

*Identification and Evaluation of Individuals for  
Special Education*

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A student shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and used where appropriate.

All referrals for special education and related services from school staff shall include a brief reason for the referral and description of the regular program resources that were considered and/or modified for use with the student and their effect. All referrals shall include evidence of a research-based reading program taught by a highly qualified instructor with monitoring of achievement progress and documentation of academic progress.

**Initial Evaluation for Special Education Services**

Within 15 days of a referral for initial assessment, unless the parent/guardian agrees in writing to an extension, the student's parent/guardian shall receive a notice of parental rights related to identification, referral, assessment, instructional planning, implementation and review, including the special education local plan area's procedures for initiating a referral for assessment to identify individuals with exceptional needs and a written proposed evaluation plan. The 15-day period does not include days between the student's regular school session or term or days of school vacation in excess of five school days from the date of receipt of the referral. If the referral is made within 10 days or less prior to the end of the student's regular school year, the proposed evaluation plan shall be developed within 10 days after the beginning of the next regular school year, or the student's regular school term. In the case of the student's school vacation in excess of five school days, the 15-day deadline shall recommence on the date the student's regular school days reconvene.

The proposed evaluation plan shall meet all of the following requirements:

1. Be in a language easily understood by the general public
2. Be provided in the native language of the parent/guardian or other mode of communication used by the parent/guardian unless it is clearly not feasible
3. Explain the types of evaluation to be conducted
4. State that no individualized education program (IEP) will result from the evaluation without parent/guardian consent

## **Parent/Guardian Consent for Evaluations**

Upon receiving the proposed evaluation plan, the parent/guardian shall have at least 15 days to decide whether or not to consent to the initial evaluation. The evaluation may begin as soon as informed parental consent is received by the district. The district shall not interpret parent/guardian consent for initial evaluation as consent for initial placement or initial provision of special education services.

Informed parental consent means that the parent/guardian:

1. Has been fully informed of all information relevant to the activity for which consent is sought, in his/her native language or other mode of communication
2. Understands and agrees, in writing, to the carrying out of the activity for which his/her consent is sought and the consent describes that activity and lists the records (if any) that will be released and to whom
3. Understands that the granting of consent is voluntary on his/her part and may be revoked at any time
4. Understands that if he/she revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked)

The district shall make reasonable efforts to obtain the informed consent of the parent/guardian for an initial evaluation or reevaluation of a student. The district shall maintain a record of its attempts to obtain consent, including:

1. Detailed records of telephone calls made or attempted and the results of those calls
2. Copies of correspondence sent to the parent/guardian and any responses received
3. Detailed records of visits made to the parent/guardian's home or place of employment and the results of those visits

If a parent/guardian refuses to consent to the initial evaluation or fails to respond to a request to provide consent, the district may, but is not required to, pursue an evaluation by utilizing the procedural safeguards, including the mediation and due process procedures.

If the student is a ward of the state and is not residing with his/her parent/guardian, the district may conduct an initial evaluation without obtaining informed consent if any of the following situations exists:

1. Despite reasonable efforts to do so, the district cannot discover the whereabouts of the parent/guardian of the student.

2. The rights of the parent/guardian of the student have been terminated in accordance with California law.

3. The rights of the parent/guardian to make educational decisions have been subrogated by a judge in accordance with California law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.

The district need not obtain parent/guardian consent before reviewing existing data as part of an evaluation or administering a test or other evaluations that are administered to all students, unless consent is required from the parents/guardians of all students.

In instances where parents/guardians consent is not needed the LEA will seek consent from the agency/individual to which the educational rights of the child have been appointed by the court.

### **Conduct of the Evaluation**

As part of the evaluation plan, the parent/guardian shall receive written notice that:

1. If the parent/guardian disagrees with an evaluation obtained by the district, the parent/guardian has the right to obtain, at public expense, one independent educational evaluation of the student from qualified specialists.

If the district observed the student in conducting its evaluation, or if its evaluation procedures make it permissible to have in-class observation of a student, an equivalent opportunity shall apply to the independent educational evaluation. This equivalent opportunity shall apply to the student's current placement and setting as well as observation of the district's proposed placement and setting, regardless of whether the independent educational evaluation is initiated before or after the filing of a due process hearing proceeding.

