

SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

Chapter 2

Information on Evaluations/Assessments

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SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

Chapter 2

Information on Evaluations/Assessments

1. How can I get the school district to evaluate or assess my child?

Your school district has an obligation to “identify, locate and evaluate” all children with disabilities who may be eligible for special education, including those who are attending private schools or are homeless or wards of the court. 34 Code of federal Regulations [C.F.R.] Sec. 300.111; California Education Code (Cal. Ed. Code) Secs. 56300 & 301. This is called “child find.”

You can also make a referral for assessment at any time. Contact your local school administrator (for example, the principal or special education program consultant). Outline your areas of concern about your child’s suspected disability and request an “evaluation” or “assessment.” Follow up with a **written**, dated request in order to document timelines. Once the school district receives your written request for assessment, the assessment process **must** begin. All written referrals shall initiate the assessment process. A referral is defined as any written request for assessment by a parent, guardian, teacher, or other service provider. School district personnel must help you put your request in writing. [Cal. Ed. Code Secs. 56029, 56301, 56302 & 56321(a); 5 California Code of Regulations (C.C.R.) Sec. 3021.] See *Sample Letter – Request for Assessment*, Appendices Section – Appendix A.

If the district refuses to assess your child following your written request for assessment, you have the right to challenge that refusal by filing a compliance

complaint with the California Department of Education's (CDE) Complaint Management and Mediation Unit or you can request a Due Process Hearing. See Chapter 6, *Information on Due Process Hearings/Compliance Complaints*.

2. How long will it take for the district to complete my child's assessment?

Under state law, your school district must give you an assessment plan within **15 days** of their receipt of your **written** referral for special education services. If a referral for assessment is made 10 days or less prior to the end of the regular year, the assessment plan must be developed within 10 days after school commences the following school year. [Cal. Ed. Code Sec. 56321(a).] The assessment plan shall:

- (1) Be in language easily understood by the general public;
- (2) Be provided in the primary language of the parent or other mode of communication used by the parent, unless to do so is clearly not feasible;
- (3) Explain the types of assessments to be conducted;
- (4) State that no individualized education program will result from the assessment without the consent of the parent;
- (5) A copy of the notice of parent rights, which includes an explanation of all procedural safeguards under state and federal special education law; and
- (6) A description of any optional dispute resolution mechanisms available under state law.

[Cal. Ed. Code Secs. 56321(a), (b).]

Additionally, if the assessment plan follows a child's **initial** referral for special education assessment, the plan shall include the following:

- (1) A description of any recent assessments conducted (including independent assessments and assessment information the parent requests to be considered);
- (2) Information stating the student's primary language and proficiency in that language.

[5 C.C.R. Sec. 3022.]

You have at least **15 days** to respond to or approve the assessment plan. [Cal. Ed. Code Sec. 56321(c)(4).] Once the district has received the signed assessment plan, it has **60 days** (excluding days of school vacation in excess of five and days that school is not in session) to complete the assessment and develop an Individualized Education Program (IEP), assuming it finds the child to be eligible. [Cal. Ed. Code Sec. 56344(a).] No determination of ineligibility for special education services can be made without an evaluation. [20 United States Code (U.S.C.) Sec. 1414(c)(5); 34 C.F.R. Sec. 300.305(e)(1).]

If a child is referred to special education 30 or less days before the end of a school year, the district must hold a meeting to develop an IEP within 30 days after the beginning of the next school year. [Cal. Ed. Code Sec. 56344(a).]

3. Does my child have to be referred to the student study team before assessment for special education?

No. A written request for assessment will initiate the assessment process and timelines regardless of the student study team (SST) process. There is no authority in law or regulation for the requirement that a pupil go through a SST before a referral of the student for special education may be processed. However, before referring the student for special education instruction and services, the school district must consider and utilize, where appropriate, the resources of the regular education program. One way the district can ensure that it has considered regular education modifications and support is by having the SST review your child's case. If you have requested a special education assessment, your child's study team referral cannot delay the assessment and IEP timelines without your consent. [Cal. Ed. Code Secs. 56303, 56321(c)(1) & (f).]

4. My child's school is on a year-round schedule, but I was told that they didn't have to test my child in July or August. Is that true?

No. However, the law says that an IEP must be developed by the school within 60 days of receiving the parent's consent to testing, not counting days between regular school sessions, terms, or days of school vacation in excess of five schooldays. [Cal. Ed. Code Sec. 56344(a).] If a child is referred to special education 30 or less days before the end of a school year, the district must hold a meeting to develop an IEP within 30 days after the beginning of the next school year. [Cal. Ed. Code Sec. 56344(a).] This means that the school must present the parent with an assessment plan, obtain the parent's consent to the testing, do the testing, and hold the IEP meeting within whatever days remain in the previous school year plus 30 days in the new school year. Because of this tight time line, testing may have to be conducted in July or August. For year-round-school students, if a school year ends in June, for example, and begins again in July, testing may have to begin in July so the process will be completed within 30 days of the start of that new school year.

5. My child is on a traditional school year calendar (September through June) and also attends an extended school year program during the summer. Does the district have to do assessments during the summer?

No. Schools do not have to do assessments between "regular school sessions." [Cal. Ed. Code Sec. 56344(a).]

6. My child has been referred for special education, and I received an assessment plan with a long list of tests that might be administered. Shouldn't the district be more specific?

Prior to conducting any assessment, the district must provide you with an assessment plan. The assessment plan must include the type of assessments to be conducted. [34 C.F.R. Sec. 300.304; Cal. Ed. Code .Secs. 56321(c)(1)-(2).]

