10 days of the hearing; in some cases, however, the decision can be made up to 40 days from date student was removed from school.

If a hearing is held by the governing board, then it must make its decision within 10 days of the conclusion of the hearing. *See Cal. Ed. Code §48918(a).*

An exception to this rule is if the governing board does not meet on a weekly basis. In this case, it must make its decision within 40 school days of the date the student was removed from school. *See Cal. Ed. Code §48918(a).*

#### **Hearings held by hearing officer or administrative panel**

A decision must be issued within 40 days of the date the student was removed from school.

If a hearing officer or administrative panel conducted the hearing, a recommendation must be made to the governing board. The decision whether to recommend expulsion must be made within three school days of the end of the hearing. *See Cal. Ed. Code §48918(e).*

If the decision is to not expel, the matter is dropped and the student is to return immediately to school. *See Cal. Ed. Code §48918(c) & (e).*

If the decision is to expel, the hearing officer or administrative panel must write “findings of fact” in support of the recommendation and submit that to the governing board. *See Cal. Ed. Code §48918(f).* The governing board makes the decision to expel based on the findings of the hearing officer or panel. A student may be able to present additional arguments, or there

could even be a supplementary hearing before the board. Check local district rules and use this as an opportunity to present alternatives to expulsion. See *Cal. Ed. Code §48918(f)*.

The governing board must make its decision based on the findings of the hearing officer or administrative panel within 40 school days of the date the student was removed from school. See *Cal. Ed. Code §48918(a)*.

### **General rights**

A student may request a postponement of a decision.

The superintendent must send a written notice of the decision to the student or the student's parent or guardian. The notice must explain the right to appeal and the educational alternative placement to be provided to the student. See *Cal. Ed. Code §48919*.

### **What can I do to prepare for a discipline hearing?**

*Look at the school district's evidence. Before the hearing, you have a right to review the information that the school district plans to present. Ask for it.*

Prepare your case by figuring out where you disagree with the district. Think about whether you agree with the facts and the fairness of the punishment. Is there another explanation of what happened or why? Does the student agree that he or she committed the acts, but disagree about the level of punishment?

Bring documents and witnesses to the hearing. They should support your side of the story or your proposal for corrective action. Make three copies of the documents you want to present—one for the hearing officer, one for the school district, and one for your own use.

Write down questions that you want to ask your witnesses. Decide whether you need witnesses at the hearing who will not come unless required to. The student has the right to ask the governing board to issue a subpoena to order the witness to attend. See *Cal. Ed. Code §48918(h)(i)*.

Think of what school district's witnesses might say (or not say) at the hearing. The student has the right to ask them questions. Write out questions that you want to ask the school district's witnesses.

Be prepared to address the major issues in the hearing:

- Did the student commit an act included in Cal. Ed. Code §48900?
- Was it related to a school activity or attendance? *See Cal. Ed. Code §48900(r).*
- Have other possible means of correction been repeatedly tried? *See Cal. Ed. Code §48915.*
- If not, is the nature of this act really such that it presents a continuing danger?
- Even if the student committed the act, is this the right punishment?
- If the student is expelled, when should he or she be readmitted, and where should the student be during the expulsion period?
- If the student is expelled, what facts support a suspension of expulsion?

Bring a lawyer or advocate if you can. Students and their families have a right to be represented by legal counsel or a non-attorney advocate.

Review Chapter 1 for tips on how to prepare for a hearing.

### ***Where you can have an impact***

Although it is helpful to have an attorney for school hearings, it is not necessary. You can be a strong advocate for the student. Discipline hearings are informal and provide an excellent opportunity not only to challenge whether the student did what the school says he or she did, but also whether the punishment is appropriate. Districts will often consider other disciplinary sanctions when people supporting the student help develop a plan for re-entry into school.

### **What if the student loses the hearing?**

*A student or parent can appeal an expulsion if it is filed within 30 days of the governing board's vote to expel the student. See Cal. Ed. Code §48919.*

A governing board's decision to expel can be appealed to the county education office. The notice of the decision to expel should describe the student's rights and give instructions on how to appeal. Review Cal. Ed. Code §48919 through §48923 for the student's responsibilities when appealing. For example, it is the student's responsibility to get a written transcript of the expulsion hearing. The cost can be waived.

If the order to expel is suspended, the appeal still must take place within 30 days of the board's vote. If the suspension is revoked, there will be no later opportunity to appeal the expulsion. A student should think seriously before giving up the right to appeal.

### **Is an appeal like a repeat of the first hearing?**

*No. On appeal, evidence does not get presented again.*

First, the following questions must be asked:

#### **1. Did the governing board act outside its jurisdiction?**

Was the expulsion order based on an act included in Cal. Ed. Code §48900? Was the act related to a school activity? Were the time limits and notices followed?

#### **2. Was the hearing unfair?**

#### **3. Was there a prejudicial “abuse of discretion”?**

Were procedural requirements in the California Education Code followed? Was the decision not based on what is required in Cal. Ed. Code §48915 (including a decision as to whether other forms of correction have been repeatedly tried)? Was the decision to expel not based on the evidence presented at the hearing?

#### **4. Was important evidence missing at the hearing?**

This must be evidence that was not available at the time of the hearing, even if the student made a good effort to get it, or evidence that was improperly excluded from the hearing.

*See Cal. Ed. Code §48922.*

If the answer to one of these questions is yes, the governing board's decision to expel can be reversed, another hearing could be set, or the board could be required to make additional findings. *See Cal. Ed. Code §48923.*

If the answer to all of those questions is no, the governing board's decision will stand. Further appeals would have to be to superior court.

