

SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

Chapter 5

Information on Related Services

From a 13-Chapter Manual

Available by Chapter and in Manual Form

Written by:

Community Alliance for Special Education (CASE)

and

Protection and Advocacy, Inc. (PAI)

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

CASE and PAI will monitor the development of conforming state law and regulations, so that revised state laws and regulations can be incorporated into later supplements and editions of SERR.

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Information on Related Services

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Information on Related Services

1. SEE ALSO CHAPTER 1, QUESTION AND ANSWER 10. What are related services?

Put simply, related services are any services that are necessary to help a student benefit from his special education program. [34 Code of Federal Regulations (C.F.R.) Sec. 300.24(a).] To benefit from special education has generally been interpreted to mean making meaningful progress toward meeting IEP goals and objectives. [*County of San Diego v. California Special Education Hearing Office*, 93 F.3d 1458 (9th Cir. 1996), 24 IDELR 756; *Taylor v. Honig*, 910 F.2d 627 (9th Cir. 1990), 16 EHLR 1138.]

Title 34 C.F.R. Sec. 300.24(a) defines related services as follows:

As used in this part, the term “related services” means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech language pathology and audiology, psychological services, physical and occupational therapy, orientation and mobility services, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

The same regulation further defines some of these services as follows:

- (1) **Audiology** includes:
 - (i) Identification of children with hearing loss;

- (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
 - (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation;
 - (iv) Creation and administration of programs for prevention of hearing loss;
 - (v) Counseling and guidance of students, parents and teachers regarding hearing loss; and
 - (vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- (2) **Counseling services** means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- (3) **Early identification and assessment of disabilities in children** means the implementation of a formal plan for identifying a disability as early as possible in a child's life.
- (4) **Medical services** means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.
- (5) **Occupational therapy:**
- (i) Means services provided by a qualified occupational therapist; and
 - (ii) Includes:
 - (A) Improving, developing or restoring functions impaired or lost through illness, injury or deprivation;
 - (B) Improving ability to perform tasks for independent functioning when functions are impaired or lost;

- (C) Preventing, through early intervention, initial or further impairment or loss of function.
- (6) **Orientation and mobility services:**
 - (i) Means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home and community; and
 - (ii) Includes teaching students the following as appropriate:
 - (A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
 - (B) To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
 - (C) To understand and use remaining vision and distance low vision aids; and
 - (D) Other concepts, techniques and tools.
- (7) **Parent counseling and training** means (i) assisting parents in understanding the special needs of their child; (ii) providing parents with information about child development; (iii) helping parents to acquire the necessary skills that will allow them to support the implementation of the child's IEP or IFSP.
- (8) **Physical therapy** means services provided by a qualified physical therapist.
- (9) **Psychological services** include:
 - (i) Administering psychological and educational tests, and other assessment procedures;

- (ii) Interpreting assessment results;
 - (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
 - (iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and
 - (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
 - (vi) Assisting in developing positive behavioral intervention strategies.
- (10) **Recreation** includes:
- (i) Assessment of leisure function;
 - (ii) Therapeutic recreation services;
 - (iii) Recreation programs in schools and community agencies; and
 - (iv) Leisure education.
- (11) **Rehabilitation counseling services** means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.
- (12) **School health services** means services provided by a qualified school nurse or other qualified person.
- (13) **Social work services in schools** include:
- (i) Preparing a social or developmental history on a child with a disability;
 - (ii) Group and individual counseling with the child and family;

- (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school and community) that affect the child's adjustment in school;
 - (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
 - (v) Assisting in developing positive behavioral intervention strategies.
- (14) **Speech-language pathology services** includes:
- (i) Identification of children with speech or language impairments;
 - (ii) Diagnosis and appraisal of specific speech or language impairments;
 - (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
 - (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
 - (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
- (15) **Transportation** includes:
- (i) Travel to and from school and between schools;
 - (ii) Travel in and around school buildings; and
 - (iii) Specialized equipment (such as special or adapted buses, lifts and ramps), if required to provide special transportation for a child with a disability.

Appendix A to Part 300 – Notice of Interpretation, Question 34 states:

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as nutritional services or service coordination), if they are required to assist a student with a disability to benefit from special education.

Although not specifically identified as a related service, federal law requires that districts ensure that assistive technology devices and/or services are available to special education students who need them as part of their special education or related services or as part of the supplemental aids and services used to assist them in being placed in the least restrictive environment and to receive a FAPE. [34 C.F.R. Sec. 300.308 and 300.346(a)(2)(v).] See Question 42 to 45 below. In addition, state law and, to some extent, federal law, requires that behavioral intervention services be provided to address a child’s behavioral needs and to allow for placement in the least restrictive environment. [5 C.C.R. Sec. 3052; 34 C.F.R. Sec. 300.346(a)(2)(i).] Federal law also requires that a child’s limited English proficiency and language needs, as well as his/her visual or hearing impairments be taken into consideration as those communication needs relate to the child’s individualized education. [34 C.F.R. Sec. 300.346(a)(2)(ii)–(iv).]

2. What is the difference between “Related Services” and “Designated Instruction and Services” (DIS)?

“Designated Instruction and Services” (DIS), is California’s definition of the term “related services.” [California Education Code Section (Cal. Ed. Code Sec.) 56363; 5 C.C.R. Sec. 3051.] California’s definition of DIS basically follows the federal definition of related services, although it is narrower in scope in some respects. However, **a child’s entitlement to special education and related services is a right established under federal law; state law cannot be applied to deny services to which a child would be entitled under federal law.**

3. What does “required to assist a child with a disability to benefit from special education” mean?

This phrase is the key in determining whether a school district is responsible for providing a related service to a student with a disability. A school district does not have to provide a service to a student with a disability just because he will benefit from the service, or even if he requires the service. The service is only “related” if it is necessary to help him benefit from educational instruction. Examples of such situations are given in the questions and answers below.

4. What is an example of a needed service that is not “related” to education?

A student and her family could require social work services because of problems at home, but she is progressing appropriately in school in spite of the problems. The

student needs the service, but not for educational reasons. If she were not performing appropriately in school as a result of family problems, social work services could be “related” to her ability to succeed in school. In that case, the services would be the school district’s responsibility.

5. When can my child get transportation as a related service?

Transportation is a related service when it is necessary in order for a student to benefit from special education. The IEP team must consider how the child’s disability affects the child’s need for transportation, including, determining whether the child’s disability prevents him from using the same transportation provided to nondisabled children or from getting to school in the same manner as nondisabled children. [34 C.F.R. Part 300, Appendix A, Q.33.] Transportation is also available to and from other schools for, perhaps, related services which are not provided at the child’s regular school site. [34 C.F.R. Sec. 300.24(b)(15).]

