

SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

Chapter 4

Information on IEP Process

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SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

Chapter 4

Information on IEP Process

1. What is an Individualized Education Program (IEP) and how do I request one for my child?

An IEP is a written statement that describes your child's present levels of performance, learning goals, school placement, and services. [34 Code of Federal Regulations (C.F.R.) Sec. 300.320.] In order to obtain an IEP, your child must first be evaluated. To request an evaluation, write a letter to the district special education director / coordinator, with a copy to your child's teacher and principal. Tell them 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 – Request for IEP Meeting*, Appendices Section – Appendix H.

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 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 are followed. [California Education Code (Cal. Ed. Code) Secs. 56029, 56302.1, 56321(a), 5 California Code of Regulations (C.C.R.) Sec. 3021(a).]

In your referral letter, you should also request that your child be assessed under Section 504 of the Rehabilitation Act of 1973 (“Section 504”) to determine whether your child might be eligible for services under that law. If eligible, 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. [OCR Memorandum, Letter to Veir, 19 IDELR 876 (April 29, 1993).] See Chapter 1, *Information on Basic Rights and Responsibilities* and Chapter 3, *Information on Eligibility Criteria*.

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

Starting from the date the district receives your written consent to assessment, the assessment(s) must be completed, and the IEP developed at a meeting within 60 calendar days. In counting days, you do not count the days in between regular school sessions or school vacation in excess of five school days. If an initial referral of a student to special education has been made 30 days or less before the end of the regular school year, an IEP shall be developed within 30 days after the beginning of the next school year. [Cal. Ed. Code Sec. 56344 (a).]

3. How do I request an IEP meeting for my child who is already receiving services when I am not also requesting an assessment?

If your child is already receiving services, you can request an IEP meeting whenever you think one is needed in order to review or change the program. You should make a written request to your child’s teacher, principal or special education administrative office. [Cal. Ed. Code Secs. 56343(c) & 56343.5.] If you are requesting an IEP meeting without the need for new assessments (for a child already in special education), the meeting shall be held within 30 days of receipt of your written request (not counting days in between regular school sessions or school vacation in excess of five school days). [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 an initial assessment, when he demonstrates a lack of anticipated progress, or when a parent or teacher requests a meeting to develop, review or revise a student's individualized education program. An IEP meeting may also be held each time a student receives a new formal assessment. [Cal. Ed. Code Sec. 56343.]. You should request an IEP team meeting after each new assessment. Neither federal nor state law limits the number of IEPs you may request per year.

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. 1415(b)(1); 34 C.F.R. Sec. 300.501; Cal. Ed. Code Sec. 56504.] 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 five business days from the date the request was made by the parent either in writing or orally. [Cal. Ed. Code Sec. 56504.]

6. Will I receive notice of the IEP meeting?

The school district must take steps to ensure that one or both of the parents of the student attend the IEP meeting or have the opportunity to participate. Your attendance and participation is one of the most important principles of the special education process. Your district must 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 district must provide you with this information: the purpose, time, and

location of the meeting and who will attend the meeting. The district must also inform you about your ability to invite others who have knowledge or special expertise about your child. [34 C.F.R. Secs. 300.321(a)(6) & 300.322; Cal. Ed. Code Sec. 56341.5.]

7. If I cannot attend an IEP meeting in person, can the district hold the meeting over the telephone?

Parent participation in the development of the IEP is one the most important principles of special education law. In its efforts to ensure that parents attend IEP meetings, the district may hold a meeting over the telephone or through video conference, as long as the parent agrees. While districts may propose that the IEP meeting be held using alternative methods, this should be done only when changes in the IEP are minor. Parents do not have to agree to use these alternative methods and may schedule the IEP meeting at a mutually agreed-upon time and place.

Before a district can hold a meeting without a parent in attendance, it must document its efforts to arrange a mutually-agreed-upon time and place to meet by keeping:

Detailed records of all telephone calls made to the parent and the results of those calls;

Copies of correspondence sent to the home and any responses received; and

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. Secs. 300.322 and 300.328; Cal. Ed. Code Sec. 56341.5.]

8. After my child's annual IEP, must an IEP meeting be held to change the IEP?

Yes. However, the parent and district may agree not to hold an IEP meeting to change the IEP and instead may develop a written document to amend or modify a student's IEP. The parent and district must both agree to make a change in the IEP

in this way. If the parent does not agree, the district must hold a meeting to make changes in the IEP. If changes are made by written document, the district must ensure that the IEP team is informed of the changes to the IEP and must give a copy of the amended IEP to the parent upon request. [34 C.F.R. Secs. 300.324(a)(4) and (6); Cal. Ed. Code Sec. 56380.1.]

9. 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.
- (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.
Another district member already on the IEP team may serve in this role.
- (5) The individual who conducted the assessments of the student, or someone who is knowledgeable about the procedure used and the results, and is qualified to interpret the instructional implications of the results.
Another IEP team member may serve in this role.
- (6) Other people with specific expertise or knowledge of the student, at the parent or district's request. 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, when appropriate.

[Cal. Ed. Code Secs. 56341(b) & (e).]

