

# **SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES**

## **Chapter 10**

### **Information on Transition Services, Including Vocational Education**

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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# SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

## Chapter 10

### Information on Transition Services, Including Vocational Education

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# SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

## Chapter 10

### Information on Transition Services, Including Vocational Education

**1. SEE ALSO CHAPTER 1, QUESTION AND ANSWER 18, ITEM (11). Does the school district have to help students with disabilities make the transition from school to work?**

Yes. Federal special education law requires that there be transitional planning services for students with disabilities regardless of which agencies provide support or educational services to the student. Beginning at age ~~14~~16 (or younger if determined appropriate by the IEP team) and updated annually, the IEP must contain a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's **courses of study** (such as participation in advanced-placement courses or a vocational education program). Beginning at age 16 (or younger if determined appropriate by the IEP team), the IEP must contain a statement of **needed transition services** for the student, including when appropriate, a statement of the interagency responsibilities or any needed linkages. [20 United States Code (U.S.C.) Sec. 1414(d)(1)(A); 34 Code of Federal Regulations (C.F.R.) Sec. 300.347(b).]

A coordinated transition-planning meeting (conducted as part of an IEP team meeting) should include representatives of agencies that would serve the student after graduation. The purpose of the plan is to ensure that the student continues to receive the support needed, from the appropriate public and private agency/agencies, to continue vocational training, education services, or find and maintain the most independent level of employment possible.

Various agencies provide continued educational support for students with disabilities after graduation. These include the Department of Rehabilitation (DR), the Regional Center System, College Enabler programs, and other private agencies. (See also Legal Rights of Students with Disabilities Under Federal Law: A guide for University and College Students, PAI Publication #5809.01.)

Transitional planning will give you a greater opportunity to become familiar with these community resources. Do not take a passive role in the planning process. Work with your school district to identify and work with the agencies that will assist your child after graduation.

The statement of needed transition services in each IEP must include, where applicable, a statement of the responsibilities of other participating agencies. However, remember that the school district remains ultimately responsible for ensuring that these services are provided. Therefore, if a participating agency stops providing an agreed upon service, the school district must fulfill that obligation or responsibility, either directly or through contract or other arrangement. See 20 U.S.C. Sec. 1412(a)(12)(B); see also Decision of U.S. Dept. of Education, Office of Special Education and Rehabilitative Services, vol. 20 Individuals With Disabilities Education Law Report page 536. The school district must have another IEP meeting to find another way to meet the transition objectives in the IEP. [34 C.F.R. Sec. 300.348(a).]

## **2. What are transition services for students in special education?**

Transition services for students in special education are services that help students move from school to work and adult life. They should reflect the student's own goals for his future.

The law defines transition services as:

A coordinated set of activities for a student with a disability that –

- (A) Is designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (B) Is based upon the individual student's needs, taking into account the student's preferences and interests; and
- (C) Includes instruction, related services, community experiences, the development or employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

[20 U.S.C. Sec. 1401(30); C.F.R. Sec. 300.29(a).]

One court has found that student's services may include driver's education, self-advocacy, and independent living skills such as cooking and cleaning. [*Yankton School District v. Schramm*, 93 F.3d 1369,1374 (8<sup>th</sup> Cir. 1996), 24 IDELR 704.]

California law is quite ambitious and specific in its descriptions of transition services and state and local education agencies' responsibilities to provide them.

The Legislature has found and declared that improvements in special education have not resulted in paid employment or maximum integration of special education students into the community. The Legislature states that there is no formalized process that bridges the gap between school and post-school services and resources, and that there is insufficient coordination between educators, adult services providers, employers, and families which would lead to paid employment and social independence. Because of this, the majority of options available to adults with disabilities foster dependence rather than independence. The Legislature's goal for transition services is a planned movement from school to adult life that provides opportunities which maximize economic and social independence in the least restrictive environment. [Cal. Ed. Code Sec. 56460.]

Cal. Ed. Code Sec. 56461 requires that the superintendent establish the capacity to provide transition services for a broad range of individuals with exceptional needs, such as employment and academic training, strategic planning, interagency coordination, and parent training.

Cal. Ed. Code Sec. 56462 describes the available transition services as including:

- (1) In-service training programs, resource materials, and handbooks that identify the following:
  - (A) The definition of "transition," including the major components of an effective school-based transitional program.
  - (B) Relevant laws and regulations.
  - (C) The roles of other agencies in the transition process including, but not limited to the scope of their services, eligibility criteria, and funding.
  - (D) The components of effective transition planning.
  - (E) The role of families in the individualized transition process.
  - (F) Resources and model programs currently available in this state.

- (2) Development of the role and responsibilities of special education in the transition process, including the following:
  - (A) The provision of work skills training, including those skills that are necessary in order to exhibit competence on the job.
  - (B) The provision of multiple employment options and facilitating job or career choice by providing a variety of vocational experiences.
  - (C) The collection and analysis of data on what happens to pupils once they leave the school system and enter the adult world.
  - (D) The coordination of the transition planning process, including development of necessary interagency agreements and procedures at both state and local levels.
  - (E) The provision of instructional learning strategies that will assist pupils who find learning difficult in acquiring skills that will enable them to obtain diplomas, promote a positive attitude toward secondary and post-secondary life.
- (3) The development and implementation of systematic and longitudinal vocational education curriculum including the following:
  - (A) Instructional strategies that will prepare pupils with severe disabilities to make a successful transition to supported employment and the community.
  - (B) The introduction of vocational and career education curriculum in the elementary grades for those pupils who can benefit from it.
- (4) Materials, resource manuals, and in-service training programs to support the active participation of families in the planning and implementation of transition-related goals and activities.
  - (A) The development of resources and in-service training that will support the implementation of individualized transition planning for all pupils with exceptional needs.
  - (B) The development of a network of model demonstration sites that illustrate a wide variety of transition models and implementation strategies.
  - (C) Coordination with other specialized programs that serve students who face barriers to successful transition.

- (D) A research, evaluation, and dissemination program that will support the major programmatic aspects of transition services. Through a variety of competitive grants, bids, contracts, and other awards specific content areas will be developed in cooperation with a variety of field-based agencies, including local education agencies, special education local plan areas, county offices, institutions of higher education, and in-service training agencies.

### **3. What is an individual transition plan (ITP)?**

The Individual Transition Plan (ITP) is a term used to describe the written plan designed to help prepare students for passage from school to post-school life. [See Cal. Ed. Code Sec. 56462; see also Cal. Ed. Code Sec. 56345.1 and 20 U.S.C. Sec. 1401(30).] The ITP must be based on the student's needs, preferences and interests and it must reflect the student's own goals. Objectives, timeliness, and people responsible for meeting the objectives should be written into both the IEP and the ITP.

### **4. When should transition planning occur?**

Transition planning can occur at a combined Individualized Education Program (IEP) and an Individualized Transition Plan (ITP) meeting, or an ITP can be developed in a separate meeting. A separate transition-planning meeting can be beneficial because it allows more time to focus on the student's desires and preferences. Specific instructions and experiences can be identified to be included in the IEP.

When a combined ITP/IEP meeting is held, ideally, transition planning should occur first in order to incorporate the agreed upon transition goals into the academic program (IEP). Whichever way transition planning is implemented, transition objectives, goals and activities should be identified and included in the student's IEP or a separate ITP can be attached to the IEP form. All of the IEP procedural guidelines must be followed.

In any case, transition planning which focuses on courses of study must begin by age 14 16 and transition planning which describes specific transition services must begin by age 16. [20 U.S.C. Sec. 1414(d)(1)(A)(vii); 34 C.F.R. Sec. 300.374(b).]

## **5. How do I initiate a transition-planning meeting?**

A parent or student can initiate a transition-planning meeting by making a written request to the student's teacher, principal or special education administrative office. The letter should indicate that the purpose of the meeting is transition planning.

