

SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

Chapter 4

Information on IEP Process

From a 13-Chapter Manual

Available by Chapter and in Manual Form

Written by:

Community Alliance for Special Education (CASE)

and

Protection and Advocacy, Inc. (PAI)

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Federal special education law was significantly amended by Congress in 2004 and will be further clarified by regulations from the U.S. Department of Education in 2006. The California Education Code has been amended to reflect some of the federal law changes but not all. In certain circumstances where it provides greater protections or entitlements, California law will continue to control special education pupils' rights unless it is amended to completely conform to federal law.

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COMMUNITY ALLIANCE FOR SPECIAL EDUCATION (CASE) provides legal support, representation, technical assistance consultations, and training to parents throughout the greater San Francisco Bay Area whose children need appropriate special education services. Trained advocates and attorneys assist parents at IEP meetings, Mediation Conferences and Due Process Hearings. CASE also provides free consultations about special education rights and services to parents and professionals by telephone or face-to-face. CASE is a nonprofit organization serving all children with disabilities who need or may need special education services. For more information, contact:

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1. How do I request special education services?

To request special education services for your child, write a letter to your child's teacher, principal or special education administrative office. Tell the school district that you are concerned about your child's educational progress. Say that you are making a referral for assessment for special education services. You may also want to let the district know that you look forward to receiving an assessment plan within 15 days from the district's receipt of your letter. See *Sample Letter* at end of this chapter.

Keep a copy of this request and any other correspondence with the school district. If you call or speak to school staff to make a referral, school district personnel must by law help you put your request in writing. **If the school district refers your child for special education, it is still critical that you follow up with your own written request.** Your written referral will ensure that assessment and IEP timelines will begin. [California Education Code (Cal. Ed. Code) Secs. 56029, 56302, 56321(a), 5 California Code of Regulations (C.C.R.) Sec. 3021(a).]

In any initial referral to special education, you may also request that your child be assessed under Section 504 of the Rehabilitation Act of 1973 to determine whether the child might be identified as having a disability under that law. If so, the school district may be required to provide reasonable accommodations and/or services, including special education services, to allow your child to benefit from school like children without disabilities. These accommodations and/or services may be important if your child does not qualify for special education, or if such accommodations and/or services are, for some reason, not provided under special education. [19 IDELR 876.] See Chapter 1, *Information on Basic Rights and Responsibilities* and Chapter 3, *Information on Eligibility Criteria*.

2. How do I request an Individualized Education Program (IEP) for my child who is already receiving services?

If your child is already receiving special education services, you can request an Individualized Education Program (IEP) meeting whenever you think one is needed in order to review or change the IEP. You should make a written request to your child's teacher, principal or special education administrative office. [Cal. Ed. Code Secs. 56343(c) and 56343.5.] You may request additional assessments for your child in the same letter. See *Sample Letter* at the end of this chapter.

3. What are the timelines for holding an IEP meeting?

After your initial **written** request for special education, or your **written** request for a new assessment, the school district has **15 days** to prepare and provide you with a written proposed assessment plan containing a copy of the notice of parent rights. In counting 15 days, days in between regular school sessions or terms or days of school vacation in excess of five school days do not count. If a referral is made 10 days or less prior to the end of the regular school year or term, the school district must develop an assessment plan within 10 days after the commencement of the next school year or term. [Cal. Ed. Code Sec. 56321(a).] You have at least **15 days** to determine whether you will consent to the proposed assessments. [Cal. Ed. Code Sec. 56321(c).]

Starting from the date the local education agency receives your **written** consent to assessment, the assessment(s) must be completed and the IEP developed at an IEP meeting within ~~50~~ **60 calendar days**. In determining days for completion of assessments and scheduling IEP meetings, you do not count the days between school sessions or terms or days of school vacation in excess of five school days. If an initial referral of a student to special education has been made 20 days or less prior to the end of the regular school year, an IEP shall be developed within 30 days after commencement of the subsequent regular school year. [Cal. Ed. Code Sec. 56344.]

If you are requesting an IEP meeting without the need for new assessments for a child already in special education, the IEP meeting shall be held within **30 days** (not counting days in July and August) from the date of receipt of your **written request**. [Cal. Ed. Code Sec. 56343.5.]

4. How often are IEP meetings held?

An IEP meeting must be held at least annually. In addition, an IEP meeting must be held when a student has received a formal initial assessment, when a student demonstrates a lack of anticipated progress, or when a parent or teacher requests an IEP meeting to develop, review or revise a student's individualized education program. [Cal. Ed. Code Sec. 56343.] Neither federal nor state law limits the number of IEPs you may request per year. If a parent requests an IEP review and the school district refuses to convene an IEP meeting, the school district must provide written notice of the refusal to the parents. This notice must explain why the school district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. [34 C.F.R. Part 300, Appendix (App.) A, Q. 20¹.] See Question 2 above.

5. Can I get copies of assessments before the IEP meeting?

Yes. School districts are required by federal and state law to provide copies of assessments and other educational records before the IEP meeting. [20 U.S.C. Sec. 1414(b)(4); 34 C.F.R. Sec. 300.562.] **You should request, in writing**, that all records be sent to you within a reasonable time before the IEP meeting. There are no specific timelines in federal or state law to tell school districts how many days **before the IEP meeting** they must provide assessments to the parents. However, California law requires that parents be allowed to examine and to receive copies of all school records within 5 calendar days from the date the request was made by the parent **either in writing or orally**. [Cal. Code Sec. 56504.]

6. Will I receive notice of the IEP meeting? What happens if I cannot attend?

The school district must take steps to ensure that one or both of the parents of the student with disabilities attend the IEP meeting or have the opportunity to participate. Your attendance and participation at your child's IEP is one of the most important principles of the special education process. Your school district must

¹ Appendix A to Part 300 of Title 34 of the C.F.R. is a set of 40 questions and answers, which provide interpretation of the federal special education regulations. Although Appendix A is not legally binding, it should be used as guidelines by parents, school districts, and the California Department of Education in determining whether state and local agencies are in compliance with IDEA and its implementing regulations.

notify you of the IEP meeting early enough to ensure that you have an opportunity to attend. The meeting must be scheduled at a mutually agreed upon time and place. In addition, as part of the notification process, the school district must provide you with this information: the purpose, time, and location of the meeting and who will attend the IEP meeting. The school district must also inform you about your ability to invite others to your IEP who have knowledge or special expertise about the child. [34 C.F.R. Sec. 300.345(a)(b); Cal. Ed. Code Sec. 56341.5(e).]

If neither parent can attend the IEP meeting, the school district must use other methods to make sure that the parent can participate in the meeting, such as individual or conference telephone calls. Before a district can hold an IEP meeting without a parent in attendance, the district must have been unable to convince the parent to attend and must document its efforts to arrange a mutually-agreed-upon time and place to meet. ~~by keeping:~~

- ~~(1) Detailed records or all telephone calls made to the parent and the results of those calls;~~
- ~~(2) Copies of correspondence sent to the home and any responses received; and~~
- ~~(3) Detailed records of visits made to the home or place of employment of the parent and the results of those visits. [34 C.F.R. Sec. 300.345(c)(d).]~~

**7. SEE ALSO CHAPTER 1, QUESTION AND ANSWER 21(A).
Who is required to attend the IEP team meeting and what are the members supposed to contribute to the meeting?**

The team must include the following people:

- (1) One or both of the child's parents, a representative selected by the parent, or both.
- (2) At least one general education teacher if the child is or may be in a general education environment. If the child has more than one general education teacher, the school can select which one attends. To the extent necessary, the general education teacher must help in the development, review, and revision of the IEP, including helping to decide on any needed positive behavior strategies and supplementary aids and services and program modifications, as well as any supports needed by school personnel.
- (3) At least one special education teacher or service provider.

- (4) A school district representative who is: qualified to provide or supervise the provision of specialized instruction; knowledgeable about the general curriculum; and knowledgeable about the resources of the district. State law requires that this person be someone other than the child's teacher. [Cal. Ed. Code Sec. 56341(b)(1).]
- (5) The individual who conducted the assessments of the student, or someone who is knowledgeable about the procedure used and the results, and who is qualified to interpret the instructional implications of the results. This person may be one of the people described above in items (2) – (5) or below in item (6).
- (6) At the parent's or district's request, other people with specific expertise or knowledge of the student. Whether the additional invited person has sufficient knowledge or expertise is decided by the party who invited the person to the meeting.
- (7) The student should be at the IEP meeting whenever necessary.

In addition, for pupils with learning disabilities, at least one member of the team must be qualified to do assessments of children with learning disabilities. This might include a school psychologist, speech-language pathologist, or remedial reading teacher. At least one team member other than the child's teacher must have observed the child's academic performance in a general education classroom, unless the child is still preschool age. In that case, the team member must have observed the child in a setting appropriate for the age of that child.