## **VIII. Education while suspended or expelled**

### **Does a regular education student have a right to education services during a suspension?**

*Sometimes.*

A school may place a suspended student in a supervised suspension class if he or she does not pose a threat of danger to others on campus, and if there is not a recommendation for expulsion. If a student is in a suspension class, teachers must provide assignments and tests that the student misses during the suspension. The student is responsible for requesting the assignments. *See Cal. Ed. Code §48911.1.*

The law does not say whether a student has the right to do classwork while suspended if he or she is not in a supervised suspension class. Teachers can require a student to make up work missed during suspension. *See Cal. Ed. Code §48913.* Although there may not be a specific legal right for a student to receive class assignments while suspended, child advocates should push to make sure he or she gets the assignments. If the teacher refuses, go up the chain of command. Argue that suspension is punishment enough and should not result in the student falling behind in school work.

### **Does a regular education student get educational services while expelled?**

*Yes.*

California law requires district governing boards to make sure an education program is provided to students who are expelled. Usually this is a program that is not at a regular school in the district. *See Cal. Ed. Code §48916.1.* Availability of these programs could be affected by budget cuts. Students who have been expelled under a mandatory expulsion have specific guidelines for their program of study. *See Cal. Ed. Code §48915(d).*

### **What does a student do during an expulsion?**

*The student will attend an education program and follow through with a rehabilitation plan.*

At the time of the expulsion order, the governing board will recommend a plan for rehabilitation for the student. The plan can include things like tutoring, a special education assessment, employment, community service, and a requirement for improved school work. Later, when

readmission to regular school is considered, the board will look at whether the student has met the conditions of the rehabilitation plan. This means that during an expulsion, a student needs to be working toward readmission to school.

## **IX. Readmission to school after an expulsion or suspension**

### **How can a suspended student get back into school?**

*A suspension is for a set amount of time. The student returns to school after that time period.*

Remember that there are limits to both the number of consecutive days and the total number of days in a year that a student may be suspended. (See Section V of this chapter.) The return to school after the suspension is automatic, although there should be an informal conference to discuss what happened.

### **How can an expelled student get back into school?**

*An expulsion order stays in effect until the governing board orders readmission. A date for the governing board to review readmission of the student must be set at the time of expulsion. In most cases, students should be readmitted at that time.*

A student has several choices.

#### **1. Wait for the board to consider readmission on the set date.**

At the time of the expulsion, a date must be set for the board to review readmission of a student to regular school programs. In most cases, the date cannot be later than the last day of the semester following the semester in which the expulsion occurred. See *Cal. Ed. Code §48916(a)*.

In cases involving mandatory expulsion, the date to review readmission is set one year from the date of the expulsion. However, the governing board can set an early date for readmission. The board can consider each case and decide if an earlier readmission date is warranted. See *Cal. Ed. Code §48916(a)*.

At the time set for review of readmission, the board will decide whether a student has met the conditions of the rehabilitation plan. If the student has done what he or she was supposed to do during the expulsion, and the student is not considered dangerous, the board must readmit the student. See *Cal. Ed. Code §48916(c)*. If the board does not allow a student to be

readmitted to regular schools, it must give the reasons in writing and provide for a continued education program. See *Cal. Ed. Code §48916(c)*.

## **2. Ask to be readmitted earlier.**

Each district is allowed to set rules and a process for requesting readmission. Those rules should be given to the student (or parent) at the time of the expulsion. If you do not have the rules, ask for a copy.

Read the rules carefully. Do they allow for a request for readmission *before* the required review? Districts may have a process in which a student can request an earlier review time. Even if the process is not spelled out in the district policies, a student could request an earlier review; the board might agree to consider the request.

You can help support the request for readmission by doing the following:

- Gather information about positive things the student has done since the incident, such as the following:
  - Getting into counseling
  - Completing anger management
  - Participating in drug/alcohol treatment
  - Attending another school program
  - Working
  - Participating in activities with peers—sports, arts classes, camp, etc.
  - Being involved in organized groups—religious organizations, scouts, team sports, etc.
  - Volunteering and community service
- Ask other adults, mentors, and supervisors to write letters of support.
- Bring supporters to the meeting where the request for readmission is reviewed.
- Help the student outline his or her goals, strengths, and interests. Include this information in the request for readmission.
- Think creatively about ways that the student could return to school. For example, if the district seems reluctant to grant the request, try proposing that the student return to school for a probationary period, attend half days, abide by a behavior plan, or get extra support. The district may be more willing to readmit the student gradually or with support.

### **3. Enroll the student in another school district.**

A student who has been expelled can request to enroll in another school district during the expulsion period. The parent or emancipated student must tell the new district about the expulsion status. *See Cal. Ed. Code §48915.1(b).*

When a student who has been expelled makes a request to enroll in another school district, whether the student is admitted depends on several factors:

- The seriousness of the act for which the student was originally expelled
- Whether the new district determines that the student poses a danger to others
- Whether the student has legal residence in the new district, or an inter-district agreement to attend

#### **Less serious acts**

If a student is expelled for an act not listed in Cal. Ed. Code §48915(a) or (c), the new district must hold a hearing to consider enrolling the student in a regular school. If the decision is that the student does pose a potential continuing danger to others, the district may deny enrollment during the expulsion period. Even if there is a decision that the student poses a danger, the district can allow enrollment, or it could allow enrollment with special conditions during the period of expulsion. The program may be something other than a regular school program. *See Cal. Ed. Code §48915.1(c) & (d).*

If the student is found *not* to pose a danger, the new district must allow the student to enroll during the expulsion period. *See Cal. Ed. Code §48915.1(e).*

To be enrolled in the new district, a student must be a resident of the district or an agreement between the old and new districts must be created.

#### **More serious acts**

If a student was expelled for a mandatory expulsion act or a serious act (see the list in Cal. Ed. Code §48915 (a) and (c)), the student cannot be admitted to any other school district before the end of the expulsion period. After that period, the new district can accept the student after a

hearing determines that he or she is not dangerous. The student must be a resident of the new district or there must be an agreement between the old and new districts. See *Cal. Ed. Code §48915.1*.