## **6. How do I know if the school district will hold a transition IEP meeting?**

Among other IEP notice requirements, the school district must send out a meeting notice that:

- (1) Indicates that the purpose of the meeting will be to discuss transition,
- (2) Indicates that the student will be invited, and
- (3) Identifies any other agency that will be invited to send a representative.

[34 C.F.R. Sec. 300.345(b)(2)(3).]

## **7. How should the IEP include transition services?**

As with other parts of the IEP, the transition requirements are much more than mere technicalities. One court recently found that a school that only provided for the vocational needs of the student failed to meet its transition obligations to him. It did not develop a plan to help the student "survive an adult life." In other words, the plan was not functional. The court noted that the school:

- (1) Did not identify any goals for the student after he left school;
- (2) Did not perform any transition evaluations, other than a vocational evaluation;
- (3) Did not provide "the full panoply of services that transition planning envisions" to prepare him for life outside of school in such areas as personal needs, getting around the community and recreation; and
- (4) Failed to meet his individual, unique needs and instead placed him in an existing generic program with minor adaptations. [East Penn School District v. Scott B., 29 IDELR 1058 (E.D. Pa. 1999).] (Taken verbatim from Funding of Assistive Technology by Ronald Hayes at 16.)

The transition IEP should be "outcome oriented." That means that the IEP team should ensure that the coordinated set of transition activities can be designed to lead to a variety of goals, depending on the particular needs of the student. For

example, the outcome for a student with moderate mental retardation might be a directly hired job in a retail store and the ability to live independently in a supported living arrangement. The services for that person should focus on seeking and maintaining a position with the necessary supports and solidifying basic work habits, punctuality and grooming, while developing independent living skills, such as taking public transportation.

## **8. When should a special education student begin receiving transition services?**

A statement of needed transition services must be included in the IEP by the age of 16 (or at a younger age if the IEP team believes it would be appropriate). [20 U.S.C. Sec. 1414(d)(1)(A)(vii); 34 C.F.R. Sec. 300.347(b)(1).] Transition statements for students younger than 16 may be particularly important for students with severe disabilities or for those who are at risk of dropping out of school before age 16.

## **9. What should a transition program for younger students (14-18 years old) contain?**

Federal law requires that, beginning at age 14 16, a student's IEP contain a statement of transition service needs that focuses on the student's courses of study such as participation in advanced-placement courses or a vocational education program. [20 U.S.C. Sec. 1414(d)(1)(A)(vii)(I); 34 C.F.R. Sec. 300.347(b)(1).] The statement of transition service needs should relate directly to the student's goals beyond secondary education, and show how planned studies are linked to these goals. For example, a student interested in exploring a career in computer science may have a statement of transition services needs connected to technology course work, while another student's statement of transition services needs could describe why public bus transportation training is important for future independence in the community. [34 C.F.R. Part 300, App. A, No. 11.] The goal is to select courses of study that will be meaningful to the student's future and motivate the student to complete his or her education. *Idem*.

Beginning at age 16 (or younger if determined appropriate by the IEP team), the IEP must contain a statement of needed transition services for the student, including, when appropriate, a statement of the interagency responsibilities or any needed linkages. [20 U.S.C. Sec. 1414(d)(1)(A)(vii); 34 C.F.R. Sec. 300.347(b)(2).]

Students between the ages of ~~14~~ 16 and 18 should participate in high school education programs similar to their nondisabled, same-aged peers. For example, a student may participate in full-time or part-time regular education classes at her neighborhood high school, with support from a full-inclusion program. Special education teachers and assistants and related resource educators collaborate with the general education teachers to adapt curricula and give individualized instruction within these integrated environments to allow the student to meet IEP goals. Additionally, the student can begin to take part in individualized, functional, and integrated work experience, perhaps for one period, one or two days per week, both on and off the high school campus to begin gaining vocational competency.

## **10. What should a transition program for older students (18-21 years old) contain?**

Ideally, these programs should lead students to career outcomes which foster maximum independence. For some students, the goal will be to move toward post-secondary education. For others, the goal may involve community-based programs such as adult integrated work programs. In that case, school staff supports the student to obtain and maintain an integrated job near her home so that she can be integrated in the community. The student should also be directly hired, so that the individual is on the employer's payroll, not paid through a subcontract with the school. Additionally, if a student works part-time, transition staff can assist her to take integrated, regular college or adult education classes, to join fitness centers, and to participate in everyday community activities, such as shopping, public transportation, movies, library, adult sports, etc.

Transition planning must be active on the part of the school district. A hearing officer found a clear failure on the part of the district to provide appropriate transition services when the IEP contained only two informal activities that were to constitute transition services (the student was to investigate college catalogs and write to colleges for more information). In addition, the hearing officer found that such a transition plan could not have been based on the student's individual needs because the student tested significantly below grade level in all areas and would need far more extensive services than simply being told to investigate colleges on her own. [*Student v. San Francisco Unified Sch. Dist.*, Case No. SN 476-98, 29 IDELR 153 (1998).]

A fundamental prerequisite to awarding a valid diploma to a special education student is that adequate transition planning and services have been provided. School districts have responsibilities under the IDEA in the area of transition

planning and services which must be fulfilled prior to exiting a student from high school. The IDEA's transition planning and services provisions create a separate substantive entitlement for special education students. Three main components of transition are: instruction, community experience, and the development of employment and other post-school adult living objectives. Community experiences should take place in the community in which the student plans to live after high school. [See *Student v. Novato Unified School Dist.*, Case No. SN 886-94, 22 IDELR 1056 (1995).] A student may have completed the district's prescribed course of study and passed the necessary proficiency tests [which, beginning in 2004, may involve the High School Exit Examination]. Even under these circumstances, however, if the school has not provided appropriate and individualized transition services, she may continue to be eligible for special education services. [See *Student v. Bellflower Unified School Dist.*, Case No. SN 575-01.]

## **11. How can students be involved in developing their own transition plans?**

Students must be invited to attend any ITP meeting. The meeting should be person-centered so that its focus is the student and her needs and desires for the future. The meeting should be conducted in a manner that enables the student to understand the planning process and to participate fully. [34 C.F.R. Sec. 300.344(b)(1).] When a student turns 17, notice shall be provided to both the student and parent, and all rights transfer from the parent to the student at the age of majority. [34 C.F.R. Sec. 300.347(c), 300.517.]

The ITP/IEP should be developed in a person-centered format. Goals and objectives in the student's IEP should emphasize the student's preferences, should be written in the first-person format, and include all life areas, such as home, work, community, social, etc.

For example, students are assisted in coordinating future-planning meetings that include paid and unpaid persons of their choosing that are involved in any area of their lives. During the meeting, the strengths, needs, dreams, fears, and wishes of an individual student are identified, along with non-negotiable items, and personal goals and objectives are generated. The student is always listed first and foremost for the implementation of her objectives, and other people responsible for supporting the student in meeting the objectives are identified.

If the student does not attend the IEP meeting, the school district must take other steps to ensure that the student's preferences and interests are considered. [34 C.F.R. Sec. 300.344(b)(2).]

## **12. Who should participate in a transition-planning meeting?**

In addition to the required IEP participants, the school district is required to invite a representative of any agency that is likely to provide transition services to the IEP meeting. If a representative does not attend, the school district must take steps to obtain the agency's participation in the planning of any transition services. [34 C.F.R. Sec. 300.344(b)(3).] The school district should invite representatives from the vocational rehabilitation agency, the regional center, community mental health, community colleges, and traditional private rehabilitation agencies, as appropriate.

## **13. What if the school district, parents, and student cannot agree on the statement of transition services in the student's IEP?**

The IEP team should discuss any disagreements and attempt to resolve them informally. If either the family or the school district disagrees with the proposed IEP, either the parent or the school district may request an impartial due process hearing from the state Special Education Hearing Office. Please refer to Chapter 6, *Information on Due Process Hearings/Compliance Complaints* for a complete discussion of the appeal process.