In addition, if the child is of "transition age," that is, beginning at least at age 14, the school must invite the student to attend the meeting. If the student does not attend after he turns 14, the school must take steps to ensure that it obtains the student's input regarding what his preferences and interests are for the transition plan. If the student is 16 or older and the IEP team is discussing transition services, the school must invite a representative of an agency that is likely to be providing or paying for a transition service. If the invited representative from the other agency does not come to the meeting, the school must take steps to obtain participation of the other agency in the transition planning some other way.

[Cal. Ed. Code Sec. 56341.]

A child who is already placed by a school district in nonpublic schools may have IEP meetings with only staff from the nonpublic school present if the school district elects not to send anyone from the district to the meeting and delegates review and revision of the IEP to the nonpublic school. However, even if the nonpublic school reviews, revises, and implements the IEP, the school district

remains responsible for compliance with special education laws with regard to the student's program. [Cal. Ed. Code Sec. 56383; 34 C.F.R. Sec. 300.349.]

8. What can I do if the required members of the IEP team are not at my child's IEP meeting?

Coordinating an IEP meeting is sometimes not an easy task for school staff. However, that does not affect the school district's responsibility to convene a valid IEP team with the required members present at the meeting. Unfortunately, many parents are faced with an IEP meeting where, for whatever reason, all the required members of the IEP team cannot attend or cannot stay for the full IEP meeting at sometime during their child's school career. In general, going forward with your meeting without the required IEP team members may affect the validity of your child's IEP, especially if you and the school district disagree at the IEP and a due process hearing is requested. In addition, the ability of the IEP team to develop an appropriate IEP may be severely compromised if IEP team members critical to the development of the IEP are absent.

Your decision on how to handle this situation must be made on a meeting-by-meeting basis depending on the unique circumstances surrounding the convening of the IEP meeting. Here are several options that you should consider:

- (1) Contact your school district special education administrator in writing (with a follow-up telephone call) at least one week prior to the meeting to let them know you are concerned. Emphasize in your communication with the school district that you want to make sure that appropriate decisions can be made at the meeting and time is not wasted for you or school staff;
- (2) Attend and go forward with the IEP meeting. Do not agree to those portions of the IEP that need input from missing IEP team member(s) to complete. Then, reconvene the IEP meeting at a mutually agreed upon time and place with the needed IEP team members in attendance to finish developing the IEP; and
- (3) If the members of the IEP team not in attendance are necessary for appropriate decision-making, you may refuse to continue the IEP meeting. Then, reschedule the IEP meeting for a time when all required IEP team members are able to attend.

[34 C.F.R. Sec. 300.345; Cal. Ed. Code Sec. 56341.5.]

9. Can the school district hold an IEP meeting without the parent?

Yes. If the school district cannot convince a parent to attend the IEP meeting, the meeting may be conducted without the parent. Parent participation is so crucial that the school district must have a record of their attempts to arrange a mutually agreed on time and place for the meeting, ~~such as:~~

- ~~(1) Detailed records of telephone calls made or attempted and the results of those calls;~~
- ~~(2) Copies of correspondence sent to the parents and responses received; and~~
- ~~(3) Detailed records of visits made to the parents home or place of employment and the results of those visits.~~

If the school district has scheduled an IEP meeting at an inconvenient time or has not given you enough notice of the meeting for either you or someone you want to accompany you to attend, remember — ***the meeting must be scheduled a mutually agreed upon time and place. The school district cannot hold the IEP meeting without you if you want to attend the meeting. They should reschedule the meeting so you can attend.***

10. Can I bring an advocate or attorney to an IEP meeting?

Yes. At your discretion, you can bring to the meeting individuals with knowledge or special expertise regarding your child — including an advocate, friend, regional center or other caseworker or attorney. The parent or school district that invited the individual to the meeting makes the determination of whether an individual has knowledge or special expertise. [34 C.F.R. Sec. 300.344(c).]

Any decision that is made with regard to an IEP must be made with the informed consent of the parent. An advocate or case manager should assist in this process by fully explaining to you the actions or consequences that are being discussed or contemplated. With your consent, the advocate, case manager, or attorney can actively advocate for the rights of your child.

11. Can a representative of a teachers union or organization attend an IEP meeting?

While the parent or school district has the discretion to invite individuals with knowledge or special expertise about the child to an IEP meeting, the Notice of Interpretation that accompanies the federal regulations states: “Part B (IDEA) does

not provide for including individuals such as representatives of teacher organizations as part of an IEP team, unless they are included because of knowledge or special expertise regarding the child. (Because a representative of a teachers organization would generally be concerned with the interests of the teacher rather than the interests of the child, and generally would not possess knowledge or expertise regarding the child, it generally would be inappropriate for such an official to be a member of the IEP team or to otherwise participate in an IEP meeting.)” [34 C.F.R., Part 300, App. A Q. 28.]

12. How can I contribute to the IEP process?

The parents of a student with disabilities are expected to be **equal participants**, along with school personnel, in developing, reviewing, and revising the student’s IEP. In fact, the IEP team must consider your child’s strengths and your concerns for enhancing her education. [34 C.F.R. Sec. 300.346(a)(i), and App. A, Q. 5.]

You can contribute to the IEP process by bringing to the IEP meeting a written summary describing your child’s needs as you see them. This summary should include these areas:

- (1) **Strengths** (for example, outgoing, open, optimistic, articulate, imaginative, friendly, caring). The IEP team must also consider: the concerns of the parents for enhancing the education of the pupil, the results of initial assessments of the child and of the most recent assessments, and the results of the pupil’s performance on any general state- or district-wide assessments. [34 C.F.R. Sec. 300.346; Cal. Ed. Code Sec. 56341.1.];
- (2) **Weaknesses/Problem Areas** (for example, poor self-concept, academic deficits, fighting, disorganization, takes longer than average to complete assignments, discouraged easily);
- (3) **Functioning Levels** (for example, difficulty with reading, math or spelling, deficits in perceptual skills, responds to individual attention, needs verbal reinforcement for presented material); and
- (4) **What the Child Needs to Learn** (for example, more positive self-concept, proficiency at grade level in academic areas, age-appropriate social skills, self help skills, job training, needs to be better organized, work at a more rapid pace).

This written format should help you organize your ideas. Then you can help school personnel in identifying goal areas for your child, and in writing a full description of your child’s educational needs.

You also can contribute by bringing others who know your child to support you, by being assertive at the IEP meeting, and by knowing your rights under the law.

13. SEE ALSO CHAPTER 1, QUESTION AND ANSWER 21. If I need an interpreter at the IEP meeting, must one be provided?

Yes. If you need a language or sign interpreter to participate at the IEP meeting, one must be provided at no expense to you, the parent. [34 C.F.R. Sec. 300.345.]

14. How should an IEP meeting operate?

You and the school district should develop your child's IEP as a partnership. Both you and the school district share the final decisions that are made about your child's program. Ideally, the IEP meeting should follow this process:

- (1) Discussion and description of your child's current level of functioning (includes academic and non-academic functioning; and functioning in the general curriculum);
- (2) Development of measurable annual goals, including benchmarks or short-term objectives that are derived from your child's current functioning;
- (3) Discussion and description of the support services required by your child and your child's teaching staff (Related Services, Designated Instruction and Services, Support for School Personnel);
- (4) Discussion and description of the special education and related services, including instruction in the general curriculum, supplementary aids and services, program modifications, and transition services and needs; and
- (5) Discussion of placement recommendation and significant details of placement (for example, class size, integration and main streaming opportunities) that make up your child's appropriate educational program.

All members of the IEP team should attend and participate in the team meeting. An IEP team member should not sign the IEP before the team meeting. [34 C.F.R., Part 300, App. A, Q. 14; Cal. Ed. Code Secs. 56341 and 56342.]

While there is no procedure in law for how to reach agreement in an IEP meeting, comments to the federal regulations make clear that the IEP team should work toward consensus. However, if a team cannot reach consensus regarding a service or placement, the school district has ultimate responsibility to offer what it believes is an appropriate program. The comments add that it is not appropriate to make IEP decisions based upon a majority. Where consensus cannot be reached and a parent

disagrees with the district's proposal, the district must provide the parents with written notice of that proposal or refusal, and the parents may seek resolution through a due process hearing. [34 C.F.R. Part 300, App. A. Q. 9.]

15. What information should be considered at the IEP for deaf or hard-of-hearing pupils?

Federal regulations require the IEP team to consider special factors when developing an IEP for a student. One of those factors is the communication needs of the student. For a student who is deaf or hard of hearing, the IEP team must consider the student's language and communication needs; opportunities for direct communications with peers and professional personnel in the student's language and communication mode; academic level; and full range of needs, including opportunities for direct instruction in the student's language and communication mode. [34 C.F. R. Sec. 300.346 (a)(2)(iv).]

