



**...OF SPECIAL EDUCATION
LAWS AND REGULATIONS**

2016 SUPPLEMENT

**THE GREEN BOOK[®]
... OF SPECIAL EDUCATION
LAWS AND REGULATIONS**

(2016 Supplement)

This supplement contains information only and is not legal advice. We recommend that you consult with legal counsel to determine how any statute or regulation provided herein may apply to your specific facts and circumstances.

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INTRODUCTION

The purpose of **The Green Book . . . ® of Special Education Laws and Regulations**, published in 2015, is to offer a single reference tool that contains the current law on both the federal and state level. Specifically, Part I of the book—the federal law—provides the full text of selected provisions of the IDEA, its regulations (and appendices), along with Section 504 and its regulations. Part II contains selected provisions of California statutes directing the provision of special education to students within the state, as well as the regulations issued by the California Department of Education implementing those statutes. We have also included certain provisions of the California Education Code and Code of Regulations applicable to all pupils. Finally, the book also contains an Index to assist in locating and cross-referencing specific provisions of federal and state law.

The 2016 supplement contains updates to the 2015 book, taking into account revisions to both the federal and state statutes (including the 2016 California legislative session) that were enacted, issued or amended since the date of publication. For those statutes and regulations that were amended, the changed provisions appear in bold and are underlined for ease of reference. All changes that appear in this supplement will be incorporated into the next edition of the book.

It is our sincere hope that the book and supplement help contribute to a better understanding of the laws that govern the provision of education to students with disabilities.

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TABLE OF CONTENTS

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (SELECTED SECTIONS)

CODE OF FEDERAL REGULATIONS IMPLEMENTING THE INDIVIDUALS
WITH DISABILITIES EDUCATION ACT (34 C.F.R. PART 300—ASSISTANCE TO STATES FOR THE
EDUCATION OF CHILDREN WITH DISABILITIES).....

REHABILITATION ACT OF 1973 (SECTION 504)

CALIFORNIA EDUCATION CODE PART 30 – SPECIAL EDUCATION PROGRAMS

CALIFORNIA CODE OF REGULATIONS – TITLE 5. EDUCATION

ADDITIONAL SELECTED RELEVANT PROVISIONS OF CALIFORNIA EDUCATION CODE

ADDITIONAL SELECTED RELEVANT PROVISIONS OF CALIFORNIA CODE OF REGULATIONS

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

[Selected sections]

UNITED STATES CODE TITLE 20 – EDUCATION CHAPTER 33 – EDUCATION OF INDIVIDUALS WITH DISABILITIES

SUBCHAPTER I - GENERAL PROVISIONS

...

20 U.S.C. § 1401 – Definitions

...

(4) Core academic subjects **DELETED**

...

(8) Excess costs

The term *excess costs* means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and which shall be computed after deducting—

(A) amounts received—

(i) under subchapter II;

(ii) under part A of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311 et seq.]; and

(iii) under **part A of title III** of that Act [20 U.S.C. 6811 et seq., 6891 et seq.]; and

(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

...

(10) Highly qualified **DELETED**

...

(18) Limited English proficient

The term *limited English proficient* has the meaning given the term “English learner” in section 8101 of the Elementary and Secondary Education Act of 1965.

...

**SUBCHAPTER II –
ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES**

20 U.S.C. § 1411 - Authorization; allotment; use of funds; authorization of appropriations

...

(e) State-level activities

...

(2) Other State-level activities

(A) State-level activities

(i) In general

Except as provided in clause (iii), for the purpose of carrying out State-level activities, each State may reserve for each of the fiscal years 2005 and 2006 not more than 10 percent from the amount of the State's allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

(ii) Small State adjustment Notwithstanding clause (i) and except as provided in clause (iii), in the case of a State for which the maximum amount reserved for State administration is not greater than \$850,000, the State may reserve for the purpose of carrying out State-level activities for each of the fiscal years 2005 and 2006, not more than 10.5 percent from the amount of the State's allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, such State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

(iii) Exception

If a State does not reserve funds under paragraph (3) for a fiscal year, then—

(I) in the case of a State that is not described in clause (ii), for fiscal year 2005 or 2006, clause (i) shall be applied by substituting “9.0 percent” for “10 percent”; and

(II) in the case of a State that is described in clause (ii), for fiscal year 2005 or 2006, clause (ii) shall be applied by substituting “9.5 percent” for “10.5 percent”.

(B) Required activities

Funds reserved under subparagraph (A) shall be used to carry out the following activities:

(i) For monitoring, enforcement, and complaint investigation.

(ii) To establish and implement the mediation process required by section 1415 (e) of this title, including providing for the cost of mediators and support personnel.

(C) Authorized activities

Funds reserved under subparagraph (A) may be used to carry out the following activities:

- (i) For support and direct services, including technical assistance, personnel preparation, and professional development and training.
- (ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process.
- (iii) To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.
- (iv) To improve the use of technology in the classroom by children with disabilities to enhance learning.
- (v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities.
- (vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of children with disabilities to postsecondary activities.
- (vii) To assist local educational agencies in meeting personnel shortages.
- (viii) To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.
- (ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools.
- (x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with **section 1201 of the Elementary and Secondary Education Act of 1965.**
- (xi) To provide technical assistance to schools and local educational agencies, and direct services, including direct **including direct student services described in section 1003A(c)(3) of the Elementary and Secondary Education Act of 1965 to children with disabilities, to schools or local educational agencies implementing comprehensive support and improvement activities or targeted support and improvement activities under section 1111(d) of the Elementary and Secondary Education Act of 1965 on the basis of consistent underperformance of the disaggregated subgroup of children with disabilities,** including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement **based on the challenging academic standards described in section 1111(b)(1) of such Act.**

...

20 U.S.C. § 1412 – State eligibility

(a) In general

A State is eligible for assistance under this subchapter for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

...

(14) Personnel qualifications

(A) In general

The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this subchapter are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(B) Related services personnel and paraprofessionals

The qualifications under subparagraph (A) include qualifications for related services personnel and paraprofessionals that—

- (i) are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;
- (ii) ensure that related services personnel who deliver services in their discipline or profession meet the requirements of clause (i) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
- (iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this subchapter to be used to assist in the provision of special education and related services under this subchapter to children with disabilities.

(C) Qualifications for special education teachers

The qualifications described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches elementary school, middle school, or secondary school: **(i) has obtained full State Certification as a special education teacher (including participating in an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in section 2005.56(a)(2)(ii) of title 34, Code of Professional Regulations, as such section was in effect on November 28, 2008, or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except with respect to any teacher teaching in a public charter school who shall meet the requirements set forth in the State's public charter school law; (ii) has not had special education certification or licensure requirements waived on an emergency, temporary or provisional basis; and (iii) holds at least a bachelor's degree.**

(D) Policy

In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain **personnel who meet the applicable requirements described in this paragraph** to provide special education and related services under this subchapter to children with disabilities.

(E) Rule of construction

Notwithstanding any other individual right of action that a parent or student may maintain under this subchapter, nothing in this paragraph shall be construed to create a right of action on behalf of an individual student for the failure of a particular State educational agency or local educational agency staff person **to meet the applicable requirements described in this**

paragraph, or to prevent a parent from filing a complaint about staff qualifications with the State educational agency as provided for under this subchapter.

(15) Performance goals and indicators

The State—

(A) has established goals for the performance of children with disabilities in the State that—

(i) promote the purposes of this chapter, as stated in section 1400 (d) of this title;

(ii) are the same as **the State’s long-term goals and measurements of interim progress for children with disabilities under section 1111(c)(4)(A)(i) of the Elementary and Secondary Education Act of 1965**;

(iii) address graduation rates and dropout rates, as well as such other factors as the State may determine; and

(iv) are consistent, to the extent appropriate, with any other goals and standards for children established by the State;

(B) has established performance indicators the State will use to assess progress toward achieving the goals described in subparagraph (A), **including measurements of interim progress by children with disabilities under section 1111(c)(4)(A)(ii)**; and

(C) will annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A), which may include elements of the reports required under section 6311 (h) of this title.

(16) Participation in assessments

(A) In general

All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 6311 of this title, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

(B) Accommodation guidelines

The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.

(C) Alternate assessments

(v) In general

The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (A) with accommodations as indicated in their respective individualized education programs.

(vi) Requirements for alternate assessments

The guidelines under clause (i) shall provide for alternate assessments that—

(I) are aligned with **challenging State academic content standards under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965 and alternate academic achievement standards under section 1111(b)(1)(E) of such Act**; and

(II) if the State has adopted alternate academic achievement standards permitted **under section 1111(b)(1)(E) of the Elementary and Secondary Education Act of 1965**.

(vii) Conduct of alternate assessments The State conducts the alternate assessments described in this subparagraph.

(D) Reports

The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(viii) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.

(ix) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).

(x) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).

(xi) The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.

(E) Universal design

The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design principles in developing and administering any assessments under this paragraph.

...

20 U.S.C. § 1413 - Local educational agency eligibility

(a) In general

A local educational agency is eligible for assistance under this subchapter for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets each of the following conditions:

...

(3) Personnel development

The local educational agency shall ensure that all personnel necessary to carry out this subchapter are appropriately and adequately prepared, subject to the requirements of section 1412(a)(14) and section 2102(b) of the Elementary and Secondary Education Act of 1965.

...

20 U.S.C. § 1414 - Evaluations, eligibility determinations, individualized education programs, and educational placements

...

(b) Evaluation procedures

...

(5) Special rule for eligibility determination

In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is—

(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 6368 (3) of this title), **as such section was in effect on the day before the enactment of the Every Student Succeeds Act;**

(B) lack of instruction in math; or

(C) limited English proficiency.

**CODE OF FEDERAL REGULATIONS
IMPLEMENTING
THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

**TITLE 34 – EDUCATION
CHAPTER III – OFFICE OF SPECIAL EDUCATION AND
REHABILITATIVE SERVICES, DEPARTMENT OF EDUCATION
PART 300 – ASSISTANCE TO STATES FOR THE
EDUCATION OF CHILDREN WITH DISABILITIES**

...