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For students 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 preschool age. In that case, the team member must have observed the child in a setting appropriate for the age of that child. [Cal. Ed. Code Sec. 56341(c).]

If the student is transition age (that is, beginning at least at age 16), the school must invite the student to attend the meeting. If the student does not attend, the district must take steps to ensure that it obtains the student's input regarding his preferences and interests. The school must also invite a representative of an agency that is likely to be providing or paying for a transition service. If the invited representative does not attend, the district must take steps to obtain the agency's participation in transition planning some other way. [Cal. Ed. Code Sec. 56341(d).]

A student who is already placed by a district in a nonpublic (non-religious) school (NPS) may have IEP meetings with only staff present from the NPS, if the school district elects not to send anyone to the meeting and delegates review and revision of the IEP to the nonpublic school staff. However, even if the NPS reviews, revises, and implements the IEP, the district remains responsible for compliance with special education laws with regard to the student's program. [34 C.F.R. Sec. 300.325; Cal. Ed. Code Sec. 56383.]

10. Are all members of the IEP team required to attend the IEP meeting?

Yes. However, federal and state law allow a parent and district to agree in writing that an IEP team member does not need to attend if the member's area of the curriculum or related services is not being modified or discussed at the meeting. In addition, if the member's area of the curriculum or related services is being modified or discussed in the meeting, the parent and district may still agree in

writing, after conferring with the member, that the member does not need to attend. In that case, the member must submit written input into the development of the IEP to the IEP team before the meeting. The law does not say how long before the meeting the input must be submitted. If the parent or district do not agree that a team member may be excused from attendance at the meeting, that IEP team member must be present at the IEP meeting. [34 C.F.R. Secs. 300.321(e)(1) and (2); Cal. Ed. Code Secs. 56341(f) & (g).]

11. What can I do if the required members of the IEP team do not attend my child's IEP meeting?

Coordinating an IEP meeting is sometimes not an easy task for school staff. However, that does not affect the district's responsibility to convene a valid IEP team with the required members present. Unfortunately, many parents are faced with an IEP meeting where all the required members of the IEP team cannot attend or cannot stay for the full IEP meeting. 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. In addition, 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.

Your decision on how to handle this situation must be made on a meeting-by-meeting basis. Here are several options that you should consider:

- (1) Contact your district special education administrator in writing (with a follow-up telephone call) at least one week before the meeting to let his 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). Then, reconvene the meeting at a mutually agreed upon time and place with the needed IEP team members in attendance to finish developing the IEP; or

- (3) Refuse to continue the IEP meeting if the members of the IEP team not in attendance are necessary for appropriate decision-making. Then, reschedule the IEP meeting for a time when all required team members are able to attend.

[34 C.F.R. Sec.300.322; Cal. Ed. Code Sec. 56341.5.]

12. 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 case manager (service coordinator) 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. Secs. 300.321(a)(6) & (c); Cal. Ed. Code. Secs. 56341(b)(6) & 56341.1(f).]

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 being discussed or considered.

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

The parent or district has the discretion to invite individuals with knowledge or special expertise about the student to an IEP meeting. Because a representative of a teachers union would generally be concerned with the interests of the teacher rather than the student, and would not necessarily possess knowledge or expertise regarding that student, it would be inappropriate for the representative to attend. [34 C.F.R. Sec. 300.321(a)(6); Cal. Ed. Code Sec. 56341(b)(6).]

14. How can I contribute to the IEP process?

Parents 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 his education. [34 C.F.R. Secs. 300.324(a)(i) & (ii); Cal. Ed. Code. Secs. 56341.1(a)(2) & (f).]

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 (outgoing, open, optimistic, articulate, imaginative, friendly, caring). The IEP team must also consider: concerns of the parents for enhancing the student's education, results of initial and most recent evaluations of the student, and results of the student's performance on any district- and state-wide assessments. [34 C.F.R. Sec. 300.324(a); Cal. Ed. Code Sec. 56341.1(a).];
- (2) Weaknesses/Problem Areas (poor self-concept, academic deficits, fighting, disorganization, takes longer than average to complete assignments, discouraged easily);
- (3) Functioning Levels (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 (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.

15. If I need an interpreter at the IEP meeting, must one be provided?

Yes. If you need a language or ASL (sign) interpreter to participate at the IEP meeting, one must be provided at no expense to you, the parent. [34 C.F.R. Sec. 300.322(e); Cal. Ed. Code Sec. 56341.5(i).] You are entitled to a free copy of the IEP in your primary language. [5 C.C.R. 3040(b).]

16. What should happen at my IEP meeting?

You and the school district should develop your child's IEP as a partnership. Both you and the 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, that are derived from your child's current functioning ("Short term objectives or benchmarks" leading toward accomplishment of the annual goals are no longer required, except for students (usually those with severe disabilities) taking alternate assessments aligned to alternate achievement standards. However, short term objectives or benchmarks are useful for all students, and districts are not prohibited from including them in an IEP);
- (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.

[34 C.F.R. Sec. 300.320; Cal. Ed. Code Sec. 56345.]

All required members of the IEP team should attend and participate in the team meeting and should not sign the IEP before the team meets.