2. The district may initiate a due process hearing to show that its evaluation is appropriate. If the final decision resulting from the due process hearing is that the evaluation is appropriate, the parent/guardian maintains the right for an independent educational evaluation, but not at public expense.

If the parent/guardian obtains an independent educational evaluation at private expense, the results of the evaluation shall be considered by the district with respect to the provision of a free appropriate public education (FAPE) to the student, and may be presented as evidence at a due process hearing regarding the student. If the district observed the student in conducting its evaluation, or if its evaluation procedures make it permissible to have in-class observation of a student, an equivalent opportunity shall apply to an independent educational evaluation of the student in the student's current educational placement and setting, if any, proposed by the district, regardless of whether the independent educational evaluation is initiated before or after the filing of a due process hearing.

3. If a parent/guardian proposes a publicly financed placement of the student in a nonpublic school, the district shall have an opportunity to observe the proposed placement and, if the student has already been unilaterally placed in the nonpublic school by the parent/guardian, the student in the proposed placement. Any such observation shall only be of the student who is the subject of the observation and may not include the observation or evaluation of any other student in the proposed placement unless that student's parent/guardian consents to the observation or evaluation. The results of any observation or evaluation of another student in violation of Education Code 56329(d) shall be inadmissible in any due process or judicial proceeding regarding FAPE or that other student.

The evaluation shall be conducted by qualified personnel who are competent to perform the assessment as determined by the district, county office of education, or the special education local plan area (SELPA).

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

In conducting the evaluation, the district shall use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. The district shall also use any information provided by the parent/guardian that may assist the district in making the determination as to whether the student is a student with a disability and, if so, the necessary components of his/her IEP when the IEP is developed, including information related to enabling the student to be involved in and to progress in the general education curriculum.

The district's evaluation shall not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability and for determining the appropriate educational program for the student. The assessment shall use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors.

The district shall also ensure that assessments and other evaluation materials provide relevant information that directly assists persons in determining the student's educational needs and are:

1. Selected and administered as to not be discriminatory or racial, cultural, or sexual basis
2. Provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer
3. Used for the purposes for which the assessments or measures are valid and reliable

4. Administered by trained and knowledgeable personnel
5. Administered in accordance with any instructions provided by the producer of the assessments
6. Tailored to assess specific areas of educational need and not merely designed to provide a single general intelligence quotient
7. If administered to a student with impaired sensory, manual, or speaking skills, selected and administered to best ensure that the results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure

Students shall be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. The district shall ensure that the evaluation is sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the student has been classified.

As part of the initial evaluation and any reevaluation, the IEP team and other qualified professionals, shall, if appropriate, review existing evaluation data on the student, including evaluations and information provided by the parents/guardians; current classroom-based local or state assessments and classroom-based observations; and observations by teachers and related services providers. On the basis of that review and input from the student's parent/guardian, the team shall identify what additional data, if any, are needed to determine:

1. Whether the student is a student with a disability, or in the case of a reevaluation, whether the student continues to have a disability, and the educational needs of the student
2. The present levels of academic achievement and related developmental needs of the student
3. Whether the student needs, or continues to need special education and related services
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 his/her IEP and to participate, as appropriate, in the general education curriculum

If a student has transferred from another district in the same school year or leaves this district, the district shall coordinate with the student's prior or subsequent district as necessary and as expeditiously as possible to ensure prompt completion of full evaluations.

## Eligibility Determination

Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent/guardian shall determine whether the child is a student with a disability and the student's educational needs. In interpreting the data, the group shall draw information from a variety of sources, including aptitude and achievement tests, parent/guardian input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior. The group shall ensure that the information obtained from these sources is documented and carefully considered.

The personnel who evaluate the student shall prepare a written report of the results of each evaluation and the parent/guardian shall be informed as to the results of the evaluation. The report shall include, but not be limited to, the following:

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

When making a determination of eligibility for special education and related services, the district shall not determine that a student is disabled if the primary factor for such determination is a lack of appropriate instruction in reading, including the essential components of reading instruction, lack of instruction in mathematics, limited English proficiency, or that the student does not otherwise meet the eligibility criteria.