The California Department of Education (CDE) developed guidelines for use by IEP teams in determining when transportation is needed as a related service. The guidelines, issued November 23, 1993, state in part:

Guidelines for Use by the Individualized Education Program (IEP) Team

... The specific needs of the pupil must be the primary consideration when an IEP team is determining any transportation needs. These may include, but are not limited to:

- (1) **Medical diagnosis and health needs.**
Consideration of whether long bus rides could affect a certain pupil’s health (duration, temperature control, need for services, health emergencies); general ability and/or strength to ambulate/wheel; approximate distance from school or the distance needed to walk or wheel oneself to the school; consideration of pupil needs in inclement or very hot weather, other;
- (2) **Physical accessibility.**
For pupils using wheelchairs who may live close to school or use public transportation, consideration of the physical accessibility of curbs, sidewalks, streets, and public transportation systems;

- (3) **Pupil capacity.**
Consideration of a pupil's capacity to arrive at school on time, to avoid getting lost, to avoid dangerous traffic situations, and to avoid other potentially dangerous or exploitative situations on the way to and from school;
- (4) **Behavior Intervention Plans.**
Behavior intervention plans (5 C.C.R. Sec. 3001) specified by the pupil's IEP and consideration of how to implement such plans while a pupil is being transported;
- (5) **Other transportation needs.**
Mid-day or other transportation needs as required on a pupil's IEP (for example, occupational or physical therapy or mental health services at another site, community based classes, etc.) must also be taken into consideration when the IEP team discusses a pupil's placement and transportation needs...

Transportation Options:

Considering the identified needs of the pupil, transportation options may include, but not be limited to: walking, riding the regular school bus, utilizing available public transportation (any out-of-pocket costs to pupil or parents are reimbursed by the local education agency), riding a special bus from a pick up point, and portal-to-portal special education transportation via a school bus, taxi, reimbursed parent's driving with a parent's voluntary participation, or other mode as determined by the IEP team.

When developing specific IEP goals and objectives related to the pupil's use of public transportation, the IEP team may wish to consider a blend of transportation services as the pupil's needs evolve. Specialized transportation as a related service must be written on the pupil's IEP with specificity and should be approved by the transportation administrator. It is recommended that transportation services be described in sufficient enough detail to inform the parties of how, when and from where to where transportation will be provided and, where arrangements for the reimbursement of parents are required, the amount and frequency of reimbursement.

Suspension from the school bus:

Occasionally pupils receiving special education services are suspended from bus transportation. (Cal. Ed. Code Secs. 48900-48900.5, Grounds for Suspension). The suspension of a pupil receiving special education services from California transportation can constitute a significant change of placement if the district: 1) has been transporting the student; 2) suspends the student from transportation as a disciplinary measure; and 3) does not provide another mode of transportation (Office of Civil Rights, Letter of Finding, Complaint No. 04-89-1236, December 8, 1989).

A significant change in placement requires a meeting of the IEP team to review the pupil's IEP. During the period of any exclusion from bus transportation, pupils must be provided with an alternative form of transportation at no cost to the pupil or parent in order to be assured of having access to the required special education instruction and services [Cal. Ed. Code Sec. 48915.5(j).]

The guidelines do not override the general provisions of federal or state law where federal or state law would require a school district to provide transportation in order for a child to benefit from special education.

6. Can the school district refuse to provide out-of-district transportation for my child?

Where a child is placed at a school outside her own school district pursuant to an IEP, presumably because of the unavailability of an appropriate program within the district, either the child's school district or the district in which the school of attendance is located must provide any necessary transportation. Which district provides the transportation will likely depend on the terms of the interdistrict attendance agreement negotiated by the two districts to allow the child to attend outside her own district. [See Cal. Ed. Code Sec. 46600 et seq.] Where a child's related services are delivered at a site not inside the child's district, transportation must be provided to and from the source of the services. Where a child will attend school within her district, but wishes to be dropped off at a location outside the district after school (such as at a relative's home for childcare or a childcare center) the entitlement is not so clear and would only be ensured if specifically stated in the IEP.

7. Can the school district stop providing transportation if my child is mainstreamed in regular classes?

No. So long as the IEP team determines that your child needs transportation, he is entitled to receive it. Moreover, in California, because the state's transportation

guidelines mandate transportation as a related service whenever a student lives beyond walking distance from school, the district is required to provide transportation even though the student's disability-related needs do not necessitate transportation. [*Simi Valley Unified School District*, 23 IDELR 760 (1995).]

8. May a school district provide transportation only to those students who live at least a specified minimum distance from their school site (for example, two miles)?

No. Such a categorical limitation would be inconsistent with the requirement that related services be provided based on individual need. If, because of the child's disability, she needs transportation to attend school, the school district must provide it.

9. May a school district require parents to provide transportation if they are able?

No. The parents' ability to provide transportation does not relieve the school district of its responsibility. In some instances, **where the parents have agreed**, school districts have reimbursed parents for mileage for providing transportation that the school district would otherwise have to provide. In these instances, parents should be reimbursed for the total round trip mileage at the rate the district reimburses its employees.

The public agency must ensure that any transportation service included in a child's IEP as a related service is provided at public expense and at no cost to the parents. [34 C.F.R. Part 300, App. A, Q. 33.]

10. When can my child get occupational or physical therapy as a related service?

OT/PT addresses a student's gross and fine motor functioning. For example, a student may have difficulty running, walking, throwing, catching, jumping, etc. (gross motor), or writing, drawing, buttoning and zipping clothes, etc. (fine motor). In addition, a student's motor functioning may affect independent living skills. If a student of normal intelligence has verbal skills that are higher than motor skills, or if a more severely disabled student has difficulty with daily living skills such as feeding, dressing, etc., this may be an informal indicator that could prompt a request for evaluation of OT/PT as "related services."

OT/PT is among the services affected by California legislation commonly referred to as AB 3632, which shifted responsibility for providing certain related services from school districts to other agencies (in this case, to California Children's Services (CCS)) under certain circumstances. Many of the issues that arise

concerning OT/PT are discussed in Chapter 9, *Information on Inter-Agency Responsibility for Related Services (AB 3632/882)*. Among these issues are the following:

- (1) What are the procedures for obtaining OT/PT?
- (2) What happens if a student does not meet CCS' eligibility requirements but still needs OT/PT for educational reasons?
- (3) If CCS determines that OT/PT is not "medically necessary," is the student still entitled to receive OT/PT as a related service? If so, who provides it?