***Where you can have an impact***

- Keep the lines of communication with the school open, so that you can try to avoid the need for school discipline before it is imposed.
- Know about the student's behavior at school by keeping in touch with teachers and administrators.
- *Any time* there is an incident at school, ask for a meeting to talk about it. This will help you and the school better address problem behavior and also ensure that the school is following the rules when imposing discipline.
- When behavior has been a consistent problem, consider making a special education referral to evaluate the student. This could help determine whether there is a more serious emotional or behavioral disorder impairing the student's ability to learn. The student may be eligible for help.
- Keep all of the documentation you receive about school discipline.

## **X. Involuntary and opportunity transfers**

There are several situations in which a student can be transferred to another school for reasons that can be considered disciplinary. They include involuntary transfers to continuation schools, involuntary transfers to community day schools, and opportunity transfers. Each has different laws that apply. Some advocates report that these transfer procedures are used by the districts in almost every disciplinary case.

### **1. Involuntary transfer to continuation schools**

Under certain circumstances, a student can be transferred against his or her will to a continuation school. (See Chapter 2, or *Cal. Ed. Code §48430 through §48438*.)

A student can be involuntarily transferred to a continuation school only if the student has either

1. Committed an act included in *Cal. Ed. Code §48900*, or

## 2. Been habitually truant or irregular in attendance

In addition, an involuntary transfer to a continuation school can only be imposed when other means fail to bring about improvement in the student's behavior. This means that a student normally cannot be involuntarily transferred to a continuation school for a first offense. There is one exception: A student can be involuntarily transferred on a first offense if the principal determines that the student's presence causes a danger to persons or property, or threatens to disrupt the instructional process.

### **What is the process for involuntary transfer to a continuation school?**

*Each district is required to have rules and regulations governing the procedure for the transfer of a student to a continuation school. Rules will vary some from district to district, but the California Education Code requires that certain protections exist in all district policies.*

A district must give written notice to the student and the parent of the district's intent to transfer the student. The notice must inform them of the opportunity to request a meeting with the designee of the district superintendent before the transfer. At that meeting, the student or the parent must be told about the reasons for the proposed transfer and have an opportunity to review the documents relied on, question any evidence and witnesses presented, and present evidence on the student's behalf. A student may choose one or more representatives and witnesses to be present at the meeting.

None of the people involved in making the final decision to involuntarily transfer the student may be staff members at the school in which the student is enrolled.

The decision to transfer must be in writing. It must state the facts, the reasons for the decision, and indicate whether the decision will be reviewed periodically, and indicate how that is to be done. The decision must be sent to the student and the student's parent.

An involuntary transfer to a continuation school must end after the end of the semester following the one during which the offense occurred, unless the district has a procedure for yearly review.

Keep in mind that a student can *voluntarily* transfer to a continuation school. A student who has voluntarily transferred to a continuation school has the right to return to the regular high school at the beginning of the

following year. Or, with the permission of the district, he or she may return at any time.

*See Cal. Ed. Code §48432.5.*

## **2. Involuntary transfer to community day schools**

A student can also be transferred against his or her will to a community day school. (See Chapter 2, or Cal. Ed. Code §48660 through §48667.)

A student may be involuntarily transferred or assigned to a community day school if the student is

1. Expelled for any reason
2. On probation pursuant to Wel. and Inst. Code §602, or
3. Referred by a school attendance review board (SARB) or other district-level referral process

### **What is the process for involuntary transfer or assignment to a community day school?**

*Unlike the California law on involuntary transfers to continuation schools, there are no specific due process requirements (like a written notice, the opportunity to question and present evidence, etc.) spelled out in the law on transfer to community day schools. The law requires districts to establish “policies that provide procedures” for the involuntary transfer of students to community day schools. Ask your district for a copy of its policies and review them carefully.*

## **3. Opportunity transfers**

Opportunity education programs are intended to serve students who

- Are habitually truant or irregular in attendance
- Are in danger of becoming habitually truant or irregular in attendance
- Are insubordinate or disorderly during attendance, or
- Are in danger of becoming insubordinate or disorderly during attendance

The purpose of these schools is to provide an opportunity for students to “resolve their problems so that they may maintain themselves in regular classes or re-establish themselves for return to regular classes... as soon as possible.” (See Chapter 2 of this manual, or Cal. Ed. Code §48630 through §48641.)

## **What is the process for an opportunity transfer or assignment?**

*A district may transfer or assign a student to an opportunity school, class, or program only after following certain procedures. First, it must give written notice to the student and the student's parent. If possible, the notice should be in the primary language of the parent. The notice must ask the parent to respond within 10 days. If there is no response, the district must make a reasonable effort to contact the parent by phone and communicate the information.*

Additionally, before a student can be assigned to an opportunity school, a committee must be formed to make a decision about whether to recommend assignment of the student to an opportunity school.

The committee must include the following people:

- A representative of the school district who is familiar with the student's progress
- A representative of the opportunity school or program
- The parent, if he or she chooses to be there
- A representative designated by the parent, if the parent chooses to appoint one

At least twice a year, the progress of a student assigned to an opportunity school must be reviewed to determine whether the student would benefit from returning to a regular school or classes.

<b>XI. Behavior charged as a crime</b>
----------------------------------------

## **Can the school district call the police when a student gets in trouble?**

*Yes. Schools can report crimes committed by students.*

## **What if the incident is filed as a crime?**

If the misconduct at school is referred to juvenile court and is charged as a crime, the student will have either a public defender or other criminal defense attorney to represent him or her on the charges. It may not be a good idea for the student to make statements in a school discipline hearing if the criminal matter has not yet been resolved. Those statements could be used against the student in the criminal case. Consult with the attorney.

