



## Introduction

Students who are eligible to receive special education are guaranteed a free and appropriate public education (FAPE). Federal, state, and local mandates provide a vast array of requirements that special educators must follow when implementing the programs designed to provide students with FAPE. These mandates are extensive and often confusing.

The overall purpose of the SELPA procedural manual is to provide district personnel a broad resource for the implementation of special education procedures focused on the identification, assessment and appropriate provision of a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE).

This manual has two parts. The intent of *Part I: Program Procedures* is to provide a user-friendly resource manual for special educators and administrators that will guide them through the procedures for identification, referral, assessment, IEP development, and program placement of students in special education and related services. *Part II: Administrative Policies and Procedures* outlines the policies, procedures, and local agreements that have been developed to assist in the provision of equitable and consistent program operation throughout the SELPA.

The release of the *Kern County Consortium SELPA Procedural Manual* signifies the SELPA's intent to provide clear and consistent guidance to all member districts in policies, procedures, and compliance with special education regulations. The manual is not intended to be exhaustive but should be used by member districts as they plan, develop, and refine specific special education policies and procedures.

The manual is reviewed annually and updated as needed. If questions arise that are not answered in the manual, please contact your special education administrator for assistance. SELPA program specialists and coordinators are also available for questions. Contact information for program specialists and coordinators can be found on the SELPA webpage at [www.kern.org/selpa/](http://www.kern.org/selpa/).

The SELPA would like to thank the following people for their participation in revising the procedural manual during the 2023-24 School Year:

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## SPECIAL EDUCATION LOCAL PLAN AREA LOCAL EDUCATION AGENCY ASSURANCES

Through the approval of the Kern County Consortium SELPA's Local Plan, all member LEAs (including member Charter LEAs) agree to the following assurances:

**1. FREE APPROPRIATE PUBLIC EDUCATION 20 UNITED STATES CODE (USC) SECTION (§) 1412 (A)(1)**

It shall be the policy of this local educational agency (LEA) that a free appropriate public education is available to all children with disabilities residing in the LEA between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

**2. FULL EDUCATIONAL OPPORTUNITY 20 USC § 1412 (A)(2)**

It shall be the policy of this LEA that all children with disabilities have access to educational programs, non-academic programs, and services available to non-disabled children.

**3. CHILD FIND 20 USC § 1412 (A)(3)**

It shall be the policy of this LEA that all children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated. A practical method has been developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

**4. INDIVIDUALIZED EDUCATION PROGRAM (IEP) AND INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP) 20 USC § 1412 (A)(4)**

It shall be the policy of this LEA that an IEP, or an IFSP that meets the requirements of 20 U.S.C. § 1436 (d), is developed, implemented, reviewed, and revised for each child with a disability who requires special education and related services in accordance with 20 U.S.C. § 1414 (d). It shall be the policy of this LEA that a review of an IEP will be conducted on at least an annual basis to review a student's progress and make appropriate revisions.

**5. LEAST RESTRICTIVE ENVIRONMENT 20 USC § 1412 (A)(5)**

It shall be the policy of this LEA that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled. Special classes, separate schooling, or other removal of children with disabilities from the general educational environment, occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

**6. PROCEDURAL SAFEGUARDS 20 USC § 1412 (A)(6)**

It shall be the policy of this LEA that children with disabilities and their parents shall be afforded all procedural safeguards according to state and federal laws and regulations.

**7. EVALUATION 20 USC § 1412 (A)(7)**

It shall be the policy of this LEA that a reassessment of a student with a disability shall be conducted at least once every three years or more frequently, if appropriate.

**8. CONFIDENTIALITY 20 USC § 1412 (A)(8)**

It shall be the policy of this LEA that the confidentiality of personally identifiable data information and records maintained by the LEA relating to children with disabilities and their parents and families shall be protected pursuant to the Family Educational Rights and Privacy Act (FERPA).

**9. PART C TO PART B TRANSITION 20 USC § 1412 (A)(9)**

It shall be the policy of this LEA that children participating in early intervention programs (Individuals with Disabilities Education Act [IDEA], Part C), and who will participate in preschool programs, experience a smooth and effective transition to those preschool programs in a manner consistent with 20 U.S.C. § 1437 (a)(9). The transition process shall begin prior to the child's third birthday.