## **14. What if a participating agency fails to provide agreed upon transition services that are listed in the IEP?**

If a participating agency agrees to provide transition services and then fails to do so, the school district must initiate a meeting of the IEP team as soon as possible to identify alternative strategies for meeting the ITP goals. The school district retains ultimate responsibility for ensuring that transition services are provided. However, the statute does not relieve any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition services that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency. [20 U.S.C. Sec. 1412(a)(12)(B); 34 C.F.R. Sec. 300.348.]

**15. What if the school district fails to provide transition services that are listed in the IEP or ITP?**

When the educational agency appears to have violated a part of special education law or procedure (for example, fails to provide transition services which are written in the student’s IEP), a parent, individual, public agency or organization can file a complaint with the California State Department of Education (CDE) under Title 5 C.C.R. Sec. 4650(a)(viii)(D).

When CDE investigates a complaint, it will make a written determination of whether the education agency was *out of compliance* with law or with the student’s IEP. If the CDE finds an education agency to be out of compliance, it will order the agency to come back into compliance. In addition, the CDE may order the agency to submit a plan of correction – a document describing the steps the agency has taken and will take to assure that the problem does not occur again, either to this student or to others.

To file a compliance complaint with the Department of Education, write to:

Complaint Management and Mediation Unit  
Special Education Division  
California State Department of Education  
1430 N Street, Suite 2401  
Sacramento, CA 95814

CDE must investigate and resolve the complaint within 60 calendar days from receipt of the complaint. Please see Chapter 6, *Information on Due Process Hearings/Compliance Complaints* for more detailed information about the Compliance Complaint.

**16. What is the relationship between transition services and vocational education?**

Vocational education is broadly defined in the overall definition of special education. [34 C.F.R. Sec. 300.26.] In addition, vocational training is included within the definition of transition services. [34 C.F.R. Sec. 300.29.] Since vocational education and training may be a crucial part of a student’s transition services, they should also be a major part of the ITP planning process.

## **17. What is vocational education?**

The federal regulations say that Vocational Education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a college or other advanced degree. [34 C.F.R. Sec. 300.26(b)(5).]

The California Code of Regulations (C.C.R.), in accordance with the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112), defines Vocational Education for Special Education students as follows:

Specifically designed Vocational Education and Career Development for individuals with disabilities, which may include:

- (1) Providing prevocational programs and assessing work-related skills, interests, aptitudes, and attitudes.
- (2) Coordinating and modifying the regular educational program.
- (3) Assisting individuals in developing attitudes, self-confidence, and vocational competencies to locate, secure, and retain employment in the community or sheltered environment, and to enable such individuals to become participating members of the community.
- (4) Establishing work training programs within the school and community.
- (5) Assisting in job placement.
- (6) Instructing job trainers and employers as to the unique needs of the individuals.
- (7) Maintaining regularly scheduled contact with all workstations and job site trainers.
- (8) Coordinating services with the Department of Rehabilitation and other agencies as designated in the individual education program.

[5 C.C.R. Sec. 3051.14.]

## **18. Who is eligible for vocational education**

All special education students “regardless of severity of disability” [5 Cal. Code Regs. Sec. 3051.14] may receive career development or vocational education services. This would include, as described in California Education Code (Cal. Ed. Code) Section 56345(b):

- (1) Prevocational career education for pupils in kindergarten and grades 1 to 6, or pupils of comparable chronological age.
- (2) Vocational education, career education, work experience, or any combination thereof, education in preparation for remunerative employment, including independent living skills training for pupils in grades 7 to 12, inclusive, or comparable chronological age, who require differential proficiency standards pursuant to Section 51215.

### **19. When should vocational services start?**

Vocational services should be viewed as a long-range process and should begin as early as possible. Career awareness and the development of work attitudes may begin within the elementary years. Career exploration of specific vocational areas and behaviors often occurs at the junior high level and continues throughout high school. Structured training experiences such as community classrooms and work experience generally begin between the ages of 13 to 16. Career placement should begin to be addressed during the two years prior to leaving school.

### **20. What is a student enrolled in a vocational education program entitled to receive?**

Each student who enrolls in vocational education programs is entitled to receive:

- (1) Assessment of the student's interests, abilities, and special needs with respect to completing successfully the vocational education program;
- (2) Special services, including adaptation of curriculum, instruction, equipment, and facilities, designed to meet the student's needs as described in (1);
- (3) Guidance, counseling, and career development activities conducted by professionally trained counselors who are associated with the provision of such special services; and
- (4) Counseling services designed to facilitate the transition from school to post-school employment and career opportunities.

[20 United States Code (U.S.C.) Sec. 2334(c).]

**Note:** Vocational education programs and activities for individuals with disabilities must be provided in the least restrictive environment. [20 U.S.C. Sec. 2334(a)(3).] See Questions 24, 25 and 26; see also Chapter 7, *Information on Least Restrictive Environment*.

## **21. When should a vocational assessment occur and what should it include?**

Comprehensive vocational assessment should be undertaken prior to a student's enrollment in vocational education. The assessment process should determine vocational interests, aptitudes, achievement, and potential. A variety of assessment procedures have been developed to measure the student's level of performance in relation to selected careers and occupations such as work samples, on-the-job observation, simulated work stations, manual dexterity tests, career interest inventories, and paper and pencil aptitude tests.

Vocational interests can be determined through the use of career interest inventories and interviews with students, parents, and previous teachers. Prior experiences, hobbies, and career exploration activities are helpful in developing an assessment of the student's interest in particular career fields.

For students with more severe disabilities, for whom traditional vocational tests are not valid or who are unable to communicate, on-the-job work samples may be more appropriate.

Vocational aptitudes (such as manual dexterity, eye/hand coordination, fine motor skills, and general intelligence) are examined in order to blend a student's career interest and vocational strengths and limitations.

The results of vocational assessments describe the skills the student possesses so that appropriate courses and programs can be selected.

## **22. How can I work with my child's teacher to promote the skills necessary for my child to enter a vocational education program?**

It is essential for you to realize the importance of vocational education. One look at the employment status of adults with a disability will tell you that vocational education must receive greater emphasis. You can see to it that vocational training begins early in school by ensuring that vocational objectives are written into your child's IEP and by communicating to the teacher your expectation that your child will work as an adult. It is never too early to begin. Make sure that grooming, physical fitness, mobility, communication, and social skills are emphasized and mastered. The sooner basic skills are developed, the sooner emphasis can shift to specific vocational skills. You can assign household responsibilities from an early age and pay an allowance. You can also make sure that your child is involved in community activities and experiences, especially leisure activities.

Again, the important point is that you recognize the importance of vocational education and take an active role in getting your child many vocational activities and experiences while being realistic about what jobs he or she might be interested in and successful at.

### **23. When I develop my child's IEP, how can I include vocational education services?**

Vocational education services can be included within the IEP in several ways. Depending upon the age and ability level of your child, goals for instruction can be included in the areas of grooming skills, social skills training, and general work behaviors. As your child moves toward secondary school age, vocational education services should be included in the IEP through training experiences in the classroom and in the community.

For example, experiences may include travel training on routes within a student's daily schedule (pedestrian and public transportation), training on specific work tasks in the classroom and at sites throughout the community such as local businesses or industries. Transition services (which include, among other things, a coordinated set of activities that promote movement from school to post-school life) must be included in the IEP for every student ~~14~~ 16 years old and older, and, where appropriate, in the IEPs of students 16 years old and older. See Question 2. [C.F.R. Sec. 300.29 and 300.347(b).]

Among the specific related services listed in federal law are Rehabilitation Counseling Services. [20 U.S.C. Sec. 1401(22).] Rehabilitation Counseling Services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended. [34 C.F.R. Sec. 300.24(b)(11).] This related service should be requested for every special education student who has needs in the area of career development, employment preparation, achieving independence, or community and workplace integration.