The defense attorney should also be made aware of any disabilities that might affect whether the youth should be charged. For example, if the student has a very low IQ, the court may decide that it isn't right to take the case through the juvenile court process.

## **XII. Conclusion**

Education is critical to a young person's success, and it is a right in California. When a child or youth in your care misbehaves or has problems in school, have confidence in him or her. Be an advocate. Help the student get back on track and back into an educational program.

## **Action points: Discipline**

- Respond to indications that there are behavior problems at school. Look for ways to work at home and at school to address behavior problems before the situation escalates to removal from school.
- Read all notices.
- Look for and follow instructions for requesting a hearing or conference.
- Act quickly; deadlines are short.
- Prepare for a conference or hearing by
  - Gathering records
  - Preparing questions for witnesses
  - Making three copies of important documents for the hearing
  - Bringing a lawyer or advocate to a hearing, if you can
  - Appealing the decision if you disagree
- Talk to a lawyer or advocate to get advice on the student's rights.
- Remember that some behavior problems are related to disabilities. Make sure a child's needs have been assessed, and decide whether a referral for special education assessment and services is warranted.
- Talk to the student's public defender if there are criminal charges.
- Petition for readmission after an expulsion by writing a letter.
- Get outside help to address the problem behavior.
- Help construct creative alternatives to deal with problem behavior. Suspension or expulsion might not be the most effective solutions.

# TIPS FOR YOUTH

If you have been suspended or expelled—it's hard to get an education. As a student, you have to follow school rules, but **even when you are in trouble, you have rights.**

**You have a right to tell your side.**

If you are removed from school for breaking a rule, the school must

**Give you notice** by telling you what you did wrong and which rule was broken.

Make the **punishment fit the behavior.**

*Give you a chance to **tell your side of the story** in a hearing or a conference with school staff.*

**You have a right to try for a second chance.**

## Don't give up

**Even if you did something wrong, being expelled from school doesn't have to be the answer.**

Even if you are expelled or suspended for a long time, you can ask the school district board to let you back into school. Or, you can ask to be admitted to a different district. Work hard in whatever alternative program you are in, and then let the district know what you are doing, what you have been thinking, and why the district should consider letting you back in. Get letters and notes from your supporters—counselors, parents, employers, teachers, or family friends who know you and believe in you.

This is not legal advice. If you need legal advice, seek the help of a lawyer

## **Chapter 5: Discipline of Special Education Students**

### **The three most important things to remember about disciplining special education students**

- ◆ Students cannot be punished for behavior that is the result of their disabilities.
- ◆ Students with disabilities have the right to receive education, special education, and related services when they are expelled or suspended from school for more than 10 days.
- ◆ The school administrator who is in charge of disciplining students may not know anything about their special needs OR the important steps that must be taken before imposing discipline. You may need to tell the administrator what you know.

#### **I. Introduction to the discipline of special education students**

When it comes to discipline, special education students have special protections that go beyond those for regular education students. While students with disabilities do have all of the same rights as other students (see Chapter 4), they also have additional rights that protect them in discipline situations.

The law recognizes that many students have disabilities that cause or at least are related to problem behavior. In the past, students with disabilities were excluded from school for behavior related to their disability. The IDEA seeks to ensure that special education students are not excluded from school and that their disabilities and any resulting behavior are handled in an appropriate manner. To provide that protection, there are very specific limitations on how a student with disabilities can be disciplined.

That said, students with disabilities are still subject to discipline. For example, a student with a disability can be suspended for up to 10 consecutive days, and can even face expulsion under limited circumstances. However, there are actions that schools must take to help address the behavior, and there are limitations on how discipline can be imposed.

Review Chapter 3 on special education and Chapter 4 on regular education discipline.

For information on how to read the references to law in this chapter, see *How to Read Citations and Find Laws*.

## **II. Suspension and expulsion of students in special education**

### **On what grounds can a student with a disability be disciplined?**

*A student with a disability can be disciplined for the same reasons a non-disabled student can be disciplined.*

In Chapter 4, the grounds for student discipline are listed. These rules apply to all students, and can result in discipline for students in special education—unless the behavior is a manifestation of the student's disability.

### **When must a district give notice to the parent of a decision to discipline a student with a disability?**

*No later than the date on which the decision to take disciplinary action is made.*

The district must notify the parents of the decision to discipline and of all the procedural safeguards under the law. See 20 U.S.C. § 1415(k)(1)(H).

### **What rights does a student with a disability have in discipline matters?**

*A student with a disability can assert all the rights of a regular education student, as well as rights under special education law.*

Students with disabilities can ask for *both* a special education due process hearing and a regular education discipline hearing, if appropriate.

Remember that there are limitations on who may ask for a special education due process hearing. (See Chapter 3 in this manual for more information on special education and Chapter 4 for information on regular education discipline.)

It may be important to request a regular education discipline hearing even if you are waiting on special-education-related decisions. A district may have a time limit for requesting a regular education discipline hearing. A hearing can be requested to preserve that right, and then put on hold pending the outcome of the special education decision-making process. There may even be situations in which both a regular education discipline hearing and a special education due process hearing would proceed in the same time period.

If both a special education matter and regular education discipline process are being pursued, the district should usually halt the regular education discipline process and resolve the special education issues first.

### **Is the process for suspending or expelling a student with a disability the same as for non-disabled students?**

The process for a suspension of fewer than 10 consecutive days is the same for a disabled or non-disabled student. You can review this process in Chapter 4 of the manual.