In addition, in determining what is an appropriate education in the least restrictive environment for deaf or hard-of-hearing pupils, state law requires the IEP team to specifically discuss the communication needs of the pupil, including:

- (1) Pupil's primary language mode (e.g., spoken language, sign language, or a combination);
- (2) Availability of language peers which may be achieved by consolidating services into an area-wide program;
- (3) Ongoing language access to teachers and specialists proficient in the pupil's language mode; and
- (4) Services necessary to ensure community accessible academic instruction and extracurricular activities. [Cal. Ed. Code Sec. 56345(e).]

16. What should be written in the IEP?

Under federal and/or state law, the Individualized Education Program (IEP) for each student with disabilities must include:

- (1) The student's present levels of educational performance, including how the child's disability affects the child's involvement and progress in the general curriculum (for preschoolers, present levels must include how the disability affects the child's participation in appropriate activities);
- (2) A statement of measurable annual goals, including benchmarks or short-term objectives, related to:

- (A) Meeting the child's needs that results from the child's disability to enable the child to be involved in and progress in the general curriculum, and
- (B) Meeting each of the child's other educational needs that result from the child's disability.

(3) A statement of: (A) specific special education services (including, for example, physical education, vocational education, extended school year, instruction in academic or perceptual areas, teacher qualifications, class size, etc.); (B) specific related services including the amount of time, frequency, and location for each service (for example, occupational therapy two times a week/45 minute sessions at the school site); (C) supplementary aids and services (for example, instructional aides, note takers, use of the resource room, etc.); and, (D) program modifications or supports for school personnel (for example, modifications to the regular class curriculum, use of computer-assisted devices, special education training for the regular teacher, etc.) to be provided to the child, on behalf of the child, or for the child: (i) to advance appropriately toward attaining the annual goals; (ii) to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and (iii) to be educated and participate with other children with disabilities and nondisabled children;

(4) An explanation of the extent, if any, to which the child will not participate with nondisabled children in regular education classes as well as extracurricular and other nonacademic activities;

(5) The projected date for initiation and the anticipated duration, frequency, and location of the services and modifications included in the IEP;

(6) A statement of any individual modifications in the administration of state or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment;

(7) Appropriate objective criteria, evaluation procedures and schedules for determining, at least annually, whether the measurable goals contained in the IEP are being achieved and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year;

(8) A statement of how the student's parents will be regularly informed of student progress (through such means as periodic report cards or progress reports) at least as often as parents are informed of their nondisabled student's progress;

(9) A description of the type of placement needed to implement the IEP in the least restrictive environment (the school district must ensure that a continuum of

alternative placements is available, including instruction in regular classes — with an aide or other adaptations if necessary, special classes, non-public nonsectarian schools, state special schools, residential placement, home instruction, and instruction in hospitals and institutions);

(10) For students 16 years of age or older, the IEP must state the transition services needed, including, if appropriate, a statement of the interagency responsibilities or any needed linkages (transition services are “a coordinated set of activities for a student ... that promotes movement from school to post-school activities... The activities shall include instruction, community experiences, the development of employment and other post-school living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.”)

(11) For each student, beginning at age 14 and younger, if appropriate, the IEP must include a statement of the transition service needs of the student (statements should relate to those sections of the IEP that focus on the student’s courses of study — such as participation in advanced-placement courses or a vocational education program);

(12) Extended school year services, when needed; and

(13) One year before the student turns 18, include a statement that the student has been informed of his or her special education rights that will transfer to the student at age 18.

[20 U.S.C. Sec. 1414(d); 34 C.F.R. Secs. 300.309 and 347; Cal. Ed. Code Sec. 56345; 5 C.C.R. Sec. 3042(b).]

Most important to remember is the fact that the major components of the IEP must relate to each other. State law requires that each IEP show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. [5 C.C.R. Sec. 3040(c).] In other words, the annual goals should be written based on how the child is presently performing in the various areas of deficit; the educational services must be sufficient, in light of his/her present performance, to make progress toward meeting the annual goals and short-term objectives.

17. Are there any other services or special factors that must be considered and included in an IEP if appropriate for a student?

Under federal and/or state law, the IEP team must, when appropriate:

- (1) For a student whose behavior impedes his or her learning or that of others, consider strategies, including positive behavioral interventions, and supports to address that behavior;
- (2) For a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media, that instruction in Braille or use of Braille is not appropriate;
- (3) Consider the communication needs of the student; and for a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode;
- (4) Consider whether the student requires assistive technology and services;
- (5) For students in kindergarten and grades 1 to 6, the IEP must also contain prevocational career education;
- (6) For students in grades 7 to 12, the IEP must also include any differential standards which will be used to enable them to graduate, and vocational education, career education, or work experience education, in preparation for remunerative employment, including independent living skill training;
- (7) For students whose primary language is other than English, the IEP must include linguistically appropriate goals, objectives, programs and services; and
- (8) Provide for the transition into the regular class program if the student is to be transferred from a special class or center, or non-public, non-sectarian school into a regular class in a public school for any part of the school day, including:
 - (A) A **description of activities provided to integrate the student into the regular education program** (the description shall indicate the nature of the activity, and the time spent on the activity each day or week) and
 - (B) A description of the activities provided to support the transition of students from special education program into the regular education program;
- (9) For students with low-incidence disabilities, provide specialized services, materials, and equipment; and

(10) For students in grades 7 to 12, inclusive, provide any alternative means and modes necessary for the student to complete the district's prescribed course of study and to meet or exceed proficiency standards for graduation.

[20 U.S.C. Sec. 1414(d)(3)(B), 34 C.F.R. Sec. 300.346, Cal. Ed. Code Secs. 56345 and 56345.1.]

18. How should the present levels of my child's educational performance be described in the IEP?

The school district must use assessment tools and strategies that provide relevant information that directly assists the IEP team to determine the educational needs of the child. This includes information related to enabling the student to be involved in and progress in the general curriculum.

The present levels of educational performance should reflect your child's unique needs in any area of education affected by your child's disability, including the general curriculum, academic areas (reading, math, communication, etc.), non-academic areas (daily life activities, mobility, social/emotional/behavioral issues, etc.), and perceptual functioning (auditory or visual processing, motor abilities, concentration problems).

The IEP team should try to describe your child's performance in objective, measurable terms. However, this should not prevent you from presenting your view of your child's needs. In developing the IEP, the IEP team must consider your child's strengths and any of your concerns for enhancing your child's education. The results of your child's initial evaluation or most recent evaluation must also be considered, but any such information used should be easily understandable to you and all other members of the team. [20 U.S.C. Sec. 1414(d)(3); 34 C.F.R. Sec. 300.532 (b), (g), (j), and Part 300, App. A, Q. 5.]

19. SEE ALSO CHAPTER 1, QUESTION AND ANSWER 18. Why are measurable, annual goals and benchmarks or short-term instructional objectives important?

Measurable annual goals and benchmarks or short-term instructional objectives allow you to track your child's progress in school and help you determine if your child's educational program is appropriate to meet his unique educational needs. Goals and benchmarks/objectives are also important because they help form and guide your child's specific instructional plans. An IEP is not designed to be a detailed instructional plan, but instructional plans should relate directly to IEP

goals and benchmarks/objectives. The best way for you as parents to influence the specific instruction your child receives is to participate in developing appropriate IEP goals and benchmarks/objectives. [34 C.F.R. Part 300, App. A, Q. 1.]

The goals and benchmarks/objectives help define what kind of special education program and related services the school district must provide. The school district must provide the programs and services necessary to meet the goals and objectives in your child's IEP. If your child needs a particular kind of special education program or service, the school district is not required to provide it unless it is necessary to meet an IEP goal or benchmark/objective. [34 C.F.R. Part 300, App. A, Q. 31.]

In addition, the determination of whether your child is meeting or failing to meet his IEP goals and benchmark/objectives is critical to developing an appropriate educational program. Consequently, your child's IEP must include at least one statement of how your child's progress toward his annual goals will be measured. The IEP must also include the extent to which that progress is sufficient to enable your child to achieve the goals and objectives by the end of the year and how you, as parents, will be regularly informed (such as through periodic report cards) of your child's progress. You must be informed at least as often as parents of nondisabled children are informed of their children's progress. [20 U.S.C. Sec. 1414(d)(1)(A)(viii); 34 C.F.R. Sec. 300.347(a)(7); Cal. Ed. Code Sec. 56345(a)(7).]

