

EDUCATION MANUAL

Simple steps to achieving an appropriate education
for foster children and those with
developmental delays and disabilities

Birth to age 22



Family. Education. Stability. Justice.

INTRODUCTION

AS LONG-STANDING ADVOCATES for children with disabilities within the foster care, delinquency, mental health, regional center and school systems, the Alliance understands how confusing it is to figure out where and how to seek services for the child you are working with. This step-by-step guide is intended to provide the tools needed to seek early intervention services from regional centers for children birth to 3 years of age, and education-related services from the school system for children 3 and older. This manual is not intended as legal advice, but for practical use by pro bono attorneys, caregivers and other service providers of children in the foster care system.



THE TRUTH ABOUT CHILDREN WHO NEED EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES

It is important to remember that all children develop and learn in different ways. Being eligible for early intervention or special education services does not mean that the child is “dumb” or cannot learn. It means the child needs specialized services to assist with their learning and development.

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EDUCATION RIGHTS

WHO HAS THE LEGAL RIGHT TO MAKE DECISIONS FOR EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES?

Education Rights (ERs) give the holder the legal right to make education-related decisions for a child, including: requesting records, early intervention and special education evaluations and assessments, and consenting to early intervention and special education services and placements in the Individualized Family Service Plan (IFSP) or Individualized Education Program (IEP). The IFSP/IEP is the contract between the Education Rights Holder (ERH) and the regional center or school district for early intervention or special education services.

WHO IS THE EDUCATION RIGHTS HOLDER?

1. **Biological Parents**
2. **Adoptive Parent:** Adoption automatically transfers ERs.
3. **Legal Guardian:** Guardianship automatically transfers ERs.
4. **Judge's Order:** Judges can limit education rights of biological parents and appoint a new ERH (via a JV-535 or minute order) such as:
 - Foster Parent
 - Prospective Adoptive Parent
 - Person acting as parent (i.e. relative caregiver)
 - Court Appointed Special Advocate (CASA)
 - Court-trained volunteer

EC § 56028, 56055; CA R. Ct. 5.650


* If you don't know who the ERH is, ask the child's court-appointed attorney or social worker.

HOW AND WHY THE ERH MIGHT CHANGE?



 Education rights may be transferred if:

1. Biological parents who previously held education rights had their rights limited or terminated by the court.
2. Child is reunified with their biological parent(s) after living with someone else.
3. Child is removed from their caregiver who previously served as ERH.
4. ERH is not cooperating with advocacy efforts.

 Contact the child's court-appointed attorney to see if there is a responsible adult in the child's life who is willing to be an ERH for the child. Have the child's court-appointed attorney walk on an order to change ERH.

WHAT IF THERE IS NO ERH?



- The school district or regional center must appoint a Surrogate Parent within 30 days of determining that one is needed.
- Surrogate Parents cannot have a conflict of interest with the child, such as working for the district or being a social worker or probation officer.

GC § 7579.5

CASA - COURT APPOINTED SPECIAL ADVOCATE

A volunteer can be appointed as an independent advocate for the best interests of the child. They provide information, access records and help advocate for the child. They have regular contact with the child and with the court. They do not automatically hold education rights.

WIC § 361

REQUESTING EDUCATION RECORDS

THE PURPOSE OF RECORDS

1. They help you better understand the child's needs.
2. They show the interventions that have or have not worked in the past.
3. They allow comparison between old testing and new testing to monitor academic and developmental progress.

ERHS OR PRO BONO ATTORNEYS, THROUGH THEIR COURT APPOINTMENT OR RETAINER AGREEMENT, CAN:

- Request records.
 - Records are essential to building your case.
 - Requests should be made in writing and can, as appropriate, be requested from:
 - ✎ The regional center,
 - ✎ The child's physician if they have a significant birth history and the child is under the age of 3,
 - ✎ Any and all schools and/or districts ever attended (even if the child only attended a school for a short amount of time).
 - The schools, districts and regional centers have 5 business days to provide you with the records.
 - Request that the copying costs be waived because the cost would prevent the ERH from obtaining records.
- Refer children for early intervention evaluations/assessments.
- Request special education assessments.
- Advise the ERH regarding consenting to early intervention or special education services and placements in the IFSP/IEP.

EC § 56504, 17 CCR § 52164





SALTZ FAMILY EARLY INTERVENTION ADVOCACY CENTER

For Children Ages 0 - 3



Family. Education. Stability. Justice.

EARLY INTERVENTION ADVOCACY: STEP-BY-STEP

STEP 1:
GETTING TO KNOW THE CHILD
(SEE PAGE 8)

STEP 2:
THE INITIAL REFERRAL
(SEE PAGE 9)

STEP 3:
THE EVALUATION & ASSESSMENT
(SEE PAGE 9)

STEP 4:
DETERMINING ELIGIBILITY
(SEE PAGE 10)

STEP 5:
**INDIVIDUALIZED FAMILY
SERVICE PLAN**
(SEE PAGES 11-12)

STEP 6:
LEGAL REMEDIES
(SEE PAGE 13)

STEP 1: GETTING TO KNOW YOUR CHILD

CHILD DEVELOPMENT BASICS

- Children experience tremendous change and growth in their first few years of life and each child develops at their own pace.
- **Developmental Milestones:** Milestones are skills that children typically learn by a certain age such as sitting up by 6 months or talking by age 2. High quality milestones can be found at www.cdc.gov/ncbddd/actearly/milestones/.
- **Developmental Delay:** A child has a developmental delay if they are not developing at a normal rate and are not reaching their developmental milestones at the expected time. 17 CCR § 52022(a)
- **Risk factors may include:** Exposure to drugs or alcohol, low birth weight, prematurity, complications at birth that cause the baby to be on a respirator, failure to thrive, having a parent with a developmental disability, serious injuries or illnesses in infancy, suffering abuse/neglect, or attachment disruptions. 17 CCR § 52022(c)



WHAT ARE EARLY INTERVENTION SERVICES?

- Early intervention services include speech and language, physical or occupational therapy, or other services designed to help children meet their developmental milestones.
- Research has shown that because children's brains are changing and growing so quickly in the first years of life, it is important to provide them with services as early as possible.