However, there are limitations on how long a student with a disability may be removed from school. In some situations, students with disabilities also have a right to parental notice and a determination of whether the behavior was related to the disability. Students with disabilities may also have a right to further assessment and changes in their IEP to help avoid behavior problems in the future. The laws determining the discipline of a special education student are found in the federal laws, starting in 20 U.S.C. §1415 and 34 C.F.R. §300.530. *See also Cal. Ed. Code §48915.5.*

#### ***Where you can have an impact***

Special education students have all the rights given to regular education students who are disciplined. Review Chapter 4 to learn more about addressing regular education discipline.

Make sure you request a regular education discipline hearing within the timelines stated in the discipline notice. You can postpone or cancel the hearing if the situation is resolved through the special education process, but it is important that you initially request it.

## **For how long can a student with a disability be removed from school for discipline purposes?**

There are three types of removal from school for a student with a disability:

- Less than 10 consecutive days
- A 45-day removal for weapons, drugs, serious bodily injury, or dangerousness
- More than 10 consecutive days

These will be described in detail below.

## **What is a school district supposed to do if a student with a disability breaks a rule that would normally require suspension or expulsion?**

*A district must follow the rules for regular education discipline and, if the removal will be for more than 10 consecutive days, the school must follow special procedures for students with disabilities.*

## **How does a district suspend a student with a disability for up to 10 consecutive days?**

Under California law, a teacher may suspend a student for up to two days, a principal may suspend a student for up to five days, and the governing board may suspend a student with a disability for up to 10 consecutive days without taking additional steps. See Chapter 4 for a detailed discussion of these processes.

If a student with disabilities violates school rules, the district can suspend or place the student in an alternative setting for up to 10 consecutive school days.

## **Can the district suspend a student with a disability for 10 consecutive days over and over again?**

*Not if the removals become a pattern.*

Subsequent incidents may result in additional suspensions or alternative placements of up to 10 days. However, the suspension or removals cannot become a *pattern* of removing the child from school.

A pattern of removals is considered a change in the child's IEP. Only the IEP team can change the child's IEP. To determine whether a series of removals from school is a pattern, consider these factors:

- Do the removals add up to more than 10 days in a school year?
- What is the duration of each removal?
- What is the total time the child has been removed from school this year?
- How close are the removals to one another?

### **When can a district immediately remove a student with a disability for up to 45 days?**

There are three situations in which a special education student can be removed immediately and for up to 45 days.

- Incidents involving weapons
- Incidents involving drugs
- If a student causes serious bodily injury to another

If a special education student is removed for one of the above reasons, no matter how or why, he or she *must* continue receiving educational services in an alternative setting. This alternative setting is called an *interim alternative education setting* (IAES).

### **What constitutes a weapons violation?**

*A weapon is any object or substance that is used for, or can cause, serious injury. A pocket knife with a blade of less than 2-1/2 inches is not considered a weapon. See 20 U.S.C. §1415(k)(1)(ii)(I); 34 C.F.R. §300.530(g) & (i)(4); 18 U.S.C. §930(g)(2).*

#### ***Where you can have an impact***

Review the IEP. Consider whether the proposed 45-day placement is in a setting that can meet the student's needs. If not, ask the IEP team to consider additional services or a different setting.

### **What constitutes a drug violation?**

*A drug violation is knowingly possessing, using, selling, or soliciting the sale of illegal drugs or a controlled substance while at school or a school function. See 20 U.S.C. §1415(k)(1)(G)(ii); 34 C.F.R. §300.530(g)(2) & (i)(1).*

## **What constitutes a “serious bodily injury”?**

*Serious bodily injury is not just anyone’s best guess. It has a specific definition under the law.*

Serious bodily injury is bodily injury that involves one of the following:

- A substantial risk of death
- Extreme physical pain
- Protracted and obvious disfigurement, or
- Protracted loss or impairment of the function of a bodily member, organ, or mental faculty

*See 20 U.S.C. §1415(k)(1)(G)(iii); 18 U.S.C. §1365(g)(3).*

## **What can a school district do about a student it believes is dangerous?**

*If the district believes that a student is dangerous and wants to remove him or her from the special education program, the district needs to request a due process hearing. A hearing officer can order the student to an interim alternative educational setting for up to 45 days. See 20 U.S.C. §1415(k)(3)(B)(ii); 34 C.F.R. §300.532.*

While a school district can act on its own to remove to an Interim Alternative Educational Setting (IAES) a student for up to 45 days for weapons, drugs or serious bodily injury, it cannot remove a child on its own because it believes the child is dangerous. If a district wants to remove a student with a disability from his or her current placement because it believes the student is dangerous, it must request a due process hearing. Only a hearing officer can make the decision to remove a student with a disability due to dangerousness. *See 20 U.S.C. §1415(k)(3)(A) & (B)(ii)(II).*

## **How does the hearing officer make the decision to remove a child the school believes is dangerous?**

The hearing officer must determine whether the school district has proven that keeping the student in the current placement is substantially likely to result in injury to the child or to others. If the hearing officer decides that maintaining the current placement is substantially likely to result in injury to the child or others, then he or she may order that the child be placed in an IAES for no more than 45 days. *See 20 U.S.C. §1415(k)(3)(A) & (B)(ii)(II).*

### **III. Schools' responsibilities when removing a student with a disability from school for more than 10 days**

The district has certain responsibilities if it intends to discipline a student with a disability in any of the following ways:

- A removal for more than 10 consecutive school days
- A cumulative pattern of removal for more than 10 school days in a year that essentially constitutes a change in placement
- A removal for 45 days to an IAES for a weapon- or drug-related violation, or because a student has caused serious bodily injury
- A removal by a hearing officer for 45 days to an IAES for dangerousness

If the any of the above occur, the district must do the following:

- Notify the parents on the day of the decision to remove the child
- Have meeting to determine whether the behavior of the child was a result of his or her disability (a manifestation determination)
- Conduct a functional behavioral assessment and develop a behavioral intervention plan as a part of the IEP

#### ***Where you can have an impact***

If the school proposes to keep the student out of school for more than 10 days, it is important that the IEP team meets quickly regarding the behavior and its relationship to the student's disability.