Frequently, several tests will be listed in each area to be assessed because the evaluator may have to determine which tests are most appropriate during the actual assessment as the evaluator gets to know your child better. If you do not understand the type of assessments that are being used, you should ask for clarification. If you believe that certain test instruments are not appropriate for your child, you can request that those instruments not be used and not sign the consent for assessment until you and the district reach agreement on the assessments to be used. If you cannot agree on appropriate test instruments, a due process hearing may be necessary to determine appropriate test instruments.

7. How can I contribute to the assessment process?

As a parent, you know your child best. You can contribute by observing your child at home, noting the areas of educational concern to you, writing them down, and pointing out those areas to school personnel. See *Patterns to Look For*, Appendices Section – Appendix F. After you receive the assessment plan, you should review it carefully to determine whether you want additional information about the proposed assessments and/or want to request additional areas that need assessment.

8. Can a school district conduct an assessment without my written approval?

No initial assessment may be done without your written approval unless the district seeks and wins a due process hearing to compel assessment. However, if a parent fails to respond to a district request to reassess a student already in special education, the district can assess without parent consent. The district must demonstrate that it has reasonably sought consent from the parent. [34 C.F.R. Sec. 300.300(c)(2); Cal. Ed. Code Secs. 56321(c)(2), 56506(e).]

9. What questions should I ask when my child is scheduled for an assessment?

You may ask about any areas of the assessment that concern you. Specifically, you may want to know who or how many people will be working with your child during the assessment. How long will an assessment last? How many times will your child be seen? Can you be present during the assessment? Will my child be assessed in the language we speak at home? In addition, you should ask the school district to explain the assessments to be given to your child if you do not understand why the assessments will be administered. The school district should explain any tests that are to be given to your child.

10. What should an assessment cover?

The student is to be assessed in all areas related to the suspected disability including, where appropriate, health and development, vision (including low vision), hearing, motor abilities, language function, general ability, academic performance, self-help, orientation and mobility skills, career and vocational abilities and interest, and social and emotional status. A developmental history should be obtained, when appropriate. [Cal. Ed. Code Sec. 56320(f); 34 C.F.R. Sec. 300.304(c)(4).]

Federal regulations make it clear that the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked” to the disability category of the child. [34 C.F.R. Sec. 300.304(c)(6).] The school district must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical, and developmental factors have on the functioning of the child. In general, the school district must use assessment tools and strategies that provide relevant information directly assisting persons in determining the educational needs of the child. [34 C.F.R. Sec. 300.304(b).]

In addition, the district must consider whether your child requires assistive technology (AT) to benefit from instruction. This could mean conducting an

assessment for any service or device that directly assists him in the selection, acquisition or use of an AT device. The assessment must include a “functional evaluation” of your child in his “customary environment . . .” [34 C.F.R. Secs. 300.6 & 300.324(a)(v); Cal. Ed. Code Sec. 56341.1(a)(5); 5 C.C.R. Sec. 3065 (b).] See Chapter 5, *Information on Related Services*.

11. Can I ask for very specific kinds of assessments — such as a neurological examination or a non-oral assessment? What if the district does not have appropriately trained personnel to do the testing?

Yes, you can ask for specific assessments. The district has the responsibility to assess in all areas related to the suspected disability. If there is no district person competent to carry out certain kinds of evaluation, the district may contract out for the service or may use the results of any available independent assessment. In certain cases, the diagnostic services of a physician or other health professional may be required if the child’s suspected disability is medically related — and as a result the child needs special education. [34 C.F.R. Secs. 300.34(a), (c)(5).] See Chapter 13, *Information on the Rights of Students with Serious Health Conditions*.

12. Is a doctor the only professional who can provide an ADD/ADHD diagnosis as part of the special education assessment process?

No, unless the school district believes that a medical doctor is required to make the diagnosis. In that case, the district must ensure that a doctor performs the evaluation at no cost to the parent. An U.S. Department of Education letter makes it clear that:

If a public agency (school district) believes that a medical evaluation by a licensed physician is needed as part of the evaluation to determine whether a child...suspected of having ADD meets the eligibility criteria of the Other Health Impaired category, the school district must ensure that this evaluation

is conducted and is at no cost to parents. [OSEP Letter, February 18, 1992, 18 IDELR 963.]

If the school district believes that a health care professional other than a doctor can provide the evaluation, then the district may use another provider, as long as all of the protections of the evaluation requirements in federal and state law are met. The school or other staff selected to conduct an ADD/ADHD evaluation must be trained to do so. [34 C.F.R. Sec. 300.304(c)(1)(iv); Cal. Ed. Code Sec. 56320(b)(3).]

13. How can I ensure that the assessment covers emotional and behavioral areas?

The law specifies that your child must be assessed in all areas related to his suspected disability. If you or your child's teachers have observed that he has behaviors which adversely affect school performance (for example, has poor impulse control, has problems making friends, or is withdrawn), you should request an assessment of your child's social and emotional status as part of any assessment plan you sign. [Cal. Ed. Code Sec. 56320(f).] You may ask for an assessment in this area even if the district has not identified it as an area for assessment on the assessment plan. The district is required to use technically sound test instruments to assess the relative contribution of cognitive and behavioral factors and physical and developmental factors to the child's disability and need for services. [34 C.F.R. Sec. 300.304(b)(3).]

In addition, California laws on positive behavior intervention services require that every special education student who demonstrates a serious behavior problem be given a functional behavioral analysis assessment. The assessment is then used to develop a positive behavior intervention plan. See Chapter 5, *Information on Related Services*. [Cal. Ed. Code Sec. 56523, 5 C.C.R. Sec. 3052.]

14. I believe that my child has a learning disability. Does the school have to do anything different when assessing for a specific learning disability?