GC § 95001, 17 CCR § 52000(b)(12)

WHO PROVIDES EARLY INTERVENTION SERVICES IN CALIFORNIA?

- Local regional centers contract with the state to provide services to children ages 0-3 under a program called Early Start. Local education agencies serve children with low incidence disabilities. GC § 95014(b), WIC § 4620, 17 CCR § 52000(b)(43)

LOW INCIDENCE DISABILITIES

- Low incidence disabilities include visual impairments/blindness, hearing impairments/deafness, and orthopedic impairments (e.g., caused by cerebral palsy, paralysis or spinal chord injury).
- Regardless of whether you think your child has a developmental delay or a low incidence disability, the initial referral should be sent to your local regional center. 17 CCR § 52000(b)(32)

STEP 2: THE INITIAL REFERRAL

- After compiling evidence that the child may have a developmental delay, low incidence disability, or a diagnosed disability such as Downs Syndrome, cerebral palsy or epilepsy, send a referral to the child's regional center for an evaluation for Early Start Eligibility. Find which regional center serves your geographic area at: www.dds.ca.gov/RC/RCZipLookup.cfm.
- If the child is a foster child, contact their social worker and request that the social worker also submit a referral on Form 5004. If the social worker is not cooperative, contact the child's attorney at dependency court and request that the attorney have the court order the social worker to make the referral. 17 CCR § 52000(b)(44), 52040

STEP 3: THE EVALUATION & ASSESSMENT

1. **The Intake Call:** The regional center will call the ERH to explore their developmental concerns. The ERH can review developmental milestones to prepare. If the call has not happened within 1 week of the referral, call the intake department to ensure they received the referral. 17 C.C.R. § 52060
2. **The Evaluation and Assessment:** The regional center will meet with the ERH in the home or at the regional center to evaluate and observe the child. The regional center must obtain written permission from the child's ERH before this assessment takes place. GC § 95016, 17 CCR § 52162

The Evaluation: The evaluation will fully review all of the child's developmental areas (cognitive, communication, physical and motor, adaptive and social/emotional) to determine if the child is Early Start Eligible. The evaluation must include age-equivalent scores to calculate the percentage of delay. 17 CCR § 52000(b)(13)

The Assessment: If the child has communication, fine/oral motor/feeding/sensory processing or gross motor delays, the regional center must also complete a comprehensive speech and language, occupational therapy and/or physical therapy assessment prior to the completion of the 45-day timeline. These assessments will determine the services the child needs. 17 CCR § 52000(b)(4), 52084

A comprehensive evaluation and assessment should include:

- a. Standardized testing providing age equivalent scores describing where the child is functioning in each of the above referenced areas (for example, child's skills are at a 25 month-old level).
- b. Interview with caregiver/ERH regarding concerns.
- c. Review of medical records and pertinent background information. 17 CCR § 52082, 52084

TIMELINES

- The referral date is the day you or the social worker first contacted the regional center to make the referral. * What is your referral date? _____
- The regional center has 45 days from the date of referral to evaluate and assess the child in all necessary areas and develop the IFSP.
*When is your IFSP due? _____
- If you have not heard from the regional center by day 35 to schedule the IFSP meeting, call the regional center to immediately schedule the meeting.
- Request that the services coordinator provide you with copies of all evaluation and assessment reports before the meeting.
- If the IFSP is held late, the child may be entitled to compensatory or "make-up" services dating back to the date when the IFSP should have been conducted.

GC § 95020, 17 CCR § 52102(a), 52086

STEP 4: DETERMINING ELIGIBILITY

Once the child has been evaluated/assessed, analyze the results to see if the child is eligible for Early Start Services. Children are eligible for Early Start if they have: 1) a developmental delay, 2) an “established risk condition” including a “low incidence disability,” or 3) are at “high risk for developmental disability.”

1. DEVELOPMENTAL DELAY:

A child must be significantly below children their age (at least 33% delayed) in one or more of the following areas:

Cognitive Development

- How the child thinks, processes information, and problem solves.

Adaptive Development

- Skills necessary to function in everyday life such as eating, dressing, and hygiene.

Social-Emotional Development

- How the child interacts with others, including showing anger in a healthy way, solving conflicts, waiting their turn and playing with others.

Communication Development

- How the child understands what others say and uses language and gestures to express their thoughts and needs.

Physical & Motor Development, Including Vision and Hearing

- Fine Motor: How the child uses their hands and fingers to accomplish tasks like dressing and feeding.
- Gross Motor: How the child walks, jumps, balances and climbs.

NOTE: The % delay is determined through the formal evaluation and assessment conducted by the regional center. The evaluation will determine the developmental level of the child, as compared to the age of the child, to see if there is a delay.

GC § 95014(a)(1), 17 CCR § 52022(a)

2. ESTABLISHED RISK CONDITION:

a) An infant or toddler has a condition that has a **high probability of resulting in a developmental delay**, including chromosomal disorders such as Down Syndrome, or neurological disorders such as Autism, Cerebral Palsy, Epilepsy, Hydrocephalus, Spina Bifida or Tuberous Sclerosis.

OR

b) An infant or toddler has a **solely low incidence disability** (i.e., vision impairment, hearing impairment, orthopedic impairment).

See p. 8 for more information on low incidence disability.

GC § 95014(a), EC § 56026, 17 CCR § 52022(b)

3. HIGH RISK FOR DEVELOPMENTAL DISABILITY:

An infant or toddler is considered at high risk for a developmental disability when:

A.) A multidisciplinary team determines that the child has a combination of biomedical factors including:

1. Prematurity (less than 32 weeks and/or low birth weight defined as less than 1500 grams)
2. Assisted ventilation for 48 hours or longer during the first 28 days of life
3. Small for gestational age: below 3rd percentile
4. Multiple congenital anomalies or genetic disorder
5. Prenatal substance exposure
6. Failure to thrive

The full list of biomedical factors can be found in Title 17 of the California Code of Regulations, Section 52022(c).

OR

B.) The parent of the infant or toddler is a person with a developmental disability

STEP 5: INDIVIDUALIZED FAMILY SERVICE PLAN

WHAT IS AN IFSP? An IFSP is a plan to improve the child's development. 17 CCR § 52000(b)(28), 52100

WHO SHOULD BE PART OF THE IFSP TEAM?