11. When can my child get psychological counseling or other mental health services as a related service?

Psychological services include counseling and psychotherapy. The difference between the two is determined by the qualifications of the provider. Counseling is provided by a credentialed counselor or school psychologist. Psychotherapy in California must be provided by a psychiatrist, licensed psychologist, a licensed marriage, family, and child counselor (MFCC), or a licensed clinical social worker (LCSW). Counseling generally focuses on school and school-related issues such as behavior in school, grades, curriculum, etc. Psychotherapy generally focuses on a student's emotional status, and feelings towards self, peers and family.

Psychological counseling and other MH services, including psychotherapy, are available when your child's emotional status has a negative effect on his educational performance, and are required for the child to benefit from special education. Other mental health services such as "day treatment programs" which integrate psychological counseling throughout the school day can also be provided.

Like OT/PT, AB 3632 affects some mental health services, including psychotherapy. In this case, responsibility for mental health services was given to the California Department of Mental Health (DMH) and local mental health agencies. Among the issues concerning AB 3632 and mental health services, which are addressed in Chapter 9, *Information on Inter-Agency Responsibility For Related Services (AB 3632/882)*, are the following:

- (1) What are the procedures for obtaining mental health services from mental health agencies?
- (2) Which mental health services are available from mental health agencies?
- (3) What happens if a child does not meet eligibility requirements for services from a local mental health agency but still needs mental health services to help him benefit from special education?

12. Does my child need to be classified as “emotionally disturbed” to receive mental health services?

No. Mental health services, such as counseling and psychotherapy, must be provided to any child who needs the service to help her benefit from special education.

13. When can my child get speech or language therapy as a related service?

Speech and language therapy may be the most frequently requested related service, primarily because language is so closely related to education. Speech therapy addresses articulation difficulties, a common disability. Language therapy addresses difficulties with memory, verbal expression, and listening. If your child has any difficulties with speech or language, you should ask the school district, in writing, to do a speech and language evaluation.

Any student eligible for special education may receive speech and language therapy if he needs the service to benefit from special education. Special education students **do not need** to be identified for special education under the special education eligibility criteria for speech and/or language disorders in order to receive speech and language therapy as a related service. [34 C.F.R. Sec. 300.125(d)]

14. Can the school district limit all children to two half-hour speech therapy sessions per week because it only has one speech therapist on staff?

No. The frequency of a related service and the amount of time in each session must be individually determined based on your child’s needs at the IEP team meeting. Frequency and amount of time should be written on the IEP. See Question 23.

15. Can my child get communication services and equipment if he is non-oral?

Yes. If your child is non-oral, you may want to ask the school district to contract with a non-oral communications specialist to do an assessment. Depending on the results of the assessment, the IEP team may decide that your child needs specialized services such as a computerized communications device and instruction in using this device in order to benefit from special education. See Questions 42-45 regarding Assistive Technology.]

16. Can my child receive vision therapy as a related service?

Yes, if your child needs vision therapy in order to benefit from special education. Vision therapy may include remedial and/or developmental instruction provided

directly by or in consultation with an optometrist, ophthalmologist, or by another qualified licensed physician or surgeon. [5 C.C.R. Sec. 3051.75.]

17. What are school health services and who provides them?

School health services are services provided by a qualified school nurse or other qualified person. These services include health and nursing services such as:

- (1) Managing a student's health problems on the school site;
- (2) Consulting with students, parents, teachers and others;
- (3) Counseling with parents and students concerning health problems; and
- (4) Providing specialized physical health care services which are necessary during the school day to enable the child to attend school. [5 C.C.R. Sec. 3051.12.]

California law defines specialized physical health care services to include "catheterization, tube feeding, suctioning or other services that require medically related training." [Cal. Ed. Code Sec. 49423.5(d).]

Under state law, there are two ways in which specialized physical health care services may be provided. DHS is responsible for providing a home health aide through Medi-Cal if the following conditions exist:

- (1) The child is eligible for Medi-Cal;
- (2) The child is being considered for a less restrictive placement from home to school;
- (3) The child requires the personal assistance or attention of a nurse, home health aide, or other specially trained adult; and,
- (4) Medical support services through the Medi-Cal program are being provided during the time the student would be in school, or traveling to or from school. [Cal. Gov. Code Sec. 7575(e); 2 C.C.R. Sec. 60400.]

For special education students who do not meet these conditions, specialized physical health care needs are to be provided by the responsible local school district. [Cal. Ed. Code Secs. 49423.5, 56363(b)(12); 5 C.C.R. Sec. 3051.12; 2 C.C.R. Sec. 60400.]

18. My child needs health services such as tracheostomy care or catheterization in order to attend school, but the school district told me it does not have to provide such services because they are “medical.” Is this true?

The distinction between “medical services” and school health services is important. Except for those medical services that are for “diagnostic or evaluation purposes,” school districts are not responsible for providing medical services as related services. The U.S. Supreme Court addressed this issue in the *Tatro* case. The court pointed out that “medical services” are defined in federal law as “services provided by a licensed physician.” Therefore, the court reasoned that if a service can be performed by a school nurse or other qualified person and is not one that must be provided by a licensed physician, then it is not a medical service – but it is a related service if it is necessary to help a child with a disability benefit from special education. If your child needs the health service to be able to attend school at all, then she needs it to benefit from special education.

19. My child needs nursing services in order to attend school (or to attend school in the otherwise appropriate least restrictive environment), but the school district told me it does not have to provide such services because they are “medical.” Is this true?

No. The Supreme Court addressed this issue in a case called *Cedar Rapids v. Garret F.* It held that continuous nursing services were considered a “related service” and that school districts had to provide them under IDEA. These services were not considered “medical” services; rather, they were seen as “supportive services” that enable a disabled child to remain at school during the day and provide meaningful access to education.

20. Can the school district require me to attend school with my child to perform health-related services?

No. Any such requirement would violate the idea of a free appropriate public education because it is not free to the parents if they must commit their time. Your child’s right to attend school cannot be legally conditioned on your presence at the school.

21. Can I have the school district provide a certain type of related service?

There are frequently different “methods” of providing a particular service. For example, the state Office of Special Education has determined that “sensory integration therapy” is one method for providing OT. While a school district must

provide a related service that is educationally necessary, it is an IEP team decision whether to address methodology. **However, unless you can show that the school district's chosen method would not allow the child to benefit from special education** (in other words, the district's method would not result in progress toward IEP goals and objectives), the choice of method usually is up to the trained specialist providing the service. [34 C.F.R. Secs. 300.26, 300.343(b)(ii), 300.346(a)(1)(i); Attachment 1 to Part 300 – Analysis of Comments and Changes, Federal Register, Vol. 64, No. 48, pg. 12552.] See Chapter 4, *Information on IEP Process*, for further discussion.

22. SEE ALSO CHAPTER 1, QUESTION AND ANSWER 47.

How do I decide who is qualified to provide a related service?

