

Principles: State and Federal Laws Affecting California Special Education Students

Based on "Policy on Legislation Affecting California Special Education Pupils' Rights Under Federal and State Special Education Laws," Adopted 11/20/1999, Amended 3/2/2013; "Policy on Legislation Affecting Pupils' Rights to Education in the Least Restrictive Environment," Adopted 11/20/1999, Amended 9/20/2003; and "Policy on Legislation Affecting California Special Education Complaint, Monitoring, and Accountability Systems," Adopted 11/20/1999, Amended 3/2/2013

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BACKGROUND:

Disability Rights California (DRC) is committed to ensuring special education students receive an education designed to meet their unique needs. Special education rights afforded by federal law should be maintained and enhanced in California. Students with disabilities must be educated in the most integrated setting to the maximum extent appropriate with non-disabled peers. DRC supports state laws and policies that establish greater protections for students with disabilities than federal law. DRC opposes any state laws or policies decreasing students' rights.

Although federal and state laws provide students and their family with comprehensive rights, the education they receive too often does not

provide positive educational outcomes including the education they need to be employed or succeed in postsecondary education or training. Special education in many districts is a parallel and less effective system of education with less ambitious learning goals. As adults, students with disabilities are less likely to graduate from high school, less likely to demonstrate proficiency in reading and mathematics, less likely to go to college, more likely to be suspended or expelled, and less likely to be employed. The promise of a collaborative approach between parents and educators to address students' unique needs is often unnecessarily adversarial.

PRINCIPLES:

Federal and state special education laws and policies require and should ensure students with disabilities:

1. Obtain timely and appropriate evaluations to determine eligibility, placement and service needs.
2. Have timely, regularly scheduled, and meaningful individualized education plan (IEP) meetings and documents in which students with disabilities and their parents are active and collaborative partners with the school staff.
3. Obtain appropriate related services.
4. Are placed in the least restrictive environment, which for most students means the class and school the pupil would otherwise attend but for their disability with the use of supplementary aids and services (such as curriculum modification, assistive technology, health services, and behavior intervention services), unless a satisfactory education cannot be achieved there.
5. Participate in integrated extra-curricular or nonacademic activities.
6. Remain in school with appropriate services and supports rather than be excluded, expelled or "pushed out" for conduct that is a manifestation of their disabilities or the result of inappropriate services from the school district.
7. Have appropriate positive behavioral intervention services considered in an IEP to address serious behavior problems.

Positive and coordinated behavioral intervention plans should be provided at home, in school, and in the community as needed.

8. Have culturally and linguistically appropriate special education evaluations, program plan meetings, and instructional and related services. This includes providing alternative communication services consistent with state law requirements so that ethnically diverse communities have appropriate language access and ensuring that individualized educational programs are translated in the family's preferred language within 30 days.
9. Are provided effective communication tools, accommodations, and strategies when students have hearing, vision or communication disabilities. This includes providing materials in alternative formats when requested by individuals who have visual impairments.
10. Receive appropriate transition planning and services at age 16 or earlier, including effective interagency collaboration. Transition laws and policies should facilitate a student's movement from school to post-school through services and activities such as postsecondary education, vocational education, integrated complete employment (earning at least minimum wage), supported employment, continuing and adult education, adult services, independent living, or community participation and experiences.
11. Have effective, fair, competently-administered due process procedures and effective compliance complaint procedures with access to advocacy services and attorney fees when appropriate.

Standardized Testing

California uses the more rigorous Common Core State Standards to guide classroom instruction in reading, writing, speaking, mathematics and other subjects. School districts across the state are training their general education teachers to use the new standards but often do not include special education teachers. General education students are required to participate in standardized testing that measures knowledge of the Common Core Standards. Most students with disabilities who historically participated in the statewide assessment system via the California Modified

Assessment will now participate in the Common Core Standards assessments with appropriate supports and accommodations.

For some students with the most significant disabilities, the standard test may not be an appropriate assessment tool. The Every Student Succeeds Act limits the use of alternative assessments to 1% of the number of students statewide taking alternative tests. A local education agency must report to the state when it believes it will exceed 1% of its total assessed student population taking alternate assessments and provide justification for exceeding the limit. The California Alternative Assessments are aligned with alternate achievement standards called the Core Content Connectors, which are linked to the Common Cores State Standards.