### **24. How can I decide in which vocational education program my child should participate?**

The following points should be considered in deciding which program is best for your child:

- (1) Student's goal;
- (2) Your expectations;
- (3) Results of vocational assessments;
- (4) Results of work samples (can include classroom samples, commercially produced samples and those prepared by and for local programs);
- (5) Results of experiences in vocationally oriented programs;
- (6) Descriptions of previous work experiences;
- (7) Student's physical and mental capacity for work;
- (8) Student's employment-related behaviors (for example, attendance, social and interpersonal skills, attention span, communication skills, personal hygiene, dependability, and productivity);
- (9) Course objectives and curriculum requirements;
- (10) Prerequisite skills;
- (11) Modifications necessary to make classrooms, shop, and work sites accessible;
- (12) Alternative instructional materials;
- (13) Staff/student ratio;
- (14) Methods for evaluating and grading student performance;
- (15) Opportunities for work experience;
- (16) Employment opportunities for a person trained in the specific skill, both locally and nationally; and
- (17) Local availability of jobs.

By matching the information about the student with information about the vocational program, the IEP team will be better able to make appropriate placement decisions.

Vocational education and training in integrated settings provides students with opportunities to learn appropriate ways of interacting with others in school and work settings. As a means of encouraging greater use of integrated programs, Congress, when passing the Carl Perkins Act for vocational education. [20 U.S.C. Secs. 2301 and following], did not allocate funds for vocational courses designed solely for students with disabilities. Rather, the law provides funds for supportive

services and modifications in regular vocational programs to permit the participation of special populations. See Questions 25 and 26.

## **25. Can my child enroll in a regular vocational program?**

In thinking about your child's vocational education program, you should know that Section 504 of the Rehabilitation Act of 1973, [Title 29, U.S.C, Section 794], says that students with disabilities cannot be denied access to vocational programs because of their need for aides or because of architectural barriers.

Regular, mainstream programs usually include either classroom and lab instruction focusing on either an occupational area (for example, business) or a specific occupation (for example, clerical). Mainstream programs offer the student with a disability the advantage of regular interaction with nondisabled students. Such programs more closely resemble the social setting that students with disabilities will encounter when they leave school and go to work.

It is important for parents to be sure that placement in a regular program with appropriate support services is thoroughly examined before consenting to a special or separate vocational education program placement.

## **26. What if my child needs an accommodation to be in a regular vocational program?**

As stated in Questions 24 and 25, educators have a legal obligation to make necessary modifications to accommodate the needs of students with disabilities. [29 U.S.C. Sec. 794; 34 C.F.R. Sec. 104.12; 20 U.S.C. Sec. 2334(a)(1) & (2).] Most modifications are based on common sense and involve using safety or teaching practices benefiting all students. The most common forms of modifications are curriculum modifications, specific instructional strategies, and adaptations of equipment or facilities (such as ramps, accessible desks, Braille manuals, talking terminals, sign language courses, and sensory devices).

Recent breakthroughs in rehabilitation engineering will increasingly benefit students with severe disabilities. The improved design and use of artificial limbs, communication devices, orthopedic braces, and mobility aids will assist in the integration process.

Specific modifications used to facilitate placement in regular vocational programs will depend on a careful analysis of your child's needs and the specific vocational program. A sample of commonly used techniques includes the following:

- (1) Structured orientation period (which could involve parents);

- (2) Peer tutoring;
- (3) Vocational resource teachers;
- (4) Small-group instruction;
- (5) Readers/interpreters;
- (6) Specialized instructional materials;
- (7) Task analysis (breaking down skills to be learned into small parts);
- (8) Large print materials;
- (9) Sound or light signals on equipment;
- (10) Counseling; and
- (11) Adaptation of teaching techniques to the student's learning style.

**27. How will the Standardized Testing and Reporting Program (the "STAR" program) affect my child's ability to transition from grade to grade beginning as early as the second grade?**

Beginning in the 1997-98 school year, school districts, charter schools, and county offices of education must administer to each of their pupils in grades two through eleven, an achievement test (California uses the Stanford Achievement Test, Ninth Edition or SAT-9), which tests pupils' knowledge of reading, writing and math, among other things. [Cal. Ed. Code Sec. 60640.] The State Superintendent and State Board of Education must adopt levels of performance on these tests that will be the minimum level required for satisfactory performance in the next grade. [Cal. Ed. Code Sec. 60648.] Each school district and county office of education must adopt a policy for the promotion and retention of pupils between the second and third, third and fourth, and fourth and fifth grades, and between elementary and middle school, and between middle school and high school. The policy regarding retention and promotion must include a method for identifying pupils who should be retained and who are at risk of being retained based on either the STAR testing results or the pupils' grades or other indicators of academic achievement determined by the school district. [Cal. Ed. Code Sec. 48070.5.]

**28. What can I do as a parent of a pupil in special education to ensure that my child is able to go on to the next grade if I do not want her retained?**

Special education pupils do not have to take the STAR test if their IEP teams specifically state that they are exempted from the test. [Cal. Ed. Code Sec. 60640(e).] If a student is exempted from the test, the district should not be able to use the absence of that test score to retain the pupil and would have to make the determination about promotion/retention based on other factors. To ensure that the factors are appropriate, the parent should have the criteria for promotion specified in the IEP. Regardless of state law, the IEP controls the determination of promotion/retention.

**29. Will the school resist exempting my child from the STAR test and base his promotion/retention on other factors?**

It is not clear yet whether exemptions from the test will be difficult to obtain. The U.S. Department of Education has indicated that only a “small percentage” of children with disabilities should have to use alternative assessments instead of the statewide test. [64 Fed. Reg. 12564 (3/12/99).] However, under state law, the Public Schools Accountability Act of 1999, schools will be rated under an Academic Performance Index (API) based, at least in part, on its students’ STAR test scores. [Cal. Ed. Code Sec. 52050 and following; see section 52052(b)(1) and (2).] Therefore, a school may not resist exempting a student from the STAR test if it believes a low score would result from making the student take the test.

Beginning in 2003, the STAR program laws have been amended to provide that individuals with exceptional needs who are unable to participate in the STAR program test, even with accommodations, will be given an alternate assessment. [Cal. Ed. Code Sec. 60640(e).] The alternate examination in the STAR program is known as the California Alternative Performance Exam. ~~Just because the law requires there to be an alternate assessment to the STAR test does not mean, however, that such a test is currently available. However, parents should ask school district officials about alternate STAR tests before deciding whether to exempt their children from the process.~~

### 30. What kinds of accommodations or modifications can my child receive in order to appropriately take the SAT-9 under the STAR program?

State law provides that students in special education and students under Section 504 whose individualized plans specify accommodations such as, but not limited to, large print, Braille, extended time, the use of a reader or scribe, or a calculator, shall be tested with those specified accommodations. [5 C.C.R. Sec. 853(c).] Only pupils in special education or under Section 504 may be tested with the accommodations of large print, use of a reader or scribe, extended time, use of a calculator, out-of-level test, or translation into a language other than English. [5 C.C.R. Sec. 853(d).] Out-of-level test means one grade level below the pupil's grade level.