State and federal regulations specify that a person is qualified if she meets federal and state certification, licensing or registration requirements. In addition, the person must adhere to the standards of professional practice established under state or federal law. [34 C.F.R. Sec. 300.23.] If you have questions about a person's qualifications, you should ask what licenses or certifications she holds.

If provider qualifications are a central component to ensuring your child's appropriate education, you should ask that the qualifications be written into your child's IEP.

23. What must be written in my child's IEP concerning related services?

Related services should be requested at an IEP meeting and, if determined appropriate, written in your child's IEP regardless of what agency actually provides the services. It is not enough merely to list related services (e.g., "speech therapy," "OT/PT," "psychotherapy," etc.) that your child is to receive in the IEP. **The IEP must also set out the specific frequency, location and duration of the service to be provided.** [34 C.F.R. Sec. 300.347(a)(6) and Part 300, App. A, Q. 35; 5 C.C.R. Sec. 3051(a)(2).]

The U.S. Department of Education's clarification to the regulations, 34 C.F.R. Part 300, App. A, Q. 35, states:

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in

the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

Changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. However, as long as there is no change in the overall amount, some adjustments in scheduling the services should be possible (based on the professional judgment of the service provider) without holding another IEP meeting. (NOTE: The child's parents should be notified whenever this occurs.)

It is also appropriate to detail clearly the services required. Instead of "speech therapy," the statement might include: "individual instruction for a minimum of one hour on a weekly basis in phonology and syntax provided by a credentialed Language, Speech and Hearing Specialist, with supportive group activities on a daily basis in the classroom, provided by the teacher or aide in consultation with the Specialist."

Other examples of appropriate provider qualifications include "health aide with CPR training," "instructional aide fluent in signing," etc.

In addition, the IEP should include the goals and objectives of each service, and appropriate objective criteria, evaluation procedures and schedules for determining whether the objectives are being achieved. (Obviously, this would not be required for a service intended only to enable the child to get to or attend school, such as transportation.)

24. SUPERSEDED. SEE ONLY CHAPTER 1, QUESTION AND ANSWER 22(A). ~~Can the amount of related services, or IEP objectives for related services, be changed without convening an IEP meeting?~~

~~No. State and federal law are quite clear that IEP meetings must be held for purposes of "developing, reviewing, and revising" a student's individualized education program. [Cal. Ed. Code Secs. 56340, 56341(a), 56343(c); 34 C.F.R. Sec. 300.343(a) and Part 300, App. A, Q. 20.] Parents must be notified of the proposed changes prior to the IEP meeting. [34 C.F.R. Sec. 300.5043.] Again, this is true regardless of what agency actually provides the related service.~~

~~Further, if you disagree with a proposed reduction or termination of a related service at an IEP meeting, you can request a due process hearing. Your child must continue to receive the related service while the hearing (and court proceedings, if any) is under way. [20 U.S.C. Sec. 1415(j); 34 C.F.R. Sec. 300.514; Cal. Ed. Code Sec. 56505(d).]~~

25. If my child is placed full time in a regular classroom is he entitled to receive related services?

Yes. The education program for all students in special education must be based on individual needs. Any child who meets the eligibility requirements for special education is entitled to the related services needed to help him benefit from special education.

Special education law favors placement in regular classrooms whenever possible. Children who can be mainstreamed full time are entitled to the supportive services that enable them to attend school or to function in a regular classroom environment. State regulations also say explicitly that related services may be provided to students “who are served throughout the full continuum of educational settings.” [5 C.C.R. Sec. 3051(a)(1).]

Even children with disabilities who are not eligible for special education and who would, thus, attend regular education classes, would be entitled to receive supportive services (for example, school health services) necessary to enable them to benefit from their school programs under other state and federal laws that ensure access of persons with disabilities to state and federally funded programs. [For example, see Section 504 of the Rehabilitation Act of 1973; Cal. Gov. Code Sec. 11135.]

26. Are school districts responsible for providing children with instructional aides?

Yes. The school district must provide an aide if your child needs an aide to benefit from her education – including situations where your child needs an aide to assist her in a regular classroom. Thus, an aide might be required to help a child with severe physical disabilities perform educational tasks (such as note taking), or to assist in a behavioral management program for a child with severe behavior problems. In this situation, rather than a “related service,” the services of an aide might be more appropriately characterized as a “supplementary aid and service” pursuant to the school’s duty to educate special education pupils to the maximum extent appropriate with nondisabled peers. [34 C.F.R. Sec. 300.550 and 300.551.] The aide should be qualified to perform the particular duties needed. Any required qualifications (for example, “trained in behavior modification,” “knowledgeable in algebra,” “fluent in signing”) should be written in the IEP, as well as the frequency, location, amount and type of services the aide will provide.

27. What can I do if my child is not receiving a related service, as provided in the IEP, because the person who is to provide the service is absent?

The best remedy is prevention. It would be proper to discuss the issue of a service provider's absence at the IEP meeting when the team writes the service in the IEP. The IEP team could then plan for, and set out in the IEP, what will happen if a related service provider is absent.

Obviously, advance planning is most critical in the case of services required to enable a child to attend school at all (such as transportation or school health services) or to attend school safely (such as a behavioral aide). It is not acceptable for a child to miss school or to be denied the right to participate in special activities like field trips because the school district fails to provide a necessary service. It is critical in these instances that the school district has plans for ensuring that a substitute provider will be available. In the case of other services, such as OT/PT, speech therapy, etc., occasional, unanticipated absences may be unavoidable. However, it would not be proper to deny services specified in an IEP when an absence occurs more than occasionally or is predictable. Where another agency fails to provide necessary services, it is the school district's responsibility to do so. [34 C.F.R. Sec. 300.142(b)(2).]

Remember, **school districts must provide services specified in a student's IEP.** Failure to provide a service listed in the IEP can be the subject of a compliance complaint submitted to the CDE. See Chapter 6, *Information on Due Process Hearings/Compliance Complaints*. The same applies even when a private provider or another public agency (such as CCS or a local mental health agency under AB 3632/882) is to provide the related service.

28. Looking at the list of related services stated in the law, it seems that school districts must provide many nonacademic services. Do school districts actually provide these services?

While the law requires school districts to pay for any nonmedical service necessary for a student to learn appropriately, local school officials contend that federal and state legislatures have not given districts adequate money to provide all these services. As a result, except for transportation, speech and language therapy, OT/PT, and counseling, school districts will often assert that services not historically provided by school districts (for example, parent training, parent counseling, recreation, complicated health services, etc.) are not educationally necessary – that is, not “related.” The net effect of this political reality is that you should be prepared to use independent experts at the IEP meeting to support your

child's need for related services in order to benefit from special education. You should also be prepared to use the due process procedures when necessary. See Chapter 2, *Information on Evaluations/Assessments*, for information on obtaining independent assessments at public expense.