Required members of the IFSP team:

- Pro Bono Attorney
- Education Rights Holder
- Regional Center Service Coordinator
- Early intervention service providers/evaluators/assessors

17 CCR § 52104

Optional members:

- Social worker
- Other family members (if appropriate)
- CASA
- Others who know about the child's



AN IFSP INCLUDES:

1. Present Levels of Development

Should identify the child's strengths and weaknesses/needs in each developmental area.

2. Developmental Outcomes

The goals for the child's growth within the next 6 months, in each area of identified need.

- Outcomes must include how and when progress will be measured.
Ex. Sally will learn 10 new words in the next 6 months.

3. Specific Early Intervention Services

The services designed to help the child reach their developmental outcomes, including:

- **Speech and Language Therapy** - To develop communication skills, improve vocabulary, and/or pronounce/articulate words more clearly.
- **Physical Therapy** - To work on weaknesses that impact walking, sitting and maintaining balance.
- **Occupational Therapy** - To develop adaptive, fine motor, feeding or sensory processing skills.
- **Infant Development Services** - In-home services with a specialist to work on overall development.
- **Neighborhood Preschools or Center-Based Programs** - Center-based programs are for more delayed children, while neighborhood preschools are for children with smaller delays who could benefit from being around typically developing peers.

The type and amount of service should be clearly written in the IFSP document.

GC § 95020(d), 17 CCR § 52106

STEP 5: IFSP (CONT.)

DUTY TO USE GENERIC RESOURCES

- Many early intervention services may be covered by a child's insurance/Medi-Cal, which must be used to access services before regional center funding is used.
- Using insurance can be a slow process.
 - Start this process as early as possible.
 - Request that the regional center provide "gap funding" for all services required by the child's IFSP. This means the regional center will pay for services until Insurance/Medi-Cal takes over.
- This requirement does not apply to evaluations/assessments.

17 CCR § 52000(b)(37), 52109

ACCESSING SERVICES THROUGH INSURANCE/MEDI-CAL

- Describe the child's delays to their pediatrician and request a prescription for the specific service(s) you are seeking.
- Contact the Alliance's Health Care Program to find a local service provider that accepts Medi-Cal. Make the earliest possible assessment appointment with that provider. Keep your regional center service coordinator informed and request that they follow up with Insurance/Medi-Cal.
- Whether services are denied or approved by the child's Insurance/Medi-Cal, request the decision in writing and provide a copy of it to your regional center service coordinator.
- Even if services are approved, Insurance/Medi-Cal may fund less services than the child needs. The regional center is responsible for funding the additional services, at the level required by the IFSP.
- If services are denied, the regional center is responsible for funding all services required by the IFSP.

GC § 95004, 17 CCR § 52108

SIGNING THE IFSP

- Before the IFSP is signed, review all outcomes, services, and notes to ensure they clearly outline what the child will receive.
- Do not sign a blank document, only one that clearly lists the outcomes and services the ERH agrees to. **Note:** Services cannot begin until the IFSP is signed.
- If there are parts of the IFSP that the ERH agrees with, but others that they do not, the ERH can sign for implementation of only the portions agreed to, as long as that is clearly written on the signature page.
- Do not leave the meeting without a copy of the service page, including ERH signature.
- Request a complete copy of the IFSP document be sent to you within 5 business days.

GC § 95020, 17 CCR § 52162

TRANSFER PROCEDURES & TIMELINES (AB 1089)

- Special transfer protections apply to infants and toddlers in foster care or voluntary placements.
- When these children transfer from one regional center area to another, the social worker must immediately send a notice of relocation to the original regional center (also called the sending regional center). The sending regional center must then immediately send a notice of transfer to the new regional center (the receiving regional center).
- The sending regional center must work with the receiving regional center to get services started in the new area as soon as possible, but definitely within 30 days from the date of the notice of transfer.
- If all services identified in the current IFSP have not been started within 30 calendar days after the notice of transfer, the sending regional center shall report in writing to the court, county social worker, and the ERH, all services that are being provided, along with the process to secure the missing ones. They shall continue reporting at 30-day intervals, until all services are started.

GC § 95014(a)(3), WIC § 4643.5

STEP 6: LEGAL REMEDIES (CHILDREN 0 - 3)

EARLY START COMPLIANCE COMPLAINT

You may file a compliance complaint with the California Department of Developmental Services (DDS) for:

- **Failure to adhere to legal timelines.**
Example: The regional center did not hold an IFSP until after the 45-day timeline and services were delayed.
- **Failure to implement portions of the IFSP.**
Example: The regional center failed to give the child speech and language therapy, even though the IFSP required it twice a week.

TO FILE A COMPLIANCE COMPLAINT, WRITE A LETTER WITH THE FOLLOWING INFORMATION:

The name, address and telephone number of the ERH and caregiver.

Timeline Violation: How the regional center failed to meet its deadlines.

IFSP Non-Compliance: What services the IFSP said it would provide (include a copy of the IFSP) and what services were NOT provided.

Request a remedy for the violation. You can often request compensatory or “make-up” services.

Mail to:

Department of Developmental Services
Attn: Office of Human Rights and Advocacy Services
Early Start Complaint Unit
1600 Ninth Street, MS 2-15
Sacramento, CA 95814

GC §95028, 17 CCR § 52000(b)(9), 52170

MEDIATION

Voluntary process that both parties must agree to. It is confidential and overseen by a neutral party. It is an informal method to deal with—and resolve—disagreements. You can file a request for mediation at any time.

Mediation is available to resolve disagreements related to:

- 1) evaluation and assessment,
- 2) eligibility determination, and
- 3) services.

Requests for mediation are filed with:

Office of Administrative Hearings
Attention: Early Start Intervention Section
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833

17 CCR § 52000(b)(33), 52170(h), 52172, 52173

ADMINISTRATIVE DUE PROCESS HEARING

- Disagreements related to identification, evaluation/assessment, or services can be resolved through a due process hearing.
- A lawyer is not needed to file or conduct a hearing but the regional center or local education agency may use a defense lawyer so we advise ERHs to seek counsel as well.
- A request form for a due process hearing can be obtained from the child’s service coordinator, the regional center, or the Department of Developmental Services (DDS).