Federal law contains special procedures for assessing students suspected of having a learning disability. The eligibility determination should be made by a team of qualified professionals and the child's parents, including his classroom teacher, or if there is no teacher, a regular education teacher qualified to teach him, and at least one person qualified to conduct individual diagnostic evaluations of children such as a school psychologist or remedial reading teacher. At least one team member must observe the child's academic performance in the regular classroom, and if the child is preschool age, the observation should take place in an environment appropriate for that age. The observation may be one made prior to the child's referral for special education assessment. The team's written assessment report must include the basis for its determination of whether or not there is a specific learning disability and its relationship to the child's academic functioning and observed behavior. [34 C.F.R. Secs. 300.307-311.] For specific information on identifying your child under the category of Specific Learning Disability, See Chapter 3, *Information on Eligibility Criteria*.

15. What are the most common tests used in the assessment of a child with suspected learning disabilities?

The law requires that the student be given an individually administered test of ability or intelligence and tests of achievement in areas such as reading, math, and writing. The most commonly used test of intelligence is the *Wechsler Intelligence Scale for Children*. Sometimes the *Wechsler Pre-School and Primary Scale of Intelligence-Revised* (WPPSI-R) or the *Stanford-Binet Intelligence Test* are used.

The most commonly used achievement tests are the *Wide Range Achievement*, the *Peabody Individual Achievement Test* (PIAT), and the *Woodcock-Johnson Psycho Educational Battery-Revised* (WJPEB-R). All of these are short tests designed to

tell you the grade level at which the student is performing in reading, writing, spelling and math.

Since *Larry P. v. Riles* prohibits districts from using intelligence tests to assess African American students, more and more districts are moving away from the use of IQ tests and are relying instead on measures of adaptive behavior. [793 F.2d 969 (9th Cir. 1984)]. Districts may administer standardized instruments such as: *Adaptive Behavior Inventory for Children (ABIC)*; *Adaptive Behavior Scales (ABS)*; *Scales of Independent Behavior-Revised (SIB-R-Woodcock, Johnson Battery, Part IV)*; or *Vineland Adaptive Behavior Scales*. The districts will also use clinical observations and informal interviews to gather data about daily living skills and functioning in the home and community.

16. Are there documents that I may have that would help in the assessment process?

Yes. Various professional reports that you may have received on your child from other sources — such as a regional center or doctors — would help the assessment process. For example, speech and language, occupational and physical therapy, neurological or ophthalmological reports; current teachers' observations (from preschool or a different district); respite, recreational or camp personnel observations; and special medical reports are often useful. School districts generally ask you to share the other professional reports with them to assist in determining your child's needs. In fact, any independent evaluation provided to the school district by the parent must be considered in any decision related to the student's programming and services. [34 C.F.R. Sec. 300.305(a)(1)(i); Cal. Ed. Code Sec. 56329(c).]

17. How can I explain to my child why he is being assessed?

You may want to explain that you and your child's teachers believe that he is not learning as much as he can. Then, you could individualize the explanation by giving a simple example of his difficulty. You could point out that each child is

unique and that everyone learns in a different way. Some learn by hearing; some learn by seeing; and some learn through their sense of touch. Explain to him that assessments will show how he learns best, so his teacher can help him learn more.

18. How can I prepare my child for assessment?

Keep your explanation short and simple. You may say something like this: “You will be working with someone like a teacher who will have you look at pictures, play some games, do a little reading and math, and draw some designs and pictures.” That will give your child a general idea of what to expect.

19. What are the procedures and standards for assessment tests and tools?

A test and other evaluation material must be selected and administered so as not to be racially, culturally, or sexually discriminatory and must be administered in the student’s primary language or other mode of communication. The test must also be validated for the specific purpose for which it is used. In addition, testing must assess specific areas of educational need and not merely produce a single general intelligence quotient. No single procedure can be used as the sole criterion for determining an appropriate educational program for the student. Finally, for a student with impaired sensory, manual, or speaking skills, the testing must ensure that the results accurately reflect the student’s aptitude or achievement level, and not the student’s impaired skills, unless those skills are to be measured by the testing. [20 U.S.C. Sec. 1414(b); 34 C.F.R. Sec. 300.304; Cal. Ed. Code Sec. 56320.]

Federal regulations state that the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.” [34 C.F.R. Sec. 300.304(c)(6).]

The school district must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical, and developmental factors have on

the functioning of the child. In general, the school district must use “assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.” [34 C.F.R. Sec. 300.304(c)(7).]

In addition, the school district must use a variety of assessment tools and strategies to gather both relevant **functional** and **developmental** information about the child, **including information provided by the parent**. The evaluation must also gather information **related to enabling the child to be involved and progress in the general curriculum or for a preschool child to participate in appropriate activities**. For a child with limited English proficiency, materials and procedures must be selected and administered to measure the extent of a child’s disability rather than measuring the child’s English language skills. [34 C.F.R. Secs. 300.304-300.305.]

20. Who conducts the assessment?

Trained personnel must administer each test in the assessment in conformance with the test producer’s instructions. The law requires that persons knowledgeable about the disability being assessed and competent to perform the assessment conduct it. Further, these persons must be competent in both the oral and written skills of the student’s primary language or mode of communication, and must have knowledge and understanding of the student’s cultural and ethnic background. California regulations require the use of an interpreter when necessary.

A credentialed school psychologist, trained and prepared to assess cultural and ethnic factors appropriate to the student being assessed, must conduct a psychological assessment. A health assessment must be conducted by a credentialed school nurse or physician with similar training. A psychometrician or credentialed school psychologist must conduct individually administered tests of intellectual or emotional functioning where available.