**SUBPART B - State Eligibility
GENERAL**

...

ADDITIONAL ELIGIBILITY REQUIREMENTS

...

34 C.F.R. § 300.160 Participation in assessments.

(a) General. A State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

(b) Accommodation guidelines.

(1) A State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.

(2) The State's (or, in the case of a district-wide assessment, the LEA's) guidelines must—

(i) Identify only those accommodations for each assessment that do not invalidate the score; and

(ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.

(c) Alternate assessments.

(1) A State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.

(2) For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must provide for alternate assessments that—

(i) Are aligned with the State's challenging academic content standards and challenging student academic achievement standards;

(ii) If the State has adopted modified academic achievement standards permitted in 34 CFR 200.1(e), measure the achievement of children with disabilities meeting the State's criteria under § 200.1(e)(2) against those standards; and

(iii) **Except as provided in paragraph (c)(2)(ii) of this section, a State's alternate assessments, if any, must measure the achievement of children with disabilities against the State's grade-level academic achievement standards, consistent with 34 CFR 206(a)(2)(ii)(A).**

(3) Consistent with 34 CFR 200.1(e), a State may not adopt modified academic achievement standards for any students with disabilities under section 602(3) of the Act.

(d) Explanation to IEP Teams. A State (or in the case of a district-wide assessment, an LEA) must provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based **on alternate academic** achievement standards, including any effects of State or local policies on the student's education resulting from taking an alternate assessment based on **alternate academic** achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

(e) Inform parents. A State (or in the case of a district-wide assessment, an LEA) must ensure that parents of students selected to be assessed based on **alternate academic** achievement standards are informed that their child's achievement will be measured based on **alternate academic** achievement standards.

(f) Reports. An SEA (or, in the case of a district-wide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.

(2) The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards.

(3) The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards **in school years prior to 2015-2016**.

(4) The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.

(5) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards **(prior to 2015-2016)**, and alternate assessments based on alternate academic achievement standards if—

(i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and

(ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

(g) Universal design. An SEA (or, in the case of a district-wide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.

(Authority: 20 U.S.C. 1412(a)(16))

[72 FR 17781, Apr. 9, 2007; 80 FR 50785, Aug. 21, 2015]

REHABILITATION ACT OF 1973 (SECTION 504)

UNITED STATES CODE TITLE 29 – LABOR CHAPTER 16 – VOCATIONAL REHABILITATION AND OTHER REHABILITATION OF SERVICES

GENERAL PROVISIONS

SUBCHAPTER V – Rights and Advocacy

29 U.S.C. §794 - Nondiscrimination under Federal grants and programs

...

(b) "Program or activity" defined

For the purposes of this section, the term *program or activity* means all of the operations of-

(1)

(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)

(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 8101 of the Elementary and Secondary Education Act of 1965), system of career and technical education, or other school system;

(3)

(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship-

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance.

CALIFORNIA EDUCATION CODE

PART 30 - SPECIAL EDUCATION PROGRAMS

CHAPTER 1. GENERAL PROVISIONS

...

ARTICLE 3.9. Qualifications for Special Education Teachers

...

Ed. Code § 56058.

Special education teachers providing instruction and educational services under this part shall meet the same *highly qualified* requirements, as defined in Section 1401(10) of Title 20 of the United States Code, and in Section 300.18 of Title 34 of the Code of Federal Regulations, and personnel qualifications described in Section 1412(a)(14) of Title 20 of the United States Code, and in Section 300.156 of Title 34 of the Code of Federal Regulations.

(Amended by Stats. 2007, Ch. 454, Sec. 9. Effective October 10, 2007.)

Ed. Code § 56059.

(a) This part does not create a right of action on behalf of an individual with exceptional needs or class of pupils for failure of a state or local educational agency employee to be highly qualified.

(b) In accordance with Section 300.156(e) of Title 34 of the Code of Federal Regulations, nothing in this part prevents a parent from filing a complaint with the department under Section 56500.2, and under Sections 300.151 to 300.153, inclusive, of Title 34 of the Code of Federal Regulations, about staff qualifications.

(Amended by Stats. 2007, Ch. 454, Sec. 10. Effective October 10, 2007.)

(NOTE: The federal Every Student Succeeds Act (“ESSA”) removed the "highly qualified teacher" requirement contained in the IDEA at 20 U.S.C. § 1412 (a)(14)(C). ESSA amended 20 U.S.C. § 1412 (a)(14)(C) to now requires that a special education teacher in the State who teaches elementary school, middle school, or secondary school: (1) has obtained full State certification as a special education teacher (including participating in an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in section 2005.56(a)(2)(ii) of title 34, Code of Federal Regulations, as such section was in effect on November 28, 2008), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except with respect to any teacher teaching in a public charter school who shall meet the requirements set forth in the State’s public charter school law; (2) has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and (3) holds at least a bachelor’s degree. (ESSA § 9214(d)(2)(A)(i).)

CHAPTER 4. IDENTIFICATION AND REFERRAL, ASSESSMENT, INSTRUCTIONAL PLANNING, IMPLEMENTATION, AND REVIEW

ARTICLE 1. Identification and Referral

...

Ed. Code § 56305.

- (a) On or before July 1, 2018, the department shall develop a manual providing guidance to local educational agencies on identifying, assessing, supporting, and reclassifying English learners who may qualify for special education services and pupils with disabilities who may be classified as English learners.
- (b) The goal of the manual shall be to provide guidance, for voluntary use by local educational agencies, charter schools, and the state special schools, on evidence-based and promising practices for the identification, assessment, support, and reclassification of these pupils and to promote a collaborative approach among general education teachers, special education teachers, school administrators, paraprofessionals, other involved personnel, and parents in determining the most appropriate academic placements and services for these pupils.
- (c) In developing the manual, the department shall do both of the following:
- (1) Review manuals and other resources produced on this topic by local educational agencies, special education administrators, other organizations, other states, and the federal government.
 - (2) Establish and consult with a stakeholder group comprised of experts and practitioners. These individuals shall have expertise or experience in either special education, English learner education, or in both.
- (d) **The manual shall include all of the following topics:**
- (1) Guidance for accurately identifying English learners who may have disabilities and accurately classifying pupils with disabilities as English learners, including guidance on avoiding overidentification and underidentification of these pupils for special education services and in different disability categories and in different grade spans.
 - (2) Information on second language acquisition and progress, including guidance on distinguishing between language acquisition and disabilities.
 - (3) Examples of prereferral strategies, early interventions, and early intervening strategies specifically addressing the needs of English learners, including examples of early interventions for pupils in preschool and the primary grades who are acquiring foundational language and literacy skills.
 - (4) Guidance on referral processes.
 - (5) Guidance on the use of assessments, including the use of multiple measures as well as assessment accommodations for both language and disability, including assessment accommodations in primary languages.
 - (6) Guidance on the consideration of extrinsic factors, such as vision, hearing, and health, in the identification of pupils.
 - (7) Guidance on the development of individualized education programs for English learners, including the composition of individualized education program teams.
 - (8) Guidance on how to support the language and content learning needs of English learners who may have disabilities, including how to do so in the least restrictive environment, as described in Section 56040.1, and in a manner that enables access to the core curriculum.
 - (9) Guidance regarding placement or continued placement in bilingual programs and on providing services and instruction in primary languages.

- (10) Guidance on special education exit and English learner reclassification processes for English learners with disabilities.
- (11) Information on the role of culture and acculturation, to the extent it is related to the process of identifying English learners for special education services.
- (12) Guidance for working with families, including guidance on meeting the needs of nonnative English speaking parents, guardians, and educational rights holders in special education proceedings.
- (13) Examples of any plans or processes used by local educational agencies for continuous evaluation and systemic review and guidance on sharing information between special education and English learner programs within local educational agencies for the purpose of tracking effectiveness, to the extent permitted under state and federal law regarding the privacy of pupil information.
- (14) State and federal law, regulations, and guidance related to the rights of English learners and pupils with disabilities.
- (e) All guidance in the manual shall be consistent with state and federal law, regulations, and guidance regarding English learners and special education.
- (f) The manual shall be written for ease of use by educators. The department is encouraged to incorporate features such as flowcharts, checklists, sample forms, and case examples.
- (g) The department shall post the manual on its Internet Web site and on its professional development Internet Web site.
- (h) For purposes of this section, the following terms have the following meanings:
- (1) “English learners” includes pupils who have been classified as English learners and those who may later be classified as English learners.
- (2) “Pupils with disabilities” includes pupils who have been or may later be identified as individuals with exceptional needs, as defined in Section 56026, including pupils who have been or may later be identified as having a low incidence disability, as defined in Section 56026.5, or a severe disability, as defined in Section 56030.5, and also includes pupils with disabilities who may be later classified as English learners.
- (i)(1)(A) In implementing this section, the department, with input from the stakeholder group, shall develop a plan for the dissemination of the manual and the means of providing professional development on the content of the manual. The plan shall address how the state and local educational agencies can collaborate in meeting both of these objectives in a cost-effective manner. (B) Implementation of the plan developed pursuant to subparagraph (A) shall be contingent upon an appropriation for that purpose in the annual Budget Act or another enacted statute.
- (2) The plan shall be submitted to the state board, the Department of Finance, the Legislative Analyst’s Office, the California Collaborative for Educational Excellence, the Advisory Commission on Special Education, and the appropriate policy and fiscal committees of the Legislature on or before July 1, 2018.
- (j) It is the intent of the Legislature that this section be funded with federal funds, to the extent permissible. (Added by Stats. 2016, Ch. 579 (AB 2785). Effective January 1, 2017.)

ARTICLE 2. Assessment

. . .

Ed. Code § 56325.

- (a)
- (1) As required by subclause (I) of clause (i) of subparagraph (C) of paragraph (2) of subsection (d) of Section 1414 of Title 20 of the United States Code, the following shall apply to special education programs for individuals with exceptional needs who transfer from district to district within the state. In the case of an individual with exceptional needs who has an individualized education program and

transfers into a district from a district not operating programs under the same local plan in which he or she was last enrolled in a special education program within the same academic year, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved individualized education program, in consultation with the parents, for a period not to exceed 30 days, by which time the local educational agency shall adopt the previously approved individualized education program or shall develop, adopt, and implement a new individualized education program that is consistent with federal and state law.