While there is no legal procedure for how to reach agreement in an IEP meeting, the IEP team should work toward consensus. However, if a team cannot reach consensus regarding a service or placement, the district has the ultimate responsibility to offer what it believes is an appropriate program. 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 parents with "prior written notice" of that proposal, and the parents may file for due process hearing. [34 C.F.R. Part 300.503; Cal. Ed. Code Sec. 56500.4.]

17. What is Prior Written Notice?

The district is required to give you a prior written notice "a reasonable time before" it refuses to initiate or change the identification, evaluation, placement or the provision of a free, appropriate public education (FAPE). The term "reasonable time" is not defined in the statute. The notice must contain the service or placement refused by the district, an explanation for the refusal, a description of each evaluation procedure, assessment, record, or report used by the school district to make their decision. The notice must also inform you of your right to challenge that decision. [34 C.F.R. Sec. 300.503; Cal. Ed. Code Sec. 56500.4.]

If you are not given proper notice before the IEP, you may argue that the district not only violated the prior written notice requirement, but also that the absence of a notice prevented you from meaningful participation in your child's IEP.

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

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. 300.324(a)(2)(iv); Cal. Ed. Code Sec. 56345(d).]

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

- (1) Student'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(d).]

The district is also responsible for insuring that hearing aids worn in school and surgically implanted medical devices (cochlear implants) are "functioning properly." However, the district is not responsible for post-surgical maintenance, programming or replacement of these devices (or an external component of the devices). [34 C.F.R. Sec. 300.113; Cal. Ed. Code Secs. 56345(d)(5)-(7).]

19. What should be written in the IEP?

The IEP for each student must include:

- (1) The present levels of educational performance, including how the student's disability affects his 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 related to:
 - a. Meeting each of the student's educational needs that result from the disability, and
 - b. Meeting the student's needs that result from his disability to enable his to be involved in and progress in the general curriculum.

For students who take alternate assessments aligned to alternate achievement standards, a description of measurable benchmarks or short-term objectives must also be included;

- (1) A description of how the student's progress toward meeting the annual goals will be measured, and when periodic progress reports will be provided (such as quarterly or at the same time report cards are issued);
- (2) A statement of specific special education and related services (for example, physical education, vocational education, extended school year, instruction in academic or perceptual areas, teacher qualifications, class size) and supplementary aids and services (instructional aides, note takers, use of the resource room, etc.) to be provided. Special education and services must be based on peer-reviewed research to the extent practicable. The IEP must also contain a statement of the program modifications or supports for school personnel that will be provided to allow the student: (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 students with disabilities and nondisabled students (for example, modifications to the regular class curriculum, use of computer-assisted devices, special education training for the regular teacher, etc.);

- (3) An explanation of the extent, if any, to which the student will not participate with nondisabled students in regular education classes or in extracurricular and other nonacademic activities;
- (4) The projected date for when services and modifications will begin and their duration, frequency, and location (for example, occupational therapy two times a week for 45 minute sessions in a room outside the classroom);
- (5) A statement of any individual modifications or accommodations in the administration of state or district-wide assessments of student achievement that are needed in order for the student to participate in the assessment, including the reason why he cannot participate in the regular assessment and the reason why the alternative assessment selected is appropriate;
- (6) A description of the type of placement needed to implement the IEP in the least restrictive environment — with an aide or other adaptations if necessary (the school district must ensure that a “continuum of alternative placements” is available, including instruction in regular classes, special classes, non-public school, state special schools, residential placement, home instruction, and instruction in hospitals and institutions);
- (7) A description of activities needed to integrate a student into a regular education class — if the student is transferring from a special class or center or a non-public school for any part of the school day— and the necessary support for that transition. This description shall indicate the nature of the activity, and the time spent on the activity each day or week;
- (8) In the first IEP after the student turns 16-years-old, if not earlier, the IEP must state appropriate measurable goals for the student’s life after high school. These goals—to be updated annually—should be based on age-appropriate assessments related to training, education, employment, and, where appropriate, independent living skills, and the transition services needed to assist the student in reaching those goals;
- (9) Extended school year services, when needed; and

- (10) One year before the student turns 18, include a statement that the student has been informed that special education rights will transfer to the student at age 18.

[20 U.S.C. Sec. 1414(d); 34 C.F.R. Secs. 300.116 & 300.320; 5 C.C.R. Sec. 3042(b); Cal. Ed. Code Sec. 56345.]

It is important to understand 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 student is presently performing in school and the educational services must be sufficient for the student to make progress toward meeting the annual goals.

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

Yes. The IEP team must consider, when appropriate:

- (1) Strategies, including positive behavioral interventions, and supports to address the behavior of a student whose behavior impedes his learning or that of others;
- (2) Instruction in Braille and the use of Braille, for a student who is blind or visually impaired, unless the IEP team determines after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media, that this is not appropriate;
- (3) Communication needs, 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 his language and communication mode;
- (4) Whether the student requires assistive technology devices and services;

- (5) Any alternative means and modes necessary for a student in grades 7-12 to complete the district's course of study and meet proficiency standards for graduation;
- (6) Linguistically appropriate goals, objectives, programs and services, for a student whose native language is not English (or who is not "proficient" in English);
- (7) Specialized services, materials, and equipment for a student with low-incidence disabilities.