~~**Note on the Postponement of the California High School Exit Exam:** *On July 9, 2003, the State Board of Education voted to postpone until 2006 the requirement of passing the California High School Exit Examination in order to be eligible for a diploma. As a result of this recent action, questions 38 through 46 have become less urgent, yet still relevant, for students with disabilities and their parents in California. Unfortunately, the State Board of Education did not address the rules that will govern the awarding of diplomas to students with disabilities who are graduating in 2004 and 2005. The skills and knowledge tested by the Exit Examination was previously measured by differential proficiency standards for students with disabilities. However, differential proficiency standards were taken out of the law in anticipation of the High School Exit Exam becoming the new standard. Some districts may still be using differential proficiency standards to award diplomas to students with disabilities, and some may not require proficiency standards at all. Parents should check with their local school district **well in advance of their child's proposed graduation date** to find out what standards their children will have to meet in order to receive a diploma. This will allow parents enough time to make sure those standards are specified in their children's IEPs. The questions and answers remain in this chapter in an effort to inform people regarding the legal issues and implications raised by the California High School Exit Examination for students with disabilities. The authors will continue to follow any developments related to the California High School Exit Examination and issue subsequent updates to this manual prior to 2006.*~~

### **31. How will the state requirement for an exit examination from high school affect my child's entitlement to receive a diploma?**

~~Beginning in the 2003-04 school year,~~ Absent judicial or legislative action in the winder or spring of 2006, beginning with the class of 2006, each pupil in California will have to take and pass a high school exit examination as a condition of graduation. [Cal. Ed. Code Sec. 48980(e).] The examination will test students in the areas of language arts and mathematics. [Cal. Ed. Code Sec. 60850(a).] Students in special education must be offered the examination but must be given appropriate accommodations to take the examination where necessary. [Cal. Ed. Code Sec. 60850(g).] Federal law also requires that students in special education are included in any statewide assessments with appropriate accommodations and modifications in administration, where necessary. [20 U.S.C. Sec. 1412(a)(17); 34 C.F.R. Sec. 300.138(a).] Both the state and federal law limit the entitlement of accommodations and modifications to "administration" of the test and do not provide for modifications to the content of it. Therefore, a child may be entitled to have the test read to him if he has, for example, a visual impairment. Another child might be entitled to take the test alone in a quiet room rather than in the company of others if he is easily distracted in such an environment.

State law requires that the exit examination be offered to pupils in special education. However, the law does not address whether the inability of certain students to take and pass the examination, even with appropriate accommodations and modifications in administration, mean that all students unable to take and pass the test are automatically precluded from receiving a diploma and graduating. Such an interpretation or application of the state law would be inconsistent with federal law. Federal law requires each IEP team to determine whether a pupil will participate in the statewide testing and, if so, whether any individualized modifications in the administration of the test will be needed and what those are. [20 U.S.C. Sec. 1414(d)(1)(A)(v)(I).] However, if the IEP team determines that a child will not be able to participate in the statewide test, the team must document why and also determine how the child will be assessed. [20 U.S.C. Sec. 1414(d)(1)(A)(II).] Federal law also requires each state to develop guidelines for the participation of children with disabilities in alternate assessments where they cannot participate in statewide assessments. [20 U.S.C. Sec. 1412(a)(17)(A)(i).] Beginning in July of 2000, each state must have developed and begun conducting those alternate assessments. [20 U.S.C. Sec. 1412(a)(17)(A)(ii).] Federal law, therefore, requires that all children be assessed in some fashion and that states develop and conduct alternate tests for students whose disabilities prevent them from appropriately participating in state-wide achievement tests, even with

modifications and accommodations in administration. If alternate assessments were developed consistent with state guidelines, the assessments should function as a legitimate alternative means of meeting state graduation and diploma requirements.

**32. What were the rules for graduating from high school with a diploma for students with disabilities before the requirement that all students pass the California High School Exit Examination (CAHSEE)?**

Like all students, prior to ~~2004~~ 2006, students with disabilities were not entitled to a diploma, as evidence that they completed the district's prescribed course of study, unless they met standards of proficiency in basic skills (reading, writing, math). [Cal. Ed. Code Sec. 51412; see also Cal. Ed. Code Sec. 56026.1(b).] The proof of proficiency in basic skills beginning in ~~2004~~ 2006 will likely be a passing score on the CAHSEE. ~~Prior to 2004, special education students who could not satisfy their district's regular proficiency standards were able to satisfy proficiency requirements through the use of "differential proficiency standards."~~

**33. SUPERSEDED. DIFFERENTIAL PROFICIENCY STANDARDS HAVE BEEN REMOVED FROM THE LAW. ~~What are regular and differential proficiency standards?~~**

~~Districts may have developed or adopted tests of pupils' proficiencies in reading, writing, and math and a minimum standard to pass the test. For example, many districts used the California High School Proficiency Examination to test students' basic skill proficiencies. A district's regular proficiency standard may have been a minimum passing score of 70%. For students in special education for whom a 70% score was unattainable, the IEP team may adopt a "differential standard" of, for example, 50% for passage of the test. If a differential standard was to be used for a student, that differential standard had to be specified in the pupil's IEP. [See Cal. Ed. Code Sections 51215(d) and 56345(b)(1) and (d), as they read prior to 2000.]~~

**34. SUPERSEDED. DIFFERENTIAL PROFICIENCY STANDARDS HAVE BEEN REMOVED FROM THE LAW. ~~Are differential proficiency standards still in effect during the 2002-03 school year?~~**

~~The same 1999 law that created the CAHSEE also repealed the law which established regular and differential proficiency standards in basic skills.~~

However, because of the four-year gap between repeal of differential proficiency standards (as a means for students with disabilities to satisfy proficiency requirements) and the time when passage of the CAHSEE becomes the new minimum proficiency standard, school districts wondered what standard to use to graduate special education students. To address this dilemma, the California Department of Education, Special Education Division issued a Memorandum, dated 3/14/00, to all Special Education Local Plan Areas. The Memorandum states that before the 2003-04 school year, districts can, at their discretion, continue to use differential proficiency standards as their local standard. This is consistent with the Department's regulation which provides that "[w]hen an individual with exceptional needs meets public education agency requirements for completion of prescribed course of study and adopted differential proficiency standards as designated in the pupil's IEP, the public agency which developed the IEP shall award the diploma." [Title 5 Cal. Code of Regulations Sec. 3070.]

**35. SUPERSEDED. DIFFERENTIAL PROFICIENCY STANDARDS HAVE BEEN REMOVED FROM THE LAW. ~~Of what relevance will differential proficiency standards be to students who are anticipating graduating in the 2003-04 school year or beyond?~~**

None. It remains to be seen how long section 3070 of Title 5 Cal. Code of Regs. remains in the administrative code in its current form. Even if the regulation was not changed before the 2003-04 school year, it would, at that time, be inconsistent with the controlling statute requiring passage of the CAHSEE for receipt of a diploma. Therefore, Section 3070, to the extent it was inconsistent with that statutory requirement, would be void.

~~If the courts or State Legislature act to invalidate the use of the CAHSEE for students with disabilities or delay implementation of the CAHSEE for a number of years, differential proficiency standards may continue to operate as a means of determining eligibility for graduation with a standard diploma. See previous Q&A.~~

**36. What is the prescribed course of study?**

It is the minimum number of units or courses students must complete in the various subject areas of high school study, such as English, math, science, social studies, etc. The state law minimum standards for every district's prescribed course of study include: three courses in English, two in math, two in science, three in social studies, one in visual or performing arts or foreign language, and two in physical

education. [Cal. Ed. Code Sec. 51225.3(a)(1).] School districts typically require additional core courses and electives to reach the total units required under the prescribed course of study. Students must complete whatever is the local district's prescribed course of study for award of a diploma and not just the state minimum course of study listed above. [Cal. Ed. Code Sec. 51225.3(a)(2).]

**37. Is there any alternative way for special education students (or, for that matter, general education students) to complete the prescribed course of study?**

Yes, such alternative means should be developed by local districts in consultation with parents, etc. [Cal. Ed. Code Sec. 51225.3(b).] Special education law recognizes that this may be necessary for some special education students and requires that any such alternative means be described in the IEP. [Cal. Ed. Code Sec. 56345(b)(1).]