(2) In the case of an individual with exceptional needs who has an individualized education program and transfers into a district from a district operating programs under the same special education local plan area of the district in which he or she was last enrolled in a special education program within the same academic year, the new district shall continue, without delay, to provide services comparable to those described in the existing approved individualized education program, unless the parent and the local educational agency agree to develop, adopt, and implement a new individualized education program that is consistent with federal and state law.

(3) As required by subclause (II) of clause (i) of subparagraph (C) of paragraph (2) of subsection (d) of Section 1414 of Title 20 of the United States Code, the following shall apply to special education programs for individuals with exceptional needs who transfer from an educational agency located outside the State of California to a district within California. In the case of an individual with exceptional needs who transfers from district to district within the same academic year, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved individualized education program, in consultation with the parents, until the local educational agency conducts an assessment pursuant to paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code, if determined to be necessary by the local educational agency, and develops a new individualized education program, if appropriate, that is consistent with federal and state law.

(b)

(1) To facilitate the transition for an individual with exceptional needs described in subdivision (a), the new school in which the individual with exceptional needs enrolls shall take reasonable steps to promptly obtain the pupil's records, including the individualized education program and supporting documents and any other records relating to the provision of special education and related services to the pupil, from the previous school in which the pupil was enrolled, pursuant to paragraph (2) of subsection (a) of Section 99.31 of Title 34 of the Code of Federal Regulations.

(2) The previous school in which the individual with exceptional needs was enrolled shall take reasonable steps to promptly respond to the request from the new school.

(c) If whenever a pupil described in subdivision (a) was placed and residing in a residential nonpublic, nonsectarian school, prior to transferring to a district in another special education local plan area, and this placement is not eligible for funding pursuant to Section 56836.165, the special education local plan area that contains the district that made the residential nonpublic, nonsectarian school placement is responsible for the funding of the placement, including related services, for the remainder of the school year. An extended year session is included in the school year in which the session ends.

(Amended by Stats. 2015, Ch. 386, Sec. 25. Effective January 1, 2016.)

...

Ed. Code § 56326.5.

(e) The department's Deaf and Hard of Hearing unit and the California School for the Deaf shall jointly select language developmental milestones from existing standardized norms, pursuant to the process specified in subdivision (d), for purposes of developing a resource for use by parents to monitor and track deaf and hard-of-hearing children's expressive and receptive language acquisition and developmental stages toward English literacy. This parent resource shall:

- (1) Include the language developmental milestones selected pursuant to the process specified in subdivision (d).
- (2) Be appropriate for use, in both content and administration, with deaf and hard-of-hearing children from birth to five years of age, inclusive, who use both or one of the languages of American Sign Language (ASL) and English. For purposes of this section, "English" includes spoken English, written English, or English with the use of visual supplements.
- (3) Present the developmental milestones in terms of typical development of all children, by age range.
- (4) Be written for clarity and ease of use by parents.
- (5) Be aligned to the department's existing infant, toddler, and preschool guidelines, the existing instrument used to assess the development of children with disabilities pursuant to federal law, and state standards in English language arts.
- (6) Make clear that the parent resource is not a formal assessment of language and literacy development, and that a parent's observations of their children may differ from formal assessment data presented at an individualized family service plan (IFSP) or individualized education program (IEP) meeting.
- (7) Make clear that a parent may bring the parent resource to an IFSP or IEP meeting for purposes of sharing their observations about their child's development.

(f) The department shall also select existing tools or assessments for educators that can be used to assess the language and literacy development of deaf and hard-of-hearing children. These educator tools or assessments:

- (1) Shall be in a format that shows stages of language development.
- (2) Shall be selected for use by educators to track the development of deaf and hard-of-hearing children's expressive and receptive language acquisition and developmental stages toward English literacy.
- (3) Shall be selected from existing instruments or assessments used to assess the development of all children from birth to five years of age, inclusive.
- (4) Shall be appropriate, in both content and administration, for use with deaf and hard-of-hearing children.
- (5) May be used, in addition to the assessment required by federal law, by the child's IFSP or IEP team, as applicable, to track deaf and hard-of-hearing children's progress, and to establish or modify IFSP or IEP plans.
- (6) May reflect the recommendations of the advisory committee established pursuant to subdivision (e).

(c)(1) The department shall disseminate the parent resource developed pursuant to subdivision (a) to parents and guardians of deaf and hard-of-hearing children, and, pursuant to federal law, shall disseminate the educator tools and assessments selected pursuant to subdivision (b) to local educational agencies for use in the development and modification of IFSP and IEP plans, and shall provide materials and training on its use, to assist deaf and hard-of-hearing children in becoming linguistically ready for kindergarten using both or one of the languages of ASL and English.

(2) If a deaf or hard-of-hearing child does not demonstrate progress in expressive and receptive language skills, as measured by one of the educator tools or assessments selected pursuant to subdivision (b), or by the existing instrument used to assess the development of children with disabilities pursuant to federal law, the child's IFSP or IEP team, as applicable, shall, as part of the process required by federal law, explain in detail the reasons why the child is not meeting the language developmental milestones or progressing towards them, and shall recommend specific strategies, services, and programs that shall be provided to assist the child's success toward English literacy.

(d)(1) On or before March 1, 2017, the department shall provide the advisory committee established pursuant to subdivision (e) with a list of existing language developmental milestones from existing standardized norms, along with any relevant information held by the department regarding those language developmental

milestones for possible inclusion in the parent resource developed pursuant to subdivision (a). These language developmental milestones shall be aligned to the department's existing infant, toddler, and preschool guidelines, the existing instrument used to assess the development of children with disabilities pursuant to federal law, and the state standards in English language arts.

(2) On or before June 1, 2017, the advisory committee shall recommend language developmental milestones for selection pursuant to subdivision (a).

(3) On or before June 30, 2017, the department shall inform the advisory committee of which language developmental milestones were selected.

(e)(1) The Superintendent shall establish an ad hoc advisory committee for purposes of soliciting input from experts on the selection of language developmental milestones for children who are deaf or hard of hearing that are equivalent to those for children who are not deaf or hard of hearing, for inclusion in the parent resource developed pursuant to subdivision (a). The advisory committee may also make recommendations on the selection and administration of the educator tools or assessments selected pursuant to subdivision (b).

(2) The advisory committee shall consist of 13 volunteers, the majority of whom shall be deaf or hard of hearing, and all of whom shall be within the field of education for the deaf and hard of hearing. The advisory committee shall include all of the following:

(A) One parent of a child who is deaf or hard of hearing who uses the dual languages of ASL and English.

(B) One parent of a child who is deaf or hard of hearing who uses only spoken English, with or without visual supplements.

(C) One credentialed teacher of deaf and hard-of-hearing pupils who use the dual languages of ASL and English.

(D) One credentialed teacher of deaf and hard-of-hearing pupils from a state certified nonpublic, nonsectarian school.

(E) One expert who researches language outcomes for deaf and hard-of-hearing children using ASL and English.

(F) One expert who researches language outcomes for deaf and hard-of-hearing children using spoken English, with or without visual supplements.

(G) One credentialed teacher of deaf and hard-of-hearing pupils whose expertise is in curriculum and instruction in ASL and English.

(H) One credentialed teacher of deaf and hard-of-hearing pupils whose expertise is in curriculum and instruction in spoken English, with or without visual supplements.

(I) One advocate for the teaching and use of the dual languages of ASL and English.

(J) One advocate for the teaching and use of spoken English, with or without visual supplements.

(K) One early intervention specialist who works with deaf and hard-of-hearing infants and toddlers using the dual languages of ASL and English.

(L) One credentialed teacher of deaf and hard-of-hearing pupils whose expertise is in ASL and English language assessment.

(M) One speech pathologist from spoken English, with or without the use of visual supplements.

(f) The advisory committee established pursuant to subdivision (e) may also advise the department or its contractor on the content and administration of the existing instrument used to assess the development of children with disabilities pursuant to federal law, as used to assess deaf and hard-of-hearing children's language and literacy development to ensure the appropriate use of that instrument with those children, and may make recommendations regarding future research to improve the measurement of progress of deaf and hard-of-hearing children in language and literacy.

(g) Commencing on or before July 31, 2017, and on or before each July 31 thereafter, the department shall annually produce a report, using existing data reported in compliance with the federally required state performance plan on pupils with disabilities, that is specific to language and literacy development of deaf and hard-of-hearing children from birth to five years of age, inclusive, including those who are deaf or hard of

hearing and have other disabilities, relative to their peers who are not deaf or hard of hearing. The department shall make this report available on its Internet Web site.

(h) All activities of the department in implementing this section shall be consistent with federal law regarding the education of children with disabilities and federal law regarding the privacy of pupil information.

(i) For the purpose of this section, the term "language developmental milestones" means milestones of development aligned with the existing state instrument used to meet the requirements of federal law for the assessment of children from birth to five years of age, inclusive.

(j) This section shall apply only to children from birth to five years of age, inclusive.

(k) Implementation of this section is subject to an appropriation being made for purposes of this section in the annual Budget Act or another statute.

(Added by Stats. 2015, Ch. 652, Sec. 1. Effective January 1, 2016.)

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Ed. Code § 56334.

The state board shall include "phonological processing" in the description of basic psychological processes in Section 3030 of Title 5 of the California Code of Regulations.

(Added by Stats. 2015, Ch. 647, Sec. 1. Effective January 1, 2016.)

Ed. Code § 56335.

(a) The Superintendent shall develop program guidelines for dyslexia to be used to assist regular education teachers, special education teachers, and parents to identify and assess pupils with dyslexia, and to plan, provide, evaluate, and improve educational services to pupils with dyslexia. For purposes of this section, "educational services" means an evidence-based, multisensory, direct, explicit, structured, and sequential approach to instructing pupils who have dyslexia.

(b) The program guidelines shall include, but shall not be limited to, characteristics typical of pupils with dyslexia and strategies for their remediation, as well as information to assist educators in distinguishing between characteristics of dyslexia and characteristics of normal growth and development.