Being aware of discipline issues and the student's rights can reduce the number of days the student goes without educational services.

### **What notice is required when a district intends to remove a child for more than 10 days?**

*The district must give the parents notice of the decision to remove the student and describe the procedural protections available. This notice must be given no later than the date of the decision to remove the student. See 20 U.S.C. §1415(k)(1)(H).*

Even though they are not always “parents” as defined by special education law, caregivers can ask that schools contact them in the event that a discipline issue arises.

**What must happen if a child is removed for more than 10 days in a school year for disciplinary reasons, or if the school is initiating a change in placement?**

*There must be a “manifestation determination.”*

**What is a manifestation determination?**

*A manifestation determination is an analysis done by the relevant members of the IEP team determining whether the child’s disability had something to do with the behavior being punished.*

**When must a manifestation determination be done?**

*It must be completed within 10 days of any decision to change the placement of a child with a disability.*

**Who makes the manifestation determination?**

*The relevant members of the IEP team, including the district and the parent. See 20 U.S.C. §1415(k)(1)(E).*

**How is the manifestation determination made?**

The district, the parent, and the relevant members of the IEP team must review all relevant information in the student’s file, including the IEP, and teacher observations, and any relevant information provided by the parents. They then ask two questions:

1. Was the behavior in question caused by the child’s disability, or did the disability have a direct and substantial relationship to the conduct?  
OR
2. Was the behavior in question the direct result of the district’s failure to implement the IEP?

If the answer to either of these questions is Yes, the behavior is considered a manifestation of the child’s disability, and he or she cannot be punished. See 20 U.S.C. §1415(k)(1)(E)(ii) and §1415(k)(1)(F)(iii).

If there has not been a functional behavior assessment, the IEP team must conduct one and implement a behavior intervention plan. If an assessment has been done and an intervention plan exists, the IEP team should review the plan and modify it as necessary to address the behavior. (The functional behavior assessment and behavior intervention plan are described below.

Even if the behavior is related to, or a manifestation of, the disability, the IEP team can decide to change the IEP or the student's placement if the student needs a different educational setting in order to benefit from education.

If the answer to the two questions above is No, the behavior is considered not to be related to the disability. The student may be disciplined just like a non-disabled student, with one important exception: The student with the disability must continue to receive the educational services that will enable him or her to continue to participate in the general curriculum (although it may be in another setting) and to progress toward meeting the goals set out in the child's IEP. See 20 U.S.C. §1415(k)(1)(D).

### **What is a functional behavior assessment?**

*A functional behavior assessment is a way of understanding why and how a student with disabilities is having difficulty in school.*

It is helpful to think of functional behavior in the following terms:

- Who?
- What?
- Where?
- When?
- Why?
- How?

### **What is a behavior intervention plan?**

**Questions that can be asked when doing a functional behavior assessment**

- ? *Who is usually around when the behavior takes place? Who is the behavior directed toward? Who is most successful in managing the behavior when it takes place?*
- ? *What happens? What behavior is problematic?*
- ? *Where does the behavior take place? In the classroom? On the playground? On the bus?*
- ? *When does the behavior take place? During passing period, lunch, or other unstructured time? In the morning? At the end of the day? During frustrating lessons? During lectures? During quiet time?*
- ? *Why does the behavior take place? Is the student frustrated with the work or format of the class? Is the student getting picked on and doesn't know how to react? Does the student's medication wear off?*
- ? *How does the behavior arise? Is it predictable? Are there signs that things are getting out of hand? What are the triggers?*

*A behavior intervention plan uses information from the functional behavior assessment to create steps to address the student's behavior. See 20 U.S.C. §1415(k)(1)(D)(ii).*

Behavior intervention plans should not be focused on "bad" behavior. The plan should be focused on rewards for good behavior and the student's success in school.

The only specific guidelines for behavior intervention plans are for cases when the child is considered to have a "serious behavior problem." Serious behavior problems meet the following criteria:

- The child's behavior is self-injurious, assaultive, or causes serious property damage.
- The student has other severe behavior problems that are pervasive and maladaptive, and that are ineffectively addressed by the instructional or behavioral approaches specified in the IEP.

If the child has a serious behavior problem, California's very detailed rules for functional analysis assessments (or functional behavior assessments) and behavioral intervention plans should be used. See 5 C.C.R. §3001 & §3052. A more detailed discussion of this law is in Chapter 3, section VII.

If a child's behavior is *not* a serious behavior problem as described in 5 C.C.R. §3001(aa), there are no specific guidelines for a behavioral intervention plan. However, you can suggest that the rules set out in 5 C.C.R. §3001 & §3052 be used. Those regulations have two important protections for students: The interventions must be positive, and the assessment and implementation of a behavior plan must be done by a person who is trained in positive behavior intervention.

An effective plan will incorporate more than one approach to the behavior problem. A behavior intervention plan can do the following:

➤ **Manage the student's behavior**

A behavior intervention plan can diminish or prevent the problem behavior by controlling a student's environment and limiting the opportunity to misbehave. For example, a student's behavior might be managed better if the student checked in with school staff at critical times of the day, ate lunch separately from others, or had an aide during class or passing periods.

➤ **Guide teachers in dealing with behaviors**

A behavior intervention plan can help teachers and school staff recognize the signs of inappropriate behavior, as well as prompt or redirect the student before the situation gets out of hand. For example, teachers may know that a student who starts pacing or leaving his or her seat is becoming frustrated. The teacher can offer the student extra help, a timeout, or a verbal prompt to refocus.