**38. How will school districts implement the requirements for the new California High School Exit Examination?**

Beginning with the ~~2003-2004~~ 2005-06 school year, each pupil completing grade 12 will have to pass, or will have had to pass, the CAHSEE in order to get a diploma. [Cal. Ed. Code Sections 60850-60856.] ~~A pupil may begin taking the CAHSEE in grade 9 beginning in the 2000-01 school year.~~ Every pupil must begin taking the CAHSEE beginning in grade 10. A pupil may continue taking the CAHSEE during each administration of the test beginning in the 11<sup>th</sup> grade until each section of it is passed. [Cal. Ed. Code Sec. 60851.] The CAHSEE has two sections: English and math. The English portion consists of multiple choice questions and two essays. The math portion covers arithmetic, statistics, data analysis and probability, number sense, measurement and geometry, mathematical reasoning, and algebra. It will be administered three times each year.

**39. Education Code Section 51412 requires pupils to meet proficiency standards *prescribed by the local governing board* to receive a diploma. The CAHSEE is a test developed by the State Superintendent and State Board of Education. Which standards (local or state) must a student meet to receive a diploma?**

The CAHSEE laws do not prohibit a local school district from requiring pupils to pass other exit examinations in addition to the CAHSEE as a condition of graduation. [See Cal. Ed. Code 60850(h).] However, unless a local district intends to hold its students to higher proficiency standards than are required by the CAHSEE, it will likely adopt the CAHSEE as its local proficiency standard.

**40. In the ~~2003-04~~ 2005-06 school year and beyond, will all students, even special education pupils, including those with severe cognitive disabilities, be expected to pass the CAHSEE or not receive a diploma?**

Under federal law, all children with disabilities must be included in state and district-wide assessments with appropriate accommodations where necessary. [20 U.S.C. Sec. 1412(a)(17)(A).] However, federal law also recognizes that some children will not be able to participate in these tests and requires that, no later than July 1, 2000, state or local education agencies develop and begin administering alternate assessments for these children. [20 U.S.C. Sec. 1412(a)(17)(A)(i)-(ii).] State law also requires the state superintendent to develop guidelines for the participation of special education students in alternative assessments if they cannot participate in the state-wide test. [Cal. Ed. Code Sec. 56385(b).] State law actually incorporates the July 2000 deadline by reference to federal law and requires that special education students who are unable to participate in the CHSEE, even with accommodations, will be given an alternate assessment. [Cal. Ed. Code Sec. 60640(e).] Despite the July, 2000 deadline, no “alternate” exit exams have been developed in California at the time of publication of this edition of Special Education Rights and Responsibilities.

**41. Is California supposed to develop a one-size-fits-all “alternate” exam?**

No. Federal law requires that for each pupil who cannot take the standard state-wide assessment, even with accommodations, that each IEP specify how that child

will be assessed. [20 U.S.C. Sec. 1414(d)(1)(A)(v).] States and local IEP teams must, therefore, individualize alternate state and district-wide assessments for students. In addition the federal statute requiring alternate means of assessing pupils who cannot take the standard assessment, uses the plural “assessments” following the word “alternate” in this provision. [20 U.S.C. Sec. 1412(a)(17)(A)(i).] It appears that Congress intended that more than one alternate assessment would need to be developed and administered.

**42. Assuming an alternate exam or individualized alternate exams are eventually developed and used for all those students who cannot take the CAHSEE, even with accommodations, will a special education student be entitled to a diploma if she passes an alternate CAHSEE?**

There is no provision to that effect in current state law. Current state law only provides that pupils must pass the CAHSEE in order to receive a diploma [Cal. Ed. Code Sec. 60851(a)], and that special education pupils shall be offered the CAHSEE with appropriate accommodations, if necessary. Accommodations do not include the provision of an alternate exam. Federal law draws a distinction between accommodations to state or district-wide assessment programs and the development of alternate assessments. [20 U.S.C. Sec. 1412(a)(17)(A).]

Under the ADA and Section 504, arguments could be made that students, including students with severe cognitive disabilities, should be afforded an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as that provided to others. [28 C.F.R. Sec. 35.130(b)(1)(iii).]

If an alternate CAHSEE is fundamentally different from the standard CAHSEE and fundamentally alters the purpose behind the awarding of a diploma, then districts will not be compelled, under Section 504 or the ADA, to award diplomas to students who pass alternate CAHSEEs. [28 C.F.R. Sec. 35.130(b)(7).] The purpose of a high school diploma is to give proof of a minimum standard of learning and competency in various skills and subject areas. If a diploma awarded to a student on the basis of passing an alternate CAHSEE would not assure the student possessed those minimum standards, ADA and Section 504 arguments likely would not create an entitlement to that equal opportunity to receive a diploma, because the alternate CAHSEE would constitute a fundamental alteration of the graduation standard.

### **43. I've heard about accommodations and modifications. What is the difference?**

An accommodation is a variation in the exam environment or process that does not fundamentally alter what the test measures or affect the comparability of scores. Accommodations may include variations in scheduling, setting, aids, equipment, and presentation format. [Cal. Ed. Code Sec. 60850(f)(1).] More specifically, accommodations that do not fundamentally alter the exam include:

- (1) Taking more time,
- (2) Large print,
- (3) Braille transcription,
- (4) Markers, masks or other means to maintain visual attention to the test,
- (5) Reduced numbers of items per page,
- (6) Audio presentation of the math portion,
- (7) Verbal, written, signed, mechanically generated, or assistant generated responses,
- (8) Assistive devices and technologies that do not fundamentally alter the exam,
- (9) Scheduling accommodations, such as more frequent breaks, multiple sessions of administration, and
- (10) Setting accommodations, such as special furniture, lighting, acoustics, or separate rooms or carrels/enclosures.

[5 Cal. Code of Regs. Sec. 1215, 1216, 1217(a)&(b).]

A “modification” is any variation in the exam environment or process that does fundamentally alter what the test measures or does affect the comparability of scores. More specifically, these have been determined to be: calculators on the math portion, and audio or oral presentation of the English/language arts portion of the exam. [5 Cal. Code of Regs. Sec. 1217(c).] In addition, in implementing any accommodation, school staff must ensure that all test responses are the independent work of the student. Staff are prohibited from assisting any pupil in determining how the student will respond or from leading or directing a student to a particular response. [5 Cal. Code of Regs. Sec. 1219.]

**44. If I believe my child may need accommodations or modifications to take the CAHSEE and I may need to go through one of these accommodation-request or modification-waiver processes, is there anything I should be doing to help ensure that process is successful?**

Yes. Accommodations used on the CAHSEE must have been part of the student's IEP or Section 504 plan and used during instruction and classroom testing procedures. [5 Cal. Code of Regs. Sec. 1217(a).] If you anticipate that your child will need a particular accommodation or modification on the CAHSEE, you should begin advocating to include it in his IEP or Section 504 plan. The accommodation or modification should be used in other testing situations during his high school career well before your child begins to take one or both portions of the CAHSEE.

**45. What if the accommodation or modification my child needs on the CAHSEE is not on the list of permitted accommodations or prohibited modifications and I want to be sure his test scores are going to count if he takes the CAHSEE with that accommodation/modification? What do I do?**

If you or the school are not sure about a particular accommodation/modification on the CAHSEE, the school district may file a request for accommodation with the California Department of Education for a case-by-case determination of whether the proposed accommodation will be valid for use on the CAHSEE. The request must be filed at least nine weeks before the student will take the CAHSEE. The request must include:

- (1) A description of the student's disability;
- (2) A description of the requested accommodation;
- (3) A statement that the IEP or Section 504 plan team has determined that the requested accommodation is appropriate and necessary to address the student's disability;
- (4) An explanation of how the requested accommodation would allow the student to access the CAHSEE

The Department of Education will determine whether the requested accommodation fundamentally alters what the test measures, and the Department's determination is final. The Department must make this decision at least six weeks in advance of the date the student planned to take the CAHSEE. [5 Cal. Code of

Regs. Sec. 1218(c)&(d).] If the Department determines that the proposed accommodation does fundamentally alter what the test measures, it will characterize it as a modification and the student's score report will be marked "not valid" for the applicable portion of the test. See next Q&A.