(c) In developing program guidelines pursuant to subdivision (a), the Superintendent shall consult with teachers, school administrators, other educational professionals, medical professionals, parents, and other professionals involved in the identification and education of pupils with dyslexia.

(d) The Superintendent shall complete the program guidelines in time for use no later than the beginning of the 2017-18 academic year.

(e) The Superintendent shall disseminate the program guidelines through the department's Internet Web site and provide technical assistance regarding their use and implementation to parents, teachers, school administrators, and faculty members in teacher training programs of institutions of higher education.

(Added by Stats. 2015, Ch. 647, Sec. 2. Effective January 1, 2016.)

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ARTICLE 2.5. Eligibility Criteria for Special Education and Related Services on the Basis of Language and Speech Disorder or Specific Learning Disabilities

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Ed. Code § 56337.5.

(a) A pupil who is assessed as being dyslexic and meets eligibility criteria specified in Section 56337 and **paragraph 10 of subdivision (b)** of Section 3030 of Title 5 of the California Code of Regulations for the

federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 and following) category of specific learning disabilities is entitled to special education and related services.

(b) If a pupil who exhibits the characteristics of dyslexia or another related reading dysfunction is not found to be eligible for special education and related services pursuant to subdivision (a), the pupil's instructional program shall be provided in the regular education program.

(c) It is the intent of the Legislature that the program guidelines developed pursuant to Section 2 of Chapter 1501 of the Statutes of 1990, for specific learning disabilities, including dyslexia and other related disorders, be available for use by teachers and parents in order for them to have knowledge of the strategies that can be utilized with pupils for the remediation of the various types of specific learning disabilities.

(Amended by Stats. 2016, Ch. 186. Amendments effective January 1, 2017.)

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ARTICLE 2.6. Attention Deficit and Hyperactivity Disorders

Ed. Code § 56339.

(a) A pupil whose educational performance is adversely affected by a suspected or diagnosed attention deficit disorder or attention deficit hyperactivity disorder and demonstrates a need for special education and related services by meeting eligibility criteria specified in paragraph (4) or (9) of subdivision (b) of Section 3030 of Title 5 of the California Code of Regulations or Section 56337 and subdivision (j) of Section 3030 of Title 5 of the California Code of Regulations for the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 and following) categories of *other health impairments*, *serious emotional disturbance*, or *specific learning disabilities*, is entitled to special education and related services.

(b) If a pupil with an attention deficit disorder or attention deficit hyperactivity disorder is not found to be eligible for special education and related services pursuant to subdivision (a), the pupil's instructional program shall be provided in the regular education program.

(c) It is the intent of the Legislature that local educational agencies promote coordination between special education and regular education programs to ensure that all pupils, including those with attention deficit disorders or attention deficit hyperactivity disorders, receive appropriate instructional interventions.

(d) It is further the intent of the Legislature that regular education teachers and other personnel be trained to develop an awareness about attention deficit disorders and attention deficit hyperactivity disorders and the manifestations of those disorders, and the adaptations that can be implemented in regular education programs to address the instructional needs of pupils having these disorders.

(Amended by Stats. 2016, Ch. 186. Amendments effective January 1, 2017.)

ARTICLE 4. Implementation

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Ed. Code § 56366.

It is the intent of the Legislature that the role of a nonpublic, nonsectarian school or agency shall be maintained and continued as an alternative special education service available to a local educational agency and parents.

(a) The master contract for nonpublic, nonsectarian school or agency services shall be developed in accordance with the following provisions:

(1) The master contract shall specify the general administrative and financial agreements, including teacher-to-pupil ratios, between the nonpublic, nonsectarian school or agency and the local educational agency to provide the special education and designated instruction and services, as well as

transportation specified in each pupil's individualized education program. The administrative provisions of the contract also shall include procedures for recordkeeping and documentation, and the maintenance of school records by the contracting local educational agency to ensure that appropriate high school graduation credit is received by each pupil. The contract may allow for partial or full-time attendance at the nonpublic, nonsectarian school.

(2)

(A) The master contract shall include an individual services agreement for each pupil placed by a local educational agency that will be negotiated for the length of time for which nonpublic, nonsectarian school or agency special education and designated instruction and services are specified in the pupil's individualized education program.

(B) The master contract shall include a description of the process being utilized by the local educational agency to oversee and evaluate placements in nonpublic, nonsectarian schools, as required by federal law. This description shall include a method for evaluating whether each pupil is making appropriate educational progress. At least once every year, the local educational agency shall do all of the following and, to the extent possible, the following shall be conducted as part of the development and provision of an individualized education program:

(i) Evaluate the educational progress of each pupil placed in a nonpublic, nonsectarian school, including all state assessment results pursuant to the requirements of Section 52052.

(ii) Consider whether or not the needs of the pupil continue to be best met at the nonpublic, nonsectarian school and whether changes to the individualized education program of the pupil are necessary, including whether the pupil may be transitioned to a public school setting. This consideration shall be made at the meeting required by subdivision (d) of Section 56343.

(C) In the case of a nonpublic, nonsectarian school that is owned, operated by, or associated with a licensed children's institution, the master contract shall include a method for evaluating whether the nonpublic, nonsectarian school is in compliance with the mandate set forth in Section 56366.9 of this code and subdivision (b) of Section 1501.1 of the Health and Safety Code.

(3) (A) Changes in educational instruction, services, or placement provided under contract may only be made on the basis of revisions to a pupil's individualized education program.

(B) At any time during the term of the contract or individual services agreement, the parent, the nonpublic, nonsectarian school or agency, or the local educational agency may request a review of a pupil's individualized education program by the individualized education program team. Changes in the administrative or financial agreements of the master contract that do not alter the individual services agreement that outlines each pupil's educational instruction, services, or placement may be made at any time during the term of the contract as mutually agreed by the nonpublic, nonsectarian school or agency and the local educational agency.

(4) The master contract or individual services agreement may be terminated for cause. The cause shall not be the availability of a public class initiated during the period of the contract unless the parent agrees to the transfer of the pupil to a public school program. To terminate the contract either party shall give 20 days' notice.

(5) The nonpublic, nonsectarian school or agency shall provide all services specified in an individualized education program, unless the nonpublic, nonsectarian school or agency and the local educational agency agree otherwise in the contract or individual services agreement.

(6) Related services provided pursuant to a nonpublic, nonsectarian agency master contract shall only be provided during the period of a pupil's regular or extended school year program, or both, unless otherwise specified by the pupil's individualized education program.

(7) The nonpublic, nonsectarian school or agency shall report attendance of pupils receiving special education and designated instruction and services, as defined by Section 46307, for purposes of submitting a warrant for tuition to each contracting local educational agency.

(8)

(A) A nonpublic, nonsectarian school is subject to the alternative accountability system developed pursuant to Section 52052 in the same manner as public schools and each pupil placed in the nonpublic, nonsectarian school by a local educational agency shall be tested by qualified staff of the nonpublic, nonsectarian school in accordance with that accountability program. The test results shall be reported by the nonpublic, nonsectarian school to the department.

(B) Beginning with the 2006-07 school year testing cycle, each nonpublic, nonsectarian school shall determine its **California Assessment of Student Performance and Progress** period subject to subdivisions (b) and (c) of Section 60640. The nonpublic, nonsectarian school shall determine this period based on completion of 85 percent of the instructional year at that nonpublic, nonsectarian school, plus and minus 10 days, resulting in a 21-day period. Each nonpublic, nonsectarian school shall notify the district of residence of a pupil enrolled in the school of its testing period. Staff at the nonpublic, nonsectarian school who administer the assessments shall attend the regular testing training sessions provided by the district of residence. If staff from a nonpublic, nonsectarian school have received training from one local educational agency, that training **shall** be sufficient for all local educational agencies that send pupils to the nonpublic, nonsectarian school. The district of residence shall order testing materials for its pupils that have been placed in the nonpublic, nonsectarian school. The board shall adopt regulations to facilitate the distribution of and collection of testing materials.

(9) With respect to a nonpublic, nonsectarian school, the school shall prepare a school accountability report card in accordance with Section 33126.

(b) (1) The master contract or individual services agreement shall not include special education transportation provided through the use of services or equipment owned, leased, or contracted by a local educational agency for pupils enrolled in the nonpublic, nonsectarian school or agency unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency.

(2) The Superintendent shall withhold 20 percent of the amount apportioned to a local educational agency for costs related to the provision of nonpublic, nonsectarian school or agency placements if the Superintendent finds that the local educational agency is in noncompliance with this subdivision. This amount shall be withheld from the apportionments in the fiscal year following the Superintendent's finding of noncompliance. The Superintendent shall take other appropriate actions to prevent noncompliant practices from occurring and report to the Legislature on those actions.

(c)

(1) If a pupil is enrolled in a nonpublic, nonsectarian school or agency with the approval of the local educational agency prior to agreement to a contract or individual services agreement, the local educational agency shall issue a warrant, upon submission of an attendance report and claim, for an amount equal to the number of creditable days of attendance at the per diem tuition rate agreed upon prior to the enrollment of the pupil. This provision shall be allowed for 90 days during which time the contract shall be consummated.

(2) If after 60 days the master contract or individual services agreement has not been finalized as prescribed in paragraph (1) of subdivision (a), either party may appeal to the county superintendent of schools, if the county superintendent **of schools** is not participating in the local plan involved in the nonpublic, nonsectarian school or agency contract, or the Superintendent, if the county superintendent **of schools** is participating in the local plan involved in the contract, to negotiate the contract. Within 30 days of receipt of this appeal, the county superintendent or the superintendent, or his or her designee, shall mediate the formulation of a contract, which shall be binding upon both parties.

(d) A master contract for special education and related services provided by a nonpublic, nonsectarian school or agency may not be authorized under this part, unless the school or agency has been certified as meeting those standards relating to the required special education and specified related services and facilities for individuals with exceptional needs. The certification shall result in the **nonpublic, nonsectarian** school or agency receiving approval to educate pupils under this part for a period no longer than 18 months from the date of the initial approval.