[20 U.S.C. Sec. 1414(d)(3)(B), 34 C.F.R. Secs. 300.320 & 300.324, Cal. Ed. Code Secs. 56341.1, 56345 & 56345.1.]

21. 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 in determining the student's educational needs. This includes information related to enabling the student to be involved in, and progress in, the general curriculum.

The team must consider the academic, developmental and functional needs of the student. The present levels 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 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 team must consider your child's strengths and any of your concerns for enhancing your child's education. The results of the 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. 300.324; Cal. Ed. Code Sec. 56341.1.]

22. 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 the 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, the teacher's instructional plans should relate directly to IEP goals and benchmarks/objectives.

The goals and benchmarks/objectives help define what kind of special education program and related services the district must provide. The 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.

In addition, the determination of whether your child is meeting his IEP goals and benchmark/objectives is critical to developing an appropriate educational program. The IEP must therefore include a description for each goal of how your child's progress will be measured, and when periodic progress reports will be provided. [Cal. Ed. Code Sec. 56345(a)(3).]

The appropriateness of your child's program is measured by whether he is making progress toward the central goals of the IEP. [*County of San Diego v. Special Education Hearing Office*, 93 F.3d 1458, 1461 (9th Cir. 1996).] Therefore, you must develop challenging IEP goals. Otherwise, it will be difficult to prove the district's program is inappropriate if your child is making progress toward unchallenging goals.

23. Can I suggest goals that are more challenging for my child than the district is suggesting?

Yes, the State Superintendent of Public Instruction and State Board of Education must adopt performance goals and indicators for special education students that are consistent, to the maximum extent appropriate, with the standards for all students in the public schools. [34 C.F.R. Sec. 300.157; Cal. Ed. Code Sec. 56138.] The California Association of Resource Specialists and Special Education Teachers (CARS+) publishes Goals and Objectives Related to Essential California Content which contains the academic standards and related sample goals. For a copy of this publication, visit www.carsplus.org.

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

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

Short-term objectives or benchmarks are now only required for students who take alternative assessments. Generally, short-term objectives are defined 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. Short-term objectives break the skills described in the annual goal down into discrete components. Benchmarks describe the amount of progress the child is expected to make within specified segments of the year and establish expected performance levels that allow for regular checks of progress. An IEP team may use either short-term objectives or benchmarks. [20 U.S.C. Sec. 1414(d)(1)(A)(i)(I)(cc); 34 C.F.R. Sec. 300.320(a)(2)(ii); Cal. Ed. Code Sec. 56345(a)(1)(C).]

25. 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?

Yes. Even students with "severe" disabilities and those in more restrictive placements must have IEPs which address how they will be involved and progress in the general curriculum. IEPs, therefore, should not be limited to functional life skills and self-help activities, but must also include goals that enable every student to access and progress in the general curriculum. [34 C.F.R. Sec. 300.320(a)(4).]

26. Must an IEP for a student with a disability include annual goals that address all areas of the general curriculum?

No. The IEP needs to address only areas of the general curriculum affected by the student's disability. If your child's disability affects reading and writing, but not math skills, no general education math goals are required. Functional deficits that impact all or much of the general curriculum can also be addressed by providing appropriate accommodations or modifications to the student in the general education classroom. For instance, a student with attention deficits might be seated in the front of the classroom, or a student with an auditory processing problem might be given a student note-taker.

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

Yes. The IEP for a student 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. [34 C.F.R. Sec. 300.39; Cal. Ed. Code. Sec. 56031.] This means that the services must be listed in the IEP even if they are not directly available from the district, but must instead be provided through contract or other arrangements.

The IEP must also set out the description and amount of special education and the frequency, duration, and location of the related services and modifications, so that the district's commitment of resources will be clear to the IEP team. The amount

of time to be committed to each of the various services should be (1) appropriate to that specific service, and (2) stated in a manner that is clear to all involved in the development and implementation of the IEP. Changes in the amount of services cannot be made without holding another IEP meeting, unless the parent and district agree to hold the meeting over the telephone or by video conference. [34 C.F.R. Secs. 300.320, 300.322, & 300.328; Cal. Ed. Code Sec. 56341.5.]

28. 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 team members in agreement with the proposed services, the district has the ultimate responsibility to ensure the IEP includes the services the student needs in order to receive an appropriate education. It is not appropriate to make IEP decisions based on a majority vote. The team should strive to reach its decisions by consensus. If there is no consensus, the school district must provide the parents with “prior written notice” of its proposals or refusals regarding the student’s educational program. Parents have the right to resolve any disagreements through due process procedures.

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

No district employee may directly or indirectly use or attempt to use his 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, he 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, *Information on Due Process/Compliance Procedures*.

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

Yes. Federal and state law define special education services as “specially-designed instruction, at no cost to the parents, to meet the unique needs” of students with disabilities. 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. [34 C.F.R. Sec. 300.39; Cal. Ed. Code Sec. 56031.] 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.

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

Yes. Special education means “specially-designed instruction...to meet the unique needs” of students with disabilities. One of those unique needs may be a limit on class size. The district may believe that class size is not a critical element in an appropriate program for a student.

