

## Identification, Referral and Assessment

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## Introduction

This document serves as a resource to multi-disciplinary assessment team personnel by providing information on best practices for special education evaluations. It is based on the idea that evaluation results are the “building blocks” of the Individualized Education Program (IEP). The hope for this document is to provide practitioners with best practices that are (1) legally defensible, (2) consistent with compliance monitoring processes, and (3) user friendly.

## Definitions

“An assessment” under California law is equivalent to “an evaluation” under federal law (EC § 56303) so the terms are often used interchangeably. However, sometimes assessment and evaluation are differentiated based on the following definitions: Assessment is data collection from multiple sources; Evaluation integrates all data to produce a student profile to inform decisions about identification, eligibility, services, and instruction. There is also some confusion about the role of the multidisciplinary assessment team compared with the responsibility of the IEP team.

- The multi-disciplinary assessment team members conduct the evaluation, analyze the data, write a report of findings, and determine if a student has a disability.
- The IEP team reviews the assessment results, determines eligibility for special education, develops the content of the IEP, and makes program placement [service] decisions. Per EC § 56341(b), the IEP team making the determination about a student’s eligibility for special education services must include the following:

(1) One or both of the pupil's parents, a representative selected by a parent, or both.

(2) Not less than one regular education teacher of the pupil, if the pupil is, or may be, participating in the regular education environment.

(3) Not less than one special education teacher of the pupil, or if appropriate, not less than one special education provider of the pupil.

(4) A representative of the LEA who meets all of the following:

(A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of individuals with exceptional needs;

(B) is knowledgeable about the general education curriculum; and

(C) is knowledgeable about the availability of resources of the local educational agency.

(5) An individual who can interpret the instructional implications of the assessment results.

(6) At the discretion of the parent, guardian, or the LEA, other individuals who have knowledge or special expertise regarding the pupil, including related services personnel, as appropriate.

(7) Whenever appropriate, the individual with exceptional needs.

While the term “parent” is used throughout this document, it is understood to be applicable to other definitions of parent as well (e.g., guardian, surrogate, adult student). The confidentiality of personally identifiable information about individuals with exceptional needs is protected (EC § 56515). Therefore, all referral, assessment plan, prior written notice, IEP, and other documents containing personally identifiable information shall be considered confidential and maintained per confidential mandatory interim record requirements.

Professional judgment should be used for every decision in the evaluation and eligibility determination process, from the formation of the eligibility determination team through the formal eligibility determination decision, including selection of assessment materials, identification of evaluators, interpretation of test results, etc. Professional judgment provides the foundation for the entire eligibility determination process and enhances the precision, accuracy, and integrity of the professionals’ decisions in the case (Schalock & Luckasson, 2005).

Access means a personal inspection and review of a record or an accurate copy of a record, or receipt of an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, and a request to release a copy of any record (EC § 49061(e)). A LEA may permit access to pupil records to any person for whom a parent of the pupil has executed written consent specifying the records to be released and identifying the party or class of parties to whom the records may be released. The recipient must be notified that the transmission of the information to others without the written consent of the parent is prohibited. The consent notice shall be permanently kept with the record file (EC § 49075(a)).

Confidentiality means the restriction of access to verbal and written communications, including clinical, medical and educational records to appropriate parties. (EC § 49076)

Individuals with exceptional needs (a.k.a. students with disabilities) means those persons who meet all of the following criteria (EC § 56026):

- (a) Identified by an IEP team as a child with a disability (as defined in 20 USC § 1401(3)(A)).
- (b) Their impairment, as described by requirement above, requires instruction and services which cannot be provided with modification of the regular school program in order to ensure that the individual is provided a free appropriate public education (pursuant to 20 USC § 1401(9)).
- (c) Come within one of the following age categories: (1) Younger than three years of age and identified by the LEA as requiring intensive special education and services; (2) Between the ages of three to five years, inclusive, and identified by the LEA; (3) Between the ages of five and 18 years, inclusive; or (4) Between the ages of 19 and 21 years, inclusive; enrolled in or eligible for a special education program prior to his or her 19th birthday; and has not yet completed his or her prescribed course of study or who has not met proficiency standards or has not graduated from high school with a regular high school diploma.

Pupil record means any item of information directly related to an identifiable pupil, other than directory information, which is maintained by a LEA or required to be maintained by an employee in the performance of his or her duties whether recorded by handwriting, print, tapes, film, microfilm or other means. "Pupil record" does not include informal notes related to a pupil compiled by a school officer or employee, which remain in the sole possession of the maker and are not accessible or revealed to any other person. (EC § 49061(b))

Reliability means that the scores on the tool will be stable regardless of when the tool is administered, where it is administered, and who is administering it. Reliability answers the question: Is the tool producing consistent information across different circumstances? Reliability provides assurance that comparable information will be obtained from the tool across different situations. Not only should a measurement tool capture what it is supposed to be capturing, it also should do so consistently over time and across assessors.

Validity means that the scores on the tool accurately capture what the test is meant to capture in terms of content. Validity answers the question: Is the tool assessing what it is supposed to assess?

Referral for assessment means any written request for assessment to identify an individual with exceptional needs made by any of the following: (a) A parent or guardian

of the individual. (b) A teacher or other service provider of the individual. (c) A foster parent of the individual, consistent with the limitations contained in federal law (EC § 56029).

Note: If a child is a ward of the state and not residing with his or her parent, the local educational agency shall make reasonable efforts to obtain consent from the parent of the child for the initial evaluation to determine whether the child is a child with a disability (EC § 56346).

### Child Find

Each SELPA is required to establish written policies and procedures pursuant to EC § 56205 for use by its constituent local agencies for a continuous child find system that addresses the relationships among identification, screening, referral, assessment, planning, implementation, review, and the triennial assessment. The policies and procedures must include written notification to all parents of their rights under child find, and the procedure for initiating a referral for assessment to identify individuals with exceptional needs (EC § 56301(d)(1)).

In addition to SELPA-level requirements, each LEA must provide for the identification and assessment of the exceptional needs of an individual, and the planning of an instructional program to meet the assessed needs. Identification procedures shall include systematic methods of utilizing referrals of pupils from teachers, parents, agencies, appropriate professional persons, and from other members of the public. Identification procedures shall be coordinated with school site procedures for referral of pupils with needs that cannot be met with modification of the regular instructional program (EC § 56302).

### Reason for Evaluation

It is important to clearly understand the referral concern before an Assessment Plan and Prior Written Notice (AP/PWN) is created. The purpose of the AP/PWN is to outline for the parent the decision to refer their child to the multidisciplinary evaluation team and the reasons for the referral. If the referral question is ambiguous and broad, judging the degree to which all concerns have been addressed becomes more difficult. If the referral question is clear, then it will be fairly straightforward to judge whether a report is truly “comprehensive.” Reviewing existing data combined with interviewing teachers and parents helps to identify the primary problem and lead to intervention ideas. For example, discussion with teachers or parents may suggest that the academic problem is accompanied by a concern about a student’s emotional status or behaviors that appears related to the academic area of concern. Information gathered as part of developing the referral question should be addressed in the evaluation report under

background information even though the data was collected before the Assessment Plan was signed.

A referral for evaluation is called “identification” in the Individuals with Disabilities Education Act (IDEA). Identification occurs when a decision is made to refer an infant, preschool or school-aged student for evaluation who is not currently identified as a child with a disability under IDEA but is suspected of having a disability. Identifying the concerns or reasons behind an initial referral for an individualized evaluation to identify a disability is critical. The following process can help the assessment team members to refine or expand the original referral for assessment questions, underscore or rule out the need for certain assessment activities, and help determine what instruments and procedures are needed:

1. The first task is to determine what questions are sought to be answered by the evaluation. Best practice indicates a team approach, including the student’s teacher, parent, and assessors, is the best means of getting agreement on the referral questions. If there is no evidence of a suspected disability, the LEA can initiate a Prior Written Notice to deny request for evaluation. It must be prepared with evidence to defend the action.
2. The second is to determine what information is needed to be collected to answer the questions;
3. The third is to examine what portions of the needed information are already available; and
4. Finally, determine what needs to be included in the proposed assessment plan and prior written notice.