(e) By September 30, 1998, the procedures, methods, and regulations for the purposes of contracting for nonpublic, nonsectarian school and agency services pursuant to this section and for reimbursement pursuant to Sections **56836.165** and 56836.20 shall be developed by the Superintendent in consultation with statewide organizations representing providers of special education and designated instruction and services. The regulations shall be established by rules and regulations issued by the board.

(Amended by Stats. 2015, Ch. 386, Sec. 26. Effective January 1, 2016.)

...

Ed. Code § 56366.3.

(a) No contract for special education and related services provided by a nonpublic, nonsectarian agency shall be reimbursed by the state pursuant to Article 4 (commencing with Section 56836.20) of Chapter 7.2 and **Section 56836.165** if the contract covers special education and related services, administration, or supervision by an individual who is or was an employee of a contracting local educational agency within the last 365 days. Former contracting agency personnel may be employed by a nonpublic, nonsectarian agency if the personnel were involuntarily terminated or laid off as part of necessary staff reductions from the local educational agency.

(b) This section does not apply to any person who is able to provide designated instruction and services during the extended school year because he or she is otherwise employed for up to 10 months of the school year by the local educational agency.

(Amended by Stats. 2015, Ch. 386, Sec. 27. Effective January 1, 2016.)

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CHAPTER 4.3. FAMILY EMPOWERMENT CENTERS ON DISABILITY

...

Ed. Code § 56415.

The department shall include a link on the sample procedural safeguards maintained on its Internet Web site to the page on its Internet Web site that lists family empowerment centers. The department shall include this link on all sample procedural safeguard forms for which it maintains translations.

(Added by Stats. 2016, Chapter 835 (SB 884). **Effective January 1, 2017.**)

CHAPTER 4.4. EARLY EDUCATION FOR INDIVIDUALS WITH EXCEPTIONAL NEEDS

...

Ed. Code § 56426.6.

(a) Early education services shall be provided by a local educational agency through a transdisciplinary team consisting of a group of professionals from various disciplines, agencies, and parents who shall share their expertise and services to provide appropriate services for infants and their families. Each team member shall be responsible for providing and coordinating early education services for one or more infants and their families, and shall serve as a consultant to other team members and as a provider of appropriate related services to other infants in the program.

(b) Credentialed personnel with expertise in vision or hearing impairments shall be made available by the local educational agency to early education programs serving infants identified in accordance **with paragraphs (2), (5), or (13) of subdivision (b)** of Section 3030 of Title 5 of the California Code of Regulations, and shall be the primary providers of services under those programs whenever possible.

(c) Transdisciplinary teams may include, but need not be limited to, qualified persons from the following disciplines:

- (1) Early childhood special education.
- (2) Speech and language therapy.
- (3) Nursing, with a skill level not less than that of a registered nurse.
- (4) Social work, psychology, or mental health.
- (5) Occupational therapy.
- (6) Physical therapy.
- (7) Audiology.
- (8) Parent-to-parent support.

(d) A person who is authorized by the local educational agency to provide early education or related services to infants shall have appropriate experience in normal and atypical infant development and an understanding of the unique needs of families of infants with exceptional needs, or, absent that experience and understanding, shall undergo a comprehensive training plan for that purpose, which plan shall be developed and implemented as part of the staff development component of the local plan for early education services.

(Amended by Stats. 2016, Ch. 186. **Amendments effective January 1, 2017.**)

...

**CHAPTER 4.45. SPECIAL EDUCATION PROGRAMS FOR
INDIVIDUALS WITH EXCEPTIONAL NEEDS BETWEEN
THE AGES OF THREE AND FIVE YEARS, INCLUSIVE**

...

Ed. Code § 56441.5.

Appropriate instructional adult-to-child ratios for group services shall be dependent on the needs of the child. However, because of the unique needs of individuals with exceptional needs between the ages of three and five years, inclusive, who require special education and related services, the number of children per instructional adult shall be less than ratios set forth in **subdivision (c) of Section 8264.8** for young children in a regular preschool program. Group services provided to individuals with exceptional needs between the ages of three and five years, inclusive, identified as severely disabled pursuant to Section 56030.5 shall not exceed an instructional adult-to-child ratio of one to five.

(Amended by Stats. 2015, Ch. 386, Sec. 28. **Amendments effective January 1, 2016.**)

...

Ed. Code § 56441.11.

(a) Notwithstanding any other law or regulation, the special education eligibility criteria in subdivision (b) shall apply to preschool children, between the ages of three and five years.

(b) A preschool child, between the ages of three and five years, qualifies as a child who needs early childhood special education services if the child meets the following criteria:

(1) Is identified as having one of the following disabling conditions, as defined in Section 300.8 of Title 34 of the Code of Federal Regulations, or an established medical disability, as defined in subdivision (d):

(A) Autism.

(B) Deaf-blindness.

(C) Deafness.

(D) Hearing impairment.

(E) Intellectual disability.

(F) Multiple disabilities.

(G) Orthopedic impairment.

(H) Other health impairment.

(I) **Emotional** disturbance. [Note: Changed from "Serious emotional disturbance" to correspond with IDEA regulations.]

(J) Specific learning disability.

(K) Speech or language impairment in one or more of voice, fluency, language and articulation.

(L) Traumatic brain injury.

(M) Visual impairment.

(N) Established medical disability.

(2) Needs specially designed instruction or services as defined in Sections 56441.2 and 56441.3.

(3) Has needs that cannot be met with modification of a regular environment in the home or school, or both, without ongoing monitoring or support as determined by an individualized education program team.

(4) Meets eligibility criteria specified in Section 3030 of Title 5 of the California Code of Regulations.

(c) A child is not eligible for special education and services if the child does not otherwise meet the eligibility criteria and his or her educational needs are due primarily to:

(1) Unfamiliarity with the English language.

(2) Temporary physical disabilities.

(3) Social maladjustment.

(4) Environmental, cultural, or economic factors.

(d) For purposes of this section, *established medical disability* means a disabling medical condition or congenital syndrome that the individualized education program team determines has a high predictability of requiring special education and services.

(e) When standardized tests are considered invalid for children between the ages of three and five years, alternative means, including scales, instruments, observations, and interviews, shall be used as specified in the assessment plan.

(f) In order to implement the eligibility criteria in subdivision (b), the Superintendent shall do all of the following:

(1) Provide for training in developmentally appropriate practices, alternative assessment, and placement options.

(2) Provide a research-based review for developmentally appropriate application criteria for young children.

(3) Provide program monitoring for appropriate use of the eligibility criteria.

(g) If legislation is enacted mandating early intervention services to infants and toddlers with disabilities pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), the Superintendent shall reconsider the eligibility criteria for preschool children, between the ages of three and five years, and recommend appropriate changes to the Legislature.

(Amended by Stats. 2016, Ch. 186. Amendments effective January 1, 2017.)

...

CHAPTER 4.7. INTERAGENCY AGREEMENTS

Ed. Code § 56475.

(a) The Superintendent and the directors of the State Department of Health Care Services, the State Department of Developmental Services, the State Department of Social Services, the Department of Rehabilitation, the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, and the Employment Development Department shall develop written interagency agreements or adopt joint regulations that include responsibilities, in accordance with Section 1412(a)(12) of Title 20 of the United States Code and Section 300.154 of Title 34 of the Code of Federal Regulations, for the provision of special education and related services to individuals with exceptional needs in the State of California.

(b) The Superintendent shall develop interagency agreements with other state and local public agencies, as deemed necessary by the Superintendent, to carry out the provisions of state and federal law.

(c) **[Removed]**

(Amended by Stats. 2016, Ch. 186. Amendments effective January 1, 2017.)

CALIFORNIA CODE OF REGULATIONS

TITLE 5. EDUCATION

DIVISION 1. CALIFORNIA DEPARTMENT OF EDUCATION

CHAPTER 3. INDIVIDUALS WITH EXCEPTIONAL NEEDS

SUBCHAPTER 1. SPECIAL EDUCATION

...

ARTICLE 3.1. Individuals with Exceptional Needs

5 C.C.R. § 3030. Eligibility Criteria.

...

(b) The disability terms used in defining an individual with exceptional needs are as follows:

...

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

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

(B) In determining whether a pupil has a specific learning disability, the public agency may consider whether a pupil has a severe discrepancy between intellectual ability and achievement in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning. The decision as to whether or not a severe discrepancy exists shall take into account all relevant material which is available on the pupil. No single score or product of scores, test or procedure shall be used as the sole criterion for the decisions of the IEP team as to the pupil's eligibility for special education. In determining the existence of a severe discrepancy, the IEP team shall use the following procedures:

1. When standardized tests are considered to be valid for a specific pupil, a severe discrepancy is demonstrated by: first, converting into common standard scores, using a mean of 100 and standard deviation of 15, the achievement test score and the intellectual ability test score to be compared; second, computing the difference between these common standard scores; and third, comparing this computed difference to the standard criterion which is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests. A computed difference which equals or exceeds this standard criterion, adjusted by one standard error of measurement, the adjustment not to exceed 4 common standard score points, indicates a severe discrepancy when such discrepancy is corroborated by other assessment data which

may include other tests, scales, instruments, observations and work samples, as appropriate.

2. When standardized tests are considered to be invalid for a specific pupil, the discrepancy shall be measured by alternative means as specified on the assessment plan.

3. If the standardized tests do not reveal a severe discrepancy as defined in subdivisions 1. or 2. above, the IEP team may find that a severe discrepancy does exist, provided that the team documents in a written report that the severe discrepancy between ability and achievement exists as a result of a disorder in one or more of the basic psychological processes. The report shall include a statement of the area, the degree, and the basis and method used in determining the discrepancy. The report shall contain information considered by the team which shall include, but not be limited to:

- (i)** Data obtained from standardized assessment instruments;
- (ii)** Information provided by the parent;
- (iii)** Information provided by the pupil's present teacher;
- (iv)** Evidence of the pupil's performance in the regular and/or special education classroom obtained from observations, work samples, and group test scores;
- (v)** Consideration of the pupil's age, particularly for young children; and
- (vi)** Any additional relevant information.