However, a 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 and you may wish to file a compliance complaint if your school district has such a policy. [34 C.F.R. Sec. 300.39; Cal. Ed. Code Sec. 56031.] See Chapter 6, *Information on Due Process/Compliance Procedures*.

32. 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.

33. 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 accommodations, modifications, supplementary aids or services within that regular class in order to learn. These 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. 300.320.] See Chapter 7, *Information on Least Restrictive Environment*.

34. 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. [34 C.F.R. Secs. 300.324(a)(3) & (b)(3); Cal. Ed. Code Sec. 56341(b)(2).]

A regular education teacher is required to attend the IEP meeting if the child is, or may be, participating in a general education program. Any member of the IEP team, including the regular education teacher, may be excused from attending if the district and the parent agree in writing. An excused member must still submit input to the team in writing, prior to the meeting, if the meeting is concerned with their area of service or curriculum. [34 C.F.R. Sec. 300.321.]

The law does not address how a school district decides which teacher should attend an IEP meeting. However, the regular education teacher should be someone who

has knowledge of the student or a teaching intervention and/or is responsible for implementing a portion of the IEP.

For an IEP meeting at the middle or high school level, where there are multiple regular education teachers for a given student, the law does not require that they all attend. If you are seeking modifications or accommodations in subjects taught by particular teachers, you should request their presence in writing.

35. 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 student to: (1) advance toward attaining his annual goals; (2) be involved in, and make progress, in the general curriculum; (3) participate in non-academic and extracurricular activities; and (4) be educated and participate with other students, both disabled and nondisabled. Given the law's emphasis on involvement in the general curriculum and in regular education placement, both regular and special education teachers need additional supports to ensure that IEPs are implemented fully and appropriately. [34 C.F.R. Sec. 300.320(a)(4); Cal. Ed. Code Sec. 56345(a)(4).]

Support for school personnel is not defined further in regulations. 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.

All staff providing special education to a student — including regular education teachers — must be knowledgeable about the IEP's contents and informed of their specific responsibilities related to implementing the IEP, including the specific accommodations, modifications and supports that must be provided for the student. [34 C.F.R. Sec. 300.323(d); Cal. Ed. Code Sec. 56347.]

36. Do I have to sign the IEP at the IEP meeting?

No. It is reasonable 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, partner or someone else before deciding whether to sign. You may not be able to take the original document home with you. Your child remains eligible for special education services and stays in his current placement while you decide whether to consent. If you do not consent or file for due process in a reasonable period of time, then the district may file for due process.

37. Can I consent to only part of the IEP?

You can consent to recommendations of the IEP with which you agree, so that those services or placement can be implemented as soon as possible. If you disagree with certain components of the IEP, those cannot be implemented, and may be issues to be resolved in due process proceedings. You may attach a written dissent to the IEP document to make your position clear. [Cal. Ed. Code Sec. 56346.]

If the district determines that the recommendations of the proposed IEP with which you do not agree are necessary to provide FAPE, it will initiate due process proceedings. While due process is pending, your child shall remain in his then-current placement, unless you and the district agree otherwise. [Cal. Ed. Code Sec. 56346(f).] See Chapter 6, *Information on Due Process/Compliance Procedures*.

38. Can I consent to the content of the IEP and not consent to a particular classroom assignment?

Yes. You may consent to the content of the IEP as written — such as goals, objectives, placement description — yet you may disagree with the actual placement site or classroom. For example, after visiting the proposed site 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

due process if your concerns cannot be resolved informally. See Chapter 6, *Information on Due Process/Compliance Procedures*.

39. Can I change my mind after I sign the IEP document?

Yes. If you change your mind, you may revoke your consent at any time. However, revoking your consent is not retroactive. It does not undo an action that occurred after your consent was given and before the consent was revoked. [34 C.F.R. Sec. 300.9; Cal. Ed. Code Sec. 56021.1(c).]

As always, the best practice is not to sign the IEP until you are sure about its contents. You 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.

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

School districts must offer a continuum of alternative placements. [34 C.F.R. Sec. 300.115.] These placements could include:

- (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 students who spend more than half their day in a regular classroom;
- (4) Special classes that serve students with similar and more intensive educational needs;
- (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.

Students may be enrolled in special classes only when the nature or severity of the disability of the student 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. This requirement also applies to separate schooling, or other settings outside the regular education environment¹. 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. Secs. 300.114, 300.115, & 300.116.] See Chapter 7, *Information on Least Restrictive Environment*.

¹ For more specific information on individual types of placements, see Cal. Ed. Code sections 56362 (resource specialist program), 56364.1 (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*.

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

Federal law and regulations presume that a student with a disability will be educated in regular education classes with their “typically developing” peers. Your district must ensure that a student 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 agrees on must be included in the IEP. [34 C.F.R. Secs. 300.42, 300.114 – 120.]

42. 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 school districts tell you which specific school site and/or classroom they are recommending and describe those settings. Other districts recommend general placement categories at the IEP meeting (for example, resource specialists, special day class) and then, the specific classroom assignments follow the meeting. In either situation, you should request at your IEP meeting that you be included in any meeting where the educational placement of your child is determined. [20 U.S.C. Sec. 1414(f), 34 C.F.R. Secs. 300.327 & 501(c); Cal. Ed. Code Secs. 56304 & 56342.5.]