29. Under what circumstances is my child entitled to residential placement?

Federal law provides that “[i]f placement in a public or private residential program is necessary to provide special education and related services to a child with disabilities, the program, including non-medical care and room and board, must be at no cost to the parents of the child.” [34 C.F.R. Sec. 300.302.] Thus, if a residential placement is necessary for educational purposes, then it must be provided at no cost to the parents. You **need not** give up custody of your child (for example, permit your child to be made a “ward of the court”) in order to get residential placement.

Typically, the need for residential placement is indicated when a student needs the structure, intensity and consistency of programming that a day program could not offer. Due to behavioral or emotional problems, for example, a student may need a 24-hour therapeutic environment with programming that is consistent across the classroom and residential components of the program in order to meet the goals and objectives of his IEP.

A school district may contend that residential placement is needed in a particular case to meet a student's social, emotional or medical needs, rather than educational needs, and that the placement is not its responsibility. Except in cases where the child needs placement in a psychiatric hospital, courts presented with this question have consistently found that it is not possible to sever a child's social and emotional needs from his educational needs. The courts have, therefore, held that residential placements are necessary for educational reasons. In cases involving psychiatric hospitalization, courts have been less consistent. In limited circumstances, courts have found that placement does meet educational needs and is, therefore, the school district's responsibility. It is also helpful to keep in mind that addressing a child's social and emotional needs, as well as traditional academic needs, is part of special education. However, courts have held that school districts are not responsible for paying for the cost of psychiatric hospitalizations.

Residential placement would also be required if the only appropriate day placement was located so far from the student's home that daily commuting would not be feasible. In this instance, residential placement would serve a purpose similar to transportation – that is, it would enable the student to attend his

education program. In California, residential placement for this purpose is classified as “transportation.” [Cal. Ed. Code Sec. 41850(b)(3).]

30. Must my child be classified as emotionally disturbed before she is entitled to a residential placement?

No. However, the vast majority of residential placements are financed under AB 3632, which does require that children be identified as emotionally disturbed. Other children who need residential placement for educational purposes are still entitled to such placements. They would not be covered by AB 3632, but the local school districts would remain responsible for their residential placement. See Chapter 9, *Information on Inter-Agency Responsibility for Related Services (AB 3632/882)*.

31. SEE ALSO CHAPTER 1, QUESTION AND ANSWER 46. My child is placed in a nonpublic school. Can he receive related services from the public school system if he needs the services to benefit from education, and the services are not available from the nonpublic school?

It depends on the circumstances under which the child is placed in the nonpublic school. Students are entitled to receive related services through the public school system. However, the public school system may not be required to provide related services at the nonpublic school if the parents unilaterally placed the student there. See Question 32 below for additional concerns when the nonpublic school is a religious school.

If the IEP team placed your child at a nonreligious, nonpublic school, he is entitled to receive appropriate related services. This may, and often does, require delivery of services at the nonpublic school site. [34 C.F.R. Sec. 300.401.]

However, if you placed your child at a nonreligious, nonpublic school unilaterally, without the consent of the rest of the IEP team, he has no individual right to special education and related services in the sense of meeting as an IEP team to determine what his individual needs are and what educational and related services will be provided to meet those needs. [34 C.F.R. Sec. 300.454(a).] Any services this child receives will come out of the process each school district must go through of spending a certain small portion of its federal dollars on students in this situation and is more specifically described below.

A local school district is still responsible for full implementation of its “child-find” and assessment responsibilities, but has extremely limited responsibilities for providing related services to pupils unilaterally enrolled in nonpublic schools by

their parents. [34 C.F.R. Secs. 300.451 and 300.452.] This means that a child may receive some related services but he may receive a different, and significantly smaller, amount than a child with a disability in a public school. The amount of money spent on these students will be limited to a proportionate share (based on the number of these students there are in the district) of the federal dollars received by the district. Currently, only about 12% of the dollars required to provide special education are federal dollars. In a district with 1,000 children, 10 of whom are children with disabilities enrolled in private schools unilaterally by their parents, a district would only have to spend 1% of 12% of its special education revenue on providing for these 10 students to participate in its special education programs. [34 C.F.R. Sec. 300.453 through 300.455.] The services the district provides your child will be written in a service plan, not an IEP. It is up to the LEA to make the final decisions with respect to the services to be provided to eligible private school children after consultation with local nonpublic school officials. [34. C.F.R. Sec. 300.454.]. You are not entitled to due process regarding the services. However, the complaint process is still available to contest issues such as the district's failure to implement its child-find or assessment responsibilities or failure to consult with local nonpublic school officials in determining the nature and scope of its limited service responsibilities. [34 C.F.R. Sec. 300.457.] Please refer to Chapter 6 for information on complaint procedures.

32. SEE ALSO CHAPTER 1, QUESTION AND ANSWER 46. My child attends a religious school. Can she receive related services from the public school system if she needs such services to benefit from education and the services are not available at the religious school?

Federal law gives limited rights to children placed in private schools unilaterally by their parents. See Question 31 above. Because of the constitutional separation of church and state, children attending religious schools can only attend these schools as a result of unilateral placements by their parents. Therefore, the same analysis given in Question 31 above would apply to the question of entitlement to related services for pupils enrolled in religious schools. Federal law does require school districts to conduct the same child-find and assessment services for religious school pupils as they do for public school pupils. [34 C.F.R. Sec. 300.451(a).] Federal law also allows schools to provide what few related services they may ultimately provide to these students on the sites of the religious schools. [34 C.F.R. Sec. 300.456(a)]. If transportation is necessary for a child to benefit from or participate in these few services, the school district must provide the necessary transportation. [34 C.F.R. Sec. 300.456(b).]

33. My child has ongoing behavior problems. Does the school district have any service responsibility to address those problems?

Yes. Although not specifically identified as related services under federal or state special education law, services to address serious behavior problems must exist in California. In 1990, the Legislature enacted Assembly Bill 2586 (Hughes). [Cal. Ed. Code Sec. 56520 to 56524.] This law prohibited the use of aversive behavior interventions and mandated the development and implementation of positive behavior intervention plans for special education students with serious behavior problems. In addition, the law required that CDE develop regulations to implement positive behavior intervention services for special education students in school. The regulations are at Title 5, California Code of Regulations, Sections 3001 and 3052. The “Positive Behavioral Intervention Procedural Flowchart” at the end of this chapter sets out procedures to (1) identify and assess behavior problems, and (2) develop intervention plans. The second page of the flow chart sets out “Emergency Intervention Procedures.” The flow chart regarding emergency intervention procedures is accurate except for the lower left-hand corner. A functional analysis assessment does not necessarily automatically follow a finding that there is no current behavior plan in existence. Rather, the IEP team must meet after the display of a behavioral emergency and decide whether a functional analysis is warranted. [5 C.C.R. Sec. 3052(i)(7).]