➤ **Teach students skills to help themselves**

A behavior intervention plan can teach a student to recognize signs that behavior is getting unmanageable and to redirect himself or herself. A student might learn to recognize that he or she gets frustrated when the teacher is giving more than one verbal instruction at a time. Rather than disengaging or disrupting the class, the student might ask the teacher to write out the instructions, ask to have a classroom buddy help take notes, or request a short break.

## **Who takes part in a functional behavior assessment and planning meeting?**

*The IEP team.*

The IEP team must figure out if there has been a functional behavioral assessment or a behavior intervention plan for the student in the past. If not, the IEP team must develop one. If a student already has one, the IEP team must review the plan, how it is working, and make changes to the plan as necessary to address the student's behavior. See 20 U.S.C. §1415(k)(1)(D).

### ***Where you can have an impact***

The IEP meeting to discuss the functional behavior assessment plan and the manifestation determination meeting can take place at the same meeting.

If a student you are working with is removed from school, and there was no notice given and nothing seems to be happening, request a meeting. Make sure the IEP team properly reviews the relationship between the behavior and the disability. Encourage the IEP team members to think about different behavior interventions that might be more successful.

Request that additional assessment of the child be done if it seems like the child is not responding to the services and strategies in the current IEP. It may be that the child's disability has not been diagnosed correctly.

## **IV. Limitations on discipline and removal of students with disabilities**

### **How long can a special education student be removed from school without educational services?**

*In general, students with disabilities can be removed from school for up to ten school days in a school year without educational services. The school must start providing educational services on the 11th day.*

Schools are not required to provide services for children who are removed for 10 school days or less in that school year, if the school does not provide services to non-disabled students who have been similarly removed. See §34 C.F.R. §300.530(d)(3).

### ***Where you can have an impact***

Keep track of the number of days the student has been out of school. If a removal will result in the student being out for more than 10 days total in a school year, ask for educational services to begin on the 11<sup>th</sup> day.

Put your request in writing.

### **What educational services should a special education student receive when he or she is removed from school for more than 10 days?**

*The school must continue to provide the services and program described in the student's IEP, even if the student is suspended or expelled from school.*

When a student is excluded from school for more than 10 days in a school year, the school district **must** provide another setting for the student's IEP to be implemented. The setting should be one that allows the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the IEP. For example, if the student has goals and objectives to help improve social skills with peers, the alternative setting should allow opportunities and instruction for those interactions. See 20 U.S.C. §1415(k)(1)(D)(i); 34 C.F.R. §300.530(b) & (d).

### **Who decides what services will be provided if a student is removed?**

*This depends on the type of removal.*

#### **Removals for up to 10 consecutive days**

When the student has been removed for 11 days in a school year, the district must start providing services required in the student's IEP. For these short-term removals, school personnel and the special education teacher, not the IEP team, decide what services are necessary during the removals. See 34 C.F.R. §300.530(b)(2) & (d).

#### **Removal for up to 45 days for weapons, drugs, serious bodily injury, or dangerousness**

For a removal from school for a weapons, drugs, or a serious bodily injury violation, the IEP team will determine the IAES. For a removal for dangerousness, the hearing officer will determine the IAES. In any case, the IAES must be selected so as to enable the child to continue to

progress in the general curriculum and continue to receive the services and modifications described in the IEP so that the child can meet his or her IEP goals. In addition, the IAES must include services and modifications that address the problem behavior so that it does not recur. See 34 C.F.R. §§300.520–522.

### **What is “stay put” and how does it apply in a discipline situation?**

*“Stay put” is a term used in the IDEA to describe where, in some circumstances, a student goes to school after a due process hearing is requested.*

“Stay put” means that in some cases, a student will remain in the current placement while the dispute is settled through a due process hearing. However, when a student is placed in an interim alternative educational setting (IAES), he or she will not be allowed to return to (or “stay put” in) the original placement. When a parent requests a hearing to protest a disciplinary placement or challenge the result of a manifest determination meeting, the law says that the student must remain in the IAES until the hearing officer makes a decision, or until the end of the disciplinary removal, whichever comes first. (See 20 U.S.C. §1415(k)(4)(A).) However, the hearing must take place within 20 days of the request and the hearing officer must issue a decision within 10 school days of the request. The hearing officer must issue a decision within 10 school days of the hearing. See 20 U.S.C. §1415(k)(4)(B).

Note that if the parent and district agree, the student can return to the original placement pending the outcome of the hearing. See 20 U.S.C. §1415(k)(4)(A).

Remember that if a student with disabilities is out of school for more than 10 days, even for disciplinary reasons, he or she must continue to receive educational services that will enable the student to continue to participate in the general curriculum (although it may be in another setting) and to progress toward meeting the goals set out in the child’s IEP. See 20 U.S.C. §1415(k)(1)(D).

## **V. Protections for students with disabilities who have not been found eligible for special education**

### **What are the rights of students who may have disabilities but were not evaluated or found eligible for special education before being disciplined?**

*In some cases, students can get the same protections they would have had if they had been eligible for special education services before the discipline incident.*

If a student being disciplined may have a disability, and he or she has not yet been found eligible for special education services, ask this question:

*“Did the district know that this student should have been evaluated or should have been receiving special education services?”*

A student can get all of the protections for special education students if the district *had knowledge* that the student had a disability before the behavior occurred. See 20 U.S.C. §1415(k)(5)(A); 34 C.F.R. §300.534.

### **What constitutes whether a district “had knowledge” of a student’s disability?**

*The district had knowledge if*

- The parent of the child expressed concerns in writing (unless the parent is illiterate or has a disability) to the supervisory or administrative staff of the district that the child is in need of special education and related services.
- The parent has specifically requested an evaluation of the child; or
- The child’s teacher has expressed specific concerns about the behavior or performance of the child to the district’s special education director or special education personnel. See 20 U.S.C. §1415(k)(5)(D)(ii).