If a determination is made that a student has a disability and needs special education and related services, an IEP shall be developed within a total time not to exceed 60 days, not counting days between the student's regular school sessions, terms, or days of school vacation in excess of five school days, from the date of the

receipt of the parent/guardian's consent for evaluation, unless the parent/guardian agrees, in writing, to an extension.

### **Independent Educational Evaluation**

The parents/guardians of a student with a disability have the right to obtain an independent educational evaluation at public expense under the same criteria that the district uses for a district-initiated evaluation. An independent educational evaluation is an evaluation conducted by a qualified examiner who is not employed by the district. Public expense means the district either pays for the full cost of the independent educational evaluation or ensures that the evaluation is otherwise provided at no cost to the parent/guardian.

The parent/guardian is entitled to only one independent educational evaluation at public expense each time the district conducts an evaluation with which the parent/guardian disagrees.

The Tulare County Special Education Local Plan Area has developed a list of qualified independent evaluators willing and credentialed to do independent evaluations. This list will be provided to the parent within 36 hours of the request. The list will be generated on a case specific basis considering the area of evaluation requested, the suspected disability and the geographic location of the student. If the parents/guardians select an independent evaluator not on the SELPA list or who does not meet the SELPA's qualification criteria, the parents/guardian will have the opportunity to demonstrate that unique circumstances justify their selection of the independent evaluator.

If a parent/guardian has requested an independent educational evaluation, the district may ask for a reason that he/she objects to the district's evaluation. However, the parent/guardian is not required to provide the reason to the district.

Upon receiving the request for an independent educational evaluation, the district shall, without unnecessary delay, either:

1. File a due process complaint to request a hearing to show that its evaluation is appropriate.
2. Ensure that an independent evaluation is provided at public expense, unless the district can later demonstrate in a hearing that the evaluation obtained by the parent/guardian did not satisfy the district's criteria.

If a due process hearing decision determines that the district's evaluation is appropriate, then the parent/guardian may obtain an independent evaluation, but not at public expense.

The results of an independent evaluation obtained by the parent/guardian, whether at public or private expense, shall be considered by the district if it meets district criteria in any decision made with respect to FAPE and may be presented as evidence at a hearing on a due process complaint.

Reimbursement for independent educational evaluations at public expense will be in accordance with CFR 34 § 300.502, SELPA policy and criteria, and no greater than the actual costs of the independent education evaluation to the parents. Criteria for payment or reimbursement of independent education evaluations shall be based on an average of actual costs of the district employee credentialed to provide the service.

If the independent evaluation is not obtained in accordance with SELPA policy, procedures, and criteria, the district may not reimburse parents who unilaterally obtain independent educational evaluations.

If the district considers the costs involved in conducting the independent educational evaluation as excessive, the district will, without delay, initiate a hearing to demonstrate that the evaluation obtained by the parent was excessive in cost.

### **Reevaluation**

A reevaluation shall be conducted when the district determines that the educational or related services needs of the student, including improved academic achievement and functional performance, warrant a reevaluation or if the student's parent/guardian or teacher requests reevaluation. Such reevaluations shall occur every three years, unless the parent/guardian and district agree in writing that a reevaluation is unnecessary. A reevaluation may not occur more than once a year, unless the parent/guardian and the district agree otherwise.

The district shall ensure that any reevaluations of the student are conducted in accordance with the evaluation procedures.

Before entering kindergarten or first grade, children with disabilities who are in a preschool program shall be reevaluated to determine if they still need special education and services. IEP teams shall identify a means of monitoring the continued success of children who are determined to be eligible for less intensive special education programs to ensure that gains made are not lost by a rapid removal of individualized programs and supports for these children.

#### **References:**

EC 44265.5, 56026, 56043, 56136, 56195.8, 56300-56304, 56320-56331, 56333-56338, 56340-56347, 56381, 56425-56432, 56441.11, 56445, 56500-56509  
5 CCR 3021-3029; 3030-3031  
20 USC 1232, 20 USC 1412, 20 USC 1415  
34 CFR 104.35; 104.36; 300.1-300.818; 300.301-300.306

#### **SELPA Publications:**

Procedural Guide for Special Education Referrals  
Breaking the Fail First Cycle  
Tulare County/District Local Plan for Special Education