In addition, federal regulations require that the IEP team must, when appropriate, consider strategies, including positive behavioral interventions, and supports to address that behavior, for a student whose behavior impedes his learning or that of others. [34 C.F.R. Sec. 300.346.]

34. What does “behavioral intervention” mean and what purpose does it serve?

“Behavioral intervention” means the systematic use of procedures that result in lasting positive changes in the student’s behavior. The intent of using a behavioral intervention program is to provide the student with greater access to a variety of community settings, social contacts and public events, and to ensure that her behavior does not hinder her placement in the least restrictive educational setting. Positive behavioral interventions respect the student’s dignity and personal privacy and assure physical freedom, social interaction, and individual choice. Positive behavioral interventions do not include procedures which cause pain or trauma. [5 C.C.R. Sec. 3001(f).]

35. What do the California positive behavior intervention regulations require of school districts?

The California regulations require that every special education student who demonstrates a serious behavior problem receive a functional analysis assessment. The assessment is then used in developing a positive behavior intervention plan for him. The plan becomes part of his IEP. [5 C.C.R. Sec. 3001(h).] The plan has its own set of goals and objectives related to reducing maladaptive behaviors and substituting appropriate behaviors.

Personnel with training in behavior analysis, with an emphasis on positive behavior intervention, must perform the functional analysis assessment, develop the positive behavior intervention plan, and supervise the implementation of the plan. This individual, called a behavior intervention case manager, becomes a member of the IEP team for every student with serious behavior problems. [5 C.C.R. Sec. 3052(a)(1).]

The regulations include many other procedures for evaluating the intervention plan, for modifying the plan, and for documenting emergency interventions. You can obtain a copy of the positive behavior intervention regulations by calling a Protection & Advocacy office – 1-800-776-5746.

36. What is a “serious behavior problem” for purposes of qualifying for positive behavior intervention services under the regulations?

A “serious behavior problem” is a behavior problem which: (1) is self-injurious or assaultive or (2) causes serious property damage; or (3) is severe, pervasive, and maladaptive, and for which instructional/behavioral approaches specified in the student’s IEP are found to be ineffective. [5 C.C.R. Sec. 3001(aa).]

If the child’s behaviors are not to the level of a serious behavior problem which would entitle her to a functional analysis assessment, parents should insist that any behavioral interventions used be specified in the IEP. If the milder behavioral problems develop into more severe, pervasive and maladaptive behaviors, but nothing has been specified in the IEP to address them, a child may not technically meet the definition of “serious behavior problem,” and a school district may insist on one more opportunity to try to address the otherwise serious behaviors with “instructional/behavioral approaches” rather than with a functional analysis assessment and positive behavior intervention plan.

37. What is involved in a “functional analysis assessment” and what information must be contained in a functional analysis assessment report?

The functional analysis assessment must involve:

- (1) Systematic observation of the occurrence of the targeted behavior for an accurate definition and description of the frequency, duration, and intensity;
- (2) Systematic observation of the immediate antecedent events associated with each instance of the display of the targeted inappropriate behavior;
- (3) Systematic observation and analysis of the consequences following display of the behavior to determine the function the behavior serves for the individual; the communicative intent of the behavior is identified in terms of what the individual is either requesting or protesting through the display of the behavior;
- (4) Ecological analysis of the settings in which the behavior occurs most frequently. Factors to be considered should include the physical setting, the social setting, the activities and the nature of instruction, the scheduling, the quality of communication between the individual and staff and other students, the degree of independence, the degree of participation, the amount and quality of social interaction, the degree of choice, and the variety of activities;
- (5) Review of records for health and medical factors which may influence behaviors (for example, medication levels, sleep cycles, health, diet); and
- (6) Review of the history of the behavior, including the effectiveness of previously used behavioral interventions.

[5 C.C.R. Sec. 3052(b)(1).]

The functional analysis assessment involves a great deal of observation of the student, collection and analysis of data, and study of his environment and past history in order to obtain the information described above and required in the functional analysis assessment report. [5 C.C.R. Sec. 3052(b).]

A functional analysis assessment report must include the following:

- (1) A description of the nature and severity of the targeted behaviors in objective and measurable terms;
- (2) A description of the targeted behaviors that includes baseline data, an analysis of the antecedents (things that occur immediately prior to the targeted behavior), consequences that maintain the targeted behavior, and a

functional analysis of the behavior across all appropriate settings in which it occurs;

- (3) A description of the rate of alternative behaviors, their antecedents and consequences;
- (4) Recommendation for consideration by the IEP team, which may include a proposed positive behavior intervention plan as described below.

[5 C.C.R. Sec. 3052(b)(2).]

38. What is a “positive behavior intervention plan”?

A positive behavior intervention plan must include the following:

- (1) A summary of information from the functional analysis assessment;
- (2) An objective and measurable description of the targeted serious behaviors and positive replacement behaviors;
- (3) Goals and objectives specific to the targeted behaviors;
- (4) A detailed description of the behavioral interventions to be used and the circumstances for their use;
- (5) Schedules for recording the frequency of interventions and demonstrations of replacement behaviors;
- (6) Criteria for determining when the interventions will be phased out or replaced with less intense or less frequent interventions;
- (7) The extent to which interventions will be used in the student’s home and in other settings.
- (8) Specific dates for the IEP team to review the behavior intervention program’s effectiveness.

[5 C.C.R. Sec. 3001(f).]

Behavior intervention plans must contain sufficient detail to direct their implementation. [5 C.C.R. Sec. 3052(c).]

39. What are “positive behavior interventions”?

Positive behavior interventions are procedures which, for example, a teacher could use each time a student displays, or is likely to display, a targeted serious behavior problem. Behavior interventions must not simply eliminate serious behavior problems, but must simultaneously teach alternative positive behaviors. [5 C.C.R. Sec. 3052(a)(2).] In other words, school districts should not use techniques that simply contain or suppress problem behaviors unless they also teach the student

substitute appropriate behaviors which accomplish the same functions for the student as the inappropriate behaviors did.

The procedures include, but are not limited to:

- (1) Altering events in anticipation of a serious behavior problem to try to prevent its occurrence;
- (2) Teaching an alternative behavior that produces the same results for the student but is more socially acceptable;
- (3) Teaching adaptive behaviors, that is, methods of coping with unanticipated events; and/or
- (4) Manipulating the consequences for serious behavior problems and appropriate behavior so that appropriate behavior achieves the desired outcome and serious behavior problems are ignored.