43. Can I put the name of a particular teacher or a particular classroom in the IEP?

No. You do not have the power to require that the district provide its services from a particular person or in a particular classroom. However, the district must provide “that unique combination of facilities, personnel, location, or equipment necessary to provide instructional services...as specified in the individualized education program...” [5 C.C.R Sec. 3042(a).] Your child’s IEP team must consider these unique factors when determining particular sites or staff. For example, the team should consider the accessibility and location of classrooms when considering whether a particular program is the least restrictive environment. Similarly, the district should consider teachers’ qualifications, such as knowledge of particular languages or techniques, when deciding what site and staff.

In other words, the district must provide services in settings and with people who can meet your child’s IEP goals and objectives. If the 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. You can also ask an education professional to observe the 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 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/Compliance Procedures*. The district cannot force you to accept a service or placement without your consent, except through due process. [Cal. Ed. Code Sec. 56346.]

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

Heterogeneous or non-categorical classroom placements for students with disabilities are allowed under federal law because a student's "unique needs" rather than disability category or label, should ultimately determine placement. To be appropriate, the placement must be based on your child's IEP. [34 C.F.R. Secs. 300.39 & 300.116.]

45. When must the IEP be implemented?

The IEP must be implemented "as soon as possible" following the IEP meeting. There should 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. Secs. 300.320(a)(7) & 300.323; Cal. Ed. Code Sec. 56344(b).]

The law requires that an IEP be in effect for each student at the beginning of the school year. [20 U.S.C. Sec. 1414(d)(2); 34 C.F.R. Sec. 300.323(a); Cal. Ed. Code Sec. 56344(c).]

46. Are there any circumstances when a school district is required to review and/or revise my child's IEP?

State law requires that an IEP team review a student's IEP at least annually. Also, the 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 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.

[Cal. Ed. Code Sec. 56343.]

In addition, federal law requires that an IEP be reviewed at least annually, and be revised if there is additional information provided to or by the parents; anticipated needs are not met; or other matters need to be resolved. [20 U.S.C. Sec. 1414(d)(4); 34 C.F.R. Sec. 300.324(b).]

47. If I place my child in a private or religious school does he have the right to an IEP and special education services?

Federal law gives students with disabilities limited rights to educational services. A student with a disability who is “parentally-placed” in a private school, including a religious school — that is, voluntarily and “unilaterally” enrolled without the agreement of an IEP team — has no right to receive the special education and related services that he would receive if enrolled in a public school. [20 U.S.C. Secs. 1412(a)(10)(B) & (C); 34 C.F.R. Sec. 300.137.] The district must nevertheless provide for the participation of your child in its special education programs. [34 C.F.R. Sec. 300.132.] The amount of federal money that must be spent is limited to a proportionate share (based on the number of parentally-placed students compared to the total district population of students with disabilities) of the federal dollars received by the district. [34 C.F.R. Sec. 300.133.] However, federal law does not prohibit a district from spending additional state funds for this purpose. [34 C.F.R. Sec. 300.133(d).] Services may be provided on the premises of private schools, even religious schools “to the extent consistent with law.” [34 C.F.R. Sec. 300.139.]

Districts must be inclusive and thoughtful in determining how to spend this portion of money on parentally-placed, private-school students with disabilities. The district must engage in a timely and meaningful consultation with representatives from private schools and representatives of parents of parentally-placed students. Private school officials may file a complaint with the U.S. Secretary of Education if they believe the district did not engage in timely and meaningful consultation or did not give due consideration to their views. [20 U.S.C. Secs. 1412(a)(10)(i)-(v); 34 C.F.R. Secs. 300.134 - 300.136.]

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The district is solely responsible for making the final decision with respect to the educational services to be provided to these students. [34 C.F.R. Secs.

300.137(b)(1) & (2).] Once a student with a disability is enrolled in a religious or other private school by the student's parents and will receive educational services, the district must conduct meetings to develop, review and revise a services plan that describes the special education and related services that the district will provide to the student in light of the services that the district has determined it will make available. The services plan must be developed, reviewed, and revised using the same procedures required in the development of an IEP. [34 C.F.R. Secs. 300.137(c) & (b).]

Special education and related services, including materials and equipment, must be secular, neutral, and non-ideological. [34 C.F.R. Sec. 300.138(c)(2).] If transportation is necessary for students to benefit from the services, the district must provide transportation from the student's school or home to a site other than the private school and from the service site to the private school. The district is not required to provide transportation from the student's home to the private school. The cost of the transportation may be included in calculating whether the district has met its financial burden in the provision of services to parentally-placed private school students. [34 C.F.R. Sec. 300.139.]

As long as the school district has made FAPE available, it is not required to pay for special education and related services for any parentally-placed student in a private school. [34 C.F.R. Sec. 300.148.] However, if your child is placed in a private school by the district in order to receive FAPE (although it is unlikely a district would place a student in a private religious school for this purpose), the district is financially responsible for all necessary instructional, related, and supplementary services. [34 C.F.R. Secs. 300.145 - 300.147.] See Chapter 5, *Information on Related Services*.