### **What if the district did not have knowledge that a student had a disability before the problem behavior occurred?**

*The student may be subjected to the same disciplinary measures applied to students without disabilities. However, an assessment can still be requested.*

Generally, if a district did not have knowledge that a student had a disability, the student will face the discipline that children without

disabilities face for similar acts. However, if you suspect that a student has some type of disability but the district did not have knowledge of it, a request can still be made for an assessment for special education services. This request for assessment can take place during the time the student is out of school for the expulsion or suspension. See 20 U.S.C. §1415(k)(5)(D)(ii); 34 C.F.R. §300.534.

Note that if parents have previously refused special education evaluation or services, or if a child has previously been evaluated and not found eligible, the district is not considered to have had knowledge of a disability. See 20 U.S.C. §1415(k)(5)(D)(ii); 34 C.F.R. §300.534(d)(2)(ii).

**What if a request for assessment is made during the time that a student is being disciplined?**

*The law requires that the assessment take place quickly.*

If an assessment is requested during a period of disciplinary exclusion, the law requires that the assessment must be completed in an expedited manner, regardless of whether the district knew about the disability previously. There is no set timeline in the law, however, for the assessment to be completed. See 20 U.S.C. §1415(k)(5)(D)(ii); 34 C.F.R. §300.534(d)(2)(ii).

**What if a student is found eligible for special education during the time he or she is suspended or expelled ?**

*If a student is found eligible during the period of removal from school, the school district must start providing special education and related services.*

<b>VI. Behavior charged as a crime</b>
----------------------------------------

**Can the school district call the police when a special education student gets in trouble?**

*Yes, schools can report crimes committed by any student.*

A school can report a crime committed by a student with a disability. When a school does report a crime, the district may be required to provide copies of the special education and disciplinary records of the student to the police. However, school records can be released only if permitted by the Family Educational Rights and Privacy Act (FERPA). See 20 U.S.C. §1232g et seq.

### **What if an incident is filed as a crime?**

*If the misconduct at school is charged as a crime, the young person will have either a public defender or other criminal defense attorney to represent him or her on the charges. Be sure to encourage the youth to talk to his or her defense attorney to determine how the school discipline case might affect the criminal case. For example, it may not be a good idea for the student to make statements in a school discipline hearing or due process hearing if the criminal matter has not yet been resolved. Those statements could be used against the youth in the criminal case.*

The defense attorney should also be made aware of any disabilities that might affect whether the youth should be charged. For example, if the young person has a very low IQ, the court may decide that it isn't right to take care of the matter in juvenile court.

## **VII. Conclusion**

Students with disabilities cannot be punished for behavior that is related to or the result of a disability. School districts must follow specific guidelines when seeking to punish a disabled student. Notice of the intent to discipline must be given, the behavior must be examined and planned for, and a team of people must determine whether the behavior was related to the disability.

Even if the problem behavior is not related to the disability, there are significant limits on how a special education student can be disciplined. Students with disabilities have strong protections under the law that ensure they will not unnecessarily lose their right to education.

## **Action points: Discipline of special education students**

- Remind the school administrator if the student has an IEP or 504 plan.
- Ask for an IEP meeting if the district removes a student with disabilities.
- Ask the district to do a functional behavioral assessment.
- Review the IEP or behavior plan: Was it being followed? Could it be improved so that the behavior is better managed? Make these proposals at the IEP meeting.
- Provide or request new assessment information that can be used to develop a plan that will prevent the behavior from recurring.
- Demand services that fulfill the IEP if a student is removed from school.
- Request a regular education discipline hearing in case the special education process does not resolve the issues.
- Look for “red flags” that indicate a student may be wrongly disciplined:
  - There are no IEP meetings to discuss functional behavior or a manifestation determination.
  - The functional behavior was never properly examined when problems first arose.
  - The functional behavior was not assessed within 10 days of the discipline.
  - A behavior intervention plan was not put in place to deal with the student’s behavior in a good way.
  - The manifestation determination was not done correctly:
    - The IEP team did not ask and answer the right questions.
    - The IEP decision was not based on enough data.
    - The group making the decision was not made up of the right people.
    - The decision that the behavior was not related to the disability seems wrong.
  - The discipline is
    - Too harsh for the behavior
    - Longer than 10 days in a row
    - More than 10 days over time and looks like a pattern that excludes the student from their IEP
    - For 45 days and not for an incident involving drugs or weapons, and a judge did not impose it
  - The student did not behave as alleged.

# TIPS FOR YOUTH

## DISCIPLINE OF STUDENTS WITH DISABILITIES

The word “disability” means a lot of different things and includes behavior, emotional and other health problems. There are strong laws that protect students with disabilities, giving them the right to the help they need to do well.

### **You can’t be punished for behavior that is the result of a disability.**

This doesn’t mean you can never be disciplined, it just means that schools must help plan for problems that you have because of your disability.

For example, if you have Attention Deficit Disorder, you can’t get in trouble for not paying attention in class. Instead, you and the school have to work on a plan that deals with the attention problem. The school cannot suspend or punish you for something that is the result of your disability.

### **You have a right to continue your education, no matter how much trouble you’re in.**

You cannot be permanently removed from school. In fact, you can only be kept from educational services for up to ten days in a school year. If you are suspended or expelled for longer than ten days, you have the right to continue your education—the same kind of program outlined in your IEP. You may end up in a different educational setting but the IEP team, which can include you, must meet to decide that.

### **Do you think you may need special education?**

If you are in trouble and think that you need extra help like special education, **ask to be evaluated**. There are laws that make the assessment happen much **quicker during the time a student is facing discipline**. If you might have a disability, you should **get services to help you** as soon as possible.

This is not legal advice. If you need legal advice, seek the help of a lawyer.