If the assessment is not conducted under standard conditions, the evaluation report must include a description of the extent to which the assessment varied from standard conditions. For example, if the method in which the test was

administered differed from standard procedures, or if the qualifications of the person administering the assessment differ from the requirements of the test instructions, a statement in the report would be required. [34 C.F.R. Secs. 300.304(c)(1)(ii) & (iv); Cal. Ed. Code Secs. 56320, 56322, 56324; 5 C.C.R. Sec. 3023.]

21. Does the assessment have to be provided in my child’s primary language?

Yes. This is a requirement of both federal and state law, unless it is not feasible and is so stated in the assessment plan. If the assessor is not bilingual, the district should provide an interpreter. In addition, state law requires that testing and assessment material be selected so as not to be racially, culturally, and sexually discriminatory. [20 U.S.C. Sec. 1414(b); 34 C.F.R. Sec. 300.304(c)(1)(i); Cal. Ed. Code Sec. 56320(a), (b).]

22. Are there public education facilities outside of the local education agency that can assess my child?

Yes. Students may be referred as appropriate for further assessments and recommendations to the California Schools for the Deaf or Blind or the Diagnostic Schools for Neurologically Handicapped Children. [Cal. Ed. Code Sec. 56326; 5 C.C.R. Sec. 3025.]

Under state law, other state agencies also have responsibilities for providing assessments. County Departments of Mental Health are responsible for conducting certain mental health assessments; California Children Services (CCS) has responsibility for conducting assessments regarding occupational and physical therapy. See Chapter 9, *Information on Inter-Agency Responsibility for Related Services* (AB 3632/Chapter 26.5).

23. How much detail should be included in my child's written assessment?

The written assessment should give you a clear picture of your child's functioning in all the areas tested. California Education Code Section 56327 requires that the report shall include, but it is not limited to, all of the following:

Whether the student may need special education and related services;

- (1) The basis for making the determination;
- (2) The relevant behavior noted during the observation of the student in an appropriate setting;
- (3) The relationship of that behavior to the student's academic and social functioning;
- (4) The educationally relevant health and development and medical findings, if any;
- (5) For students with learning disabilities, whether there is such a discrepancy between achievement and ability that cannot be corrected without special education and related services;
- (6) A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and
- (7) The need for specialized services, materials, and equipment for students with low incidence disabilities.

In addition, specific details should be included on areas of deficit (weakness or delay) and areas of strength that can be used to assist the child in remedying those deficits. As a parent, you should be able to understand how your child's learning style and learning deficits and strengths affect his ability to learn. If this is not clear to you, ask school personnel to explain it to you. **Do not be afraid to ask them to explain technical terms in language you can understand.** Assessments must now determine not only eligibility, but also proposed content of your child's IEP and information related to enabling him to be involved and progress in the general curriculum, or for preschoolers, appropriate activities. [20 U.S.C. Sec. 1414(b)(2); 34 C.F.R. Sec. 300.304(b)(1)(ii).]

Most school psychologists make a clear finding of *ineligibility* when that is their conclusion; but, quite often, they do not give an opinion on eligibility when they think the child is *eligible*. If you receive an assessment that leaves the issue of eligibility open, you should call the assessor's attention to California Education Code Section 56327 and insist that the assessor give an opinion on eligibility in the written report as required by law.

24. Do I have the right to examine and/or get copies of my child's educational records?

Federal regulations require school districts to comply with a parent's request to inspect and review educational records without unnecessary delay and in no case more than 45 days after the request has been made. [34 C.F.R. Sec. 300.613.] However, **state law gives parents the right to examine and receive copies of all school records within five business days from the date of an oral or written request.** [Cal. Ed. Code Sec. 56504.]

The school district may charge no more than the actual cost of reproducing the records. If this charge effectively prevents a parent from getting copies, the copies shall be provided at no cost. [34 C.F.R. Sec. 300.617; Cal. Ed. Code Sec. 56504.]

25. Can I get copies of written assessment reports before the IEP meeting?

Yes. School districts are required by federal and state law to provide copies of assessment reports at no cost upon completion of the assessment. [20 U.S.C. Sec. 1414(b)(4); 34 C.F.R. Sec. 300.306(a)(2).] You should request in writing that all assessments be sent to you within a reasonable time before the IEP meeting. There are no specific timelines in federal or state law to tell school districts how many days before the IEP meeting they must provide copies of assessments and other educational records to parents.

When you make a request for assessment prior to an IEP meeting, tell the district that you will agree to reschedule the IEP if the reports are not completed well

before the meeting. If the school district will not honor your request, the best argument is that the failure to provide the assessments in advance deprives you of your rights to meaningfully participate in the meeting and to give your informed consent to the IEP. [34 C.F.R. Sec. 300.322; Cal. Ed. Code Sec. 56346.]

26. Are formal standardized tests the only kind of assessment data that the IEP team can review?

No. As part of an initial evaluation or re-evaluation, federal regulations require that existing data on the child be reviewed. This data includes evaluations and information provided by the parent; current classroom-based assessments and observations; and teacher and related services providers' observations. [20. U.S.C. Sec. 1414(c); 34 C.F.R. Sec. 300.305(a)(1).]

In addition, the school district must draw upon information from a variety of sources. These include aptitude tests, achievement tests, parent input, teacher recommendations and information about the student's physical condition, social or cultural background and adaptive behavior. [34 C.F.R. Sec. 300.306(c)(1).]

27. If I do not agree with the school district's evaluation, can I get the school district to pay for an independent evaluation?

Yes. If you disagree with a school district's assessment, you must specifically ask the district to pay for an independent educational evaluation (IEE). It is very important that you state your request as a **disagreement** with a particular assessment.