Also recall that the appropriateness of your child's program is measured by whether your child is making progress toward the central goals of the IEP. [*County of San Diego v. Special Education Hearing Office*, 93 F.3d 1458 (9th Cir. 1996).] Therefore, if the goals do not require much in the way of progress, and if the child is making progress toward those goals, it may not require much in the way of a special education program to bring about progress toward unambitious goals and it will be difficult to prove the district's program is inappropriate if you are dissatisfied with it.

20. If IEP goals and objectives are so important in this process, is there any help for me as a parent in advocating that goals be ambitious and set higher expectations for my special education student than my district appears to want to set?

Yes, the State Superintendent and State Board of Education must adopt performance goals and indicators for special education students that are consistent with, to the maximum extent appropriate, the standards for all pupils in the public

schools. [Cal. Ed. Code Sec. 56138; 34 C.F.R. Sec. 300.137.] The California Association of Resource Specialists and Special Education Teachers publishes a manual called the *Grade Level Guides* which contains the academic standards and expectations for California public school students in each of the grades kindergarten through tenth grade. Parents may wish to obtain a copy of these grade level standards so as to have an idea what a child in a particular grade should be learning so that parents are better able to negotiate the variety and content of their children's IEP goals. Call (916) 443-0479 for information on how to order *Grade Level Guides*. The California Association of School Administrators and the California Association of Resource Specialists and Special Education Teachers publishes the *Handbook of Goals and Objectives*. The handbook may be useful in the development of goals and objectives for students with mild to moderate disabilities. Call (916) 444-3216 or (800) 890-0325 to order the handbook.

IEP goals must be measurable. [20 U.S.C. Sec. 1414(d)(1)(A)(ii).] Therefore, parents should not consent to IEPs with goals such as: "Mary will improve in math." The "present levels of educational performance" section of the IEP should specify at what level Mary is performing in math. Her IEP math goals should specify how much the IEP team expects Mary to improve in math from that level.

The U.S. Department of Education has made it clear that even the IEPs of children with severe disabilities and those placed in specialized settings must address how the child will be involved and progress in the general curriculum. [34 C.F.R. Part 300, Appendix A, Q&A 2, Vol. 64, Fed. Reg., p. 12472.] IEP goals, therefore, should not be limited to functional life skills and self-help activities for children with severe disabilities and should include goals which enable every student to access and progress in the general curriculum.

21. What is the difference between short-term objective and a benchmark?

Appendix A to Part 300 — Notice of Interpretation describes **short-term objectives** as measurable intermediate steps and **benchmarks** as major milestones that enable parents, students, and educators to monitor a student's progress toward achieving the annual goals that are part of the IEP at intermediate times during the year. Appendix A adds: "...IEP teams may continue to develop short-term instructional objectives, that generally break the skills described in the annual goal down into discrete components. The revised statute and regulations also provide that, as an alternative, IEP teams may develop benchmarks, which can be thought of as describing the amount of progress the child is expected to make within specified segments of the year. Generally, benchmarks establish expected

performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of their child’s progress toward achieving the annual goals. An IEP team may use either short-term objectives or benchmarks or a combination of the two depending on the nature of the annual goals and the needs of the child.” [C.F.R. Part 300, App. A, Q. 1.]

22. Must my child’s IEP address his involvement in the general curriculum regardless of the nature and severity of his disability and the setting in which he is educated?

Title 34 C.F.R. Appendix A to Part 300 — Notice of Interpretation specifically addresses this issue:

Yes. The IEP for each child with a disability (including children who are educated in separate classrooms or schools) must address how the child will be involved and progress in the general curriculum. However, the Part B regulations recognize that some children have other educational needs resulting from their disability that also must be met, even though those needs are not directly linked to participation in the general curriculum...Thus, the IEP team for each child with a disability must make an individualized determination regarding (1) how the child will be involved and progress in the general curriculum and what needs that result from the child’s disability must be met to facilitate that participation; (2) whether the child has any other educational needs resulting from his or her disability that also must be met; and (3) what special education and other services and supports must be described in the child’s IEP to address both sets of needs.

[C.F.R. Part 300, App. A, Q. 2.]

23. Must an IEP for a child with a disability include annual goals and benchmarks/objectives that address all areas of the general curriculum?

Appendix A to Part 300 — Notice of Interpretation states:

No...a public agency is not required to include in an IEP annual goals that relate to areas of the general curriculum in which the child’s disability does not effect the child’s ability to be involved in and progress in the general curriculum. If a child with a

disability needs only modifications or accommodations in order to progress in an area of the general curriculum, the IEP does not need to include a goal for that area. However, the IEP would need to specify those modifications or accommodations.

[C.F.R. Part 300, App. A, Q. 4.]

24. Must the IEP contain all services my child needs?

Yes. Each school district must make special education and related services available to all eligible children with disabilities under its jurisdiction. Federal regulations define special education services as “specially-designed instruction, at no cost to the parents, to meet the unique needs of a child with disability.”

Therefore, the IEP for a child with a disability **must** include all of the unique, specific special education and related services needed by the child as determined by the IEP team. This means that the services must be listed in the IEP even if they are not directly available from the local agency, and **must** be provided by the agency through contract or other arrangements. [34 C.F.R. Secs. 300.26, 300.343(b)(ii), and Part 300, App. A, Q. 31.]

The IEP **must** also set out the amount of special education and related services — including the frequency, duration, and location of the services and modifications — to be provided, so that the level of the agency’s commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP. Changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. [34 C.F.R. Sec. 300.347(a)(6) and Part 300, App., Q. 20 and 35.]

25. If a majority of IEP team members, with the exception of the official representing the school district, agree on IEP services, should those services be written into the IEP?

Regardless of the number of IEP team members who are in agreement with the proposed services, “...the public agency has the ultimate responsibility to ensure that the IEP includes the services the child needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority ‘vote.’” The IEP team should strive to reach its decisions by consensus. “If the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency’s proposals or refusals, or both, regarding the child’s educational

program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.” [34 C.F.R. Part 300, App. A, Q. 9.]

26. What can I do if my child’s teacher or other direct-service-level staff tell me one thing about what my child needs to be appropriately educated but refuse to say those same things in an IEP meeting, mediation conference, or due process hearing because they are afraid of retaliation by their superiors for saying anything that conflicts with the administrator’s position?

You can inform teachers and others that, beginning in 2003, teachers and other staff have some additional protection from retaliation for trying to assist special education parents and students and a means to address retaliation or intimidation when it does happen. No district employee may directly or indirectly use or attempt to use his/her official authority or influence to intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any person, including, but not limited to, a teacher, related services provider, paraprofessional, aide, contractor, or subordinate for the purpose of interfering with that person’s effort to assist a parent or guardian of a special education student to obtain services or accommodations for that student. [Cal. Ed. Code Sec. 56046(a).] If a teacher or other employee of the district believes an administrator or other employee of the district has violated this prohibition, she can file a complaint with the State Department of Education and ask the Department for an investigation. [Cal. Ed. Code Sec. 56046(b).] See Chapter 6 regarding the complaint process.

27. Can I ask for a specific type of instruction or program to address my child’s educational needs?

Yes. Federal regulations define special education services as “specially-designed instruction, at no cost to the parents, to meet the unique needs of a child with disability.” Specially-designed instruction means “...adapting, as appropriate to the needs of an eligible child...the content, methodology, or delivery of instruction” to address the unique needs of the child and to ensure his access to the general curriculum, so that he can meet the educational standards that apply to all students. Therefore, requesting and discussing a student’s unique need for a particular method of instruction or specific program at an IEP is within a parent’s right to have their concerns for enhancing the education of their child considered by the

IEP team. In addition, the Analysis of Comments and Changes attached to the federal regulations discusses this issue further:

...In light of the legislative history and case law, it is clear that in developing an individualized education there are circumstances in which the particular teaching methodology that will be used is an integral part of what is “individualized” about a student’s education and, in these circumstances will need to be discussed at the IEP meeting and incorporated into the student’s IEP.

For example, for a child with a learning disability who has not learned to read using traditional instructional methods, an appropriate education may require some other instructional strategy...Other students’ IEPs may not need to address the instructional method to be used because specificity about methodology is not necessary to enable those students to receive an appropriate education...In all cases, whether methodology would be addressed in an IEP would be an IEP team decision.

[34 C.F.R. Secs. 300.26, 300.343 (b)(ii), 300.346 (a)(1)(i); 34 C.F.R. Part 300, Attachment 1, pg. 12552.]

28. Can class size limits be included in the IEP?

Yes. Federal law and state law and policy state that special education means “specially-designed instruction...to meet the unique needs of a child with disabilities...” One of those unique needs may be a limit on special education class size. A school district may disagree with a parent on the need for a class size limit. The district may believe that class size is not a critical element in an appropriate program for a student.