The first step in the process is to use a combination of review of records and interviewing of key individuals to produce a clear and concise referral question. The question needs to be more specific than “the purpose of this assessment is to determine if the student is eligible for special education services.” If the referral question is ambiguous and broad, then judging the degree to which all aspects of the concern have been addressed becomes significantly more difficult. Clarification in this area also helps determine which professionals will need to be involved in the evaluation process. An example of a more specific referral question is: “the purpose of this assessment is to determine areas of strengths and weaknesses related to literacy and to determine whether the student responds adequately to an evidence based literacy intervention.

This information will be used to determine if the student is best taught by general or special education or a combination of the program and personnel.”

It is also important to seek clarity on suspected area(s) of disability when initiating a reevaluation. Just because a student was previously identified under one eligibility

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criteria does not mean that his or her life functioning remains the same. For example, a child may initially be identified as speech and language impaired until further evaluation determines he has high functioning autism. A child identified as having a specific learning disability may develop a mental health disorder as she goes through her teen years. When a youth starts developing behavior patterns that lead to suspension, the team should consider a more comprehensive reevaluation. Getting clarity at this initial phase of the evaluation process is critical.

## Referral Requirements

All referrals for special education and related services shall initiate the assessment process and shall be documented. When a verbal referral is made, staff members must offer assistance to the individual in making a request in writing, and then assist the individual if the individual requests such assistance. All school staff referrals must be written and include a brief reason for the referral and documentation of the resources of the regular education program that have been considered, modified, and when appropriate, the results of intervention. This documentation shall not delay the timelines for completing the assessment plan or assessment (CCR Title 5, § 3021).

A pupil shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized (EC § 56303).

Parental consent is not required before reviewing existing data ... or before administering a test or other assessment that is administered to all children, unless before administration of that test or assessment, consent is required of the parents of all the children. (EC § 56321(e) and 34 CFR § 300.300(3)(a))

All referrals for special education and related services must be documented and the LEA must provide parents with a written notice that the student is being referred to determine eligibility for special education (20 USC § 1415(b)(3); 34 CFR § 300.503(a)(1), § 300.300(a) and (c)).

When a LEA receives a written request for special education assessment from a parent, the LEA has 15 days to respond to the request (EC § 56043(a). Whether or not the parent is able to attend the [problem solving team] meeting, the LEA must provide a written response to their request for evaluation within 15 days (EC § 56043(a)).

## Initial Assessment

No initial assessment shall be conducted unless the written consent of the parent or guardian is obtained prior to the assessment. The parent or guardian shall have at least

15 days from the receipt of the proposed assessment plan to arrive at a decision. Assessment may begin immediately upon receipt of the consent. (EC § 56321(c)(4))

If the parent of the child does not provide consent for an initial assessment, or the parent fails to respond to a request to provide the consent, the LEA may, but is not required to, pursue the initial assessment utilizing the procedural safeguards procedures, including mediation and due process procedures. (34 CFR § 300.300(a); EC § 56501(a)(3) and § 56506(e)) The LEA does not violate its obligation for child find, evaluation and eligibility determination if it declines to pursue the assessment (34 CFR § 300.300(a)(3)(ii); EC § 56321(2)(3)). If the LEA prevails in a due process hearing, the assessment may be conducted without parent consent (EC 56321).

Note: When a student, who has an active assessment plan, transfers into the LEA, the assessment must be continued as soon as possible to adhere to the 60 day timeline. Contact with the previous district is crucial in this matter to have proper information on the reason for referral, background information, and for the continuance of the evaluation process.

If the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if—

- Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
- The rights of the parents of the child have been terminated in accordance with State law; or,
- The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child (34 CFR § 300.300(a)(2)).

Note: The court may also appoint a Court Appointed Special Advocate (CASA). In the cases when the courts have not appointed an individual or CASA, the LEA will need to appoint a trained surrogate parent.

#### Evaluation for Out-of-State Transfer Student

Per the Office of Special Education and Rehabilitative Services (OSERS, 2010) only a few options are available when a student transfers in from out-of-state, a copy of his or her IEP cannot be provided, and the parent identifies the “comparable” services.

First, the LEA must make reasonable steps to promptly obtain the child's records from the previous place in which the child was enrolled. If the LEA is not able to obtain the IEP from the previous public agency or from the parent, it is not required to provide special education and related services to the child. However, if the LEA has reason to believe that the child may have a disability, nothing in the law or regulations prevents the LEA from providing special education services while an evaluation is pending if both the parent and LEA agree. If a child receives special education services while the evaluation is pending, the new evaluation would still be considered an "initial" evaluation and must be completed within 60 days after receiving parental consent. If the IEP team makes an eligibility determination and concludes that the child has a disability and that he or she needs special education services, the LEA must develop and implement an IEP for the child even though he or she is already receiving special education services by the LEA.

If there is a dispute between the parent and LEA whether an evaluation is necessary or the special education services that are needed to provide a free appropriate public education (FAPE) to the child, the dispute could be resolved through mediation procedures or, as appropriate, the due process procedures. If a due process complaint is filed, the LEA would treat the child as a general education student while the due process hearing is pending.

In the second option, when a child with a disability who has an IEP in effect transfers into a new LEA from out-of-state, the new LEA, in consultation with the parent, must provide the child with FAPE – including services comparable to those described in the child's IEP from the previous public agency. The LEA must, if deemed necessary, conduct an evaluation and develop a new IEP. If the new LEA determines that it is necessary to conduct a new evaluation, that evaluation would be considered an initial evaluation because the purpose of that evaluation is to determine whether the child qualifies as a child with a disability and to determine the educational needs of the child.

The LEA must obtain parent consent for such an evaluation. If the parent does not provide consent for an initial evaluation or fails to respond to a request to provide consent, the LEA may, but is not required to, pursue the initial evaluation employing consent override procedures provided in the law (mediation or request for due process). Because the child's evaluation is considered an initial evaluation, the stay-put provision in the law does not apply. The LEA would treat the child as a general education student and would not be required to provide the child with comparable services if a due process complaint is initiated to resolve the dispute over whether or not the evaluation should be conducted. Also, the LEA does not violate its obligation to identify, locate, and evaluate a child suspected of having a disability and needing special education services if it declines to pursue the evaluation. Bottom line, if the parent does not provide

consent and the LEA does not seek to override this, the child is treated as a general education student.

## Reevaluation

The reassessment of a student with a disability must be conducted if the LEA determines that the educational or related service needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment, or if the pupil's parents or teacher requests a reassessment (EC § 56381, § 56320, Title 20 USC § 1414(a), (b), and (c)). The reassessment cannot occur more frequently than once a year, unless the parent and the LEA agree otherwise, and shall occur at least once every three years, unless the parent and the LEA agree, in writing, that a reassessment is unnecessary. A student may be reassessed sooner than the three year requirement upon parent request and/or when conditions warrant. Lozano Smith (2014) recommends that teams consider the following scenarios as potential reasons for doing a reevaluation sooner:

- evidence of regression,
- student may no longer be eligible or have additional needs,
- goals are met early or not met at all,
- there is an increase or decrease in inappropriate behaviors,
- to address placement or service concerns,
- in response to a unilateral placement, and/or
- potential due process or complaint filing.

A student must be reassessed before determining that a pupil is no longer an individual with exceptional needs, before exiting a student from a special education program and related services, and before determining that the student no longer needs special education support. This holds true even when the pupil only receives a related service and/or when the student is on a 'consult'. Reassessment is not required before the termination of a pupil's eligibility and/or services due to graduation from secondary school with a regular diploma or "aging out" due to exceeding the age eligibility for a free appropriate public education (FAPE). For each pupil who's eligibility terminates under one of these circumstances, the LEA must provide the pupil with a Summary of Performance, including information about the student's academic achievement, functional performance, and recommendations on the manner in which to assist the pupil in meeting his or her postsecondary educational goals (as required in 20 USC § 1414(c)(5)(B)(ii)).