**46. If my child cannot reasonably take the CAHSEE and pass it without a calculator on the math portion or audio or oral presentation of the English portion or some other modification that has been determined to fundamentally alter the test or the comparability of scores, is he simply precluded from ever receiving a diploma?**

No. Under certain circumstances the requirement of passing the CAHSEE without using modifications which fundamentally alter the test may be waived. A school principal must submit a waiver request to the governing board of the school district if requested to do so by a parent or guardian, and the board may grant a waiver if the principal certifies the following:

- (1) The student has an IEP or Section 504 plan that requires use of the modification that is prohibited from use in the CAHSEE;
- (2) The student has satisfactorily completed, or is in the process of completing, sufficient high school level coursework to have attained the skills and knowledge otherwise needed to pass the CAHSEE;
- (3) The student received a passing score on the CAHSEE with the use of the prohibited modification.

[Cal. Ed. Code Sec. 60851(c).]

**47. Does receiving a regular diploma terminate a student's special education eligibility?**

Yes. [Cal. Ed. Code Sections 56026(c)(4) and 56026.1(a); 34 C.F.R. Sec. 300.122(a)(3).] State law specifically states that graduation with a regular high school diploma is a change of placement for special education students. Therefore, state law requires that the school issue a written notice to the family a reasonable time prior to that change in placement which informs them that graduation with a regular diploma will make the student ineligible for further special education. [Cal. Ed. Code Sections 56500.4 and 56500.5.] The written prior notice must include all the information required under Title 34 C.F.R. Sec. 300.503, such as: a description

of what the school district intends to do, an explanation of the reasons for the action, a description of any alternatives the district considered and why those were rejected, and a description of the reports, tests, and procedures on which the action is based. Absent this required notice, a school's proposal to graduate a student may be inappropriate. [*Union School District v. Smith*, 15 F.3d 1519 (9<sup>th</sup> Cir. 1994), 20 IDELR 987; see also *Student v. San Francisco Unified Sch. Dist.*, SN 476-98, 29 IDELR 153.] However, no new evaluation of a student is required prior to awarding a regular high school diploma. [Cal. Ed. Code Sec. 56381(e); 34 C.F.R. Sec. 300.534(c)(2).] If you disagree with the IEP team's determination that the child will graduate, you may file for a due process hearing.

#### **48. Is it true that special education eligibility is automatic up to the ages of 21 or 22 under federal and state law?**

No. Federal law does not make special education mandatory between the ages of 18 and 21, much less 22. [34 C.F.R. Sec. 300.121(a) and 300.122(a)(1).] Rather, federal law defers to state law or practice. On the issue of maximum age eligibility, state law is found at Cal. Ed. Code Sections 56026 and 56026.1. Under state law, special education eligibility continues without qualification through a student's 18<sup>th</sup> year (assuming, of course, that the student has not received a regular diploma). [Cal. Ed. Code Sec. 56026(c)(3).] However, at the age of 19, special education eligibility continues only so long as the student has not completed his prescribed course of study, or met proficiency standards in basic skills, or graduated with a regular high school diploma. [Cal. Ed. Code Sections 56026(c)(4) and 56001(a).] As soon as one of those events occurs, the student is no longer eligible. If a student completes his prescribed course of study (including transition services) and meets proficiency standards, he is entitled to a diploma, but he becomes ineligible for special education. [Cal. Ed. Code Sections 56026(c)(4) and 56026.1.] However, after one's 19<sup>th</sup> birthday, if he completes his prescribed course of study (including transition services) or meets proficiency standards (but not both), he is neither eligible for special education services nor entitled to a diploma. See Q&A 50 regarding transition services.

**49. Special education laws make reference to completing “his or her” prescribed course of study for purposes of diplomas and special education eligibility. The general education laws talk about completion of the district’s prescribed course of study. Is there any significance to the difference?**

No. If a district IEP team has individualized a prescribed course of study for a particular special education student under Cal. Ed. Code Sections 51225.3(b) and 56345(b)(1), that prescribed course of study becomes both the student’s and the district’s prescribed course of study for that student for both special education service and diploma eligibility purposes. To ensure that a student’s individualized prescribed course of study will satisfy district requirements for completion of a prescribed course of study, parents should include a written statement in the IEP that the student’s individualized course of study satisfies that requirement.

**50. Could the lack of transition planning for a special education student extend her special education eligibility?**

Yes. Because he is a special education student with an IEP, he is entitled to transition services beginning at age 16, or younger if appropriate. Transition services become, therefore, part of a special education student’s prescribed course of study. The failure of a school district to have done appropriate transition service planning and implementation for a special education student could extend a student’s special education eligibility.

The California Special Education Hearing Office has recognized that a fundamental prerequisite to awarding a valid diploma to a special education student is that adequate transition planning and services have been provided. School districts have responsibilities under the IDEA in the area of transition planning and services which must be fulfilled prior to exiting a student from high school. The IDEA’s transition planning and services provisions create a separate substantive entitlement for special education students. Three main components of transition are: instruction, community experience, and the development of employment and other post-school adult independent living objectives. **Even though a student may have completed the district’s prescribed course of study and earned all the necessary units for graduation, and even though a student may have passed basic skill proficiency tests [the CAHSEE, beginning in 2004], if a school has not provided appropriate and individualized transition services for a student, he/she may continue to be eligible for special education services.**

Transition planning must be active on the part of the school district. For example, it was a clear failure on the part of a district to offer an IEP that contained only two informal activities as transition services (the student was to investigate college catalogs and write to colleges for more information). The hearing officer found that such a transition plan could not have been based on the student's individual needs because the student tested significantly below grade level in all areas and would need far more extensive services than simply being told to investigate colleges on her own. [See *Student v. Bellflower Unified School Dist.*, Case No. SN 575-01 (2001); *Student v. San Francisco Unified Sch. Dist.*, Case No. SN 476-98, 29 IDELR 153 (1998); *Student v. Novato Unified School Dist.*, Case No. SN 886-94, 22 IDELR 1056 (1995).]

**51. If a student receives a Certificate of Achievement or Completion, is she still eligible for special education?**

Absent a student becoming ineligible because of meeting proficiency standards or completing the prescribed course of study or receiving a standard diploma, receipt of a certificate will not end a pupil's special education eligibility. Title 34 C.F.R. Sec. 300.122(a)(3) specifically recognizes the ability of special education students to continue receiving special education services so long as they have not received a regular high school diploma. [See also Cal. Ed. Code Sections 56026(c)(4) and 56026.1.] The law states the Legislature's intent that the creation of this Certificate (and, arguably, the receipt of one of these Certificates by a student) is not to eliminate the opportunity for an individual to earn a standard diploma. [Cal. Ed. Code Sec. 56392.] Because the Certificate does not end a student's eligibility [absent section 56026(c) applying], there is no reason why a recipient of one of these Certificates could not continue working toward a regular diploma.

**52. If the Certificate does not end a student's special education eligibility and does not preclude the student from still pursuing a regular diploma, what is the purpose of the Certificate?**

The Certificate may provide some recognition to students who meet their IEP goals or complete a prescribed alternative course of study but who will not be receiving a regular diploma. The certificate was also created to overcome the objection of some local school officials to special education pupils participating in graduation ceremonies with their same-age peers but not receiving any piece of paper in the process. State law ensured the rights of pupils receiving these certificates to participate in graduation ceremonies and any school activity related to graduation.

[Cal. Ed. Code Sec. 56391.] But state law does not, nor could it, lessen special education pupils' federal entitlements to continue receiving special education services so long as they have not yet received a regular high school diploma, completed their prescribed courses of study, or met proficiency standards in basic skills pursuant to Cal. Ed. Code Sec. 56026(c)(4).