48. If I place my child in a private school, will the district pay me back for the costs? Is there anything in particular I should know before I make such a placement?

Yes. If you enroll your child in a private school unilaterally — that is, without the agreement of the rest of the IEP team — there is a possibility that you may be reimbursed for the money you have spent. However, you will probably have to prove at a due process hearing that the district's program was not appropriate and that the private school you selected is appropriate. You may be entitled to reimbursement even if the private school in which you "parentally-placed" your child in is not certified by the state. [*Florence County School District v. Carter*, 510 U.S. 7 (1993); *Union School District v. Smith*, 15 F.3d 1519 (9th Cir. 1994); 34 C.F.R. Sec. 300.148(c); Cal. Ed. Code Sec. 56175.]

You should inform the IEP team at the most recent IEP meeting that you intend to reject the public school placement offer before removing your child from the public school. At that same meeting, you should also state your concerns and your intent to enroll your child in a private school at public expense. Otherwise, you may be denied full or partial reimbursement. However, if you do not give notice at the meeting, you must give written notice to the district at least 10 business days before you remove your child. [34 C.F.R. Sec. 300.148(d)(1); Cal. Ed. Code Sec. 56176.]

Reimbursement may also be denied or reduced if before you remove your child, the district notifies you of its desire to reassess him, and you fail to make your child available for that reassessment. [Cal. Ed. Code Sec. 56176(c); 34 C.F.R. Sec. 300.148(d)(2).]

If you do not give the required notice described above, either at the most recent IEP meeting or in writing at least 10 business days before removal, reimbursement must not be reduced or denied if you failed to give the necessary notice because: 1) it would likely have resulted in physical harm to the child, 2) the school prevented you from giving notice, or 3) you had not received your parents-rights notice which would have informed you of your responsibilities in this situation.

Also, if you cannot read or write English, or you do not give notice because it would likely result in serious emotional harm to your child, the due process hearing officer or judge may also decide to reimburse you fully or in part. [34 C.F.R. Sec. 300.148(e); Cal. Ed. Code Sec. 56177.]

Regardless, reimbursement may be denied or reduced if a judicial officer finds that your actions were unreasonable. [34 C.F.R. 300.148(d)(3); Cal. Ed. Code Sec. 56176(d).] See Chapter 6, *Information on Due Process/Procedures*.

49. 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. However, a hearing officer can consider costs in choosing between appropriate placements. [Cal. Ed. Code Sec. 56505(h).]

50. 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 his IEP. [34 C.F.R. Secs. 300.39, 300.116(b)(2) & 300.320(a)(4).] 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).

51. 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 impairments). In addition, schools are required to purchase equipment needed to provide related services such as occupational and physical therapy equipment. [Cal. Gov. Code Sec. 7575(d); Cal. Ed. Code Secs. 56363.1 & 56836.22.]

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. 300.105.]

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*.

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

Yes. 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 non-school 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. 300.105.]

53. Can I tape record an IEP meeting?

Yes. Parents may use an audiotape recorder to 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(g)(1).]

Under federal and state law, audio tape recordings made by the school district are subject to the confidentiality provisions of the Family Educational Rights and Privacy Act of 1974. [20 U.S.C. Secs. 1232g(a)(4) & (b)(2); 34 C.F.R. Secs. 300.610 - 300.626; Cal. Ed. Code Sec. 56341.1(g)(2).] 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. Secs. 99.10 - 99.22; 56341.1(g)(2)(A) & (B).]

54. What if participants in my IEP meeting use terms or acronyms that I do not understand?

You have a right to full participation in the IEP process. [34 C.F.R. Sec. 300.322.] 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 terms to intimidate you. Many parents do not understand acronyms or other educational terms. Asking questions is an indication that you are rightfully concerned about developing the appropriate education program for your child. 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. 300.300(b)(1).]

55. Can a school district use pre-written or computer-generated IEPs ?

The law does not allow the district to present a completed IEP for approval without a full discussion of your child's needs. This would violate your right to participation in the IEP process. [34 C.F.R. Sec. 300.322.] 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. A draft IEP can be beneficial, whether prepared by you or the district, as long as it is discussed and revised, as needed, at an IEP meeting.

Like a handwritten IEP, a computerized IEP cannot be completed in advance and must be individualized or revised at the IEP meeting to specifically address all of your child's needs. Make sure that goals, objectives, and other language stored in the computer or pull-down menu terms are not automatically made part of the IEP. The language or descriptions used in the IEP should specifically focus on your child's individual needs and services.

Similarly, the district may not refuse to include a requested goal, service or service description in the IEP for reasons such as: (1) it does not appear in the pull-down menu; (2) there is not an appropriate “field” on the computerized form; or (3) there is not enough space on the form. A handwritten or computerized addendum can always be added to the IEP. District refusal to allow your input undermines your right to participate in the IEP meeting.