When the school district receives your request for an IEE, the school district has only two options: **Fund or File**. That is, the district must either pay for the independent evaluation (**Fund**) or file for Due Process (**File**), claiming that the district assessment is "appropriate." If the district decides to go to a hearing, and the hearing officer determines that the evaluation is appropriate, you have a right to the independent evaluation, but not at public expense. [34 C.F.R. Sec. 300.502; Cal. Ed. Code Sec. 56329(b).] The district may ask you to identify specific areas

of disagreement with its evaluation, but this cannot be used to delay the district's response to your request. [34 C.F.R. 502(b); Cal. Ed. Code Secs. 56329(b) & (c).]

Under federal regulations, the district must respond to your request for an IEE "without unnecessary delay." [34 C.F.R. Sec. 300.502(b)(2).] If the district fails to respond by either paying or filing for due process, it has failed to comply with the law. You could file a compliance complaint to ask the CDE to determine whether the school district should fund an IEE under those circumstances.

28. Can the district limit the cost of an independent evaluation and limit the evaluator to someone it selects?

The district may try to restrict the cost of an IEE or limit the evaluators who the district will accept to conduct the evaluation. There is no legal authority for limiting the cost and neither the federal nor state law sets out procedures for selecting the independent evaluator. However, you should make sure the evaluator is not a district employee and that he has the necessary qualifications to do the assessment. [34 C.F.R. Sec. 300.502(a)(3)(i).]

In some cases, the district may offer an assessment by a California Diagnostic Center, which is a division of the CDE. The Diagnostic Center is designed to assist districts that do not have the expertise to do a particular assessment. While you may want to consider an assessment by a Diagnostic Center, there are two reasons why you may not want to accept this alternative: (1) due to waiting lists, the Diagnostic Center may take up to six months to complete an assessment; and (2) because the Diagnostic Center is a public agency that has a continuing relationship with your district, its assessment may be more limited in its recommendations.

29. If I disagree with an evaluation performed by the school, can I get an independent evaluation from someone who is qualified but is not employed by the school?

Yes. You can always obtain an independent educational evaluation (IEE) at your own expense and the school district must consider the results of an independent evaluation in any decision regarding the provision of a free appropriate public education to your child. The results may also be presented as evidence at a due process hearing. [34 C.F.R. Sec. 300.502(c); Cal. Ed. Code Sec. 56329(c).]

Once you have obtained the IEE and are satisfied with it, provide a copy to the school district well before the IEP meeting. And, inform the district **in writing** of the recommended services or placement in the IEE that you are requesting for your child. This will allow the district to provide you with “prior written notice” if the district refuses to provide the services or placement recommended in the IEE. See Chapter 4, *Information on IEP Process*.

Also, be sure to let the school district know that you want someone to attend the IEP meeting who is authorized to respond to the IEE on behalf of the school district. You are responsible for paying for an assessment that you have obtained on your own. However, if the district accepts the recommendations made in this assessment, you may be able to seek reimbursement from the school district.

30. Is there any other way to obtain an independent evaluation if the district refuses to provide one and I am unable to pay for one?

During the mediation process, parents and school districts will often agree to an independent assessment. A hearing officer at a due process hearing may also order an independent evaluation as part of the hearing. In this case, the independent evaluation is at public expense. [Cal. Ed. Code Sec. 56505.1(e).] You should contact local hospitals, medical centers, parent resource-training centers, parent support groups, regional centers or other community-based agencies to explore the availability of low cost evaluations.

31. The school district is refusing to let an independent evaluator visit the school site to observe my child in his current or proposed placement. What can I do?

It is good practice to have your independent assessor include a classroom observation as part of an assessment. Otherwise, your expert will be subject to attack by the district for giving an opinion from a clinical perspective that is not relevant to what happens in the classroom. If an observation is too expensive or time consuming, the assessor should at least communicate with teachers and other service providers to support to the conclusions and/or recommendations of the independent assessment.

If the school district observed the child as part of its assessment or if the district's assessment procedures make in-class observation permissible, an independent evaluator has the same right to observe a child in his current or proposed educational placement whether or not the independent assessment is conducted at public or private expense. This right also exists whether or not a due process hearing has been requested not. [Cal. Ed. Code Sec. 56329(b).]

If the school district refuses to permit the independent evaluator to visit a site as part of an independent assessment, you could file a compliance complaint with the Department of Education or a motion with the Office of Administrative Law to enforce this right. See Chapter Six, *Information On Due Process Hearings/Complaints*.

The right to observe a proposed placement also applies to school districts. If a parent is proposing that a school pay, or reimburse the parent, for the costs of a private school placement, the district is entitled to observe that proposed private school and/or to observe the student in the proposed private school if the parent has already placed the child there. [Cal. Ed. Code Sec. 56329(d).]

32. How often must evaluations be conducted for a student with a disability?

An initial evaluation must be conducted prior to a student being considered for special education and related services. A re-evaluation must be conducted at least every three years for special education students with certain exceptions. A re-evaluation must also be conducted whenever the student's parents, teacher or district staff request one. [20 U.S.C. Sec. 1414(a)(2); 34 C.F.R. 300.303.]

33. Must a school district conduct additional testing for every student with a disability as part of a re-evaluation?

No. As part of any re-evaluation, the IEP team (including parents) and other qualified professionals, as appropriate, must review existing data on the student to identify what additional data, if any, are needed to determine:

- (1) Whether the student continues to have an eligible disability;
- (2) The education needs of the student;
- (3) Whether the student continues to need special education and related services; and
- (4) Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the student's IEP and to participate in the general curriculum.

The team must review evaluations and information provided by the parent; current classroom-based assessments and observations; and teacher and related services providers' observations. The group may conduct this review without a meeting. [20 U.S.C. Sec. 1414(c)(1); 34 C.F.R. Sec. 300.305; Cal. Ed. Code Sec. 56381.] The district is not required to obtain parental consent to conduct this portion of the re-evaluation [34 C.F.R. Sec. 300.300(d)(1)(i).]