As part of a reassessment, the IEP team and other qualified professionals, as appropriate, shall do the following:

1. Review existing assessment data on the pupil, including assessments and information provided by the parents of the pupil, current classroom-based assessments and observations, and teacher and related services providers' observations (34 CFR § 300.305). The records review typically includes previous psycho-educational assessment reports, related service provider assessment reports, current and previous IEPs, progress toward goals reports, report cards, special education teacher records, general education teacher input, attendance records, discipline records, review of health and medical records, consideration of student work samples or portfolio, and communications between school and home.
2. It is important to look at all areas that may be a manifestation of a disability and/or impact a student's educational performance (i.e., attendance, attention, behavior, communication, peer interactions, medical status, social-emotional functioning). Observational data collected in the classroom, in informal settings like the playground or lunchroom, in the home or community can often provide insights about the student's areas of difficulty.
3. On the basis of the review conducted pursuant to paragraph (1), and input from the parents of the pupil, identify what additional data, if any, is needed to determine:
  - Whether the pupil continues to have a disability described;
  - The present levels of performance and educational needs of the pupil;
  - Whether the pupil continues to need special education and related services; and,
  - Whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the individualized education program of the pupil and to participate, as appropriate, in the general curriculum.

The LEA shall administer tests and other assessment materials needed to produce the data identified by the IEP team. The team needs to follow required procedures for use of the AP/PWN when describing the areas to be tested. Team members need to conduct a comprehensive analysis of a child to determine what assessment instruments or tools are important to use based on what is known at the time of initiating an assessment plan. In addition to standardized testing, non-standardized tests, parent teacher interviews or surveys, and a student interview can provide supporting evidence to the determination of a disability.

A reassessment may not be conducted, unless the written consent of the parent is obtained prior to reassessment (except pursuant to EC § 56506(e) and 34 CFR § 300.300(c)). Informed parental consent need not be obtained for the reassessment of an individual with exceptional needs if the LEA can demonstrate that it has taken

reasonable measures to obtain that consent and the parent of the child has failed to respond. To meet the reasonable measure requirements, the LEA must use the following procedures (consistent 34 CFR 300.322(d)):

- Notify parents of the meeting early enough to ensure that they will have an opportunity to attend.
- Schedule the meeting at a mutually agreed on time and place.
- Ensure the notice of meeting to the parent indicates the purpose, time, and location of the meeting and who will be in attendance.
- Verify that the notice also informs the parents of the provisions in §300.321(a)(6) and (c) relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child.
- Other requirements regarding the IEP meeting and conference notice also apply.
- Best practice is to make three attempts to obtain parent consent to the Assessment Plan.
- The first attempt is through whatever communication method is usually kept (keep a dated copy). The second and third attempts are both done using certified mail with return receipt requested. Allow at least five school days between each attempt.

If the parent refuses to consent to the reassessment, the LEA may, but is not required to, pursue the reassessment by using the consent override (due process) procedures. Per OSERS (2010), the LEA does not need to use the consent override procedures if it can document:

1. detailed records of telephone calls made or attempted and the results of those calls,
2. copies of correspondence sent to the parents and any responses received, and
3. detailed records of visits made to the parent's home or place of employment and the results of those visits.
4. The LEA does not violate its obligations if it declines to pursue the reassessment (34 CFR § 300.111 and 300.301 to 300.311, inclusive).

### Assessment Timelines

A proposed assessment plan shall be developed within 15 calendar days of referral for terms or calendar days of school vacation in excess of five schooldays, from the date of receipt of the referral, unless the parent or guardian agrees in writing to an extension. In addition, a copy of the notice of a parent's or guardian's rights shall be attached to the assessment plan. (EC § 56321(a)).

A parent or guardian shall have at least 15 calendar days from the receipt of the proposed assessment plan to arrive at a decision (EC § 56321(c)).

When a referral is received 10 days or less prior to the end of the regular school year:

- The assessment plan shall be developed within 10 days after the commencement of the subsequent regular school year or the pupil's regular school term as determined by each LEA's school calendar.
- In the case of pupil school vacations, the 15-day time shall commence on the date that the pupil's regular schooldays reconvene (EC § 56321a).

A full and individual initial evaluation must be conducted by the LEA before any action is taken with respect to the initial placement of a child with a disability. Consent for evaluation shall not be construed as consent for placement or for provision of special education and related services (34 CFR §300.301(a); EC § 56320d).

Once a child has been referred for an initial assessment to determine whether the child is an individual with exceptional needs and to determine the educational needs of the child, these determinations shall be made, and an IEP team meeting shall occur within 60 days of receiving parental consent for the assessment (EC § 56302.1(a)).

The 60-day time period does not apply if the following occurs (EC § 56302.1(b)):

- A child enrolls in a school served by the LEA after the relevant time period has commenced but prior to a determination by his or her previous LEA of whether the child is an individual with exceptional needs. The exemption of this paragraph applies only if the subsequent LEA is making sufficient progress to ensure a prompt completion of the assessment, and the parent and subsequent LEA agree to a specific date by which the assessment shall be completed.
- The parent of a child repeatedly fails or refuses to produce the child for the assessment.

Vacations or off track days longer than 5 consecutive school days are not counted as part of the 60 calendar days. The number of days prior to the off school time is added to the days starting upon the student's return to total the 60 calendar days (EC § 56043(f)(1)). However, an IEP required as a result of an assessment of a pupil shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each LEA's school calendar for each pupil for whom a referral has been made 30 days or less prior to the end of the regular school year. In the case of pupil school vacations, the 60-day time shall recommence on the date that pupil schooldays reconvene. A meeting to develop an initial IEP for the pupil shall be

conducted within 30 days of a determination that the pupil needs special education and related services (EC § 56344, 34 CFR 300.323(c)(1)).

### Notice of Procedural Safeguards and Parents' Rights

The parents or guardians of a pupil who has been referred for initial assessment, or of a pupil identified as an individual with exceptional needs, shall be afforded an opportunity to participate in meetings with respect to the identification, assessment, and educational placement (34 CFR § 300.501; EC § 56304, § 56342.5 and § 56341.5(b) and (c))

The Notice of Procedural Safeguards and Parents' Rights shall be given to the parent/guardian only one time a school year, except: (EC § 56301(d)(2)):

- Upon initial referral or parent request for assessment
- Upon receipt of the first state complaint
- Upon receipt of the first due process hearing request
- When a decision is made to make a removal that constitutes a change of placement because of a violation of a code of pupil conduct
- Upon request by a parent

It is critical that someone on the team explains the contents of the Notice of Procedural Safeguards and Parents' Rights to the parent to ensure that s/he understands their rights and the processes involved. This notice and the other referenced forms are located on Sonoma County SELPA's webpage.

### Prior Written Notice

Written prior notice shall be given by the LEA to the parent(s) or guardian(s) of an individual with exceptional needs, or a child upon initial referral for assessment, whenever the LEA proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (EC § 56500.4) A compliant notice will be individualized for each student and must include the following components: (34 CFR § 300.503)

- A description of the action proposed or refused by the agency
- An explanation of why the agency proposes or refuses to take the action
- A description of any other options that the agency considered and the reasons why those options were rejected
- A description of each assessment procedure, test, record, or report the agency used as a basis for the proposed or refused action
- A description of any other factors that are relevant to the agency's proposal or refusal

- A statement that the parents/guardians of a child with a disability have protections under state and federal procedural safeguard provisions and the means by which a copy of a description of the procedural safeguards can be obtained.

The Prior Written Notice must be:

- Written in language understandable to the parent/guardian.
- Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication.
- That the parent understands the content of the notice and this is documented.
- A copy of the Procedural Safeguards should be provided with the Prior Written Notice.

When a LEA receives a written request for special education assessment from a parent, the LEA has 15 days to respond to the request, whether or not the parent is able to attend a problem solving team meeting (e.g., Student Success Team, Educational Monitoring Team).

- If an assessment is indicated, the parent shall be provided a copy of the Procedural Safeguards and a proposed AP/PWN.
- If an assessment is not indicated, the parent shall be provided a copy of the Procedural Safeguards and PWN with the reason why the request for assessment is being denied.