However, a school district may not categorically refuse to add class size to an IEP as a matter of policy. Such a policy would not allow the IEP team to develop an IEP based on the unique needs of the student. You may wish to consider filing a compliance complaint if your school district has such a policy. [34 C.F.R. Secs. 300.26, 300.347; Cal. Ed. Code Sec. 56031.] See Chapter 6, *Information on Due Process Hearings/Compliance Complaints*.

29. Is there a mandated length or format for an IEP?

No. Neither federal nor state law includes a mandated length or format for an IEP. However, an IEP document must be developed and the IEP meeting must be

conducted in accordance with the requirements and procedures in federal and state law. [34 C.F.R. Secs. 300.341 – 300.350; Cal. Ed. Code Secs. 56340 – 56347.]

30. If my child is mainstreamed into regular classes, can I write modifications to the regular classroom in the IEP?

Yes. Students who are able to participate in regular programming classes may require modifications, supplementary aids or services, within that regular class in order to learn. Such modifications may include the use of a tape recorder, oral testing, special seating, etc. Such modifications must be specifically written into your child's IEP. [20 U.S.C. Sec. 1414(d); 34 C.F.R. Sec. 300.347(a)(3) and Part 300, App. A, Q. 1.]

31. Under what circumstances should the regular teacher of a special education student participate in the IEP?

Federal law and regulations require that your child's regular education teacher, as a member of the IEP team, to the extent appropriate, participate in the development of the IEP. This includes the determination of appropriate positive behavioral interventions and strategies; the determination of supplementary aids and services, program modifications, support for school personnel; and the review or revision of the IEP.

While a regular teacher must be a part of the IEP team for a student with a disability participating in the regular education environment, he is not required to participate in all decisions of the IEP team, attend every IEP team meeting or be present for the entire IEP meeting.

In determining the extent of the regular education teacher's participation at IEP meetings, public agencies and parents should discuss and try to reach agreement on whether the child's regular education teacher that is a member of the IEP team should be present at a particular IEP meeting and, if so, for what period of time. The extent to which it would be appropriate for the regular education teacher member of the IEP team to participate in IEP meetings must be decided on case-by-case basis.

[20 U.S.C. Secs. 1414(d)(3)(C) and 1414(d)(4)(B); 34 C.F.R. Secs. 300.344(a)(2), 300.346(d), and Part 300, App. A, Q. 24.]

32. How should the school district pick which regular education teacher and special education teacher participate as members of the IEP team?

Appendix A to Part 300 — Notice of Interpretation states:

The regular education teacher who serves as a member of a child's IEP team should be a teacher who is, or may be, responsible for implementing a portion of the IEP, so that the teacher can participate in discussions about how best to teach the child

If the child has more than one regular education teacher responsible for carrying out a portion of the IEP, the school district may designate which teacher(s) will serve as IEP team member(s). In addition, the school district is strongly encouraged (but not required) to seek input from teachers who will not be attending the IEP meeting. Regardless of whether they attend the IEP meeting or not:

...the LEA must ensure that each regular education teacher (as well as each special education teacher, related services provider, and other service provider) of an eligible child...(1) has access to the child's IEP, and (2) is informed of his or her specific responsibilities related to implementing the IEP, and of the specific accommodations, modifications and supports that must be provided to the child in accordance with the IEP.

[34 C.F.R. Sec. 300.342(b) and Part 300, App. A, Q. 26.]

33. Is there any way to get additional support for my child's teachers – both regular and special education – through the IEP?

Yes. Each IEP should include a statement of the **support for school personnel** needed in order for the child to advance appropriately toward attaining the annual goals; to be involved in and progress in the general curriculum; and, to be educated and participate with other children with disabilities and nondisabled children. With the strong regulatory emphasis on a child's involvement in the general curriculum and in regular education placement, the regulations recognize that both regular and special education teachers will need additional supports to ensure that IEPs are implemented fully and appropriately. [34 C.F.R. Sec. 300.347(a)(3); Cal. Ed. Code Sec. 56345(a)(3).]

Unfortunately, support for school personnel is not defined further in regulations. However, it is clear that the IEP team will need to address and discuss this component of the IEP thoroughly. Possible support could include teacher training; additional support staff for test administration or adaptation; additional paraprofessional staff for classroom instruction and behavioral support; and, additional staff for curriculum adaptation and other classroom support. The support in this area may mean the difference between student success and failure in school.

California and federal law requires not only that all staff who will be providing special education to a student have the IEP and be knowledgeable about its contents but also that each staff person be informed of his/her specific responsibilities related to implementing the IEP and the specific accommodations, modifications, and supports that must be provided for the student. [Cal. Ed. Code Sec. 56347; 34 C.F.R. Sec. 342(b)(2)&(3).]

34. Do I have to approve an IEP at the IEP meeting?

No. It is reasonable and may be necessary for you to have a copy made of the proposed IEP to take home to read over more closely and/or to discuss with your spouse or someone else before deciding whether to sign the document. You may not be able to take the original document home with you. If you decide to sign the IEP, you should check to make sure the IEP you sign is the same as the copy you took home to review. Your child remains eligible for special education, continues to receive his current services, and stays in his current placement while you decide whether to consent. If you do not consent or file for a fair hearing in a reasonable period of time, then the LEA may file for a fair hearing.

35. SEE ALSO CHAPTER 1, QUESTION AND ANSWER 22. Can I consent to only part of the IEP?

You can consent to those parts of the IEP that you agree with, so those services can begin. If you disagree with certain parts of the IEP, those parts cannot be implemented and may be issues at a due process hearing if your concerns cannot be resolved informally. You may wish to file a written dissent with the IEP document to make your position clear. [Cal. Ed. Code Sec. 56346.]

If you do not consent to all the components of the IEP, then those components of the program to which you have consented shall be implemented so not to delay providing special education and related services to your child. [Cal. Ed. Code Sec. 56346(a).]

If the public education agency determines that the part of the proposed IEP to which you do not consent is necessary to provide a free and appropriate education to your child, they shall initiate a pre-hearing mediation conference, a mediation conference or a due process hearing. While the pre-hearing mediation conference, mediation conference or due process hearing is pending, your child shall remain in his then-current placement, unless you and the public education agency agree otherwise. [Cal. Ed. Code Sec. 56346(b).]

36. Can I consent to the content of the IEP and not consent to placement?

Yes. You may consent to the content of the IEP as written, including the placement recommendation yet you may disagree with the actual placement site or classroom. For example, after visiting the proposed placement or classroom, you may feel that it does not meet the requirements of the IEP as written. Your disagreement with the actual classroom may become the basis for a due process hearing if your concerns cannot be resolved informally. See Chapter 6, *Information on Due Process Hearings/Compliance Complaints*.

37. SEE ALSO CHAPTER 1, QUESTION AND ANSWER 22 (A). Can I change my mind after I sign the IEP document?

Yes. If you have changed your mind, you may revoke your consent at any time. [34 C.F.R. Sec. 300.500(b)(1)(iii)(A).] However, the revoking of your consent is not retroactive. It does not negate an action that has occurred after the consent was given and before the consent was revoked. [34 C.F.R. Sec. 300.500(b)(1)(iii)(B); Cal. Ed. Code Sec. 56026.1(c).] The U.S. Department of Education comments on this regulation state that: “once a parent consents to an educational decision concerning their child, be it an evaluation or provision of service(s), any revocation of their consent once the action to which they initially consented has been carried out will not affect the validity of the action.” [34 CFR Part 300, Attachment 1, Fed. Reg. Vol. 64, No. 48, p. 12606.] Therefore, if the district has done an evaluation, the results of the evaluation are not invalidated by the parent later withdrawing consent to the evaluation. Similarly, if the district has provided a service, the fact that the parent later withdraws consent to that service will not invalidate the appropriateness of that service for the child at the time he received it.

The authors of this manual believe it is significant that the federal regulation and the comments on it did not include “placement” among the actions which cannot be retroactively affected by a parent’s withdrawal of consent. If, after you have

signed the IEP, you decide to withdraw your consent to your child's new placement, you should immediately send a written revocation of consent to the special education administrator who represented the school district at the IEP meeting. In the revocation you should ask for the child to be immediately returned to his previous placement and for a new IEP meeting within 30 days of the written request, not counting days in July or August. [Cal. Ed. Code Sec. 56343.5.]

The district might not return your child to the previous placement or implement other aspects of the previous IEP, especially if the new IEP is already being implemented at the time you attempt to withdraw consent or if a significant period of time has gone by before your attempted revocation. If the school refuses to return the child to the previous placement or otherwise carry out the previous IEP, and you feel strongly about these issues and cannot wait to try to address them at the new IEP meeting, you could file for a due process hearing and ask for a "stay-put" order from the hearing office to restore the previous IEP. See Chapter 6, *Information on Due Process Hearings/Compliance Complaints* for further information. You should argue that the non-retroactivity of revocation only applies to the validity of evaluations done and services provided in between your initial consent and withdrawal of it. However, the special education hearing office may or may not order that your child be returned to his/her previous placement.