If the IEP team decides that additional data/testing are needed, the district must obtain parental consent and conduct the evaluations. [34 C.F.R. Sec. 300.300(c); Cal. Ed. Code Sec. 56381(f).]

If the team decides that no additional data/testing are needed, the district is not required to conduct an assessment *unless the parent requests one*. In this case, the district must notify you of this decision and the reasons for it, and inform you of your right to request an assessment. [20 U.S.C. Sec. 1414(c)(4); 34 C.F.R. Sec. 300.305(d)(1)(ii)]; Cal. Ed. Code Sec. 56381(d).]

34. Is a school district required to do an evaluation if it indicates that a child no longer qualifies for special education and related services?

Yes. Before determining that a child with a disability is no longer eligible for special education and related services, the school district must conduct a thorough and comprehensive evaluation of the child. If you disagree with the school district's recommendation on eligibility, you may ask for a due process hearing to resolve the issue. [20 U.S.C. Sec. 1414(c)(5); 34 C.F.R. Sec. 300.305(e)(1).]

However, if the district is terminating eligibility because the student graduated with a regular high school diploma, or exceeded the age eligibility for special education and related services, no evaluation is required. [34 C.F.R. Sec. 300.305(e)(2).]

35. Is parental consent needed for re-evaluation of a child?

A re-evaluation may not be conducted without written parental consent unless a school district can show that it took reasonable steps to obtain consent and the parent failed to respond. [Cal. Ed. Code Secs. 56381(f)(2) & 56506(e); 34 C.F.R. Sec. 300.305(c)(2).] Reasonable steps to obtain consent can be demonstrated if the district can show detailed records of telephone calls made or attempted to the parent and the results, copies of correspondence sent to the parents and any responses received, or detailed records of visits made to the parent's home or place

of employment and the results. [34 C.F.R. Secs. 300.300(c)(2) & 300.322(d); Cal. Ed. Code Sec. 56381(f)(2).] Prior to obtaining consent, the district must fully inform the parent of all information relevant to the proposed re-evaluation. [34 C.F.R. Sec. 300.9.]

36. What can do if I believe that the re-evaluation has been done superficially just to meet the legal mandate?

All assessments, including the three-year re-evaluation, must be conducted in accordance with state and federal law. The school district's assessment plan should give you enough information to determine the appropriateness of the evaluation. If the plan is not comprehensive enough, you may suggest that additional tests be administered and/or may ask to postpone the IEP meeting until a comprehensive re-evaluation can be done. The thoroughness of the re-evaluation can also be the subject of a due process hearing. [34 C.F.R. Sec. 300.507(a)(1); Cal. Ed. Code Sec. 56320.]

37. My child is temporarily placed in a psychiatric hospital that is located in another county. Who is responsible for conducting aspecial education assessment or re-evaluation?

Special education students who are placed in a public hospital, state licensed children's hospital, psychiatric hospital, proprietary hospital or a health facility for medical purposes are the educational responsibility of the district, special education local plan area, or county office of education in which the hospital or facility is located. [Cal. Ed. Code Secs. 56167 & 56168(b).] Therefore, the re-evaluation is conducted by the educational agency responsible for the area in which the facility is located.

38. What is the assessment process for Section 504? Is it the same as the special education assessment process?

No specific assessment process is outlined in Section 504 of the Rehabilitation Act of 1973. However, Section 504 regulations require that school districts “conduct an evaluation...of any persons who, because of [disability], need or are believed to need special education or related services...” The school district must establish standards and procedures for 504 evaluations and ensure that:

- (1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
- (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
- (3) Tests are selected and administered so as best to ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect his aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting his impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

[34 C.F.R. Sec. 104.35.]

Section 504 evaluation standards and procedures may be different for each school district. The district may choose to use the special education assessment process or develop a separate process for Section 504 evaluation. Parents should write their district Section 504 Coordinator and obtain a copy of the district’s 504 Policies and Procedures. [34 C.F.R. Sec. 104.35.]

39. If I request an assessment for Section 504 eligibility, does the school district have to assess my child to determine his eligibility for accommodations and/or services?

No. If the school district believes that your child does not have a “physical or mental impairment which substantially limits a major life activity,” the district may refuse to evaluate him. You would have to file for a Section 504 hearing to require the district to evaluate your child for eligibility. [OCR Memorandum April 29, 1993; 19 IDELR 876.]

40. Should my child be included in the school’s regular performance assessments?

Yes. Federal law requires the participation of students with disabilities in state and district-wide assessments of student achievement with appropriate modifications where necessary. Participation in these assessments and any necessary modifications of the administration of the assessments must be documented on the student’s IEP. [34 C.F.R. Sec. 300.138(a); Cal. Ed. Code Secs. 56345(a)(5) & (6).] For a full discussion of your child’s rights with regard to these assessments, see Chapter 10, *Information*.

In addition, the IEP team may exempt students from these assessments. If the IEP team determines that your child will not participate in state or district-wide assessments (or part of an assessment), a statement of why the assessment is not appropriate for your child and how he will be assessed must be included in the IEP. [20 U.S.C. Secs. 1412(a)(16) & 1414(d)(1)(A)(i)(VI)(bb); 34 C.F.R. Sec. 300.320(a)(6)(ii); Cal. Ed. Code Sec. 56345(a)(6)(B).] Also, the state was required to develop guidelines for determining when alternative assessments have to be used.

41. What are the legal requirements that ensure appropriate and accurate special education assessment for multicultural students?