[5 C.C.R. Sec. 3052(d)(2).]

Positive behavior interventions also include procedures for responding to and reinforcing appropriate behaviors. [5 C.C.R. Sec. 3052(e).]

40. What behavioral interventions are prohibited

Behavior interventions cannot involve infliction of pain or trauma, including emotional trauma. [5 C.C.R. Secs. 3001(d), 3052(a)(5).] More specifically, behavior interventions cannot involve any of the following:

- (1) Releasing toxic or unpleasant sprays near the student's face;
- (2) Denying the student adequate sleep, food, water, shelter, bedding, comfort, or access to bathroom facilities;
- (3) Subjecting the student to verbal abuse, ridicule or humiliation, or causing emotional trauma;
- (4) Using locked seclusion;
- (5) Preventing adequate supervision of the student;
- (6) Depriving the student of one or more of her senses;
- (7) Using any device, material or object that simultaneously immobilizes all four extremities (except for prone containment in emergencies).

[5 C.C.R. Secs. 3052(i), 5052(l).]

41. What can school personnel do if my child suddenly has a dangerous behavioral outburst?

If your child exhibits unpredictable spontaneous behavior which poses a clear and present danger to himself or others, or serious property damage, the school personnel may use emergency interventions, including prone containment by trained staff, for the time necessary to address the emergency. [5 C.C.R. Sec. 3001(c), 3052(i).]

To prevent emergency interventions from being used in place of systematic behavioral interventions, the parent (and residential care provider, if appropriate) shall be notified of the emergency intervention, or if serious property damage occurs, within one school day and a Behavioral Emergency Report shall be filed. If the student does not have a behavioral intervention plan, then an IEP meeting shall be scheduled within two days to determine whether a functional analysis assessment is necessary and to determine the necessity for an interim behavioral intervention plan. If a functional analysis assessment is not initiated, the IEP team must document the reasons for that decision. [5 C.C.R. Sec. 3052(i)(7).] If the student has a behavioral intervention plan which was not effective for the emergency behavior, then an IEP review shall be conducted to see if the plan needs to be modified. [5 C.C.R. Sec. 3052(i)(8).]

42. What is assistive technology under IDEA?

An assistive technology device is any item, piece of equipment, or product system – whether acquired commercially off the shelf, modified or customized – that is used to increase, maintain or improve the functional capabilities of children with disabilities. [34 C.F.R. Sec. 300.5.] Assistive technology service means: any service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device. It includes:

- (1) Evaluating the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- (3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive technology devices;
- (4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

- (5) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
- (6) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the child.

[34 C.F.R. Sec. 300.6]

Policy statements of the U.S. Department of Education, Office of Special Education Programs (OSEP) emphasize that the determination of whether a child requires an assistive technology device or service must be based on an individualized consideration of each pupil's needs. [OSEP (1995) 22 IDELR 888.] The list of items or services which can constitute assistive technology under IDEA is quite broad and has been extended to items such as eye glasses and hearing aids. [OSEP (1995) 22 IDELR 629; OSEP (1993) 20 IDELR 1216.] Medication, however, has specifically been excluded from consideration as an assistive technology device or service. [64 Fed. Reg. 12540 (3/12/99).] OSEP has stated that assistive technology encompasses both a disabled child's own personal needs for devices (for example, electronic note takers, cassette recorders, etc.), as well as access to general technology devices used by all students. Therefore, if an eligible child is unable, without a specific accommodation, to use a technology device used by all students, the agency must ensure that the necessary accommodation is provided. Further, school districts must ensure that students, teachers and other personnel receive the necessary in-service instruction on the operation and maintenance of technology. [64 Fed. Reg. 12540 (3/12/99).]

43. How can I determine when assistive technology is a related service?

A determination of whether an assistive technology device or service is a related service under IDEA follows the basic legal mandates for providing a free, appropriate public education. It includes a determination of whether the device or service is necessary to assist the student in benefitting from his education, and/or whether the device or service is necessary to fulfill the school district's obligation to educate students with disabilities in the regular education environment unless "the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

44. Can my child use the assistive technology equipment outside of the school day?

Each child's IEP team must consider the child's need for assistive technology in the development of the child's IEP. [34 C.F.R. Sec. 300.346.] The nature and extent of the assistive technology devices and services to be provided to the child must be reflected in the child's IEP. [34 C.F.R. Sec. 300.346(c).]

A public agency must permit a child to use school-purchased assistive technology devices at home or in other settings, if the IEP team determines that the child needs access to those devices in nonschool settings in order to receive FAPE (to complete homework for example). [34 C.F.R. Part 300, App. A., Q. 36.]

45. Who pays for assistive technology devices?

Although most assistive technology equipment is not expensive, one of the most frequent barriers to providing assistive technology devices is cost and the corresponding question of who is responsible for purchasing the needed equipment. IDEA places the ultimate responsibility on school districts for providing (and funding) all services necessary to provide a student with a free and appropriate education, including assistive technology. [34 C.F.R. Part 300, App. A, Q. 36.] The devices should be provided at no cost to the parents, and the parents cannot be charged for normal use, wear and tear. However, while ownership of the devices in these circumstances would remain with the public agency, State law, rather than Part B, generally would govern whether parents are liable for loss, theft, or damage due to negligence or misuse of publicly owned equipment used at home or in other settings in accordance with a child's IEP. [34 C.F.R. Part 300, App. A., Q. 36.] School districts have no obligation to pay for services if there are alternate funding sources – such as private insurance, Medi-Cal, and vocational rehabilitation. However, school districts cannot require parents to buy assistive devices.

46. My child is a special education student but she must be instructed at home for a while due to health (mental or physical) issues related to her disability. The school district says that she will receive one hour of home instruction per day and no related services. No assessment was done. My child used to go to school six hours a day and received several related services. Can the district limit its services in this way?

No. School districts frequently limit home instruction to one hour per day pursuant to local practice or policy and unrelated to any individualized determination of a

student's needs. It is unclear what the origins of such policies are. California law provides that for the purpose of computing average daily attendance for pupils with temporary disabilities, each clock hour of teaching time devoted to individual instruction will count as one day of attendance. [Cal. Ed. Code Sec. 48206.3(c)(1).] In other words, in order to receive full state funding for a day of attendance for a student with a **temporary** disability, all a school district must provide is one hour of instruction to that student. This is only a funding statute and has absolutely nothing to do with any determination that an hour of instruction is sufficient to meet a particular special education student's needs under his IEP. In addition, this statute is specifically not to be applied to special education students. [Cal. Ed. Code Sec. 48206.3(b)(2).]