**10. PRIVATE SCHOOLS 20 USC § 1412 (A)(10)**

It shall be the policy of this LEA to assure that children with disabilities voluntarily enrolled by their parents in private schools shall receive appropriate special education and related services pursuant to LEA coordinated procedures. The proportionate amount of federal funds will be allocated for the purpose of providing special education services to children with disabilities voluntarily enrolled in private school by their parents.

**11. LOCAL COMPLIANCE ASSURANCES 20 USC § 1412 (A)(11)**

It shall be the policy of this LEA that the local plan shall be adopted by the appropriate local board(s) (district/county) and is the basis for the operation and administration of special education programs; and that the agency(ies) herein represented will meet all applicable requirements of state and federal laws and regulations, including compliance with the Individuals with Disabilities Education Act (IDEA), the Federal Rehabilitation Act of 1973, Section 504 of Public Law and the provisions of the California Education Code, Part 30.

**12. INTERAGENCY 20 USC § 1412 (A)(12)**

It shall be the policy of this LEA that interagency agreements or other mechanisms for interagency coordination are in effect to ensure services required for free appropriate public education (FAPE) are provided, including the continuation of services during an interagency dispute resolution process.

**13. GOVERNANCE 20 USC § 1412 (A)(13)**

It shall be the policy of this LEA to support and comply with the provisions of the governance bodies and any necessary administrative support to implement the Local Plan. A final determination that an LEA is not eligible for assistance under this part will not be made without first affording that LEA with reasonable notice and an opportunity for a hearing through the State Educational Agency.

**14. PERSONNEL QUALIFICATIONS - 20 USC § 1412 (A)(14)**

It shall be the policy of this LEA to ensure that personnel providing special education related services meet the highly qualified requirements as defined under federal law, and that those personnel have the content knowledge and skills to serve children with disabilities.

This policy shall not be construed to create a right of action on behalf of an individual student for the failure of a particular LEA staff person to be highly qualified or to prevent a parent from filing a State complaint with the California Department of Education (CDE) about staff qualifications.

**15. PERFORMANCE GOALS AND INDICATORS 20 USC § 1412 (A)(15)**

It shall be the policy of this LEA to comply with the requirements of the performance goals and indicators developed by the CDE and provide data as required by the CDE.

**16. PARTICIPATION IN ASSESSMENTS 20 USC § 1412 (A)(16)**

It shall be the policy of this LEA that all students with disabilities shall participate in state and district-wide assessment programs. The IEP team determines how a student will access assessments with or without accommodations, or access alternate assessments, consistent with state standards governing such determinations.

**17. SUPPLEMENTATION OF STATE/FEDERAL FUNDS 20 USC § 1412 (A)(17)**

It shall be the policy of this LEA to provide assurances that funds received from Part B of the IDEA will be expended in accordance with the applicable provisions of the IDEA and will be used to supplement and not to supplant state, local and other Federal funds.

**18. MAINTENANCE OF EFFORT 20 USC § 1412 (A)(18)**

It shall be the policy of this LEA that federal funds will not be used to reduce the level of local funds and/or combined level of local and state funds expended for the education of children with disabilities except as provided in federal law and regulations.

**19. PUBLIC PARTICIPATION 20 USC § 1412 (A)(19)**

It shall be the policy of this LEA that public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities are held prior to the adoption of any policies and/or regulations needed to comply with Part B of the IDEA.



**20. RULE OF CONSTRUCTION 20 USC § 1412 (A)(20)**

(Federal requirement for State Education Agency only)

**21. STATE ADVISORY PANEL 20 USC § 1412 (A)(21)**

(Federal requirement for State Education Agency only)

**22. SUSPENSION/EXPULSION 20 USC § 1412 (a)(22)**

The LEA assures that data on suspension and expulsion rates will be provided in a manner prescribed by the CDE. When indicated by data analysis, the LEA further assures that policies, procedures and practices related to the development and implementation of the IEPs will be revised.

**23. ACCESS TO INSTRUCTIONAL MATERIALS 20 USC § 1412 (A)(23)**

It shall be the policy of this LEA to provide instructional materials to blind students or other students with print disabilities in a timely manner according to the state adopted National Instructional Materials Accessibility Standard.

**24. OVERIDENTIFICATION AND DISPROPORTIONALITY 20 USC § 1412 (A)(24)**

It shall be the policy of this LEA to prevent the inappropriate over identification or disproportionate representation by race and ethnicity of children as children with disabilities.