Federal law requires:

- (1) Tests must be selected and administered so as not to be racially, culturally, or sexually discriminatory;
- (2) Tests must be administered in the student's primary language or other mode of communication;
- (3) Tests must be validated for the specific purpose for which they are used;
- (4) Testing must assess specific areas of educational need and not merely produce a single general intelligence quotient (no single procedure can be used as the sole criterion for determining an appropriate educational program for a student);
- (5) When a student with impaired sensory, manual, or speaking skills is being tested, the testing must ensure that the results accurately reflect the student's aptitude or achievement level, and not the student's impaired skills, unless those skills are to be measured by the testing; and
- (6) A student must be assessed in all areas related to a suspected disability, including, where appropriate, health and development, vision (including low vision), hearing, motor abilities, general ability, academic performance, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status.

[34 C.F.R. Sec. 300.304.]

In addition, for a child with limited English proficiency, materials and procedures must be selected and administered to measure the extent of a child's disability rather than measuring the child's English language skills [Cal. Educ. Code Sec. 56320(a)(b) & (d).]

In addition, federal law requires that parents give informed consent for student evaluation procedures and student placement. Informed consent means that you, as a parent, have been fully informed of all information relevant to the activity for

which consent is sought, in your native language or other mode of communication. [20 U.S.C. Sec. 1415(b)(4); 34 C.F.R. Sec. 300.503(c)(1)(ii).]

State law requires the same protections included in federal law. In addition, the state requires that:

- (1) The assessment plan be provided in the primary language of the parent unless to do so is clearly not feasible;
- (2) Any psychological assessment of students be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the student being assessed; and
- (3) For students whose primary language is other than English, linguistically appropriate goals, objectives, programs and services be included in a student's IEP.

[Cal. Ed. Code Secs. 56320(a), 56321(b)(2), 56324(a), & 56345(b)(2).]

42. How can I ensure that my child has an appropriate assessment?

The language used by assessment staff who administers assessments to their child too often intimidates parents of children with special education needs. Tests are not as complex as they may first appear. A competent psychologist, speech clinician, learning specialist, or other assessment staff in the public schools can easily explain the tests to you. You have the right to ask about tests, how they are put together, and what the results of a test battery mean in clear and plain language. Never hesitate to exercise this right; your child's future may be decided on the results of such assessments. Here are some questions you can ask, especially if you are or your child is a member of a multicultural population:

- (1) How reliable and valid is the test? That is, if given again, is it likely that the results will be about the same (reliability)? Does this test measure adequately the ability it is supposed to measure (validity)?

- (2) Are the norms for this test based on a representative sample of the population of which the child is a part? That is, if the child is Asian-American, are Asian-Americans included in the normative sample?
- (3) Is the response format of the test appropriate to the child? That is, if the child is non-verbal, can he respond without giving a verbal response? If your child is visually impaired, can the test be given without visual material? If your child speaks only Spanish...is physically handicapped...is hearing impaired...etc., can he take the test without interference from physical or linguistic limitations?
- (4) Is the examiner skilled in administering the test, knowledgeable about normal and abnormal patterns of development, capable of observing qualitative features of test performance, and proficient in interpreting results? Your child has the right to receive assessment services from a competent, qualified examiner.
- (5) Has the examiner provided a setting and developed a procedure that will assure the student's maximum performance so that results will not be skewed by extraneous circumstances? Such circumstances might include, for example, illness, anxiety, hunger, trauma, motivation, confidence, temperature, lighting, etc. A good assessment must acknowledge the influence of such variables and estimate their impact on assessment results.

First and foremost, tests must be selected on the basis of the referral problem and according to the specific needs of the individual child. You should always question the practice of assessing all students on the same test (or same test battery) since each student is a special and unique individual. [34 C.F.R. Sec. 300.304; Cal. Ed. Code Sec. 56320.]

43. Must the district assess my child before he becomes ineligible for special education because of age or graduation with a regular diploma?

The district does not have to assess a student who will lose special education eligibility only as a result of exceeding the age limitations or because of graduating with a regular high school diploma. For a student who has not reached the age

limit or graduated, the district must assess him before it can determine he no longer has a qualifying disability. [Cal. Ed. Code Sec. 56381(i); 34 C.F.R. Sec. 300.305(e)(2).]

44. My child is in a private school. Must the district evaluate him for special education eligibility even if I have no intention of taking him out of his private school?

Yes, as long as it has your consent, a district must locate, identify, and assess all private school children with disabilities, including religiously affiliated school-age children, who have disabilities. Both the district in which you reside and the one in which the private school is located (if different) have “child find” obligations. You should make your written request for assessment to *both* districts, although only the district where you *reside* has responsibility to provide services to your child if he is eligible. [34 C.F.R. Secs. 300.111 & 300.131; Cal. Ed. Code Secs. 56171, 56300, & 56301.]

45. What is the *Larry P. v. Riles* case? How did it originate?

The *Larry P. v. Riles* (*Larry P.*) case was filed in 1971 when five African-American children who had been placed in special education classes for the “educable mentally retarded” (EMR) in the San Francisco Unified School District filed suit in the Federal District Court of Northern California, claiming that they had been wrongly placed in the EMR classes based on their performance on intelligence tests that were racially biased and discriminatory. [495 F. Supp. 926 (N.D. Cal. 1979).] The suit also claimed that a disproportionate total number of African-American students were placed in EMR classes compared to the number of African-American students in the school system.

The Court decided in favor of the students and the district was prohibited from using IQ tests to identify or place African-American students in EMR-type classes. The decision was upheld on appeal in 1984. [793 F.2d 969 (9th Cir. 1984).] The

Court expanded its ruling in the case by banning the use of IQ testing for all African-American students who have been referred for special education services.