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

(C) Whether or not a pupil exhibits a severe discrepancy as described in subdivision (b)(10)(B) above, a pupil may be determined to have a specific learning disability if:

1. The pupil does not achieve adequately for the pupil's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the pupil's age or State-approved grade-level standards:

- (i)** Oral expression.
- (ii)** Listening comprehension.
- (iii)** Written expression.
- (iv)** Basic reading skill.
- (v)** Reading fluency skills.
- (vi)** Reading comprehension.
- (vii)** Mathematics calculation.
- (viii)** Mathematics problem solving, and

2.

- (i)** The pupil does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in subdivision (b)(10)(C)(1) of this section when using a process based on the pupil's response to scientific, research-based intervention; or
- (ii)** The pupil exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 C.F.R. sections 300.304 and 300.305; and

3. The findings under subdivisions (b)(10)(C)(1) and (2) of this section are not primarily the result of:

- (i)** A visual, hearing, or motor disability;
- (ii)** Intellectual disability;
- (iii)** Emotional disturbance;
- (iv)** Cultural factors;
- (v)** Environmental or economic disadvantage; or
- (vi)** Limited English proficiency.

4. To ensure that underachievement in a pupil suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group making the decision must consider:

- (i)** Data that demonstrate that prior to, or as a part of, the referral process, the pupil was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- (ii)** Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the pupil's parents.

5. In determining whether a pupil has a specific learning disability, the public agency must ensure that the pupil is observed in the pupil's learning environment in accordance with 34 C.F.R. section 300.310. In the case of a child of less than school age or out of school, a qualified professional must observe the child in an environment appropriate for a child of that age. The eligibility determination must be documented in accordance with 34 C.F.R. section 300.311.

ADDITIONAL SELECTED RELEVANT PROVISIONS OF CALIFORNIA EDUCATION CODE

PART 27 - PUPILS

CHAPTER 6. PUPIL RIGHTS AND RESPONSIBILITIES

ARTICLE 1. Suspension or Expulsion

Ed. Code § 48900.

A pupil shall not be suspended from school or recommended for expulsion, unless the superintendent of the school district or the principal of the school in which the pupil is enrolled determines that the pupil has committed an act as defined pursuant to any of subdivisions (a) to (r), inclusive:

(a)

(1) Caused, attempted to cause, or threatened to cause physical injury to another person.

(2) Willfully used force or violence upon the person of another, except in self-defense.

(b) Possessed, sold, or otherwise furnished a firearm, knife, explosive, or other dangerous object, unless, in the case of possession of an object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.

(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

(d) Unlawfully offered, arranged, or negotiated to sell a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and either sold, delivered, or otherwise furnished to a person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

(e) Committed or attempted to commit robbery or extortion.

(f) Caused or attempted to cause damage to school property or private property.

(g) Stole or attempted to steal school property or private property.

(h) Possessed or used tobacco, or products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit the use or possession by a pupil of his or her own prescription products.

(i) Committed an obscene act or engaged in habitual profanity or vulgarity.

(j) Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.

(k)

(1) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

(2) Except as provided in Section 48910, a pupil enrolled in kindergarten or any of grade 1 to 3, inclusive, shall not be suspended for any of the acts enumerated in this subdivision, and this subdivision shall not constitute grounds for a pupil enrolled in kindergarten or any of grades 1 to 12, inclusive, to be recommended for expulsion. This paragraph shall become inoperative on July 1, 2018, unless a later enacted statute that becomes operative before July 1, 2018, deletes or extends that date.

- (l) Knowingly received stolen school property or private property.
- (m) Possessed an imitation firearm. As used in this section, *imitation firearm* means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.
- (n) Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code.
- (o) Harassed, threatened, or intimidated a pupil who is a complaining witness or a witness in a school disciplinary proceeding for purposes of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both.
- (p) Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.
- (q) Engaged in, or attempted to engage in, hazing. For purposes of this subdivision, *hazing* means a method of initiation or preinitiation into a pupil organization or body, whether or not the organization or body is officially recognized by an educational institution, **that** is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil. For purposes of this subdivision, *hazing* does not include athletic events or school-sanctioned events.
- (r) Engaged in an act of bullying. For purposes of this subdivision, the following terms have the following meanings:

(1) *Bullying* means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a pupil or group of pupils as defined in Section 48900.2, 48900.3, or 48900.4, directed toward one or more pupils that has or can be reasonably predicted to have the effect of one or more of the following:

- (A) Placing a reasonable pupil or pupils in fear of harm to that pupil's or those pupils' person or property.
- (B) Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health.
- (C) Causing a reasonable pupil to experience substantial interference with his or her academic performance.
- (D) Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.

(2)

(A) *Electronic act* means the creation and transmission originated on or off the schoolsite, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:

- (i) A message, text, sound, **video** or image.
- (ii) A post on a social network Internet Web site, including, but not limited to:
 - (I) Posting to or creating a burn page. *Burn page* means an Internet Web site created for the purpose of having one or more of the effects listed in paragraph (1).
 - (II) Creating a credible impersonation of another actual pupil for the purpose of having one or more of the effects listed in paragraph (1). *Credible impersonation* means to knowingly and without consent impersonate a pupil for the purpose of bullying the pupil and such that another pupil would reasonably believe, or has reasonably believed, that the pupil was or is the pupil who was impersonated.
 - (III) Creating a false profile for the purpose of having one or more of the effects listed in paragraph (1). *False profile* means a profile of a fictitious

pupil or a profile using the likeness or attributes of an actual pupil other than the pupil who created the false profile.

(iii) **An act of cyber sexual bullying.**

(I) For purposes of this clause, “cyber sexual bullying” means the dissemination of, or the solicitation or incitement to disseminate, a photograph or other visual recording by a pupil to another pupil or to school personnel by means of an electronic act that has or can be reasonably predicted to have one or more of the effects described in subparagraphs (A) to (D), inclusive, of paragraph (1). A photograph or other visual recording, as described above, shall include the depiction of a nude, semi-nude, or sexually explicit photograph or other visual recording of a minor where the minor is identifiable from the photograph, visual recording, or other electronic act.

(II) For purposes of this clause, “cyber sexual bullying” does not include a depiction, portrayal, or image that has any serious literary, artistic, educational, political, or scientific value or that involves athletic events or school-sanctioned activities.

(B) Notwithstanding paragraph (1) and subparagraph (A), an electronic act shall not constitute pervasive conduct solely on the basis that it has been transmitted on the Internet or is currently posted on the Internet.

(3) *Reasonable pupil* means a pupil, including, but not limited to, an exceptional needs pupil, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with his or her exceptional needs.

(s) A pupil shall not be suspended or expelled for any of the acts enumerated in this section unless the act is related to a school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to a school activity or school attendance that occur at any time, including, but not limited to, any of the following:

- (1)** While on school grounds.
- (2)** While going to or coming from school.
- (3)** During the lunch period whether on or off the campus.
- (4)** During, or while going to or coming from, a school-sponsored activity.

(t) A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion, pursuant to this section, except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (a).

(u) As used in this section, *school property* includes, but is not limited to, electronic files and databases.

(v) For a pupil subject to discipline under this section, a superintendent of the school district or principal may use his or her discretion to provide alternatives to suspension or expulsion that are age appropriate and designed to address and correct the pupil’s specific misbehavior as specified in Section 48900.5.

(w) It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a pupil who is truant, tardy, or otherwise absent from school activities.

(Amended by Stats. 2014, Ch. 87, Sec. 1. Effective January 1, 2016; **further amended by AB 2536 and AB 2212, with respect to changes in the definition of an electronic act, to be effective January 1, 2017.**)

Ed. Code § 48900.9.

(a) The superintendent of a school district, the principal of a school, or the principal's designee may refer a victim of, witness to, or other pupil affected by, an act of bullying, as defined in paragraph (1) of subdivision (r) of Section 48900, committed on or after January 1, 2015, to the school counselor, school psychologist, social worker, child welfare attendance personnel, school nurse, or other school support service personnel for case management, counseling, and participation in a restorative justice program, as appropriate.

(b) A **pupil** who has engaged in an act of bullying, as defined in paragraph (1) of subdivision (r) of Section 48900, may also be referred to the school counselor, school psychologist, social worker, child welfare attendance personnel, or other school support service personnel for case management and counseling, or participation in a restorative justice program, pursuant to Section 48900.5.

(Amended by Stats. 2015, Ch. 303, Sec. 104. Effective January 1, 2016.)

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CHAPTER 6.5. PUPIL RECORDS

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ARTICLE 4. Rights of Parents

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Ed. Code § 49069.5.

(a) The Legislature finds and declares all of the following:

(1) The mobility of pupils in foster care often disrupts their educational experience.

(2) Efficient transfer procedures and transfer of pupil records is a critical factor in the swift placement of foster children in educational settings.

(3) Pupils who have had contact with the juvenile justice system are often denied credit or partial credit earned during enrollment in juvenile court schools. Delays in school enrollment and loss of earned credit can result in improper class or school placement, denial of special education services, and school dropout.

(b) The proper and timely transfer between schools of pupils in foster care is the responsibility of both the local educational agency, including the county office of education for pupils in foster care who are enrolled in juvenile court schools, and the county placing agency, which includes the county probation department.

(c) As soon as the county placing agency or county office of education becomes aware of the need to transfer a pupil in foster care out of his or her current school, the county placing agency shall contact the appropriate person at the local educational agency of the pupil. The county placing agency or county office of education shall notify the local educational agency of the date that the pupil will be leaving the school and request that the pupil be transferred out.

(d) Upon receiving a transfer request from a county placing agency or notification of enrollment from the new local educational agency, the local educational agency receiving the transfer request or notification shall,

within two business days, transfer the pupil out of school and deliver the educational information and records of the pupil to the next educational placement.

(e) As part of the transfer process described under subdivisions (c) and (d), the local educational agency shall compile the complete educational record of the pupil including a determination of seat time, full or partial credits earned, current classes and grades, immunization and other records, and, if applicable, a copy of the pupil's plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794 et seq.) or individualized education program adopted pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(f) The local educational agency shall assign the duties listed in this section to a person competent to handle the transfer procedure and aware of the specific educational recordkeeping needs of homeless, foster, and other transient children who transfer between schools.