17 C.C.R § 52172, 52174



TRANSITIONING TO PRESCHOOL

THE TRANSITION FROM REGIONAL CENTER TO SCHOOL DISTRICT

- Children over the age of three may be eligible for special education services from their local school districts.
- About six months before an Early Start-eligible child turns three, the regional center and school district must discuss the transition process starting with a transition IFSP meeting with the ERH, service coordinator and school district representative.
- At the transition IFSP meeting, the regional center, school district, and ERH will discuss the child's current developmental concerns.
- Current developmental information is necessary so that the school district can develop an assessment plan.
- The school district must assess in all areas of suspected disability, not just the areas already known about, so the assessment plan should include assessments by qualified personnel that will address all areas of concern.
- For example: Child has had difficulties with articulation (people cannot understand what he's saying). Even though the regional center did not identify speech as an area of disability, and was not providing speech and language services, the school district must still assess in this area because it is a suspected area of disability.



- The district must complete the assessments and hold an initial Individualized Education Program ("IEP") meeting in time for potential services to start by the child's third birthday.
- If a child's third birthday falls over the summer, the regional center and school district should plan ahead to ensure the IEP and all services are in place by the first day of school after summer break.

17 CCR § 52112

FAQ

Q: What is the difference between early intervention services for children ages 0-3rd birthday and children 3-5?

A: For children 0-3, Early Start services are provided mainly through the regional center. For children 3-5, services are provided by their local school district. GC § 95001(a)(11), EC § 56441.11

Q: Why do Early Start services through regional centers stop at age 3?

A: The eligibility for regional center services changes at age 3. Children over age 3 must have a developmental disability to qualify for ongoing regional center services, such as: Mental Retardation (Intellectual Disability), Epilepsy, Autism, Cerebral Palsy or a condition similar to Mental Retardation that requires the same treatment, and this condition must constitute a substantial disability. WIC § 4512

PRESCHOOL

THE IMPORTANCE OF PRESCHOOL

All children benefit from attending a high-quality early care and education program to develop skills that contribute to school success, regardless of whether they have a developmental delay.

EC § 8235



Early Care and Preschool Education Options

Early Head Start and Head Start Programs: Free programs provide comprehensive early education and development classes. Early Head Start programs serve children ages 0 - 3rd birthday. Head Start provides part-day or full-day programs for children ages 3 - 5. To find an Early/Head Start program near you, call 1.877.773.5543 or visiting PreKKid.org.

California State Preschool Program (CSPP): Free part-day and full-day child development program for low-income 3 and 4 year-olds.

Child Care and Development Centers: Provides developmental services for infants, toddlers and school-aged children.

Los Angeles Universal Preschool (LAUP): Part-day child development programs for 4 year old children.

Find an early care and education program near you by calling the Los Angeles Child Care Alliance Resource and Referral line at 1.888.922.4453.

PRESCHOOL SUSPENSIONS AND EXPULSIONS

Researchers have found that preschool students are expelled three times more often than school-aged students. Aggressive or inappropriate classroom behaviors that often lead to suspensions or expulsions could be signs that a child needs behavioral or mental health services. Schools should work with a child's family and/or social worker to explore community and school-based mental health services, including considering a referral to special education services.



SPECIAL EDUCATION

For Children Age 3 - High School Graduation (or age out at 22)



Family. Education. Stability. Justice.

FREQUENTLY ASKED QUESTIONS & CHILD-FIND

FAQS

Q: How early can children potentially be eligible for special education services?

A: Children as young as 3 years old can benefit from special education services from their local school district.

EC § 56026

Q: When do children age out of services?

A: Children continue to qualify for services until they receive a high school diploma or the end of the semester in which they turn 22 years-old. EC § 56026

Q: What does a disabled child have a right to under the law?

A: If eligible, the child has a right to special education and related services. EC § § 56000, 56001

Q: What are Special Education and Related Services?

A: An education program that is individualized to meet the child's unique needs based on their disability. This is called a FAPE: **Free Appropriate Public Education**. In order to qualify, the disability must prevent the child from benefiting from their education. EC § § 56000, 56031, 56040

Q: How do you know if the child is not receiving a FAPE?

A: (1) The school has failed to identify or address all areas of suspected disability. (2) The child is not making adequate progress (academic or otherwise). (3) The child is not in the least restrictive environment.

Q: What does a child with an education disability look like?

- A:
- Poor grades or attendance
 - Difficulty with classroom activities such as writing, coloring, drawing, or learning letters and numbers
 - Behavior problems
 - Speech and language problems
 - Problems with memory or attention
 - Social or emotional problems
 - Problems moving normally, such as using a pencil
 - Problems seeing or hearing
 - Problems performing daily living skills such as dressing, feeding or grooming in an age-appropriate manner.

CHILD-FIND

Child-find is the school's affirmative duty to identify, locate and evaluate children who are suspected of having a disability. EC § § 56300, 56301, 56302

Courts have interpreted this as being a very low threshold. If there is a modicum of suspicion that the child may be disabled, the child has a right to a special education assessment.

Schools commonly make the mistake that they do not need to assess a child because they do not believe the child would be eligible for special education. The courts have stated that a school cannot refuse to assess a child because they do not believe the child would be eligible. The discussion of eligibility takes place at an IEP meeting, after the school adheres to the child-find mandate by properly assessing the child.



STEP 1: REQUESTING AN ASSESSMENT

REQUESTING AN ASSESSMENT

- Write a letter to the school requesting a comprehensive psycho-educational assessment. Depending on your child's needs, additional assessment requests might include a speech and language, occupational therapy, or physical therapy assessment.
- State the reasons why the child is suspected of having a disability in that area.
- The school is required to send a written response within 15 calendar days of receiving the request. EC § 56321
- The ERH has 15 calendar days to review, sign and return the assessment plan to the school. Review the assessment plan carefully to ensure all areas of suspected disability are covered.