A legal opinion pertaining to Prior Written Notice suggests a separate form be sent out after the IEP team has made a decision for the change/rejection on the following actions:

- Evaluation/Re-evaluation – intention or refusal (EC § 56500.4)
- Educational Placement (change of placement)
- Change of placement due to graduation
- Exiting student from special education
- When the LEA is refusing to take an action requested by parent in writing

Assessment Procedures

An assessment shall be administered by qualified personnel who are appropriately trained to administer and interpret test results. Qualified personnel should be competent in both oral and written skills in the student's primary language or mode of communication, as well as have knowledge and understanding of the student's cultural and ethnic background. If an interpreter must be used the assessment report must document this condition (Title 5, CCR § 3023).

A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities) (34 CFR § 300.304(b)(2)).

Assessors must use "technically sound instruments that may assess the relative contribution of cognitive and behavioral facts, in addition to physical or developmental factors." (20 USC § 1414(b)(2)(C); 34 CFR § 300.304(b)(3)). Note: "technically sound instruments" generally refers to assessments that have been shown through research to be valid and reliable (71 Fed. Reg. August 14, 2006).

Testing and assessment materials and procedures must be selected and administered so as not to be racially or culturally discriminatory (34 CFR §300.304(c)(1)(i); EC § 56320(a)).

Materials and procedures used to assess a student with limited English proficiency must be selected and administered to ensure that they measure the extent to which the student has a disability and needs special education rather than measuring the student's English proficiency (34 CFR § 300.304(c)(1)(ii) and § 300.306(b)(iii)).

Tests and other assessment materials are provided and administered in the pupil's primary language or other mode of communication, unless the assessment plan indicates reasons why this provision and administration are not clearly feasible, have been validated for the specific purpose for which they are used, and are administered by trained personnel in conformance with the instructions provided by the producer of the tests and other assessment materials, except that individually administered tests of intellectual or emotional functioning shall be administered by a credentialed school psychologist (EC § 56320(b)).

Assessment procedures must ensure that tests and other assessment materials are used to assess specific areas of educational need and do not rely merely on procedures that provide a single IQ score (34 CFR § 300.304(c)(2); EC § 56320(c)).

Assessment tools must be “tailored to assess specific areas of educational need” and “special attention shall be given to the child’s unique educational needs” (EC § 56320(c)(g)).

Assessment procedures must ensure that materials are selected and administered that reflect the individual’s skills and aptitude levels. If a test is administered to a student with impaired sensory, manual or speaking skills, the test must accurately reflect the student’s aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student’s impaired skills (unless those skills are the factors that the test purports to measure) (34 CFR § 300.304(c)(3); EC § 56320(d)).

No single procedure is used as the sole criterion for determining whether a pupil is an individual with exceptional needs and for determining an appropriate educational program for the pupil (EC § 56320(e)).

Each student evaluated for initial and three year reviews must have a hearing and vision screening unless parental permission is denied (34 CFR § 300.304(c)(4); Title 5 CCR § 3027).

The pupil is assessed in all areas related to the suspected disability including, if appropriate, health and development, vision, including low vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. A developmental history is obtained, when appropriate. For pupils with residual vision, a low vision assessment shall be provided (EC § 56320(f)).

The assessment of a pupil, including the assessment of a pupil with a suspected low incidence disability, shall be conducted by persons who are both knowledgeable of that disability, and competent to perform the assessment, as determined by the local educational agency. Special attention shall be given to the child’s unique educational needs, including, but not limited to, skills and the need for specialized services, materials, and equipment (EC § 56320(g)).

When a child reaches the age of 18, all rights under Part B of the IDEA will transfer to him or her. The only exception will be if the child is determined to be incompetent under State Law (34 CFR § 300.520; EC § 56041.5).

A compliant [AP/PWN] notice will be individualized for each student and must include the following components: (34 CFR § 300.503(2))

- A description of the action proposed or refused by the agency

- An explanation of why the agency proposes or refuses to take the action
- A description of any other options that the agency considered and the reasons why those options were rejected
- A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action
- Sources for parents to contact to obtain assistance in understanding the provisions of this part
- A description of any other factors that are relevant to the agency's proposal or refusal
- A statement that the parents/guardians of a child with a disability have protections under state and federal procedural safeguard provisions and the means by which a copy of a description of the procedural safeguards can be obtained.

The proposed assessment plan given to the parents or guardian shall also meet all the following requirements: (EC § 56321b)

- Be in language easily understood by the general public.
- Be provided in the primary language of the parent, guardian, or other mode of communication used by the parent or guardian, unless to do so is clearly not feasible.
- Explain the types of assessments to be conducted.
- State that no individualized education program will result from the assessment without the consent of the parent.

The assessment must be sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the child is classified (34 CFR §300.304(c)(6)).

The assessment plan process must include current classroom based assessments, observations, description of any recent assessments conducted, and a review of existing evaluation information provided by the parents, including any available independent assessments, and any information the parent requests to be considered (34 CFR § 300.305(a)(1); EC § 56321(e) and § 56381(c); CCR § 3022).

The assessment plan process must result in the identification of data needed to determine eligibility, present levels of performance, the child's need for special education and related services, and any modifications needed to enable the child to meet the goals and to participate in the general curriculum (34 CFR § 300.305(a)(2); EC § 56381(b)(2).

Independent Education Evaluation (IEE) Policy & Providers

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LEAs may approve any provider that meets the requirements indicated in [SELPA IEE Policy](#). Contact the SELPA for a list of approved local providers.

Or look at the following resources:

### [CASP LEP Directory](#)

Nonpublic Schools and Agencies Certification Data Worksheet(XLSX; Updated 13-Apr-2021)

The Nonpublic Schools and Agencies (NPS/As) spreadsheet contains certification information regarding all of the NPS/As currently certified by the California Department of Education.

### Assessment Strategies

Assessment professionals have the discretion to select particular testing or evaluation instruments and strategies known to be nondiscriminatory and non-biased. This may include processing, developmental, academic, adaptive, social-emotional, dynamic, ecological assessments and utilizing a conceptual approach to data analysis. In every evaluation, the assessment team members must use professional judgment in selecting the battery of instruments and strategies to be utilized with an individual child.

“A comprehensive evaluation provides an IEP team with information regarding both environmental (instruction/intervention) and within learner attributes (e.g., response and cognitive processing). This approach provides the information essential to (a) make a determination that a student has a disability, (b) document the need for special education services, and (c) provide information important to instruction and intervention design” (CASP, 2011).

Employing the RIOT (review, interview, observe and test) model ensures that “all areas related to the suspected disability” are addressed instead of solely focusing on the learner through testing.

- Review: The first step in conducting an assessment should be to review prior records or any other type of permanent product that might be relevant.
- Interview: Anyone with knowledge of the student and his skills should be interviewed. This might include teachers, administrators, parents, or the student herself. Multiple perspectives and input are crucial to decision making.
- Observe: It is important to actually see what is occurring in a classroom or other setting. Whether to use structured or informal approaches should depend on what type of information is sought.

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- Test: This is what most people think of when they hear “assessment”. Almost always it is important to administer tests to a student because it is the best way to get certain types of information.

In regards to identification of a disability, structured or unstructured interviews are important in obtaining information about the student’s medical and developmental history, social- emotional functioning, educational progress or history, and community involvement. The family is a critical component in identifying home environmental factors that may be impacting the child’s behavior. Although not standardized, a formal interview format may provide relevant information. Lichtenstein (2014) views rating scales as written versions of standardized interview questions and notes they can be included as background information or under test results. A developmental history is considered an essential component in an initial evaluation since it can influence the determination of whether or not the child has a disability.

Systematic observations in the child’s environment yields data critical to any evaluation procedure as it increases the chance of making correct assumptions. It is important that observations be conducted to gather demonstration of behaviors, which is different from information about the behavior. During this process, best practices emphasize the need to write observations as descriptive statements rather than subjective or inferential statements and to save the interpretations about the meaning of the behaviors for the data analysis process. The chart below shows these distinctions.

Written consent by a parent is required prior to observing an individual student if the data collected is due to suspicion of disability or disability-related need. If the observation is conducted solely to provide feedback to the teacher regarding service delivery, then written consent will not be needed. Observations can provide insights to what might impact a student’s performance. These other sources are sometimes called domains and are represented by the acronym ICEL— Instruction, Curriculum, Environment, Learner.