47. What are special education students who must be instructed at home for a period of time entitled to in their home instruction programs?

All special education students are entitled to an appropriate program. An appropriate program is an individualized constellation of specialized instruction and related services designed to meet a student's unique needs and which results in educational benefit. [*Board of Education v. Rowley*, 102 S.Ct. 3034 (U.S. 1982).] An arbitrary limit of one or two hours per day of home instruction without individualized assessment and a determination that such a limit will result in educational benefit is not designed to meet a student's unique needs. Educational benefit means progress toward the central IEP goals and objectives. [*County of San Diego v. Special Education Hearing Office*, 93 F.3d 1458 (9th Cir. 1996).] Therefore, any home instruction program offered by a school district must be individually designed to assure that this progress toward goals and objectives continues notwithstanding the location of the child. All the same procedures must be followed by the IEP team in developing an IEP for a student who will be instructed at home as are followed for any other special education student. [U.S. Department of Education, Office of Special Education Programs, Letter to Boney (1991) 18 IDELR 537.]

48. What can I do to address the school district's application of an arbitrary limited-hours policy to my child's home instruction?

To address the policy of the district, you can file a complaint with the Office for Civil Rights (OCR) in San Francisco. See Chapter 6 of *Special Education Rights and Responsibilities*. That office has repeatedly found schools in California and elsewhere to be in violation of Section 504 when they impose such policies on children with disabilities. [See *Oceanside City Unified School District* (1996) 25

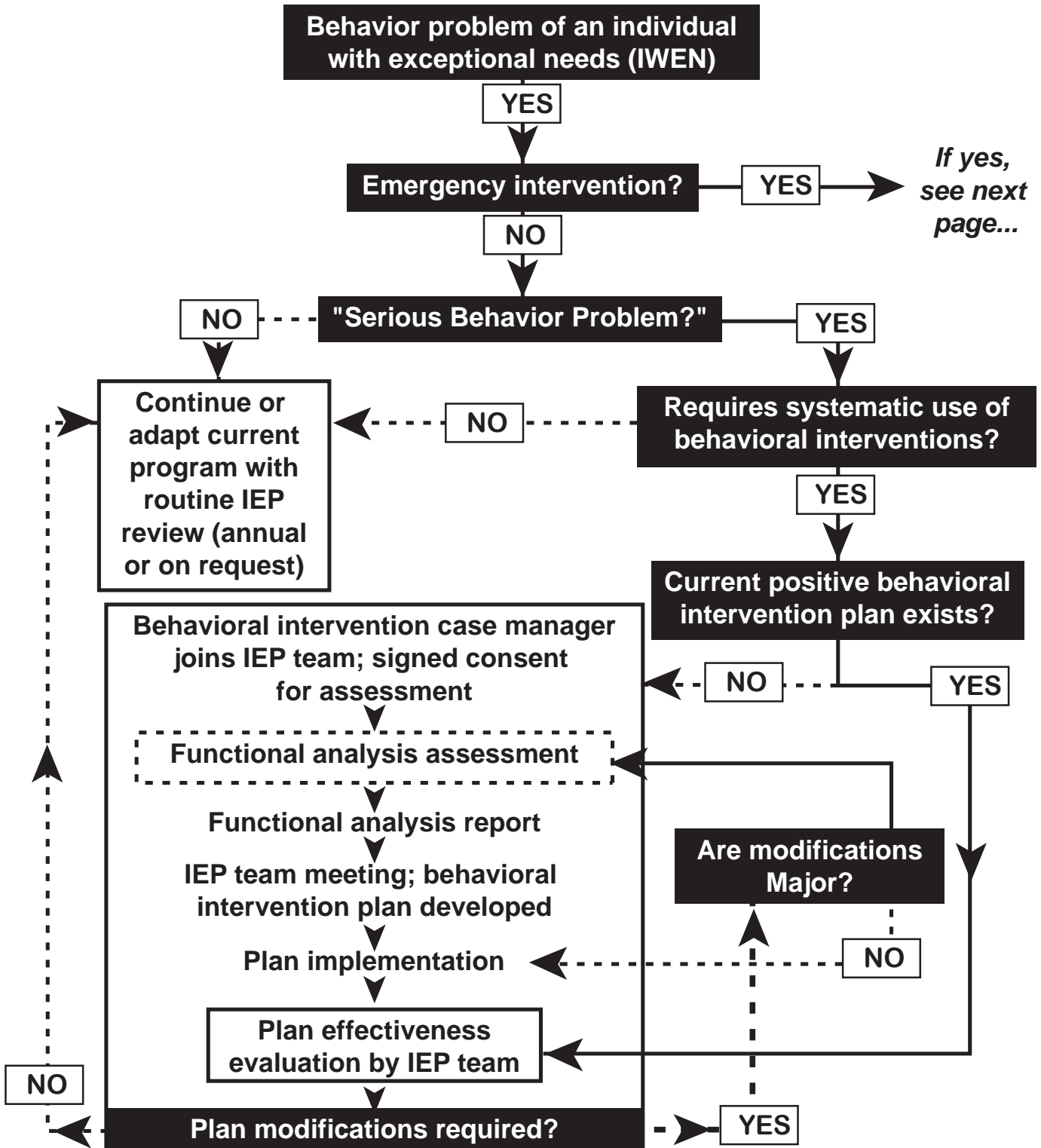
IDELR 170; *Conejo Valley Unified School District* (1993) 20 IDELR 1276; *Tucson Unified School District* (1990) 17 EHLR 11.] You should know, however, that such a complaint may only address the policy or practice of the district; it will not necessarily result in any different program for your child. OCR may order a district to abandon its practice of limiting home instruction to a certain number or hours and to instead use assessment and the IEP process to arrive at an appropriate home instruction program. However, OCR will not dictate to the IEP team or school district what an appropriate home instruction program for any given child looks like. Even if the school district goes through this process after an order from, or agreement with, the OCR or California Department of Education, the district is unlikely to generate assessments which recommend more in the way of a home instruction program than the district believes it has the resources to provide. You will likely have to proceed to a due process hearing to resolve the dispute.

49. What can I do to try to obtain an appropriate home instruction program for my child?

To challenge the specifics of a school district's home instruction program recommendation for a particular child, you will likely have to go through a mediation and perhaps due process hearing procedure. To participate in these procedures effectively, you will need evidence to establish that the program being offered by the school district was not individually designed and will not result in progress toward the central goals and objectives of the IEP. See Chapter 6 for information on mediations and due process hearings.

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Positive Behavioral Intervention Procedural Flowchart



Positive Behavioral Intervention Procedural Flowchart

Emergency Intervention Procedures

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