EC § 56321

TYPES OF TESTING THAT CAN BE REQUESTED

1. Psycho-Educational, including:
 - Cognitive/IQ (learning and memory)
 - Academic
 - Psychological processing including visual, auditory, sensory motor and attention processing
 - Social, emotional, behavioral
 - Health & physical development including hearing and vision
2. Speech and language by a speech and language pathologist
3. Central auditory processing by a licensed audiologist
4. Visual processing/vision therapy assessment by an optometrist
5. Fine motor and/or sensory processing by an occupational therapist
6. Gross motor by an adapted PE specialist or physical therapist
7. Vocational
8. Educationally Related Mental Health Services or Educationally Related Intensive Counseling Services (see page 22)

A COMPREHENSIVE ASSESSMENT SHOULD INCLUDE:

1. Standardized testing
2. Classroom observations
3. Interviews of caregiver, ERH, teacher, etc.
4. Review of school records and work samples

IF A CHILD IS IN SPECIAL EDUCATION, HOW OFTEN SHOULD THEY BE TESTED?

- A child **MUST** be assessed every 3 years (Triennial Assessment).
- A child **CAN** be assessed once per year, if requested by the ERH.
- A child **SHOULD** be tested academically every year to track their progress.

EC § § 56043, 56381

TIPS

- Make requests in writing. Keep proof of receipt. Types of proof include:
 - (1) fax confirmation sheet;
 - (2) time-stamped copy from the school clerk; or
 - (3) certified mail receipt.
- In response to the request for an assessment, there are only 2 legal options for the district:
 - (1) A written refusal to assess OR
 - (2) An assessment plan.EC § § 56321, 56500.4
- **DO NOT** accept other options! Do not agree to a parent-teacher conference or a Student Study Team (SST) meeting instead of IEP testing.
- **Suspected Disability:** If the child demonstrates any evidence that they have a disability (e.g. mental health diagnosis or failing grades), a school district likely cannot refuse to conduct the requested assessment.
- Request, in writing, on the assessment plan, to receive a copy of the assessment report(s) 5 business days before the IEP meeting.

STEP 2: INDIVIDUALIZED EDUCATION PROGRAM

WHAT IS AN IEP?

An IEP is a written education program developed by the school district, teachers, and ERH. IEPs include how the child is currently doing in school, and what everyone involved wants to do for the next school year to improve the child's education outcomes. EC § § 56032, 56345

WHEN & WHY ARE IEPs HELD?

Generally there are 4 kinds of IEPs:

1. **Initial IEP** — To determine eligibility for special education services.
2. **Annual IEP** — Each eligible child must have at least 1 IEP every year.
3. **Amendment or Addendum IEP** — ERH or school can request a meeting at any time to change or modify the existing IEP. After written parent request, the IEP must be held within 30 calendar days.
4. **30-Day Transfer IEP** — Must have an IEP within 30 calendar days after any move between school districts in order to discuss placement options and services within the new district. District must implement the old IEP and provide 'comparable' services for the first 30 days.

EC § § 56043, 56043.5, 56343

WHO SHOULD ATTEND IEP MEETINGS?

Required IEP Team Members:

- Pro Bono Attorney
- Education Rights Holder
- General Education Teacher
- Special Education Teacher
- Administrative Designee
- Any person who has assessed the child or who provides services, if those services are being discussed

Optional IEP Team Members:

- Parent or current caregiver (if not ERH)
- School Psychologist
- Social Worker
- Other school personnel who provide services or completed an assessment (e.g. speech and language pathologist)

EC § 56341

Five Main Components:

1. Eligibility
2. Present Levels of Performance
3. Annual Goals & Objectives
4. Statement of Placement
5. Statement of Services

EC § § 56341.1, 56345

1. ELIGIBILITY

Deaf/Hard of Hearing (DHH)
Specific Learning Disability (SLD)
Visual Impairment (VI)
Traumatic Brain Injury (TBI)
Orthopedic Impairment (OI)
Speech and Language Impairment (SLI)

Emotional Disturbance (ED)
Intellectual Disability (ID)
Autism (AUT)
Other Health Impairment (OHI)
Multiple Disabilities (MD)

EC § § 56026, 56333 et seq., 5 CCR § § 3030, 3031

STEP 2: IEP (CONT.)

2. PRESENT LEVELS OF PERFORMANCE (PLOP)

Indicates how the child is currently doing in all areas where they are having problems, including:

- Pre-academics or academics including reading, writing and math
- Emotional/behavioral/social/attention
- Speech and language
- Gross and fine motor skills
- Daily living skills
- Completing class work/homework
- Attendance

EC § 56345

3. ANNUAL GOALS & OBJECTIVES (G/O)

Indicates what the IEP team will work on for the next year to help the child perform better in school.

- Goals should be easily understood and measurable (you should be able to figure out whether or not the child is meeting the goals).
- There should be at least 1 annual goal in every area of weakness.

SPECIFICITY! The present level must identify the specific area of weakness for the child. The goal must specifically identify what will be worked on for the next year.

- Insufficient PLOP: “Billy is having trouble communicating.” **vs.**
- Acceptable PLOP: “Billy has limited expressive vocabulary and is not able to express his feelings with words.”
- Insufficient G/O: “Billy will use more words to express himself.” **vs.**
- Acceptable G/O: “Billy will use 2 to 3 word phrases to communicate his needs and feelings 80% of the time.”

COMPREHENSIVENESS! The IEP must have a PLOP and G/O for each area of weakness, even if this means the child has 20 of each. Make sure to check that each identified weakness has a thorough and specific accompanying goal (e.g. If Billy also has receptive language issues, he will need a goal for receptive language.)

PRE-ACADEMIC	READING/WRITING	MATH	GROSS/FINE MOTOR & ADAPTIVE BEHAVIOR	SOCIAL/EMOTIONAL/BEHAVIOR/ATTENTION
<ol style="list-style-type: none"> 1. Identifying & matching 2. Colors & shapes 3. Recognizing numbers 4. Interest in books 5. Concepts of quantity 6. Identifying body parts 	<p><u>Reading:</u></p> <ul style="list-style-type: none"> • Decoding • Comprehension • Fluency • Phonics • Sight words <p><u>Written Language:</u></p> <ul style="list-style-type: none"> • Spelling • Punctuation & capitalization • Sentence structure • Paragraph structure • Multiple paragraph essays 	<ol style="list-style-type: none"> 1. Addition/subtraction/multiplication/division 2. Computation: with or w/out regrouping 3. Word problems 4. Money/dollar sense 5. Telling time 	<ol style="list-style-type: none"> 1. Walking/running 2. Climbing stairs 3. Scribbling 4. Stringing beads 5. Building tower of blocks 6. Holding a pencil and/or forming letters correctly 7. Eating 8. Using the bathroom 9. Dressing 10. Self care 	<ol style="list-style-type: none"> 1. Time on task 2. Social skills 3. Depression 4. Temper tantrums 5. Following directions 6. Attendance 7. Homework/class work completion

STEP 2: IEP (CONT.)