- Instruction: This is what we usually think of as teaching. How content is presented to students can vary in many different ways: type of materials, grouping, opportunities to respond, etc.
- Curriculum: This is the content that is actually taught. Scope and sequence would be included here as well as pacing within and between topics.
- Environment: This means the classroom environment—things such as physical arrangement of the room, where the student sits and next to whom, lighting, noise, etc.
- Learner: Obviously the student himself. It is important to put the student and his performance in the broader context of the instruction, curriculum, and

environment before we determine why a student is performing as he is or how to address difficulties.

The assessment process must include observations of the child in various settings that may include; in the classroom(s), at play during recess, in the lunchroom, transitioning from one activity or class to another, while interacting with peers and adults at an assembly, or any other activity or class the in which the student may be involved.

- If the student is suspected of having a specific learning disability, it is mandated that at least one team member shall observe the pupil's academic performance and behavior in the areas of difficulty in the pupil's learning environment, including the regular classroom setting.
- For students who are being assessed and suspected of having emotional disturbance, it is also necessary to observe the student throughout their school environment because the emotional disturbance should manifest itself across domains and over a long period of time.

When a child who is less than school age or out of school is referred for an evaluation, an IEP team member must observe the child in an environment appropriate to a child of that age. An assessment is weakened by failure to observe and consult with staff such that a witness statement may be entitled to little weight (OAH Case No. 2012040379). A reevaluation can be deemed inadequate if the assessor does not observe the student in his classes while school is in session (OAH Case No. 2012120545).

Projective tests require specialized training, adherence to administration criteria, and analytical interpretation of results. School psychologists may or may not feel they have the knowledge and skills to do this type of assessment based on their preparation training program. It may be necessary to include persons with mental health training as a member of the assessment team when social-emotional factors are the primary concern.

Difficulty with one or more social, emotional or behavioral aspects of learning can appear in a wide range of disability conditions. When assessing the social/emotional factors of a student, remember to evaluate whether or not the student may benefit from educationally related mental health services (ERHMS). Related services such as group counseling and guidance, individual counseling, psychological services, parent education and training, positive behavioral interventions and supports, and social work services can be offered regardless of disability category if a need is identified.

Rating scales can be used to identify development and/or characteristics of emotional difficulties. Rating scales may be completed by anyone who knows the child. They can help to identify the extent of behaviors (intensity, frequency), and to reflect the

observations of those who regularly engage with the individual (e.g., teacher, parent). Some rating scales provide for self-reporting measures. Rating scales are not exact and should be used in conjunction with other methods of collecting data.

There are a variety of inventories that have been standardized to assess for academic, adaptive, cognitive, processing, and social-emotional functioning. It is important to review the norms to determine if a particular test is appropriate for a particular child. The Diagnostic Center (2012) contends that school psychologists have come to rely on formal standardized, norm referenced test batteries “because they are relatively quick and easy to administer, score, and interpret, and, despite their limitations, results sometimes provide useful information for helping students.” Although a variety of sources are utilized to gather information, formal testing appears to be the predominant method of generating and reporting on data for most reports.

#### Assessing Students Subject to *Larry P. v. Riles*

The *Larry P. v. Riles* (1979, 1986, & 1992) court hearings are the basis for law that disallows the administration of standardized intelligence quotient (IQ) tests to students who are African American or black. This case determined that intelligence tests administered to students who are African American or black are culturally biased within the meaning of EC § 56320(a). Parental consent or waivers will not undo that bias. When a student is identified as multi-racial, and one of those races is black, or the student looks to be black, he or she must be considered African American for testing purposes (CDE, 2014).

Given that standardized intelligence testing (which includes any measures of cognition, mental ability or aptitude) is discriminatory to students identified as African American and federal and state special education law prohibit use of discriminatory tests, standardized intelligence tests should not be given for any special education purpose to this subgroup, even if the tests considered do not appear on either list generated by the courts (CDE, 1992, 1997, 2014).

To ensure compliance with the *Larry P.* mandate, the California Department of Education (CDE) established the following compliance review procedures to evaluate how well LEAs are meeting this mandate.

1. Does the assessment plan include a description of alternative means that will be used to assess the student when standardized tests are considered invalid?
2. Is there evidence that the assessment will be comprehensive? Do tests and other assessment materials meet the following requirements?
  - Are materials selected and administered not racially or culturally discriminatory?

- Do assessment procedures ensure that IQ tests are not administered to students who are black or African American for the purposes of identifying a disability?
  - Does the evaluation result in a written report which includes the findings of each assessment and contain required information?
3. To what extent is the assessment varied from standard conditions? 24
4. What effects do environment, cultural or economic conditions have on the student's performance?

The CDE Special Education Division determined that, according to the Larry P. v. Riles ruling, the special education review compliance guidelines shall:

1. Prohibit the use of standardized intelligence tests for the identification of students who are black or their placement into classes for students with intellectual disabilities;
2. Include a list of any tests prohibited until they have been validated for use in the determination of intellectual disability status or placement into a special education class for students with intellectual disabilities;
3. Prohibit any tests wherein there are noted scores that would provide a direct measure of intelligence of any child reported to be or perceived to be black; and
4. Concluded that any standardized measure of intelligence should not be used with students who are African-American or black until such time that the test is validated as statistically, racially, and culturally unbiased for administration by the State Board of Education and is approved by the court.

NO standardized measure of intelligence (cognition, mental ability or aptitude) can be used with students who are African-American or black because, to date, none have been validated as statistically, racially, and culturally unbiased or approved by the court.

Accordingly, previously published articles and guidelines regarding assessment practices for students who are African American are, as of now, obsolete and are not to be used. There are no lists of approved tests from CDE, CASP, or any other agency or entity that may be used that measure anything pertaining to any areas of cognition. Therefore, a LEA cannot use a traditional discrepancy model to determine a specific learning disability when assessing a student who is black for that purpose because a discrepancy cannot be discerned between cognition and academic performance.

To meet these requirements, the Sonoma County SELPA recommends using the ["Alternate Means" Assessment Guidelines](#) from Riverside County SELPA. These guidelines follow the MATRIX System model created by the Diagnostic Center North as

an alternate means of identifying a student's learning strengths and weaknesses. The system utilizes five procedural categories (review of records, observations, interviews, informal assessment, and formal assessment) to gather information in five critical learning domains (reasoning, executive functioning, visual-spatial skills, social cognition, and language). Quick Guides and data collection templates are included to help assessors analyze the data. The student's profile and assessment report is then shared with the IEP team to determine eligibility for special education services.

### Early Start through Preschool Assessments

Early Start typically refers to infants and toddlers from birth to age three while preschool refers to children from three through five years of age. Per the American Academy of Pediatrics (2001), children aged birth to five experience physical, cognitive, linguistic, and socio-emotional growth and development at a rapid pace. While all children may not reach developmental milestones at the same time, one should be concerned when developmental does not occur within an expected age range. By catching developmental issues early, children can be provided with treatment or intervention more effectively, and additional developmental delays or deficits may be prevented.

Screening provides a quick snapshot of a child's health and developmental status. As such, it may identify potential difficulties that might necessitate further evaluation. However, screening would only be a first step. Because screenings are designed to be brief, they do not capture the full range of potential developmental issues, focus more on identifying deficits than the higher range of performance, only indicate the possible presence of a developmental delay or difference, cannot definitively identify or describe the nature or extent of a disability, and must be followed by a more comprehensive and formal evaluation process to confirm (or not).

#### Multi-disciplinary Assessment Procedure:

- The accepting Early Start agency is responsible for a full developmental assessment and determining the needs of the child.
- The assessments are conducted by a multidisciplinary team (Physical Therapist, Early Intervention Specialist, Speech Therapist, Nurse, etc.) for purposes of service planning.
- Parental consent for evaluation must be obtained prior to assessment.
- Team members will schedule and complete assessments of the child's developmental skills within 45 days of the referral.
- If a child is eligible for CA Early Start Services, an Individual Family Service Plan (IFSP) will be developed that addresses the strengths and needs of the infant or toddler, parental concerns, and early intervention services.