As always, the best practice is not to sign the IEP until you are sure about its contents. You can and should take a copy of the IEP home to think about for a day or two if you are not sure you should sign it at the time of the IEP meeting. You can also sign an IEP in part [Cal. Ed. Code Sec. 56346] as described in Questions 35 and 36 of this chapter.

38. What kinds of educational placements must a school district offer?

School districts must offer a continuum of alternative placements, including:

- (1) Instruction in a regular classroom;
- (2) Related services (in California, these are called "designated instruction and services") necessary to help your child benefit from special education (see Chapter 5, *Information on Related Services*);
- (3) Resource specialist services in which a school resource specialist provides specialized instruction and services to children who spend more than half their day in a regular classroom;

- (4) Special classes that serve pupils with similar and more intensive educational needs. Pupils may be enrolled in special classes only when the nature or severity of the disability of the pupil is such that education in regular classes with the use of supplementary aids and services, including curriculum modification and behavioral support, cannot be achieved satisfactorily. These requirements also apply to separate schooling, or other removal of students with disabilities from the regular education environment.
- (5) State special schools, such as the California School for the Deaf and California School for the Blind;
- (6) Home instruction;
- (7) Instruction in hospitals or institutions, such as medical facilities, state hospitals and developmental centers, and juvenile schools;
- (8) Placement in appropriate nonpublic, non-sectarian schools when no appropriate public school placement is available; and
- (9) Out-of-home residential placement, including non-medical care and room and board when educationally appropriate or when the only appropriate school is too far away from your home;
- (10) Itinerant instruction in classrooms, resource rooms, and settings other than classrooms where specially-designed instruction may occur;
- (11) Instruction using telecommunication; and
- (12) Instruction in settings other than classrooms where specially designed instruction may occur.

[34 C.F.R. Secs. 300.26, 300.551; Cal. Ed. Code Secs. 56360, 56361, and 56363.]²

The continuum of placements must permit students to receive an education to the maximum extent appropriate with children who do not have disabilities. [34 C.F.R. Sec. 300.550.] See Chapter 7, *Information on Least Restrictive Environment*.

² For more specific information on individual types of placements, see Cal. Ed. Code Secs. 56362 (resource specialist program), 56364 (special day class), 56367 (state special schools), 56365 (non-public schools), 56167 (medical institutions), 56850 (state developmental centers and hospitals), 56150 (juvenile schools), and 56156 (out-of-home residential placement). See also 34 C.F.R. Sec. 300.302 (out-of-home residential placements). For more information on services provided by other agencies, see Chapter 9, *Information on Inter-Agency Responsibility for Related Services*.

39. How can supplementary aids and services help my child in the regular classroom?

Federal law and regulations presume that a child with a disability will be educated in regular education classes with their regular education peers. Your school district must ensure that a child with a disability is not removed from the regular education environment unless the nature and severity of the disability is such that education in regular classes with supplementary aids and services cannot be satisfactorily achieved. Supplementary aids and services can range from teaching aids such as computers to additional staff support (*e.g.* one-to-one paraprofessional assistance, a note-taker or test-giver). These support services can be provided in the regular class, regular education environment or in other education-related settings. Any supplementary aid or service that the IEP team agreed on must be included in the IEP. [34 C.F.R. Secs. 300.28, 300.550 – 300.556 and Part 300 App. A, Q. 1; Cal. Ed. Code Sec. 56364.]

40. What role do parents have in determining the educational placement for their child?

Federal law requires that parents of a student with a disability be members of **any** group that makes decisions on the educational placement of their child. You have the right to obtain as much specific information as possible about the recommended placements during your IEP meeting. Some districts will tell you which placements (specific classrooms) they are recommending and describe those classrooms. Other school districts will recommend general placement categories (for example, resource specialists, special day class). Then, specific classroom assignments follow the IEP. Whichever procedure your district follows, you should request at your IEP meeting that you be included, as the law requires, in any meeting where the educational placement of your child is determined. [20 U.S.C. Sec. 1414(f), 34 C.F.R. Sec. 300.501(c); Cal. Ed. Code Sec. 56342.5.]

41. Can the IEP require particular teachers, classrooms or placements?

You do not have the power to require that the school district provide its services from a particular person or in a particular classroom. However, the school district must provide “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services...as specified in the individualized education program...” [Title 5, California Code of Regulations (C.C.R.) Sec. 3042(a).] Your child’s IEP team must consider these unique factors

when deciding what program your child should attend. For example, the IEP team should consider the accessibility and location of classrooms when considering whether a particular program is the least restrictive environment for your child. Similarly, the school district should consider teachers' qualifications, such as knowledge of particular languages or techniques, when deciding what program your child should attend. [CDE, Special Education Division, TACS 05-89.]

In other words, the school district must provide services in settings and with people who can meet your child's IEP goals and objectives. If the school district's proposed classroom or teacher cannot meet your child's IEP goals, you can ask the district to change them.

In most cases, you should observe the classroom yourself **before** agreeing to placement if you have concerns. If you wish, you can also ask an education professional to observe your child's recommended placement so that you can be sure it is appropriate. If you disagree with your child's specific classroom assignment, it is best to share your concerns with your school district and work together to arrange for another classroom assignment. However, this may not be possible and you may need to use the due process procedures available to you. See Chapter 6, *Information on Due Process Hearings/Compliance Complaints*. The school district cannot force you to accept a service or placement without your consent, except through the due process procedure. [Cal. Ed. Code Sec. 56346.]

42. May children with differing disabilities be grouped together for instruction in the same classroom?

Heterogeneous or non-categorical classroom placements for children with disabilities are allowed under federal and state law because education needs, rather than disability category or label, should ultimately determine placement. However, such a placement must meet your child's IEP goals and objectives or it is not appropriate. [34 C.F.R. Sec. 300.552.]

43. When must the IEP be implemented?

The IEP must be implemented as soon as possible following the IEP meeting. There can be no undue delay in providing special education and related services, and the IEP must specify projected dates for the initiation of services. [34 C.F.R. Sec. 300.342, 300.347(a)(6); 5 C.C.R. Sec. 3040.]

The law requires that an IEP be in effect for each child at the beginning of the school year. [Cal. Ed. Code Sec. 56344(b); 20 U.S.C. Sec. 1414(d)(2); 34 C.F.R. Sec. 300.342(a)(b).] The IEP that must be in effect is not any IEP but one which

contains all the elements of an appropriate IEP. [20 U.S.C. Sec. 1414(d)(2)(A).]
See Question 16.

**44. SEE ALSO CHAPTER 1, QUESTION AND ANSWER 22(B).
Are there any circumstances when a school district is required
to review and/or revise my child's IEP?**

An IEP team must review a student's IEP at least annually. Also, the school district must convene an IEP meeting if:

- (1) A student has received an initial evaluation or a subsequent re-evaluation;
- (2) The student demonstrates a lack of anticipated progress toward their annual goals and in the general curriculum, if appropriate; or
- (3) The parent or teacher requests a meeting to develop, review, or revise the IEP.

[20 U.S.C. Sec. 1414(d)(4), 34 C.F.R. Sec. 300.343(c), Cal. Ed. Code Sec. 56343.]

**45. If I place my child in a religious school or other nonpublic
school, does she have the right to an IEP and special education
services?**

Generally, no. A school district is not required to pay for special education and related services for any child voluntarily and unilaterally placed in a private school without the agreement of an IEP team. A child with a disability placed unilaterally by their parents in a private school has no individual right to receive the special education and related services that he would receive if enrolled in a public school. [34 C.F.R. Secs. 300.450 – 462.] See Chapter 5, *Information on Related Services*, Questions 31 and 32, for a more thorough discussion of the very limited responsibilities of schools for special education and related services for children placed unilaterally by their parents in private schools.

**46. SEE ALSO CHAPTER 1, QUESTION AND ANSWER 46.
What if I want to place my child in a private school and I will
want the school district to pay me back for the costs? Is there
anything in particular I should know or I need to do before I
make such a placement?**

Yes. If you enroll your special education student in a private school without the agreement of the rest of the IEP team, there is a possibility of being reimbursed for

the cost. Usually, however, you will have to show at a due process hearing that the school district's program was not appropriate and that the private school you selected is appropriate. If you are able to convince the school district at either a mediation conference or a hearing officer at a due process hearing of your position, you may be entitled to reimbursement even if the private school you enroll your child in is not certified by the state. [Cal. Ed. Code Sec. 56175; 34 C.F.R. Sec. 300.403(c); *Florence County School District v. Carter*, 510 U.S. 7 (1993); *Union School District v. Smith*, 15 F.3d 1519 (9th Cir. 1994).]