4. STATEMENT OF PLACEMENT

A. Least Restrictive Environment (LRE)

- Disabled children have a right to participate with general education (non-disabled) students for as much of the school day as possible. This could include mainstreaming in a general education classroom, lunch/recess, and extracurricular activities as much as the child's disability allows.
EC § 56040.1
- LREs are unique to each child and can be a combination of any of the different types of placements or services discussed below.

B. General Education

- Pros: Students learn through positive peer modeling from their nondisabled peers. For example, good study skills, academics and/or social relationships.
- Cons: Disabled students may not get the assistance that they require to benefit from their education.
- General education for children 3-5 can include Head Start, state preschool or general education kindergarten classrooms.

C. Resource Specialist Program (RSP)

- Students are given more individual attention to address delayed academic or organizational skills.
- **Collaboration**: RSP teacher discusses the child's needs with a general education teacher and gives them pointers on how to help the child in the general education classroom.
- **Push-In**: RSP teacher and/or aide go into the general education classroom and assist the child.
- **Pull-Out**: Student leaves the general education classroom and is taught in another classroom with less students and more individualized attention.
- RSP services for children 3-5 can include Preschool/Kindergarten Itinerant Teacher (PKIT) services, a specialist to help the child in the classroom.

D. Special Day Class (SDC)

- Restrictive Placement: Students are segregated in a classroom with no general education peers, only disabled peers.
- CAUTION: These types of placements sometimes can function more as a daycare than a classroom for instruction. Before such placements are agreed upon, the ERH should research and visit the placement.
- SDC placement options for children 3-5 can include preschool collaborative classes designed for children with mild to moderate special needs.

E. Non-Public School (NPS)

- A non-public school is a specialized placement for students whose academic, developmental, behavioral, and/or social-emotional issues are so severe that they cannot be served in the public school setting. EC § 56034
- Before agreeing to any specific non-public school placement, you should visit and ask others about the school's reputation.

STEP 2: IEP (CONT.)

5. STATEMENT OF SERVICES

- **Speech and language therapy:** Helps children develop expressive and receptive language skills and improve their articulation (how they pronounce words). EC § 56031, 5 CCR 3051.1
- **Occupational therapy:** Helps children improve fine motor and visual motor skills necessary for writing, drawing, copying and cutting. Also addresses sensory processing deficits. 5 CCR § 3051.6
- **Adapted physical education:** Helps children who have difficulty with motor skills to be able to participate in PE. 5 CCR § 3051.5
- **Physical therapy:** Helps children with physical limitations access their school environment. 5 CCR § 3051.6
- **Psychological (DIS) counseling:** Helps children develop social and emotional coping skills and improve their behavior. EC § 56345.2, 5 CCR § 3051.10
- **Audiological services or therapy:** Helps children with hearing impairments or processing disorders access their education. 5 CCR § 3051.2
- **Low vision services or vision therapy:** Helps children with visual impairments or processing disorders access their education. 5 CCR § 3051.7
- **One to one behavior aide:** Helps children regulate their behavior in the classroom. 5 CCR § 3051.23
- **Transportation:** Bus transportation is provided if: (1) Due to the need for special education services, the child is not attending their “home school”; or (2) A child is so disabled that they cannot get to school in a way that their age appropriate peers can (e.g., high schooler walking to school). EC § 56345.2
- **Extended School Year (ESY):** 4-6 weeks of instruction provided during the summer for some special education students when they have an unusual inability to recoup information lost over the summer. 5 CCR § 304.3
- **Assistive Technology Services:** Any service that assists a student in the selection or use of an assistive technology device that is educationally necessary. 5 CCR § 3051.19

Educationally-Related Mental Health Services (ERMHS), formerly known as AB 3632

- Federal law requires that mental health services be provided to special education eligible children if such services are necessary for the child to benefit from their education program.
- These services can include individual/family/group counseling or therapy, medication management and/or residential placement. Residential placement is a 24-hour care facility for those children with the most involved mental health issues.
- To receive ERMHS services, request an ERMHS assessment. Normal assessment timelines apply. 34 CFR § 300.34

IEP Consent

- IEP consent is the same as IFSP consent with one exception, stay-put.
- Stay-Put: If the ERH does not agree to anything in the new IEP, and wants the old IEP to stay in place, the ERH has the right to not sign the new IEP.
- Please see page 12 for more details on IFSP/IEP consent.

20 USC § 1415(j), EC § § 56346, 56505

STEP 3: LEGAL REMEDIES (CHILDREN AGES 3 - 22)

If the ERH disagrees with the services or placement offered in an IEP or feels that the child's IEP is not being followed, there are 2 ways to take legal action against the school:

COMPLIANCE COMPLAINT

Filed with the California Department of Education for:

1. Failure to adhere to legal timelines. (Example: the district did not provide a written response within 15 days of receiving a request for an assessment.)
2. Failure to implement portions of the IEP. (Example: The district failed to give the child speech and language therapy services for the last 2 months, even though it is required by the IEP.)
3. A lawyer is not needed to do this!

EC § 56043, 5 CCR § 4660, et seq.

To file a Compliance Complaint, write a letter with the following information:

1. What the IEP states the school will provide.
2. What the school is not providing.
3. What you want to make up for this failure.
4. Include a copy of the IEP.