56. Who is responsible for implementing my child’s IEP?

Under federal law, the California Department of Education (CDE) is ultimately responsible for ensuring that required procedures are followed and that students receive needed education services in accordance with their IEPs. [34 C.F.R. Sec. 300.600.] California law delegates to local school districts the direct responsibility for providing the services in students’ IEPs and for ensuring that a continuum of program options exists to meet their needs of students. [Cal. Ed. Code Sec. 56360.] However, if the district refuses, or wrongfully neglects, to provide FAPE to a student with disabilities, CDE is responsible for directly providing the needed services. [20 U.S.C. Secs. 1412(a)(11) & 1413(g); 34 C.F.R. Sec. 300.227.]

If your child is enrolled in a nonpublic school, the 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 district delegates these tasks, responsibility for compliance with special education law remains with the school district. [Cal. Ed. Code Sec. 56383.]

57. May a school district require that I use my medical insurance to pay for part of my child’s special education program?

No. The district must get your written consent before it may use the private insurance to pay for any special education costs for your child. When a district asks for consent, it must tell you that your refusal to consent does not relieve the district of its responsibility to provide the special education and related services. If you would otherwise consent to the use of your insurance — whether private or

public — except for the fact that you would have to pay a deductible or co-payment, the district may use its funds to pay the deductible or co-payment.

Federal and state law does allow school districts to use public and private insurance to help pay for the costs of special education or related services in certain circumstances. [34 C.F.R. Secs. 300.154(d-f); Cal. Ed. Code Sec. 56363.5.]

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

- (1) Decrease available lifetime coverage or any other insured benefit;
- (2) Result in the family paying for services otherwise covered by Medi-Cal and which 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 waivers, based on aggregate health-related expenditures.

[34 C.F.R. Sec. 300.154(d)(2)(iii).]

58. If I do not sign a new IEP at the annual IEP meeting, can the district withhold eligibility or an existing IEP service from my child?

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 placement or services, the last agreed-upon IEP remains in effect. The disagreements may become the basis for a request for due process. Once you file for due process, your child must remain in his current educational placement until the disagreement is resolved. [34 C.F.R. Secs. 300.324(b) &

300.518; Cal. Ed. Code Sec. 56505(d).] See Chapter 6, *Information on Due Process/Compliance Procedures*.

59. Can a foster parent sign an IEP for a child in their care?

Yes. A foster parent may act as a parent for special education purposes for a child with their care if these conditions exist:

- (1) The biological or adoptive parent's authority to make educational decisions for the child have been taken away by a court; and
- (2) The foster parent has no interest that would conflict with the interests of the child.

If acting as a parent, a foster parent has all the rights a biological or adoptive parent would have in the special education process, including the ability to initiate a referral for special education eligibility of their foster child and sign the IEP for a student. [34 C.F.R. Sec. 300.30(a)(2); Cal. Ed. Code Secs. 56028(a)(2), 56055 & 56029(c).]

Foster parents may also be appointed by a school district or court to be a “surrogate parent” to exercise educational rights for a child within their care. 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 Secs. 7579.5(c) & (g).]

60. 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, he serves as the child's parent and has all rights available to a parent. The surrogate 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. 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 may give or withhold any consent related to a student's IEP. [34 C.F.R. Secs. 300.30 & 300.519; Cal. Gov. Code Sec. 7579.5(d).]

61. How can my child qualify for “extended school year” services?

Federal regulations define extended school year (ESY) services as “special education and related services … that are provided to a child with a disability … beyond the normal school year of the public agency … in accordance with the child’s IEP...” These must be provided at no cost to the parent and must meet state standards. [34 C.F.R. Sec. 300.106(b).]

Under state law, a student must meet certain eligibility requirements for ESY services under California law. To qualify, a student must show:

- (1) His disabilities “are likely to continue indefinitely or for a prolonged period;
- (2) Interruption of his educational program may cause regression;
- (3) Limited recoupment capacity; and
- (4) The above factors make it “impossible or unlikely” that he will attain self-sufficiency and independence without ESY services.

However, the “lack of clear evidence” of the above factors may not be used to deny a student ESY if the IEP team determines the need such a program and it is written into the IEP. [5 C.C.R. Sec. 3043.]

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 “[l]imit 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. 300.106(a)(3).]

62. Can my child receive ESY services beyond the limited number of weeks usually offered by the school district?

There is no limitation in federal or state law on the length of an extended school year 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 established a reimbursement formula for ESY services, 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. This formula merely outlines the number of instructional days for which your district will be reimbursed by the State of California. [5 C.C.R. Sec. 3043(d).] The reimbursement formula does not affect an IEP team’s ability to determine ESY services based on the individual needs of your child.

63. 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 regular summer school programs are available to non-disabled 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. Secs. 3043(g) & (h).]

64. Do students enrolled in charter schools have special education rights?

Yes. Children with disabilities who attend public charter schools have all special education rights available under federal and state law. Charter schools, which must comply with all federal and state special education procedures and requirements, may be organized in one of three ways: 1) if the charter school is part of a local district, the district is responsible for providing special education

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and related services to all eligible students; 2) if the charter school is its own district, the school is responsible for providing special education and must follow all federal and state procedures and statutes; or 3) if it is neither a public school nor its own district, the State is responsible for ensuring that the charter school meets all special education requirements. [34 C.F.R. Sec. 300.209; Cal. Ed. Code Sec. 47646.]