In order to have an opportunity for full reimbursement, the parents must provide the school district proper notice of their intention to place the child in a private school. Parents must have given notice at the most recent IEP meeting prior to the removal of the student from the public school of their intention to reject the public school program offer, including stating their concerns about the public school placement. At that same IEP meeting, parents must also inform the school district of their intention to enroll the child in a private school and to seek reimbursement for the cost from the district. [Cal. Ed. Code Sec. 56176(a); 34 C.F.R. Sec. 300.403(d)(1)(i).]

If the parents decide to place the child in a private school after the most recent IEP meeting, they do not have to convene a new meeting. However, parents must give written notice to the district at least 10 business days before they remove the child from the public school of their rejection of the public school program and their intention to seek reimbursement for the private program from the district. [Cal. Ed. Code Sec. 56176(b); 34 C.F.R. Sec. 300.403(d)(1)(ii).]

Prior to the parents' removal of the child from public school, the district can notify the parents of the district's desire to reassess the child. The parents must make the child available for that reassessment if they want to maintain their eligibility for potential reimbursement. [Cal. Ed. Code Sec. 56176(c); 34 C.F.R. Sec. 300.403(d)(2).]

Even if the parents do not give the required notice described above, either at the most recent IEP meeting or in writing at least 10 business days before removing the child from public school, the parents may still be eligible for reimbursement. Reimbursement may not be reduced or denied if parents failed to give the necessary notice because: 1) the parent is illiterate and cannot write in English, 2) giving timely notice would likely have resulted in physical or serious emotional harm to the child, 3) the school prevented the parents from giving the notice, or 4) the parents had not received their parents-rights notice from the district which

would have informed the parents of their responsibilities in this situation. [See 34 C.F.R. Sec. 300.403(e).]

See Chapter 6, *Information On Due Process Hearings/Complaints*, for information on the due process procedures and, specifically, Question 27 for a description of the parents-rights notice.

47. Should the IEP respond to real, documented needs, or does it accommodate the available funds/resources of the school district?

While many school districts do have financial burdens, school districts **must** provide educational services based on the educational needs of your child. School districts cannot use economic issues to deny your child the services he needs. [34 C.F.R. Part 300, App. A, Q. 1 and 31.] However, a hearing officer can consider costs in choosing between appropriate placements. [Cal. Ed. Code Sec. 56505(h).]

48. When considering placements, should the child fit the program placement or the program fit the child?

The program placement should be determined based on your child's needs as described in her IEP. [34 C.F.R. Sec. 300.552.] The intent of the law is that the program be based on the unique needs of your child, rather than the programs available in the school district. If a program which meets your child's unique needs does not exist, the school district is required to secure a program (for example, starting a new program, modifying an existing program, providing for an interdistrict transfer or paying for a nonpublic school placement as appropriate).

49. Can my school district be required to purchase equipment needed to implement my child's IEP?

Yes. Districts must provide equipment needed to implement your child's IEP. State law provides money to school districts to purchase equipment required in the IEP for students with low-incidence disabilities (for example, Braille equipment for blind students or communication devices for students with oral language handicaps). In addition, schools are required to purchase equipment needed to provide related services such as occupational and physical therapy equipment. [Cal. Ed. Code Sec. 56363.1 and 56836.22; Cal. Gov. Code Sec. 7575(d).]

In addition, federal law requires that districts ensure that assistive technology devices and/or services are available to special education students who need them as part of:

- (1) Their special education and/or related services; or
- (2) The supplemental aids and services used to assist students in being placed in the least restrictive environment. [34 C.F.R. Sec. 300.308.]

An assistive technology device is any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities. [34 C.F.R. Sec. 300.5.] Assistive technology services include evaluation for and purchasing, modifying or repairing of such a device, and training necessary for the student and others to use it effectively. [34 C.F.R. Sec. 300.6.] See Chapter 5 *Information on Related Services*, Questions 42 through 45.

50. Can my child use a school-purchased assistive technology device at home or other nonschool settings?

A school district must permit a child with a disability to use school-purchased assistive technology at home or in other settings, if the IEP team determines that the child needs access to those devices in nonschool settings in order to receive an appropriate education (for example, to complete homework). Assistive technology devices must be provided to parents at no cost. Parents cannot be charged for normal use or wear and tear. [34 C.F.R. Sec. 300.308 and Part 300, App. A. Q. 36.]

51. Can I tape record an IEP meeting?

Yes. Parents may tape record an IEP meeting, even without the school district's permission, as long as the parents give the school district 24 hours notice of their intention to do so. Similarly, a school district may tape record a meeting with 24 hours notice to the parent. However, the district cannot tape record the meeting if the parent objects. If the parent objects to the district tape recording, then there can be no tape recording of the meeting by either the district or the parent. [Cal. Ed. Code Sec. 56341.1(f)(1).]

Under federal law, audio tape recordings made by the school district are governed by the Family Educational Rights and Privacy Act of 1974. [20 U.S.C. Sec. 1232(g).] In addition, you have the right:

- (1) To inspect and review district-made tape recordings;

- (2) To request that the tape recordings be amended if you believe that they contain information that is inaccurate, misleading, or in violation of the rights of privacy or other rights of the individual with exceptional needs; and
- (3) To challenge, in a hearing, information that you believe is inaccurate, misleading, or in violation of the individual's rights of privacy or other rights. [34 C.F.R. Sec. 99.10-99.22; Sec. 56341.1(f)(2)(A)&(B).]

52. What if participants in my IEP meeting use initials or jargon that I do not understand?

Remember that you have a right to equal participation in the IEP process. [34 C.F.R. Part 300, App. A, Q. 5.] Do not let the meeting proceed until you fully understand what is being said. Stop the meeting, ask what the jargon or professional term means, and continue to ask until you are comfortable that you understand the meaning. Do not allow the jargon to intimidate you. **Above all, remember MOST parents do not understand the jargon.** Asking questions is not an indication that you are uninformed, but rather an indication that you are rightfully concerned about developing the appropriate education program for your child. Also, if you do not fully understand the contents of your child's IEP, you may not be able to give your informed consent for the provision of services as required by law. [34 C.F.R. Sec. 300.500(b)(1).]

53. Can a school district use pre-written or computer generated IEP goals and objectives?

The law does not allow the school district to present a completed IEP for approval without a full discussion of your child's need for special education and the services offered. [34 C.F.R. Part 300, App. A, Q. 32.] Sometimes, in order to save time, school personnel prepare suggested goals or meet with the parent before the IEP meeting. This is permitted only if it does not prevent team members (especially parents) from providing input and if it results in an individualized education program. However, the CDE recommends that your school district should not send you a draft IEP before your IEP meeting. [CDE, Special Education Division, TACS 07-89.]

54. Who is responsible for implementing my child's IEP?

Federal law requires that the state education agency be ultimately responsible for ensuring that the required procedures are followed and that students receive needed education services in accord with their IEPs. [34 C.F.R. Sec. 300.600.] California

law delegates to local education agencies the direct responsibility for providing the services in students' IEPs and for ensuring that a continuum of program options exists to meet the needs of students for special education and related services. [Cal. Ed. Code Sec. 56360.] However, if the local education agency refuses or wrongfully neglects to provide a student with disabilities with a free appropriate public education, then the state education agency is responsible for directly providing the needed services. [20 U.S.C. Secs. 1412(a)(11) and 1413(h); 34 C.F.R. Sec. 300.360.]

If your child is enrolled in a nonpublic school, the school district, at its discretion, may delegate to the nonpublic school the responsibility of conducting the IEP meetings and implementing the IEP. However, even if the school district delegates these tasks to the nonpublic school, responsibility for compliance with special education law regarding nonpublic school students remains with the school district. [Cal. Ed. Code Sec. 56383.]

55. May a school district access my public (or private) insurance to pay for part of my child's special education program?

The California and federal laws allow school districts to use public and private insurance to help pay for the costs of special education or related services under certain circumstances. [Cal. Ed. Code Sec. 56363.5; 34 C.F.R. Sec. 300.142(e)-(g).]

Children with public insurance eligibility, such as Medi-Cal, cannot be required to enroll in Medi-Cal just so that a school district can use the Medi-Cal to pay for services. Those already using Medi-Cal cannot incur any out-of-pocket expenses, such as payment of deductibles or co-payments, for services which are part of a child's appropriate education. But a school may use its money to pay those deductibles or co-payments and circumvent this problem. Public insurance cannot be used if to use it would:

- (1) Decrease available lifetime coverage or any other insured benefit;
- (2) Result in the family paying for services that would otherwise be covered by Medi-Cal and that are required by the child outside of school;
- (3) Increase family premiums or lead to termination of coverage; or
- (4) Risk the loss of eligibility for home and community-based waivers, based on aggregate health related expenditures.