**25. PROHIBITION ON MANDATORY MEDICINE 20 USC § 1412 (A)(25)**

It shall be the policy of this LEA to prohibit school personnel from requiring a student to obtain a prescription for a substance covered by the Controlled Substances Act as a condition of attending school or receiving a special education assessment and/or services.

**26. DISTRIBUTION OF FUNDS 20 USC § 1411(E),(F)(1-3)**

(Federal requirement for State Education Agency only)

**27. DATA 20 USC § 1418 (A-D)**

It shall be the policy of this LEA to provide data or information to the CDE that may be required by regulations.

**28. CHARTER SCHOOLS (EC 56207.5 (A-C))**

It shall be the policy of this LEA that a request by a charter school to participate as an LEA in a special education local plan area (SELPA) may not be treated differently from a similar request made by a school district.

The LEA Assurances adopted by the board of each member LEA is on file in the SELPA office and is included in the Local Plan submission to CDE.

# Part I

## Program Procedures



## **Chapter 1 – Program Procedures**

### **The Role of the SELPA**

Special Education Local Plan Areas (SELPA) were created by state legislation to assist in assuring that districts, county office-approved charter schools, and county offices of education provide a full continuum of programs and services to students with disabilities and that these programs and services are provided according to all legal mandates. Every district and county office of education belongs to a SELPA. The districts and county offices of education that belong to each SELPA are referred to as local education agencies (LEAs). Kern County Consortium SELPA is a single-county, multiple-district SELPA. Each SELPA has an administrator and must have an assigned Administrative Unit (AU). The purpose of the AU is to provide support to the SELPA in areas such as office facilities, personnel services, and fiscal management. The AU can be assigned to any of the LEAs within the SELPA. The SELPA, however, is a separate organization from the LEA that is selected to act as the SELPA's AU. In the Kern County Consortium SELPA, the Kern County Superintendent of Schools has been selected as the AU.

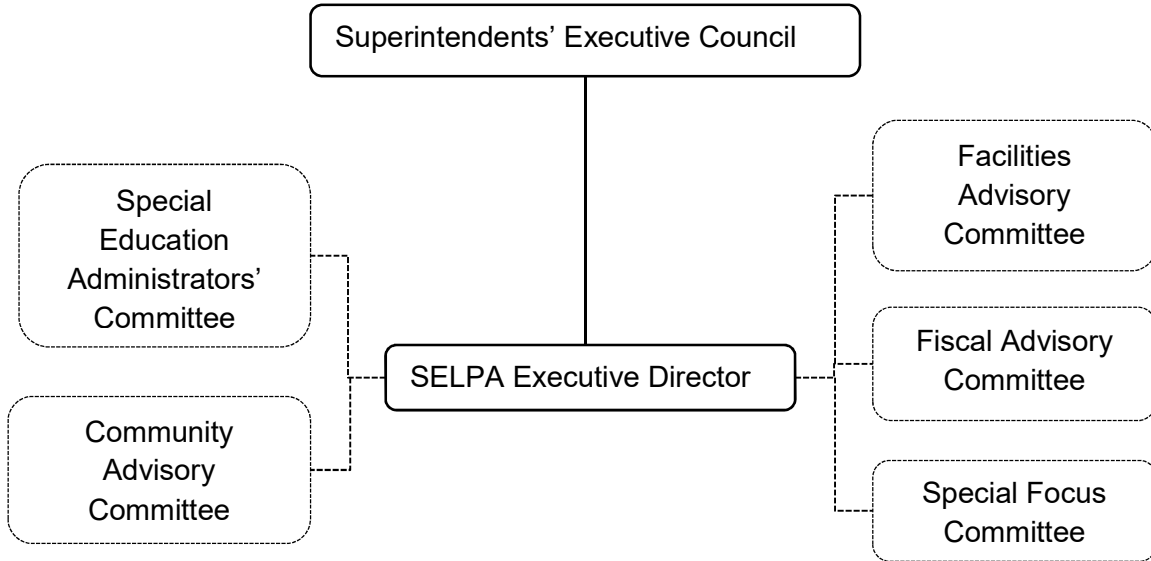
Confusion is often expressed about the differing roles of the federal and state governments, the SELPA, and the LEAs. The charts on the next few pages are provided to assist in defining and differentiating the roles of each of those agencies, outlining the governance structure of the SELPA (see the local plan for more detailed information), and suggesting whom to call for help with specific types of issues.