Mail to:

Procedural Safeguards Referral Services
Special Education Division
California Department of Education
1430 N Street STE. #2401
Sacramento, CA 95814

ADMINISTRATIVE DUE PROCESS HEARING

Lawsuit against the school district for failing to provide the child with a FAPE for any of the following reasons:

- Not making adequate progress under the current IEP;
- Failing to identify/address all areas of suspected disability;
- Failing to offer placement in the least restrictive environment; or
- Procedural errors that amount to: a loss of academic benefit to the child OR a denial of meaningful participation in the IEP process by the parent.
- Seek the assistance of an attorney.

EC § 56501, et seq.





BRIDGES TO THE FUTURE: EQUAL ACCESS TO EDUCATION FOR FOSTER YOUTH

High school graduation and beyond



Family. Education. Stability. Justice.

HIGH SCHOOL GRADUATION AND BEYOND

18 Year Old Youth: Did you know?

- You hold your own education rights
- You can consult with the adults in your life prior to making any important decision about your education
- You make the decisions about your education

HIGH SCHOOL GRADUATION

Assembly Bill 167/216

- Foster and probation youth are eligible to graduate with a diploma under AB 167/216 if they transfer schools after completing their 2nd year of high school.
- Students are eligible to complete only state graduation requirements, if they are not reasonably able to complete additional local graduation requirements by the end of their 4th year of high school.
- Students have a right to remain in high school for a 5th year if they can complete the local graduation requirements during that year.
- Serious consideration should be given before graduating under AB 167/216 to ensure youth have the academic skills necessary to pursue higher education or vocational goals.
- Graduating under AB 167/216 may also make a youth INELIGIBLE for applying to a 4 year university.
- Only an ERH or 18 year old youth can make the decision to graduate under AB 167/216.

EC § § 51225.1, 51225.2, 512254.3

Typical School District Graduation Requirements

- History and English: 4 years each
- Math and Science: 3 years each
- Art and Foreign Language: 2 years each
- Electives: 70 or more credits
- Senior Project
- Pass English and Math CA High School Exit Exam (CAHSEE)

AB 167/216 Graduation Requirements

- History and English: 3 years each
- Math and Science: 2 years each
- Art OR Foreign Language: 1 year
- Electives: None
- Senior Project: None
- Pass English and Math CAHSEE

SPECIAL EDUCATION YOUTH

Are you receiving a diploma or a certificate of completion?

DIPLOMA

For those who have:

- Fulfilled credit requirements including passing Algebra 1
- Passed both portions of the CAHSEE
- Youth will be EXITED from special education services

VS.

CERTIFICATE OF COMPLETION

For those with IEPs who have not met diploma requirements

- Eligible for Certificate of Completion, considered to have completed their course of study
- Continue to remain eligible for IEP services until age 22

CAHSEE Waivers

Youth with IEPs have a right to a waiver of the CAHSEE requirement to graduate.

- Youth should consider NOT accepting a CAHSEE waiver specifically so that they can remain special education eligible and receive services until they can pass the CAHSEE or turn 22.
- This is especially true if the youth's academic skills are low.
- If a youth remains eligible for special education services, it does not mean they have to stay in high school.

EC § § 60851, 60852.3

What FREE services are youth entitled to after they receive a certificate of completion?

- Continued IEP supports, services, and accommodations
 - Continued high school enrollment
 - Adult education
 - Community college
 - Vocational programs
 - Continuation high schools
- *Youth should not agree to or sign an "Exit-IEP" just to get these services. If a youth exits special education, they may have to pay for these services.

EDUCATION RIGHTS OF FOSTER YOUTH

THE PROBLEM

52% of CA youth perform at grade level — 25% of foster youth perform at grade level
5% of CA students are held back in the K-3rd grade — 83% of foster children are held back in the K-3rd grade
75% of CA youth graduate from high school — 40% of foster youth graduate from high school

WITHIN 2 YEARS OF AGING OUT

70% of youth want to attend college — Yet, only 3% have earned their associates degree
50% are unemployed — Of those working, 93% do not earn a living wage
25% are incarcerated — 20% are homeless

ASSEMBLY BILL 490: FOSTER YOUTH'S EDUCATION BILL OF RIGHTS

Provides foster youth with specific protections for their education.

- Immediate enrollment without any of the normally required documentation such as birth certificate, proof of residence, or immunization records. EC § § 48853, 48853.5, 49069
- Right to Partial Credits: determined by "seat time" (e.g. if you are in class for 14 hours, you earn 1 credit). EC § § 48645.5, 49069.5, 51225.1
- Right to access academic resources, services and extracurricular activities regardless of missing sign-up deadlines. EC § § 48850, 48853
- Every school district must have a Foster Youth Liaison identified to help address these issues. EC § 48852.5

SCHOOL OF ORIGIN (SOO)

- SOO is the school the child attended when they were detained from their parents, the school they most recently attended, or any school they attended in the past 15 months where the child has significant ties.
- The child is allowed to stay in their SOO for the entire time they are in care and matriculate to the next level.
- When a child moves, only the ERH can decide whether remaining in their SOO is in the child's best interests.
- The child has a right to stay in their SOO while disputes are resolved.
(Assembly Bills 490/1933)

EC § § 48853, 48853.5, All County Letter 11-51

ASSEMBLY BILL 12

Foster youth can remain in the foster care system until age 21 if they meet 1 of the following eligibility criteria:

1. Completing high school or an equivalent program;
2. Attending college, community college or a vocational education program;
3. Attending a program designed to remove barriers to employment;
4. Maintaining employment for at least 80 hours per month; or
5. Unable to do one of the above requirements because of a medical condition.

AB 12 allows a foster youth to live in a Supervised Independent Living Placement and receive foster care payments until they turn 21. Youth are eligible if they lived in a suitable placement (dependency or delinquency) and were 18 years old as of 1/1/12. WIC § § 303, 11403

DISMANTLING THE SCHOOL TO PRISON PIPELINE

BARRIERS TO EDUCATIONAL SUCCESS OF FOSTER CHILDREN LEAD TO PLACEMENT IN THE JUVENILE JUSTICE SYSTEM

- 19,000+ Los Angeles County children are in foster care.
- 50% of children in foster care have disabilities resulting from the neglect, abuse and trauma they suffer.
- Few youth receive appropriate special education services because they lack a qualified advocate.
- The denial of services in turn leads to more problematic behaviors.
- Overburdened schools look to the juvenile justice system to deal with “problem” students.
- 30% of children in foster care will “cross-over” into the juvenile justice system.
- 66% of cross-over youth in Los Angeles have mental health issues and 87% have learning disabilities.
- Advocacy to inform the court about the child’s disability can ensure they receive appropriate services.