(g) The local educational agency shall ensure that if the pupil in foster care is absent from school due to a decision to change the placement of a pupil made by a court or placing agency, the grades and credits of the pupil will be calculated as of the date the pupil left school, and no lowering of grades will occur as a result of the absence of the pupil under these circumstances.

(h) The local educational agency shall ensure that if the pupil in foster care is absent from school due to a verified court appearance or related court ordered activity, no lowering of his or her grades will occur as a result of the absence of the pupil under these circumstances.

(i)(1) A complaint of noncompliance with the requirements of this section may be filed with the local educational agency under the Uniform Complaint Procedures set forth in Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations.

(2) A complainant not satisfied with the decision of a local educational agency may appeal the decision to the department pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations and shall receive a written decision regarding the appeal within 60 days of the department's receipt of the appeal.

(3) If a local educational agency finds merit in a complaint, or the Superintendent finds merit in an appeal, the local educational agency shall provide a remedy to the affected pupil.

(4) Information regarding the requirements of this section shall be included in the annual notification distributed to, among others, pupils, parents or guardians of pupils, employees, and other interested parties pursuant to Section 4622 of Title 5 of the California Code of Regulations.

(j) For the purposes of this section, the following definitions apply:

(1) *County placing agency* means a county social services department or county probation department.

(2) *Local educational agency* means a school district, county office of education, a charter school participating as a member of a special education local plan area, or a special education local plan area.

(3) *Pupil in foster care* means a child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code.

(Amended by Stats. 2015, Ch. 772, Sec. 4. Effective January 1, 2016.)

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ARTICLE 5. Privacy of Pupil Records

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Ed. Code § 49073.1

(a) A local educational agency may, pursuant to a policy adopted by its governing board or, in the case of a charter school, its governing body, enter into a contract with a third party for either or both of the following purposes:

- (1)** To provide services, including cloud-based services, for the digital storage, management, and retrieval of pupil records.
- (2)** To provide digital educational software that authorizes a third-party provider of digital educational software to access, store, and use pupil records in accordance with the contractual provisions listed in subdivision (b).

(b) A local educational agency that enters into a contract with a third party for purposes of subdivision (a) shall ensure the contract contains all of the following:

- (1)** A statement that pupil records continue to be the property of and under the control of the local educational agency.
- (2)** Notwithstanding paragraph (1), a description of the means by which pupils may retain possession and control of their own pupil-generated content, if applicable, including options by which a pupil may transfer pupil-generated content to a personal account.
- (3)** A prohibition against the third party using any information in the pupil record for any purpose other than those required or specifically permitted by the contract.
- (4)** A description of the procedures by which a parent, legal guardian, or eligible pupil may review personally identifiable information in the pupil's records and correct erroneous information.
- (5)** A description of the actions the third party will take, including the designation and training of responsible individuals, to ensure the security and confidentiality of pupil records. Compliance with this requirement shall not, in itself, absolve the third party of liability in the event of an unauthorized disclosure of pupil records.
- (6)** A description of the procedures for notifying the affected parent, legal guardian, or eligible pupil in the event of an unauthorized disclosure of the pupil's records.
- (7)** (A) A certification that a pupil's records shall not be retained or available to the third party upon completion of the terms of the contract and a description of how that certification will be enforced.
(B) The requirements provided in subparagraph (A) shall not apply to pupil-generated content if the pupil chooses to establish or maintain an account with the third party for the purpose of storing that content pursuant to paragraph (2).
- (8)** A description of how the local educational agency and the third party will jointly ensure compliance with the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g).
- (9)** A prohibition against the third party using personally identifiable information in pupil records to engage in targeted advertising.

(c) In addition to any other penalties, a contract that fails to comply with the requirements of this section shall be rendered void if, upon notice and a reasonable opportunity to cure, the noncompliant party fails to come into compliance and cure any defect. Written notice of noncompliance may be provided by any party to the contract. All parties subject to a contract voided under this subdivision shall return all pupil records in their possession to the local educational agency.

(d) For purposes of this section, the following terms have the following meanings:

(1) "Deidentified information" means information that cannot be used to identify an individual pupil.

(2) "Eligible pupil" means a pupil who has reached 18 years of age.

(3) "Local educational agency" includes school districts, county offices of education, and charter schools.

(4) "Pupil-generated content" means materials created by a pupil, including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, and account information that enables ongoing ownership of pupil content. "Pupil-generated content" does not include pupil responses to a standardized assessment where pupil possession and control would jeopardize the validity and reliability of that assessment.

(5) (A) "Pupil records" means both of the following: (i) Any information directly related to a pupil that is maintained by the local educational agency. (ii) Any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other local educational agency employee. (B) "Pupil records" does not mean any of the following: (i) Deidentified information, including aggregated deidentified information, used by the third party to improve educational products for adaptive learning purposes, and for customizing pupil learning. (ii) Deidentified information, including aggregated deidentified information, used to demonstrate the effectiveness of the operator's products in the marketing of those products. (iii) Deidentified information, including aggregated deidentified information, used for the development and improvement of educational sites, services, or applications.

(6) "Third party" refers to a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records.

(e) If the provisions of this section are in conflict with the terms of a contract in effect before January 1, 2015, the provisions of this section shall not apply to the local educational agency or the third party subject to that agreement until the expiration, amendment, or renewal of the agreement.

(f) Nothing in this section shall be construed to impose liability on a third party for content provided by any other third party.

(Amended by Stats 2015, Ch. 386, Sec. 20. Effective January 1, 2016.)

ADDITIONAL SELECTED RELEVANT PROVISIONS OF CALIFORNIA CODE OF REGULATIONS

TITLE 2. ADMINISTRATION DIVISION 9. JOINT REGULATIONS FOR PUPILS WITH DISABILITIES CHAPTER 1. INTERAGENCY RESPONSIBILITIES FOR PROVIDING SERVICES TO PUPILS WITH DISABILITIES

ARTICLE 1. General Provisions

2 C.C.R. § 60000. Scope.

The provisions of this chapter shall implement Chapter 26.5, commencing with Section 7570, of Division 7 of Title 1 of the Government Code relating to interagency responsibilities for providing services to pupils with disabilities. This chapter applies to the **State Department of Health Care Services** and their designated local agencies, and the California Department of Education, school districts, county offices, and special education local plan areas.

The intent of this chapter is to assure conformity with the federal Individuals with Disabilities Education Act or IDEA, Sections 1400 et seq. of Title 20 of the United States Code, and its implementing regulations, including Sections 76.1 et seq. and 300.1 et seq. of Title 34 of the Code of Federal Regulations. Thus, provisions of this chapter shall be construed as supplemental to, and in the context of, federal and state laws and regulations relating to interagency responsibilities for providing services to pupils with disabilities.

(Note: Authority cited: Section 7587, Government Code. **Section 20, Health and Safety Code. Reference: Sections 7570 and 12803, Government Code.**)

2 C.C.R. § 60010. Education Definitions.

(a) Words shall have their usual meaning unless the context or a definition of a word or phrase indicates a different meaning. Words used in their present tense shall include the future tense; words in the singular form shall include the plural form; and use of the masculine gender shall include the feminine gender.

(b) *Administrative designee* means the individual who fulfills the role as described in paragraph (4) of subsection (b) of Section 56341 of the Education Code and paragraph (4) of subsection (a) of **Section 300.321** of Title 34 of the Code of Federal Regulations.

(c) *Assessment* means an individual evaluation of a pupil in all areas of suspected disability in accordance with Sections 56320 through 56329 **and Section 56337** of the Education Code and Sections **300.300 through 300.311** of Title 34 of the Code of Federal Regulations.

(d) *Assessment plan* means a written statement that delineates how a pupil will be evaluated and meets the requirements of Section 56321 of the Education Code.

(e) *Confidentiality* means the restriction of access to verbal and written communications, including clinical, medical and educational records, to appropriate parties under **Section 99.30 of Title 34** of the Code of Federal Regulations, Section **300.610** et seq. of Title 34 of the Code of Federal Regulations, Sections 827, 4514, 5328, and 10850 of the Welfare and Institutions Code, and Sections 49060 through 49079 of the Education Code.

(f) *County superintendent of schools* means either an appointed or elected official who performs the duties specified in Chapter 2 (commencing with Section 1240) of Part 2 of Title 1 of the Education Code.

(g) *Day* means a calendar day pursuant to Section 56023 of the Education Code.

(h) *Designated instruction and services* means specially designed instruction and related services described in subsection (b) of Section 56361 and subsection (b) of Section 56363 of the Education Code, and Section 3051

of Title 5 of the California Code of Regulations, as may be required to assist a pupil with a disability to benefit educationally.

(i) *Individualized education program*, hereinafter *IEP*, means a written statement developed in accordance with Section 7575 of the Government Code, Sections 56341 and 56342 of the Education Code **and Sections 300.320 through 300.328** of Title 34 of the Code of Federal Regulations, which contains the elements specified in Section 56345 of the Education Code and Section **300.320** of Title 34 of the Code of Federal Regulations.

(j) *Individualized education program team*, hereinafter *IEP team*, means a group which is constituted in accordance with Section 56341 of the Education Code and Title 20, United States Code Section 1414(d)(1)(B).

(k) *Local education agency*, hereinafter *LEA*, means a school district or county office of education which provides special education and related services.

(l) *Local interagency agreement* means a written document negotiated between two or more public agencies which defines each agency's role and responsibilities for providing services to pupils with disabilities and for facilitating the coordination of these services in accordance with the provisions of **Section 56195.7(d)** of the Education Code.

(m) *Necessary to benefit from special education* means a service that assists the pupil with a disability in progressing toward the goals and objectives listed in the IEP in accordance with subsection (c) of Section 7572 and paragraph (2) of subsection (a) of Section 7575 of the Government Code.

(n) *Nonpublic, nonsectarian agency* means a private, nonsectarian establishment or individual that is certified by the California Department of Education and that provides related services and/or designated instruction and services necessary for a pupil with a disability to benefit educationally from the pupil's IEP. It does not include an organization or agency that operates as a public agency or offers public service, including but not limited to, a state or local agency, or an affiliate of a state or local agency, including a private, nonprofit corporation established or operated by a state or local agency, a public university or college, or a public hospital.