Agency Responsibilities in Providing Special Education

Federal/State Governments	SELPAs	LEAs
<ul style="list-style-type: none"> <li>• Enact legislation governing the provision of special education</li> <li>• Determine the level of funding that will be provided</li> <li>• Distribute funding to each SELPA</li> <li>• Develop and implement systems for holding SELPAs and LEAs accountable for provision of appropriate special education programs</li> </ul>	<ul style="list-style-type: none"> <li>• Develop and maintain the local plan that designates the Administrative Unit, the SELPA governance structure, and identifies the systems, policies, and procedures that will be used to support the LEAs in meeting their legal requirements for providing special education</li> <li>• Develop and maintain policies and inter-agency agreements necessary for implementing the local plan</li> <li>• Ensure that appropriate programs/services are available for all children with disabilities within the SELPA</li> <li>• Receive funding from federal and state sources and distributes to LEAs</li> <li>• Facilitate completion of program reviews and evaluations</li> <li>• Provide LEAs with consultation and support, as needed</li> <li>• Provide appropriate staff development activities</li> </ul>	<p><i>School Districts</i></p> <ul style="list-style-type: none"> <li>• Engage in child-find activities for eligible students within the district</li> <li>• Develop and operate district special education programs and services</li> <li>• Hire and supervise special education teachers and specialists for district-operated programs</li> <li>• Develop and implement an appropriate budget to support district special education programs</li> <li>• Provide special education transportation as needed</li> <li>• Respond to compliance and due process complaints</li> <li>• Participate in program reviews and evaluations</li> <li>• Enter into inter-agency agreements with the KCSOS or other regional special education program, as needed</li> </ul> <p><i>KCSOS/Regional Programs</i> Conduct all activities described above for programs operated by the KCSOS on behalf of all districts within the county of on behalf of several districts within a specified region or county</p>

## SELPA Governance Structure

The following organization chart illustrates the SELPA governance structure:



### Superintendents' Executive Council

The Superintendents' Executive Council (SEC) reviews and approves the local plan, significant changes to the local plan, revisions to the funding allocation model, and other important policy and fiscal matters. The Superintendents' Executive Council consists of a selected representative from each of the eight Area Centers and the Superintendent of the Administrative Unit or his designee, each of whom provides a liaison function between the LEA governing boards and the SEC.

### Special Education Administrators Committee

The Special Education Administrators Committee is an advisory body to the Superintendents' Executive Council and the SELPA Executive Director. The Special Education Administrators are responsible for the operation of local education agency/district programs to ensure that all eligible children with disabilities receive appropriate services.

### Fiscal Advisory Committee

The Fiscal Advisory Committee is an advisory committee convened by the SELPA Executive Director to provide input and recommendations regarding fiscal issues. The committee consists of at least two chief business officials, two LEA special education administrators from the Special Education Administrators Committee, and one representative

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from the Kern County Superintendent of Schools. Additionally, the committee includes at least one participant who represents small school districts.

#### Facilities Advisory Committee

The Facilities Advisory Committee is an advisory committee convened by the SELPA Executive Director to provide suggestions and recommendations to the Superintendents' Executive Council regarding long-range facilities planning for students with disabilities. The committee consists of at least one chief business official, one superintendent from the Superintendents' Executive Council, one special education administrator from the Special Education Administrators Committee, one representative from Kern County Superintendent of Schools Special Education, and the Director of Facilities and Property Management Services from the Kern County Superintendent of Schools. Additionally, the committee includes at least one participant who represents small school districts.

#### Special Focus Committee

The SELPA Executive Director may convene informal special focus advisory committees in areas such as program development, SELPA adoption of student information systems, development and revision of IEP forms, and interagency agreements. Each committee meets only as long as necessary to complete a specific purpose.

#### Community Advisory Committee

The Community Advisory Committee (CAC) reviews and provides input into the development of the local plan, recommends annual priorities to be addressed by the SELPA, and assists in parent education and awareness. The CAC includes parents, special education administrators, and community members. The majority of members are parents of children with disabilities.