For more information about the Early Start process, please see our [website](#).

## English Language Learners

Research demonstrates that English learners (ELs) with the least amount of language support are most likely to be referred for special education and ELs receiving all of their instruction in English were almost three times as likely to be in special education as those receiving some native language support (Artiles & Ortiz, 2002, as cited by Butterfield, 2014). In addition, ELs who receive more primary language instruction over time leads to higher academic instruction in English (Goldenberg, 2008, cited by Butterfield, 2014). Therefore, having a comprehensive understanding of the type of instruction an EL student has received is critical.

Students who are in the process of learning English may often display academic behaviors and skill sets that are misinterpreted as a disability. Assessors need to understand typical and developmental features of a student's primary language, be able to identify the common English errors that are produced by speakers of that language, understand that errors are difference (not disorders), and be able to determine if the student is exhibiting a disorder that would impact his or her performance in any language spoken.

Failure to account for language development can lead to over-representation in referrals, discriminatory outcomes in assessments, and disproportionate placement in special education programs. Before referring for an individualized assessment, an analysis of the student's background (i.e., educational history), progress in English Language Development (ELD) instruction compared with similar peers, and response to interventions should be conducted. When an English learner is referred for evaluation, all the standard and unique to English learner legal requirements apply.

Professionals assessing an English learner need to utilize formal and informal assessment strategies. It is considered best practice to assess the student in his or her native language as it provides comparative data about how the student performs in this native language versus English. It may not be feasible to assess in the student's primary language when assessment tools are not available in the native language or student has a severe disability and lacks the communication or other skills needed to be able to be assessed accurately. Best practice is to interview the parent about the child's primary language patterns of development and learning of new information via an interpreter or native speaker.

Utilizing an assessor fluent in both languages provides a more comprehensive view of what the student knows and is able to do. Knowledge of the student's proficiency at both the Basic Interpersonal Communication Skills (BICS) and Cognitive Academic Language Proficiency (CALP) level, both academically and cognitively, can be used to guide the assessment team regarding types of assessment to be performed. If the

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preliminary bilingual assessment data indicate the student has little or no skills in the primary language, the assessment members may opt to do the remainder of the assessment in English.

Federal and State special education guidelines require that a student be assessed or reassessed in his/her primary language or other mode of communication. However, questions arise about when we can test in English, when (and how) we test in the native language, where we find assessment tools to help in the process, and who would be the person who has the ability to assess the student in the native language. These are questions that need to be answered prior to the actual assessment. Once the student's dominant language has been determined, assessment can take place.

However, assessment continues to be fraught with problems. Many professionals rely almost entirely on the use of standardized tests to evaluate a student whose primary language is not English. They use these tests to evaluate the student's language skills and to plan intervention/service delivery. Some of the reasons that professionals rely on standardized tests include:

- legal considerations (e.g. percentile ranks and standard deviations are used as cut-offs to determine special education eligibility)
- time constraints (standardized tests are often faster to score and administer than informal measures) caseload constraints (many schools have a great number of students who are referred for testing due to academic difficulties)
- convenience (standardized tests are often easier and more automatic to administer than most informal measures).

If professionals continue to use standardized tests with students whose primary language is not English, they need to at least be aware of the tests' potential legal, psychometric, cultural, and linguistic limitations in terms of validity and reliability. The underlying assumption is that testing ELs in English is at best questionable. The use of inappropriate testing instruments may lead to the over identification of ELs in special education, which can result in financial and compliance sanctions to the district. Best practices include the use of more than just standardized measures. Informal and formal assessment procedures should include the family's background information, developmental milestones, language use, health history, in-class and out-of-class observations, language assessment in both languages, and criterion-referenced measures.

Nonverbal tests are often used in testing bilingual students. Unfortunately, nonverbal measures of intelligence are less reliable than verbal measures, and, despite appearances, may even be hypersensitive to language background (Ascher, 1990).

A directly translated test is always invalid. While it is not difficult to translate a test, it is extremely difficult – if not impossible – to translate psychometric properties from one language to another. A word in English is simply not the same word in terms of difficulty in Spanish, Hmong, Russian, or Chinese. (Ascher, 1990). Further, translation assumes that the EL student has the same life experiences and background as the norming population, when they often do not.

Norm-referenced tests in primary language: Some tests have been developed in Spanish in an attempt to increase validity and reliability. However, some of these tests were normed using monolingual Spanish speakers with little or no sustained exposure to English. When used with students immersed in a predominately English culture and education system (even those in a bilingual program) their error rates are unacceptably high (Figueroa, 1989).

Recently, a number of tests have been normed using a bilingual population in the U.S. and are considered to be more reliable for use with bilingual students. It is important to read the test manual to be aware of the norming population when selecting tests.

Guidelines for use of interpreters: The use of trained bilingual paraprofessionals is an invaluable resource to an evaluator when she/he does not speak the language(s) of the student to be assessed. Qualified individuals can be used to gather information in interviews and to collect data from non-standardized, criterion-referenced instruments. On standardized tests, with the evaluator in attendance, a bilingual paraprofessional can administer recommended tests and later debrief with the examiner. Under no circumstances should the bilingual paraprofessional be asked to translate a standardized test or to administer a direct translation of a standardized test for the purpose of assessing an EL.

The following general guidelines should be considered:

- The use of interpreters can hinder the establishment of rapport.
- Training of interpreters is essential.
- Choose interpreters who have prior experience as school interpreters with a high level of proficiency in both languages.
- Interpreters should be familiar with special education and the student's cultural and linguistic background.
- During testing sessions or meetings speak in short, simple sentences. Avoid idioms, metaphors, or colloquialisms. Use specific terms.
- Do not speak to colleagues while interpreters are in the process of translating.
- Encourage direct translation of all answers.

- Allow time before and after testing to prepare with the interpreter.
- Review confidentiality requirements with interpreter.
- Prepare all assessment materials.
- Explain test procedures and purposes.
- Discourage cueing or promoting during testing.
- Even with a very experienced interpreter, the professional assessor must be present and fully involved during the assessment session.
- Inexperienced and untrained interpreters can make errors administering tests resulting in substantial changes in the content and meaning of the questions.

(Adapted from Langdon and Saenz, 1996)

Triennial Reevaluation: In a triennial reevaluation, the assessment team needs to consider the same issues as for an initial. However, it is extremely important in the re-assessment of an EL student that these issues be revisited:

- Student’s language level in both languages
- History of language of instruction
- Change in language used at home

Resources:

[Guidelines for Special Education Interpreters](#)

[Guidelines for Evaluation of English Language Learners](#)

[Meeting the Needs of English Learners \(ELs\) with Disabilities](#)

### Eligibility Criteria

A child shall qualify as an individual with exceptional needs ... if the results of the assessment ... demonstrate that the degree of the child’s impairment requires special education in one or more of the program options authorized by EC § 56361. The decision as to whether or not the assessment results demonstrate that the degree of the child’s impairment requires special education shall be made by the IEP team... The IEP team shall take into account all the relevant material that is available on the child. No single score or product of scores shall be used as the sole criterion for the decision of the IEP team as to the child’s eligibility for special education (CCR Title 5 § 3030(a)). The disability terms used in defining an individual with exceptional needs under Title 5 §3030(b) include: (1) Autism, (2) Deaf-Blindness, (3) Deafness, (4) Emotional Disturbance, (5) Hearing Impairment, (6) Intellectual Disability, (7) Multiple Disabilities, (8) Orthopedic Impairment, (9) Other Health Impairment, (10) Specific Learning Disability, (11) Language or Speech Disorder, (12) Traumatic Brain Injury, and (13) Visual Impairment.

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The California Code of Regulations Title 5 § 3030 were revised in 2014 as noted below.

## 1. Autism

Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(A) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in subdivision (b)(4) of this section according to CFR 300.8(c)(1)(ii).

(B) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria of this section are satisfied.

## 2. Deaf-Blindness

Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

## 3. Deafness

Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing with or without amplification that adversely affects a child's educational performance.