Parents of children with private insurance must give their consent before a school district may use the private insurance to pay for any special education costs. When

a district asks for a parent's consent, it must tell the parent that the parent's refusal to consent does not relieve the school of its responsibility to provide the special education and related services anyway. If a parent would otherwise consent to the use of his/her private or public insurance, but for incurring a deductible or co-payment, the district may use its money to offer to pay the deductible or co-payment and, perhaps, obtain the parent's consent to use of the insurance for the remaining costs of the service.

56. If my child already is a special education student, can the school withhold eligibility or existing service?

No. IEPs do not expire. A new IEP must be written annually or more frequently if necessary or at parent or teacher request to replace the current IEP. If you and the school disagree on services, the last agreed-upon IEP remains in effect. Those disagreements on services may become the basis for a due process hearing. Once you file for a due process hearing, your child must remain in her current educational placement. [34 C.F.R. Secs. 300.343(c)(1) and 300.514; Cal. Ed. Code Sec. 56505(d).] See Chapter 6, *Information on Due Process Hearings/Compliance Complaints*.

**57. SEE ALSO CHAPTER 1, QUESTION AND ANSWER 14.
Can a foster parent sign an IEP for a child in their care?**

There are two possible options that would allow a foster parent to sign an IEP for a child in their care:

Option #1 – Unless prohibited by state law, a foster parent may act as parent for the purposes of the provision of special education services to a child living with them in foster care if these conditions exist:

- (1) The natural parent's authority to make educational decisions for the child have been taken away by a Court;
- (2) The foster parent has an ongoing, long-term relationship with the child;
- (3) The foster parent is willing to make the educational decisions required of parent in the special education process; and
- (4) The foster parent has no interest that would conflict with the interests of the child.

In California at this time, the law does not prohibit foster parents from acting as a parent for the purpose of the special education process. [34 C.F.R. Secs. 300.20.]

Option #2 – Foster parents may be appointed by a school district to be a surrogate parent. This appointment will also allow the foster parent to act as parent for a child within their care. In fact, when selecting a surrogate parent, school districts must give first preference to the foster parent, a relative caretaker, or court appointed special advocate (CASA). [Cal. Gov. Code Sec. 7579.5(c) and (g).]

58. What parental rights does a surrogate parent have at an IEP meeting?

Once a surrogate parent is chosen by the school district to act on behalf of a child with a disability in the special education process, the surrogate parent serves as the child’s parent and has all parental rights available to a parent. The surrogate parent may represent the child in matters related to the identification, assessment, instructional planning and development, educational placement, reviewing and revising the IEP, and in all other matters related to the provision of FAPE to the child. A surrogate parent can give written consent to the IEP, including non-emergency medical services, mental health treatment services, and occupational or physical therapy services. In short, the surrogate parent may give or withhold any consent related to a child’s IEP. [34 C.F.R. Secs. 300.20 and 300.515; Cal. Gov. Code Sec. 7579.5(d).]

59. How can my child qualify for extended school year services (summer school)?

California has developed state standards that a student with a disability must meet for eligibility for extended school year services. For example, a student’s disabilities must continue indefinitely or for a prolonged period; interruption of the student’s education program may cause regression; student has slow recoupment of skills that interfere with an ability to attain self-sufficiency and independence, etc. However, state regulations also say that “...the lack of clear evidence for such factors may not be used to deny an individual an extended school year program if the individualized education program team determines the need such a program and includes extended school year in the individualized education program...”[5 C.C.R. Sec. 3043.] Further, comments to the federal regulations reinforce the authority of the IEP team to determine eligibility for extended school year (ESY) services: “In all instances, the child’s IEP team must decide the appropriate manner for determining whether a child is eligible for ESY services in accordance with applicable State standards and Part B requirements.” [34 C.F.R. Part 300, Attachment 1, pg. 12576; 5 C.C.R. Sec. 3043.]

60. If my child needs ESY services, should these services be written into my child's IEP?

ESY services must be provided only if an IEP team decides that the services are necessary in order to provide a free, appropriate public education to your child. [34 C.F.R. Sec. 300.309(a)(2).] Federal regulations define ESY services as “special education and related services that are provided to a child with a disability beyond the normal school year of a public agency in accordance with the child’s IEP...”The services must be provided at no cost to the parent and must meet the standards of the State Educational Agency (SEA). [34 C.F.R. Sec. 300.309(b).] State regulations also require that ESY services be included in an IEP if determined necessary by an IEP team. [5 C.C.R. Sec. 3043(f).]

When discussing ESY services at your IEP meeting and/or when writing the IEP, it is important to understand that the special education and related services provided to your child during the extended school year must be “comparable in standards, scope, and quality to the special education program offered during the regular academic year.” [5 C.C.R. Sec. 3043(g)(2).] **In addition, federal regulations state that the school district may *not* “limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.”** [34 C.F.R. Sec. 300.309(a)(3).]

61. Can my child receive ESY services beyond the extended year session for regular education students?

There seems to be no limitation in federal or state law to the provision of ESY services beyond the ESY session. On the contrary, state regulations specifically define **extended year** as “the period of time between the close of one academic year and the beginning of the succeeding academic year.” [5 C.C.R. Sec. 3043(c).] In addition, CDE has gone so far as to outline a reimbursement formula for ESY services in state regulations, including state reimbursement “for a maximum of 55 instructional days for individuals in special classes or centers for the severely handicapped.” [5 C.C.R. Sec. 3043(d).] Fifty-five (55) days is far beyond the usual 20-day ESY session. Further, comments to the federal regulations state: “...there is nothing in the definition of ESY [in federal regulation] that would limit the ability of a public agency to provide ESY services to a student with a disability...when school is not in session, if the IEP team determines that the child requires ESY services during these time periods in order to receive FAPE.” [34 C.F.R. Part 300, Attachment 1, pg. 12576.] Consequently, both comments to the federal regulations

and state regulations provide support for the ability of an IEP team to extend ESY services to a student beyond the ESY session for regular students.

As mentioned above, state regulations also outline a state reimbursement formula for ESY services. This formula **appears** to limit the number of instructional days school districts are allowed to provide ESY services. It is critical to understand that these apparent limitations merely outline the number of instructional days for which your school district will be fiscally reimbursed by the State of California for ESY services. [5 C.C.R. Sec. 3043(d).] **These limitations do not affect an IEP team's ability to determine ESY services based on the individual needs of your child.**

62. My child is integrated into the regular classroom during the regular academic year. Should that integrated programming be available during the extended school year?

If ESY services are available to regular education students in your school district and if your child's IEP includes integration in the regular classroom during the regular academic year, those integrated services must be provided during the extended school year. [5 C.C.R. Sec. 3043(h).]

63. My child is enrolled in a year-round school. Is my child entitled to ESY services during times other than summer school?

Comments to the federal regulations offer this guidance regarding children with disabilities in year-round schools:

For most public agencies, the normal school year is 180 days. Typically, ESY services would be provided during the summer months. However, there is nothing in the definition of ESY [in federal regulation] that would limit the ability of a public agency to provide ESY services to a student with a disability during times other than the summer, when school is not in session, if the IEP team determines that the child requires ESY services during these time periods in order to receive FAPE.

[34 C.F.R. Attachment 1 to Part 300, pg. 12576.]

Sample Letter — Request for IEP Meeting

Ms. Bev Blue
Address
City, CA Zip Code
Telephone Number
Date

Mr. Gary Green
Director of Special Education
Local Unified School District
Address
City, CA Zip Code
Re: John Blue

Dear Mr. Green:

I am the parent of John Blue, who is currently enrolled in 5th grade at Regular Elementary School in the special day class for disabled students with learning disabilities.

I am requesting that an IEP meeting be held for my son as soon as possible. He has been having some problems at school and has been suspended once. I think his program may need to be modified to address his individual needs.

I am also requesting that a behavioral assessment be completed before the meeting and that I receive a copy of this assessment and all of John's school records regarding the suspension prior to the IEP meeting.

[Optional: In addition, please have the Section 504 Coordinator for Local Unified School District present at the IEP meeting to discuss whether assessment and/or accommodations under Section 504 of the Rehabilitation Act of 1973 might be indicated for John.]

Since I work in the afternoon, a morning IEP meeting would be convenient for me. If you have questions or need to discuss this letter further, please call me at work at 555-5555.

Thank you in advance for your prompt action regarding this request.

Sincerely,

Bev Blue

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