To ensure that students with disabilities have equal educational opportunities, the state must:

1. Ensure that special education teachers receive the same training in the Common Core Standards as general education teachers.
2. Ensure students with disabilities who participate in testing designed to measure knowledge and proficiency with Common Core standards receive appropriate modifications and accommodations.
3. Ensure that no more than 1% of the number of students statewide are taking the California Alternate Assessment, which uses standards established by the Core Content Connectors.
4. Provide an appropriate array of testing modifications and accommodations, such as providing materials in alternative formats, when a high school exit exam is a high school graduation requirement, and for students for whom the exit exam is not appropriate, identify alternative ways the student can demonstrate proficiency and receive a diploma.
5. Ensure high stakes testing does not result in the exclusion of special education students from the least restrictive environment, general education activities, or settings.

Special Education Monitoring and Accountability Systems

As required by the Individuals with Disabilities Education Act (IDEA), the United States Department of Education (ED), Office of Special Education

and Rehabilitative Services (OSERS), Office of Special Education Programs (OSEP) makes an annual determination of each state's compliance with implementing the provisions of Part B of the IDEA. Every state receives one of the following compliance determinations from OSEP: "meets requirements," "needs assistance," "needs intervention," or "needs substantial intervention." Federally mandated data collection that enables ED to determine local compliance with IDEA is a critical tool for evaluating students' access to services and measuring outcomes.

California's special education complaint and monitoring system must make school systems more accountable for pupil outcomes and for school system failures to implement appropriate programs. The agencies responsible for monitoring compliance with state and federal special education laws must be more accountable. Agencies charged with monitoring local education agency (LEA) compliance should take a more proactive approach to their duties.

DRC will advocate for effective monitoring systems that:

1. Monitor achievement of outcomes rather than paper compliance.
2. Hold ED, CDE and LEAs accountable for collecting data that provides a meaningful measure of outcomes for students with disabilities and informs the public about LEAs that are not meeting students' needs.
3. Ensure that students with disabilities are not disproportionately suspended, expelled or otherwise excluded from school and school districts follow behavior and discipline procedures designed to achieve that outcome.
4. Ensures CDE orders appropriate corrective action to remedy systemic violations of federal and state special education laws.
5. Better inform policy makers of best practices and the training needs of schools. Data should include information on the use of restraint and seclusion, informal suspensions, segregated school sites, non-public schools, and out-of-state residential placements.

Students with Behavioral Challenges

Positive behavioral interventions should be used to address behavior that is dangerous to the student and others, including behavior that results in the

use of restraint or seclusion, and should focus on the underlying cause or purpose of the dangerous behavior. Any behavioral intervention must be consistent with the student's right to be treated with dignity and be free from abuse.

Behavioral restraint or seclusion are only used as safety measures of last resort when a student's behavior poses an imminent risk of serious physical harm. Restraint or seclusion should never be used as a substitute for a behavioral intervention plan or for punishment, discipline, coercion, retaliation, or staff convenience. Restraint and seclusion should only be used by properly-trained staff and only with the degree of force and the amount of time necessary for the imminent danger of serious physical harm to dissipate. The following must never be used: prone restraint, any intervention that restricts a student's breathing, chemical restraint, mechanical restraint.

DRC will advocate for behavioral supports and interventions that do not include restraint or seclusion. Disability related behaviors should be addressed as follows:

1. Ensure that prior to developing a behavior plan the IEP team will have information about the student's behavior based on a comprehensive behavioral analysis assessment.
2. Ensure that behavioral analysis assessment are consistent with OSEP guidance and best-practice standards and include strategies for removing antecedents and adding antecedents that maintain appropriate behavior; removing consequences that escalate dangerous behaviors and adding consequences that maintain appropriate behaviors; and teaching alternative appropriate behaviors including self-regulation. *Dear Colleague Letter on the Inclusion of Behavioral Supports in IEPs, August 1, 2016.*
3. Ensure that behavior plans are designed to provide the student with greater access to a variety of community settings and successful social opportunities.
4. Ensure that students with behaviors are not placed in unduly restrictive settings in lieu of appropriate behavior supports and interventions.

5. Ensure that teachers are regularly trained to use positive behavioral interventions as an alternative to restraint and seclusion.
6. Ensure that local education agencies are collecting data on the use of restraint and seclusion.