## 4. Emotional Disturbance

Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A general pervasive mood of unhappiness or depression.
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (F) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

## 5. Hearing Impairment

Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

## 6. Intellectual Disability

Intellectual disability means significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

## 7. Multiple Disabilities

Multiple disabilities means concomitant impairments, such as intellectual disability-blindness or intellectual disability-orthopedic impairment, the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. "Multiple disabilities" does not include deaf-blindness.

## 8. Orthopedic Impairment

Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

## 9. Other Health Impairment

Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that:

- (A) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
- (B) Adversely affects a child’s educational performance.

Other examples of Other Health Impairments may include Attention deficit/hyperactivity disorder, nephritis, Tic disorders including Tourette syndrome, Fetal Alcohol Spectrum Disorder, seizure disorders, HIV, chronic lung disease, and genetic impairment. There are students with medical problems in every disability category - not all health conditions fall within OHI. OHI is not a default category and must be addressed like other impairment categories.

1. Limited strength, vitality or alertness: only one of the three must apply in any individual case. There is no official definition of these terms, either at the federal or state level. However, by looking online, in the dictionary, and in a thesaurus, the following definitions may be helpful. Keep in mind there may be too much vitality or alertness, especially when the student has ADHD.

- Strength: bodily or muscular power; vigor; durability related to decreased capacity to perform school activities; tires easily, chronic absenteeism related to the health problem. For instance, can the student sit or stand as required by school activities? Is the student able to hold a pencil or use other classroom tools? Does the student fall asleep or require frequent rest breaks due to the health problem?
- Vitality: physical and mental strength; capacity for endurance; energy; animation; activity. There is certainly overlap in the meanings of these three terms. A student might have the strength to sit up or hold a pen, for example, but might not have the energy to complete the task at hand.
- Alertness: attentiveness; awareness; keen; observant; watchful; on guard; ready. Is the student aware of his/her surroundings and the activities going on? Does he/she have the mental acuity to participate in the lesson or activity?

2. Chronic or acute health problem: note there is no specified length of time for the health problem to be present or to continue. Students with chronic health problems may need intermittent services, especially if their illness is cyclical or

may recur necessitating additional treatment. It is not important to determine whether the health problem is chronic or acute. These terms are included to indicate the problem may be either, and it is not a distinction on which to spend discussion time in terms of eligibility. If it can be determined whether the problem is chronic or acute, it may be helpful in programming decisions.

- Chronic: long term and either not curable or there are residual features resulting in limitations of daily living functions requiring special assistance or adaptations or the disease or disorder that develops slowly and persists for a long period of time, often the remainder of the life span; may include degenerative or deteriorating conditions.
- Acute: begins abruptly and with marked intensity, then subsides or has a rapid onset, severe symptoms, and a short course; sequelae may be short-term or persistent.

3. Adversely affecting a child’s educational performance: it is important to structure the IEP team discussion and discuss how the child’s education is affected. This information will be critical if the student is found to be a child with a disability, and an IEP is going to be developed. Describe how the health problem is manifested at school, including implications for programming.

## 10. Specific Learning Disability

Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may have manifested itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, phonological processes, cognitive abilities including association, conceptualization and expression.

(A) Specific learning disabilities do not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(B) In determining whether a pupil has a specific learning disability, the public agency may consider whether a pupil has a severe discrepancy between intellectual ability and achievement in oral expression, listening comprehension, written expression, basic reading skill, reading

comprehension, mathematical calculation, or mathematical reasoning. The decision as to whether or not a severe discrepancy exists shall take into account all relevant material which is available on the pupil. No single score or product of scores, test or procedure shall be used as the sole criterion for the decisions of the IEP team as to the pupil's eligibility for special education. In determining the existence of a severe discrepancy, the IEP team shall use the following procedures:

1. When standardized tests are considered to be valid for a specific pupil, a severe discrepancy is demonstrated by: first, converting into common standard scores, using a mean of 100 and standard deviation of 15, the achievement test score and the intellectual ability test score to be compared; second, computing the difference between these common standard scores; and third, comparing this computed difference to the standard criterion which is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests. A computed difference which equals or exceeds this standard criterion, adjusted by one standard error of measurement, the adjustment not to exceed 4 common standard score points, indicates a severe discrepancy when such discrepancy is corroborated by other assessment data which may include other tests, scales, instruments, observations and work samples, as appropriate.
2. When standardized tests are considered to be invalid for a specific pupil, the discrepancy shall be measured by alternative means as specified on the assessment plan.
3. If the standardized tests do not reveal a severe discrepancy, the IEP team may find that a severe discrepancy does exist, provided that the team documents in a written report that the severe discrepancy between ability and achievement exists as a result of a disorder in one or more of the basic psychological processes. The report shall include a statement of the area, the degree, and the basis and method used in determining the discrepancy. The report shall contain information considered by the team which shall include, but not be limited to: (i) Data obtained from standardized assessment instruments; (ii) Information provided by the parent; (iii) Information provided by the pupil's present teacher; (iv) Evidence of the pupil's performance in the regular and/or special education classroom obtained from observations, work samples, and group

test scores; (v) Consideration of the pupil's age, particularly for young children; and (vi) Any additional relevant information.

4. A severe discrepancy shall not be primarily the result of limited school experience or poor school attendance.

(C) Whether or not a pupil exhibits a severe discrepancy, a pupil may be determined to have a specific learning disability if:

1. The pupil does not achieve adequately for the pupil's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the pupil's age or State-approved grade-level standards: (i) Oral expression; (ii) Listening comprehension; (iii) Written expression; (iv) Basic reading skills; (v) Reading fluency skills; (vi) Reading comprehension; (vii) Mathematics calculation; (viii) Mathematics problem solving, and
2. (i) The pupil does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified when using a process based on the pupil's response to scientific, research-based intervention; or  
 (ii) The pupil exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments; and
3. The findings are not primarily the result of: (i) A visual, hearing, or motor disability; (ii) Intellectual disability; (iii) Emotional disturbance; (iv) Cultural factors; (v) Environmental or economic disadvantage; or (vi) Limited English proficiency.
4. To ensure that underachievement in a pupil suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group making the decision must consider:
  - (i) Data that demonstrate that prior to, or as a part of, the referral process, the pupil was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
  - (ii) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the pupil's parents.
5. In determining whether a pupil has a specific learning disability, the public agency must ensure that the pupil is observed in the pupil's learning environment. In the case of a child of less than school age or out of school, a qualified professional must observe the child in an environment appropriate for a child of that age.

## 11. Language or Speech Disorder

A pupil has a language or speech disorder and it is determined that the pupil's disorder meets one or more of the following criteria:

(A) Articulation disorder.

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

(B) Abnormal Voice. A pupil has an abnormal voice which is characterized by persistent, defective voice quality, pitch, or loudness.

(C) Fluency Disorders. A pupil has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the pupil and listener.

(D) Language Disorder. The pupil has an expressive or receptive language disorder when he or she meets one of the following criteria:

1. The pupil scores at least 1.5 standard deviations below the mean, or below the 7th percentile, for his or her chronological age or developmental level on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics. When standardized tests are considered to be invalid for the specific pupil, the expected language performance level shall be determined by alternative means as specified on the assessment plan, or
2. The pupil scores at least 1.5 standard deviations below the mean or the score is below the 7th percentile for his or her chronological age or developmental level on one or more standardized tests in one of the areas listed in subsection (A) and displays inappropriate or inadequate usage of expressive or receptive language as measured by a representative spontaneous or elicited language sample of a minimum of fifty utterances. The language sample must be recorded or transcribed and analyzed, and the results included in the assessment report. If the pupil is unable to produce this sample, the language, speech, and hearing specialist shall

document why a fifty utterance sample was not obtainable and the contexts in which attempts were made to elicit the sample. When standardized tests are considered to be invalid for the specific pupil, the expected language performance level shall be determined by alternative means as specified in the assessment plan.

## 12. Traumatic Brain Injury

Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech.

(A) Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

## 13. Visual Impairment

Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

The team members usually reach consensus on eligibility but, when one or more members disagree, he or she should sign the IEP as being in attendance and attach a letter of dissent explaining why they disagree.