(o) *Nonpublic, nonsectarian school* means a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an IEP, employs at least one full-time teacher who holds an appropriate credential authorizing special education services, and is certified by the California Department of Education. It does not include an organization or agency that operates as a public agency or offers public services, including but not limited to, a state or local agency, or an affiliate of a state or local agency, including a private, nonprofit corporation established or operated by a state or local agency or a public university or college.

(p) *Parent* includes any person having legal custody of a child. *Parent*, in addition, includes any adult pupil for whom no guardian or conservator has been appointed and the person having custody of a minor if neither the parent nor legal guardian can be notified of the educational action under consideration. *Parent* also includes a parent surrogate who has been appointed in accordance with Section 7579.5 of the Government Code and Section 56050 of the Education Code. The term *Parent* does not include the state or any political subdivision of government.

(q) *Pupil* or *Pupil with a disability* means those students, birth through 21 years of age, as defined in **Section 300.8** of Title 34 of the Code of Federal Regulations, who meet the requirements of Section 56026 of the Education Code and Sections 3030 and 3031 of Title 5 of the California Code of Regulations and who, because of their impairments, need special education and related services as defined in **subsections (26) and (29)** of Section 1401 of Title 20 of the United States Code. This term includes handicapped children, children with disabilities and individuals with exceptional needs as defined in Section 56026 of the Education Code. The determination that an individual is a pupil with a disability is made only by an IEP team pursuant to Section 56342 of the Education Code.

(r) *Qualified* means that a person has met federal and state certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services, or, in the absence of such requirements, meets the state-education-agency-approved or recognized requirements and adheres to the standards of professional practice established in federal and state law or regulation, including the standards contained in the California Business and Professions Code.

(s) *Related services* means those services that are necessary for a pupil with a disability to benefit from his or her special education program in accordance with paragraph Title 20, United States Code Section 1401(26).

(t) *Special education* means specially designed instruction and related services to meet the unique needs of a pupil with a disability, as described in Section 56031 of the Education Code and **Section 300.39** of Title 34 of the Code of Federal Regulations.

(u) *Special education local plan* means a plan developed in accordance with **Sections 56205 through 56213** of the Education Code which identifies each participating LEA's roles and responsibilities for the provision of special education and related services within the service area.

(v) *Special education local plan area*, hereinafter *SELPA*, means the service area covered by a special education local plan, and is the governance structure created under any of the planning options of **Section 56205** of the Education Code.

(Note: Authority cited: Section 7587, Government Code. **Reference: Sections 7570 and 7579.5, Government Code; Section 5328, Welfare and Institutions Code; Sections 1240, 49060-49079, 56023, 56026, 56028, 56031, 56034, 56035, 56050, 56205-56208, 56320-56329 and 56341, Education Code; Clovis Unified School District (1990, Ninth Circuit) 903 F.2d 635; Section 1401, Title 20, United States Code; and Sections 300.8, 300.39, 300.320-300.328, 300.300-300.311 and 300.610, Title 34, Code of Federal Regulations.**)

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ARTICLE 7. Exchange of Information Between Education and Social Services

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2 C.C.R. § 60510. Prior Notification.

(a) **The court, regional center for the developmentally disabled, or public agency other than an educational agency shall notify the SELPA director, in writing or by telephone, prior to placing a pupil with a disability in any of the following facilities:**

- (1) **A “certified family home” as defined in Welfare and Institutions Code Section 11400(c).**
- (2) **A “community care facility” as defined in Health and Safety Code Section 1502(a). For the purposes of this chapter, a community care facility means those facilities listed and defined in this article that provide 24-hour residential care to children.**
- (3) **A “community treatment facility” as defined in Health and Safety Code Section 1502(a)(8)..**
- (4) **A “foster family agency” as defined in Welfare and Institutions Code Section 11400(g) and Health and Safety Code Section 1502(a)(4).**
- (5) **A “foster family home” as defined in Health and Safety Code Sections 1502(a)(5) or 1505.2. For the purposes of this Chapter, a foster family home includes a small family home pursuant to Education Code Section 56155.5(b), or the approved home of a relative.**
- (6) **A “group home” as defined in Health and Safety Code Section 1502(a)(13).**

(7) A “licensed children's institution” as defined in Education Code Section 56155.5(a). For the purposes of this Chapter, a licensed children's institution means the following community care facilities licensed by the California Department of Social Services: a group home, foster family agency, and community treatment facility.

(8) A “small family home” as defined in Health and Safety Code Section 1502(a)(6).

(b) When placing a pupil in a facility listed in subdivision (a), the court, regional center for the developmentally disabled, or public agency other than an educational agency shall provide the following relevant information to the SELPA director in writing within 10 days of placement

- (1)** The name of the last school attended, the contact person at that school, and the available educational records, including the current IEP.
- (2)** A copy or summary of the most recent psychological and medical records relevant to educational planning which are maintained by the agency.
- (3)** The name, address and telephone number of the parent who has the responsibility to represent the pupil in educational matters and to sign the IEP for special education, designated instruction and services and related services.
- (4)** The name, address and telephone number of the individual with designated responsibility to sign for consent for non-emergency medical services.
- (5)** The name of the administrator/designee, address, telephone number, and licensing status of a home under consideration for the pupil.
- (6)** A description of any special considerations related to transporting the pupil.
- (7)** Signed consents by the parent to exchange information relevant to IEP planning and individual program planning.
- (8)** When an agency makes an emergency placement to protect the physical, mental health or safety of a pupil, the agency shall furnish the SELPA director the required information within three days after the placement.

(c) The SELPA director shall provide the placing agency with information about the availability of an appropriate special education program in the SELPA in which the home is located. This should occur within seven days of receipt of the notice of placement.

- (1)** If no appropriate special education placements exist within the SELPA, and the placement options are home instruction or in a public or nonpublic facility located in another SELPA, the placing agency should make every effort to place the pupil in another SELPA that has appropriate available residential and educational programs.
- (2)** When the agency places a pupil in a licensed children's institution, as defined in this Chapter which has an on-grounds, certified, nonpublic, nonsectarian school, the pupil may attend the education program only if the SELPA's IEP team has determined that there is no appropriate public education program in the community and that the on-grounds program is appropriate and can implement the pupil's IEP.
- (3)** When the IEP team makes the determination that the on-grounds program is appropriate, the LEA may then contract for educational services with the nonpublic school.

(Note: Authority cited: Section 7587, Government Code. Reference: Sections 7579 and 7580, Government Code; and Section 56156, Education Code.)

ARTICLE 8. Procedural Safeguards

2 C.C.R. § 60550. Due Process Hearings.

(a) Due process hearing procedures apply to the resolution of disagreements between a parent and a public agency regarding the proposal or refusal of a public agency to initiate or change the identification, assessment, educational placement, or the provision of special education and related services to the pupil.

(b) Upon receiving a request for a due process hearing regarding the services provided or refused by another agency, the Superintendent of Public Instruction or designee shall send the state and local agency involved a copy of the hearing request, the name of the assigned mediator, and the date of the mediation meeting in accordance with Section 56503 of the Education Code. Nothing in this section shall preclude any party from waiving mediation.

(c) If the mediator cannot resolve the issues, a state level hearing shall be conducted by a hearing officer in accordance with Section 56505 of the Education Code.

(d) Each agency which is identified by the State Superintendent of Public Instruction or designee as a potentially responsible party and which has been involved in a proposal or refusal to provide a service is responsible for preparing documentation and providing testimony for the hearing officer.

(e) The hearing officer shall be knowledgeable in the laws governing administrative hearings. In addition, the hearing officer shall be knowledgeable about the provisions of Chapter 26.5 of the Government Code and **applicable laws relevant to special education and the California Children's Services Program**. For hearings related to the provision of occupational and/or physical therapy, the hearing officer shall rule according to Government Code Section 7575(a) which specifies:

(1) "Notwithstanding any other provision of law, the State Department of Health Services, or any designated local agency administering the California Children Services, shall be responsible for the provision of medically necessary occupational therapy and physical therapy, as specified by **Article 5**, commencing with Section 123825 et. seq. of the Health and Safety Code, by reason of medical diagnosis and when contained in the pupil's IEP.

(2) Related services or designated instruction and services not deemed to be medically necessary by the State Department of Health Services, which the IEP team determines are necessary in order to assist a pupil to benefit from special education, shall be provided by the LEA by qualified personnel whose employment standards are covered by the Education Code and implementing regulations."

(f) The hearing decision shall be the final administrative determination regarding the provision of educational and related services, and is binding on all parties.

(g) Nothing in this article shall preclude the Department of Social Services from instituting, maintaining and concluding an administrative action to revoke or temporarily suspend a license pursuant to the Community Care Facilities Act, Health and Safety Code Section 1500 et. Seq.

(h) Nothing in this article shall interfere with the discharge of a pupil placed in a community treatment facility who does not meet admission or continuing stay criteria and/or does meet discharge criteria as defined in Welfare and Institutions Code Section 4094 and implementing CCL regulations.

(i) The California Department of Education is fiscally responsible for services provided by the mediator and the hearing officer in response to a parent's request for a due process hearing.

(Note: Authority cited: Section 7587, Government Code; **Section 20, Health and Safety Code. Reference: Section 7586, Government Code; Sections 56501-56507, Education Code;** Corbett v. Regional Center of the East Bay Inc. and Linda McMahon, Director of the Department of Social Services , (1988) 9th Cir. 699 F. Supp. 230; In re Roger S . (1977) 19 Cal.3d. 921; and In re Michael E . (1975) 15 Cal.3d. 183.)

2 C.C.R. § 60560. Compliance Complaints.

Allegations of failure by **an LEA or CCS** to comply with these regulations, shall be resolved pursuant to Chapter 5.1, commencing with Section 4600, of Division 1 of Title 5 of the California Code of Regulations.

(Note: Authority cited: Section 7587, Government Code. Reference: Section 7585, Government Code; and Section 4650, Title 5, California Code of Regulations.)