The federal district court case of *Crawford v. Honig* prompted a reexamination of the rights of multicultural children in special education. This case has challenged the *Larry P.* ruling banning the use of IQ tests for African-American children and has, preliminarily, resulted in three African-American children being allowed to take IQ tests because their parents wish to have them do so. After the Ninth Circuit Court of Appeals affirmed *Crawford*, CDE issued a new Legal Advisory in October 1994, continuing the directive which banned IQ testing. [See 37 F.3d 485 (9th Cir. 1994).]

46. Did CDE take specific action to implement Larry P.?

The California Department of Education issued a statewide directive to all state special educators to clarify the use of IQ tests in the assessment of African-American students for special education services. The key components of the directive are:

- (1) School districts are not to use intelligence tests in the assessment of African-American students who have been referred for special education services;
- (2) In lieu of IQ tests, districts should use alternative means of assessment to determine identification and placement (such as assessment of the student's personal history and development, adaptive behavior, classroom performance, academic achievement, and evaluative instruments designed to point out specific information relative to a student's abilities and inabilities in specific skill areas);
- (3) An IQ test may not be given to an African-American student even with parental consent;
- (4) When a school district receives records containing test protocols from other agencies...or independent assessors, these records shall be forwarded to the parent. IQ scores contained in the records shall not become a part of the student's current school records;

- (5) There are no special education related purposes for which IQ tests shall be administered to African-American students;
- (6) IQ tests shall not be used to determine whether an African-American student is learning disabled, because it is possible that the resulting score could subsequently result in the student's being identified as mentally retarded;
- (7) The prohibition on IQ testing applies even though students are no longer placed in special day classes designated EMR;
- (8) This directive supersedes all previous notices as to the meaning and effect of the Court's decision in *Larry P. v. Riles*. [CDE, *Larry P. Directive*, 1986.]

47. Does the *Larry P.* case affect all children who may need special education assessments?

No. The ruling applies only to African-American students who may need special education services. However, some local districts have, on their own, expanded the ruling to include all children.

48. What was the *Diana v. State Board of Education* case? What impact does the *Diana* case have on Spanish-speaking students?

The *Diana v. State Board of Education* (*Diana*) case originated when a group of Spanish-speaking students were inappropriately assigned to EMR classes based on an assessment by an unqualified assessor. [CA 70 RFT (N.D. Cal. 1970).] *Diana* occurred because a monolingual psychologist tested Spanish speakers in English and used this data to place students in special education classes. The case, filed in 1969, was settled out of court in 1970. The stipulated settlement agreement required that the CDE: (1) monitor schools for racial imbalance, (2) correct any imbalance, (3) collect data annually, and (4) use representatives of the Latino community when audits are performed in school districts. At the time of the order, Latinos were over-represented in EMR classes, constituting 26% of the total

statewide EMR population but only 14% of the statewide school-age population in 1967.

The CDE must still comply with the 1971 court order to monitor the representation of special education to ensure proportionate representation for Spanish-speaking students. Because of *Diana*, state law contains provisions for testing in the child's native language so that no child will be placed into special education only because of a limited ability to speak English. [Cal. Edu. Code Secs. 56320(a), (b), & (d).]

49. What are some commonly used tests for Spanish-speaking students who may need special education services?

What is most important in identifying Spanish-speaking students is the **assessor**, not the test. Any parent or community person who works with Spanish-speaking students should examine carefully the bilingual training, assessment training, and cultural sensitivity of the person doing special education testing. Test translation should be avoided at all cost, as translation invalidates the results.

Listed below are general areas of assessment and tests that are commonly used with Spanish speakers. The tests are not valid for every student in all situations. Remember — each assessment plan should be tailored to meet each student's individual educational assessment needs.

**Reading and Other
Academics:**

Woodcock-Muñoz III

Language:

- Clinical Evaluation of Language Fundamentals (CELF)
- Expressive One Word Picture Vocabulary Test (EOWPVT)
- Receptive One Word Picture Vocabulary Test (ROWPVT)
- Peabody Picture Vocabulary Test (PPVT)
- Test of Auditory Processing Skills (TAPS)

Processing:

- Test of Auditory Processing Skills (TAPS)
- Test of Visual Processing Skills (TVPS)

Cognitive:

- Wechsler Intelligence Scale for Children (WISC)
- Leiter International Performance Scale (Non-verbal)
- Test of Nonverbal Intelligence (TONI)

50. What is the effect of *Diana and Larry P.* on special education assessments for other ethnic and language minority students?

No student being assessed for special education eligibility and services should be discriminated against or assigned to special education classes based on his limited ability to speak English. As in *Larry P.*, the tests administered to students must be non-biased and culturally valid. Therefore, the rulings in *Diana and Larry P.*, coupled with federal and state assessment protections, reinforce the obligation of

school districts to meet the linguistic and cultural needs of ethnic and language minority students in the assessment process, as well as in the provision of special education services.

Currently, there are very few specially designed special education assessments for other ethnic and language minority students. Special education assessment is usually conducted with the common tests that are administered to most students. Therefore, for the limited-English student, it is essential that the assessor be proficient in the student's native or primary language.

51. What is the effect of Larry P. on the special education eligibility criteria?

State special education eligibility criteria have not been affected by the *Larry P.* court ruling. The single eligibility area affected most by the *Larry P.* decision is specific learning disability.

Before 2004, school districts used the “discrepancy model” to determine whether a student had a learning disability. Under this model, a student had to have a severe discrepancy between intellectual *ability* and *achievement* in academic areas. Student ability was traditionally measured by standardized IQ tests. The *Larry P.* case, however, prevented the use of these tests, and districts were required to use alternative methods. Under current law, states cannot require districts to use the discrepancy model and must permit the use of a child's “response to scientific, research-based intervention” (RTI). Those districts that choose to continue the discrepancy model may do so, but must use alternative tests to measure intellectual ability. See Chapter 3, *Information on Eligibility*.