### Evaluation Report

The personnel who assess the pupil are required to prepare a written report, or reports, as appropriate, of the results of each assessment. Per EC § 56327, the report must include, but is not be limited to, all of the following:

1. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions.
2. Whether the child may need special education and related services.
3. The basis for making the determination.
4. The relevant behavior noted during the observation of the child in an appropriate setting.
5. The relationship of that behavior to the child's academic and social functioning.

6. The educationally relevant health, development and medical findings, if any.
7. A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate.
8. The need for specialized services, materials, and equipment for pupils with a low incidence disability.
9. In addition, parent input must be included in the report (per 34 CFR §300.305(a), 5 CCR §3022, EC §56321(a), EC §56381(a)(1)).

While these criteria must be met, there is also other information that should be included to be considered best practice. A comprehensive report provides the documentation that all legal and professional aspects of an assessment have been completed. It should be viewed as a resource for teachers and other staff members as intervention options are considered. The National Association of School Psychologists (NASP, 2010) Principles for Professional Ethics and Guidelines for the Provision of School Psychological Services emphasize the following:

- Present findings in language clearly understood by the recipients
- Reports should emphasize interpretation and recommendations
- Reports should support the recipients in their work or interactions with the child
- Reports focused on test scores or global statements of functioning are rarely useful.

Carriere and Hass (2013) state that “A useful report is understandable to the consumer, it clearly answers the referral questions, and it provides clear and feasible individualized recommendations”. One basic premise to this way of writing is that writing a legal statement in your report does not make it true. They promote making each report understandable by:

1. Simplifying the terminology and jargon. If a shorter word, or a more common word, will get the point across, use it. Explain acronyms and educational terms. If it's possible to cut a word out, then cut it out.
2. Lowering the readability level. Most newspapers are written at a 5th or 6th grade level. A written report should be nearer to that level; not reflective of a graduate school paper. Never use the passive voice when the active voice can be used.
3. Making the logic of the assessment and report transparent. A+B does =C. For example, don't try to make a leap all the way to a disability of emotional disturbance when the assessment results and observations only indicate mild behavioral problems that may be handled through the use of an intervention plan or a goal, or both.

Assessment results (as provided in the written report) indicate whether or not a child has a disability and if the degree of the child's impairment requires special education.

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During an initial or triennial IEP team meeting, the assessors summarize the findings of the multidisciplinary team evaluation by indicating whether the child may need special education and related services, the basis for making the determination, the relevant behaviors and their relationship to the student's disabilities.

The report must be provided to the parent at the IEP meeting regarding the assessment (EC § 56329(a)(3)). Best practice is to have the report complete at the time of the IEP meeting. Lozano Smith (2014) stresses the importance of proofreading every report for embarrassing or substantive typos – confusing he/she or wrong name in report – to maintain credibility of staff and report reliability. Do not give out a “DRAFT” report. Do not read the report verbatim in an IEP meeting. Summarize the highlights and use visuals when appropriate.

Individualized assessment reports must be translated into the primary language if requested by the parent/guardian. Often parents will indicate that verbal translation is sufficient. Translation requires basic terminology along with specialized vocabulary associated with the assessment to IEP processes.

### Assessing Preschoolers

Preschool children identified as individuals with exceptional needs must be reassessed prior to transitioning from a preschool program to kindergarten or first grade (EC § 56445). This reassessment may include standardized testing, criterion referenced testing, observation and/or review of records (34 CFR §300.305). Personnel providing special education services to the child are responsible for completing this reassessment and writing a summary report. Whenever possible, the IEP team review meeting should include a kindergarten or first grade teacher to ensure that a smooth transition occurs.

### Exiting

To be eligible as an individual with exceptional needs, the student must be identified by an IEP team as a child with a disability; the student's impairment requires instruction and services which cannot be provided with modification of the regular school program; and the student meets the necessary age requirements.

- a review of existing data (i.e., previous assessment results, attendance, discipline referrals, health records, progress on goals, report cards, state and district assessment results),
- updated assessment results (i.e., vision and hearing, current academic achievement scores),
- all the components previously identified under comprehensive report requirements, and,

- documentation from the IEP team meeting wherein this determination was made.

When a child no longer meets the eligibility requirements (as described in the Eligibility Criteria section) or their needs can be met with modification of the regular school program, the student will be exited from special education.

When a child reaches the age of 18, all rights under Part B of the IDEA will transfer to him or her. The only exception will be if the child is determined to be incompetent under State Law. In such cases the parent has to take steps to seek full or partial conservatorship. Without such documentation, the student with disabilities has the authority to sign his or her own assessment plan and/or IEP.

An individual with exceptional needs who graduates from high school with a regular high school diploma is no longer eligible for special education and related services. A "regular high school diploma" means a diploma conferred on a pupil who has completed a prescribed course of study and has met the standards of proficiency in basic skills prescribed by the governing board of the school district (EC § 56026.1).

A student with a disability can graduate from high school with a diploma or obtain a certificate of achievement and has the right to participate in graduation ceremonies. There are five big ideas:

1. High school graduation means exiting public education with a high school diploma.
2. Senate Bill 172, which was signed by Governor Brown on October 7, 2015, suspends the administration of the CAHSEE and the requirement that students completing grade 12 successfully pass the high school exit exam as a condition of receiving a diploma of graduation from high school for the 2015-16, 2016-17, and 2017-18 school years. The law also requires LEAs to grant a diploma to any student who completed grade twelve in the 2003-04 school year, or a subsequent school year, and has met all applicable graduation requirements other than passage of the CAHSEE. This law takes effect January 1, 2016.
3. Students with an IEP who have not earned their high school diploma are eligible for public school service until age 22.
4. State and Federal law requires that special education students be provided a connection to continuing training/education and employment through the Individualized Transition Plan portion of the IEP.
5. Each student with a disability is to receive a "Summary of Performance" written by their case manager upon earning the high school diploma or aging out of public education at age 22.

SD vs PSW vs Rtl (guidance, recent court cases, and recommendations)

The 2004 reauthorization of the Individuals with Disabilities Education Act (IDEA) prohibited states from requiring Local Education Agencies (LEA) to use the ability-achievement discrepancy model and authorized the use of alternative approaches to the identification of students with Specific Learning Disabilities (SLD). There has been vigorous debate in the field of school psychology as to what constitutes appropriate procedures for determining whether an individual qualifies for special education and related services under the category of specific learning disability (SLD).

Currently in California, three approaches are allowed for the identification of a student with a specific learning disability: (a) a severe discrepancy between intellectual ability and achievement (5 CCR § 3030 [b] [10] [B]); (b) the pupil does not make sufficient progress to meet age or state-approved grade level standards... when using a process based on the pupil's response to scientific, research-based intervention<sup>^</sup> (5 CCR § 3030 [b] [10] [C] [2] [i]); or (c) the pupil exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, State-approved standards or intellectual development...<sup>^</sup> (5 CCR § 3030 [b] [10] [C] [2] [ii]) (California Department of Education 2014).

A multi-tiered model addresses the learning needs of all children, including children with SLD. A multi-tiered model is intended to provide for quality instruction in the general education classroom and timely interventions in general education before a special education referral is considered. For a detailed legal analysis of Patterns of Strengths and Weaknesses (PSW), see court case Temecula Valley USD (OAH 12-18-18) 2018070108. Best practices in making a special education SLD determination is to be able to explain your decisions, report all scores, and receive ongoing training. It is important for school psychologists to state their professional opinion if a student qualifies for special education by indicating in the report if the student meets or does not meet the criteria for the categories considered. It is also important to make 2-3 recommendations based on the assessment results, and include these in the written report.

#### Resources

[NASP Position Statement on Identification of Students with Specific Learning Disabilities](#)

[CASP Position Paper: Specific Learning Disabilities and Patterns of Strengths and Weaknesses](#)

Assessment Resources During Unusual Circumstances

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[School Psychology Practice during COVID  
Updated Assessment Guidance & Four Specific Eligibility Areas Guidance](#)

Other Resources & Credits

[Riverside Best Practices for Special Education Evaluations](#)

[El Dorado Procedural Guide](#) -

<https://charterselpa.org/program-support/procedural-guide/>