Prepare for Court

- Provide school records of good attendance and grades.
- IF THE YOUTH HAS A DISABILITY: Write a letter and appear at their court date to inform the court about how the youth’s disability affects their behavior, the alleged charge, and their ability to comply with the terms of their probation.

The Players

Public Defender: A lawyer for the youth who argues their case to the judge.

Probation Officer: Assists youth to find services needed to follow the court ordered plan.

Judge: In charge of the courtroom, they decide if the youth is guilty and sentences them to a rehabilitation plan.

DISPOSITION (SENTENCING)

- **Diversion:** If the youth’s crime is very minor, they can participate in a diversion program to avoid the charge.
- **Informal Probation:** The youth stays at home and if they successfully complete the terms of their probation for 6 months to 1 year, the case is dismissed.
- **Formal Probation:** Youth can be sent to suitable placement (i.e. group home or camp) and must complete the terms of their probation for 1-3 years.
- For any disposition there are “terms” that the youth must complete include good attendance/grades, following parent rules, and possibly going to therapy and/or drug treatment.
- **Sealing Juvenile Records:** All youth should seal their juvenile record once they have been off probation for 6 months. Go to the court where the hearing was held and request a Petition to Seal Juvenile Records and Court Order. WIC § 781

SCHOOL DISCIPLINE GUIDELINES

SCHOOL PUSH-OUT

- Schools often ‘push’ problem youth out of mainstream campuses, especially students with behavior or attendance problems, or those who are significantly behind in their credits. They give them an ‘option’ of going to continuation schools or independent study programs, although these schools provide less services. This can happen to children of all ages including preschool.
- **Youth have a right to attend their local comprehensive school for the entire school day.**
- ERHs should NOT agree to pick their child up from school early or stay on campus with them all day due to behavioral problems.

SUSPENSION

- A temporary removal from school (usually no more than 5 days).
- The school must give written notice of any suspension including the date when the student can return to school.
- Students may not be suspended for absence or tardies.
- If the student is asked to write a statement after an incident, they can politely refuse as this statement can be used against them in expulsion or delinquency proceedings.

EC § § 48900, 48900.1

EXPULSION

- A long term removal (usually two semesters) from all comprehensive schools in the district; it can be longer for a “Zero Tolerance” offence such as weapons, drugs, serious bodily injury or sexual harassment. You can only be expelled after a formal hearing. At hearing, the student has a right to representation, to review evidence and to present/cross-examine witnesses.
- Youth must attend school, even while under an expulsion order. The district should help youth find an alternative school.
- Youth have to apply to be readmitted to the district once they have complied with all requirements of their Rehabilitation Program (usually good grades, behavior, attendance).

EC § § 48900, et seq.

SPECIAL EDUCATION AND DISCIPLINE

- Schools are not permitted to subject disabled students to normal discipline procedures if the incident was caused by their disability.
- When schools want to expell a disabled student or suspend them for 10+ days, they must hold a manifestation determination IEP.
- **Manifestation Determination:** An IEP meeting must be held within 10 days of the suspension/ decision to recommend expulsion to determine: 1) if the conduct was a manifestation of or caused by the student’s disability, or 2) if the conduct was caused by the school’s failure to implement the IEP. If either of these is found, the IEP team must end the suspension or expulsion proceedings, conduct a behavior assessment, and create a behavior plan. If the IEP team does not find the incident to be a manifestation of the child’s disability, the school may discipline the student like any other.
- If a student is not IEP eligible, but an ERH has requested an assessment in writing, prior to the behavior that led to the discipline, the school must conduct the assessment, determine the child’s eligibility for special education services and then do a manifestation determination before proceeding with the disciplinary action.

EC § 48915

COMMON ACRONYMS AND RESOURCES

RESOURCES

SOURCES OF LAW

Individuals with Disabilities Education (Improvement) Act—(IDE(I)A) 20 United States Code section 1400 et seq. Parts B & C

Title 34 of the Code of Federal Regulations (CFR), section 300 et seq. & section 303 et seq.

California Code of Education (EC) section 56000 et seq.

Title 5 California Code of Regulations (CCR) section 3000 et seq. & Title 17 CCR section 52000 et seq.

California Early Intervention Services Act, Government Code (GC) section 95000 et seq.

Case Law: Supreme Court, 9th Circuit Court of Appeals, and Office of Administrative Hearings (persuasive authority)

OTHER RESOURCES

CA Composite of Laws: www.scoe.net/specedbwsregs/

Special Ed Connect: www.specialedconnection.com, (password provided by ACR attorney)

Wrightslaw.com

Office of Administrative Hearings (OAH) decisions: www.dgs.ca.gov/oah/DDS Hearings/DDS Decisions.aspx & www.dsg.ca.gov/oah/specialeducation/searchdo.aspx

Alliance Special Education Program Attorneys

COMMON ACRONYMS

APE	Adaptive Physical Education	ID	Intellectual Disability
AT	Assistive Technology	IEP	Individualized Education Program
CASA	Court Appointed Special Advocate	IFSP	Individualized Family Service Plan
CDE	California Department of Education	MR	Mental Retardation
CP	Cerebral Palsy	ODD	Oppositional Defiance Disorder
CSW	County Social Worker	OHI	Other Health Impairment
DCFS	Department of Children & Family Services	OT	Occupational Therapy
DD	Developmental Delay	PKIT	Preschool/Kindergarten Itinerant Teacher
DHH	Deaf or Hard of Hearing	PT	Physical Therapy
DMH	Department of Mental Health	RSP	Resource Specialist Program
DIS	Designated Instruction and Services	SDC	Special Day Class
ED	Emotional Disturbance	SELPA	Special Education Local Plan Area
ERH	Education Rights Holder	SLI	Speech or Language Impairment
ESY	Extended School Year	SLD	Specific Learning Disability
FAPE	Free Appropriate Public Education		
LEA	Local Education Agency		
LRE	Least Restrictive Environment		