**53. My child wants to participate in the graduation exercises and he apparently could if he received one of these Certificates. But the school told me that it has no duty to award any certificate and that my child cannot participate in the ceremony or any related activities without receiving a diploma. What can I do?**

The law which created the Certificate of Achievement/Completion is not mandatory. [Cal. Ed. Code Sec. 56390.] School districts may, but are not required to, award these certificates. Some districts have chosen not to do so. However, if participation in the graduation exercises and related activities was specified by a student's IEP as part of his/her participation in integrated activities of the school, the school must implement the IEP and allow the student to participate in the activities. You should advocate for inclusion of this activity in the IEP beginning with your discussion of transition at age of 16, or younger if appropriate. This will ensure enough time to take any necessary actions to resolve disagreements before the graduation ceremony.

**54. Can a student continue to receive transition services after receipt of an exit document other than a regular high school diploma?**

Yes. If a student is still within the eligible age range for a free appropriate public education within the state, the district must continue to provide needed transition services to the student. The district must use funds under Part B of IDEA to pay for the transition services or contribute to the cost of those services through a shared cost arrangement with another agency – provided that all applicable requirements of Part B of IDEA are met. Thus, IDEA gives educational agencies the power to continue to serve a student post graduation as part of the student's transition goals, as long as the student is still within the age requirements (that is until the student turns 22 years of age).

There are three ways to lose eligibility for services:

- (1) If a student graduates with a regular high school diploma;

- (2) If the student ages out (please see Chapter 3, *Information on Eligibility Criteria*, Question 1 for more information); or
- (3) If a reevaluation of the student leads to termination of eligibility based on no longer having a qualifying disability (this can be appealed).

[34 C.F.R. Sec. 300.534(c).]

Any other type of exit document, for example, another type of diploma or a certificate of completion, does not end eligibility. [34 C.F.R. 300.534(c).]

As a safeguard, you should ensure that your child's IEP includes a transition plan (this is required for students beginning at age 14 focusing on courses of study and for student's beginning at age 16, or younger, focusing on transition services). [Cal. Ed. Code Sec. 56345.1.] You should also discuss with the IEP team how your child's IEP goals addressing transition will be completed before all services from the school district have ended.

## **55. Can I challenge a school district if it decides that my child will graduate?**

When a student with disabilities is expected to receive a regular high school diploma, the IEP team should meet at an appropriate time before graduation. The IEP team should review your child's IEP to ensure that graduation requirements will be met and that the goals and objectives in the IEP will be completed. Thus, before a diploma is issued, the educational agency must convene an IEP team to decide whether the student should graduate. [*Letter to Richards*, 17 EHLR 1322, 1990.]

Once a school district decides that a disabled student will graduate, his parents have a right to written notice and due process rights under IDEA to challenge the school district's decision because graduation is a significant change in placement. [Cal. Ed. Code Sections 56500.4 and 56500.5.] The school district will be expected to provide the notice within a reasonable time before preparing for his graduation. This is to ensure that there is sufficient time for you and your child to plan for or challenge the pending graduation. [34 C.F.R. Sec. 300.122(a)(3); 34 C.F.R. Sec. 300.503.] Failure to provide the required notice of this change of placement may constitute a sufficiently serious procedural violation so as to make the proposal for your child's graduation inappropriate. [*Union School District v. Smith*, 15 F.3d 1519 (9th Cir. 1994), 20 IDELR 987; see also *Student v. San Francisco Unified Sch. Dist.*, SN 476-98, 29 IDELR 153.] Once a parent files for a due process hearing, the "stay-put" provision of IDEA applies and the school district is

required to maintain the student's placement and implement the IEP during due process. [34 C.F.R. Sec. 300.514; 20 U.S.C. Sec. 1415(j); Cal. Ed. Code Sec. 56505(d).] If your child's IEP specified that he will participate in graduation ceremonies (as part of his participation in regular education activities) without receiving a diploma or certificate, then that aspect of the IEP would have to be implemented. This would happen regardless of the fact that you may be challenging the district's decision that your child will graduate.

**56. If my child will still be in special education for a number of years, what happens when she reaches the age of 18? Will she begin to make decisions regarding the IEP, or will I continue to be the decision-maker for educational purposes?**

When a student reaches the age of 18, all educational decision-making authority transfers from the parent to the student, unless the student has been determined incompetent under California law. The school district must notify both you and your child of the transfer of rights and must provide a notice of procedural safeguards to both the student and parent. [Cal. Ed. Code Sec. 56041.5.] Some school districts have taken the position that this law means that a parent must obtain a conservatorship over her 18-year-old child in order to continue to act on the child's behalf in the special education process. Some school districts have taken the position that without a conservatorship, special education services cannot continue. Unless the child begins to act on her own behalf in the special education process by calling for IEP meetings and signing IEP documents, etc., they believe that no one with the necessary authority is requesting and consenting to continuing services. Section 56041.5 should not have the effect of terminating special education services for students who reach the age of majority, and it should not require extreme and expensive procedures such as the establishment of a conservatorship. Because a student who reaches the age of 18 and who has not been determined incompetent by any court has both the legal authority and capacity to make all necessary educational decisions, he is clearly capable of assigning educational decision-making authority to one or both parents, if he/she chooses to do so. See the *Sample Assignment of Educational Decision-Making Authority* form at the end of this chapter.

**57. Does the Vocational Rehabilitation Department have any responsibility in assisting children to transition from special education to post-school life?**

Yes. Each state's vocational rehabilitation program plan must contain policies and procedures for coordination between the state Department of Rehabilitation and education officials responsible for special education. The policies must be designed to facilitate the transition of students from receiving special education services to the receipt of vocational rehabilitation services. The Department of Rehabilitation must provide technical assistance to education agencies in planning for the transition of students. Department of Rehabilitation personnel must also do a transition plan with education agency personnel, which facilitates the development and completion of each student's IEP. The plan must also include information on the roles and responsibilities of each agency, including financial responsibilities of each, and including determinations of which agency will be the lead agency and which agency's personnel will be responsible for transition services. The plan must also include procedures to do outreach to identify students with disabilities who may need transition services. [29 U.S.C. Sec. 721(a)(11)(D).] In addition, the vocational rehabilitation regulations contemplate that an individualized plan for employment be developed for special education students who are also eligible for vocational rehabilitation services prior to the time the student leaves the school setting. [34 C.F.R. Sec. 361.22(a)(1).]

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**ASSIGNMENT OF EDUCATIONAL  
DECISION-MAKING AUTHORITY**

**California Education Code Section 56041.5**

I, \_\_\_\_\_, having reached the age of 18 years, having never been determined to be incompetent for any purpose by a court of competent jurisdiction, and having received, at the age of majority, all educational decision-making authority pursuant to California Education Code Section 56041.5, hereby authorize my parent, \_\_\_\_\_, to make any and all decisions for me regarding my entitlement to a Free Appropriate Public Special Education. Such authority shall include, but is not limited to:

1. Filing complaints with any public agency, such as the California Department of Education and U.S. Department of Education, Office for Civil Rights;
2. Initiating and pursuing special education due process proceedings pursuant to Cal. Education Code Sec. 56500, et seq. and any judicial appeals thereof;
3. Attending IEP meetings and due process mediations and pre-due process mediations and signing IEP documents and mediation agreements with the same legal effect and authority as I would have absent this assignment;
4. Authorizing or refusing to authorize assessments, services, or placements;
5. Obtaining copies of any of my educational, psychological, medical, behavioral, or juvenile justice records, or any other materials and

information related in any way to my special education, related services, supplementary aids and services, or transition services;

6. Receiving information orally from any individual or agency (public or private) regarding my special education rights or services;
7. Exercising any other right or action on my behalf concerning my education with the same authority as I would have absent this assignment.

A photocopy or facsimile of this document shall have the same effect as the original.

Dated: \_\_\_\_\_