## Who to Contact about Special Education

Who	About What
Classroom Teacher	<ul style="list-style-type: none"> <li>• Daily curriculum and instruction</li> <li>• Behavior and discipline</li> <li>• Grades and student progress</li> <li>• Learning environment</li> </ul>
School Psychologist	<ul style="list-style-type: none"> <li>• Referrals to special education</li> <li>• Assessment/reassessment of students for special education eligibility</li> <li>• IEP development and implementation</li> <li>• Social/behavioral/emotional needs of students</li> </ul>
Site Principal	<ul style="list-style-type: none"> <li>• Supervision and evaluation of teachers and instructional assistants assigned to the school</li> <li>• Policies/procedures related to school-wide curriculum and instruction</li> <li>• Facilities, textbooks, classroom supplies and materials</li> <li>• Issues previously addressed to classroom teacher or school psychologist that have not been resolved</li> </ul>
LEA Special Education Administrator	<ul style="list-style-type: none"> <li>• Development and operation of district special education programs</li> <li>• Supervision and evaluation of special education itinerant staff</li> <li>• Special education facilities issues</li> <li>• Compliance, due process, legislation</li> <li>• Issues previously addressed by site principal that have not been resolved</li> </ul>
SELPA Program Specialist	<ul style="list-style-type: none"> <li>• Special education curriculum development</li> <li>• Appropriate instructional strategies and curriculum accommodations and modifications</li> <li>• Special education staff development</li> </ul>
SELPA Coordinator	<ul style="list-style-type: none"> <li>• Appropriate special education placement and services for students</li> <li>• Complex special education student issues that have not been resolved at the local LEA level</li> <li>• Compliance, due process, legislation</li> <li>• Supervisions and evaluation of SELPA program specialists</li> </ul>
SELPA Executive Director <u>or</u> Director of Regional Services	<ul style="list-style-type: none"> <li>• SELPA Local Plan</li> <li>• Special Education policies, procedures, and interagency agreements</li> <li>• Special education funding</li> <li>• Compliance, due process, legislation</li> <li>• Issues previously addressed to district special education administrator and/or SELPA Coordinator that have not been resolved</li> </ul>

## Chapter 2 – Child Find

### Referral Procedures

The Kern County Consortium SELPA works closely with public and private agencies such as Kern Regional Center, Head Start, California Children’s Services, Department of Human Services, pediatricians’ offices, private preschools and others as appropriate in the identification of individuals with disabilities. Each Local Education Agency (LEA) within the SELPA has established procedures for the identification, location, and evaluation of students who may require special education services. Information regarding Child Find activities is available through the LEAs or through the SELPA office.

### Child Find

Child Find activities are designed to locate individuals, birth through 21 years of age, including children not enrolled in public school programs as well as children who are homeless or wards of the state and reside in the district and may be eligible for and in need of special education and/or related services. Child Find activities also foster awareness and understanding on the part of educators, parents and other community members of referral procedures for special education, the eligibility criteria, and continuum of special education programs and services available. Child Find activities inform educators, community agencies, and parents/guardians of their right to refer their child for a special education assessment to determine eligibility and the need for special education services.

The Kern County Consortium SELPA coordinates the Child Find requirements for its 48 member LEA’s through the services provided by the Search and Serve office of the SELPA. In this capacity, the Search and Serve office will:

- Make contact with state and local agencies that provide services to children
- Distribute early intervention materials to agencies and individuals who provide services to children
- Produce and distribute public service announcements
- Make presentations to local professional groups and organizations established to inform and/or to serve culturally diverse populations

The Search and Serve office will screen each contact and make a referral to the most appropriate source of evaluation and services for the child. The Child Find process includes cooperation with the Kern Regional Center Early Start program. The Search and Serve office communicates with and distributes informational materials to hospitals, doctors’ offices, and pertinent agencies. All individuals with exceptional needs and their parents are guaranteed their procedural safeguards with regard to identification, assessment, and placement in special education programs.



Infants, birth to three years, are referred directly by the district, parent, doctor, or agency to the Early Start Program at the Kern Regional Center or the Search and Serve office at the Kern County Consortium SELPA. Intake information precedes the assignment of staff for assessment and the coordination with other agencies.

### Sources of Referral

Referrals to determine a student's eligibility and need for special education can come from a variety of sources including the following:

- 1) Student Success Team (SST);
- 2) Parent, guardian, educational representative, or surrogate parent;
- 3) School staff;
- 4) Public and private agencies;
- 5) Student;
- 6) Physicians and other medical professionals; or
- 7) Other community members.

### Procedures for Processing Referrals

Upon receipt of a referral for special education assessment, the Search and Serve Project Facilitator shall enter the date of the referral, the name of the student, his or her birth date, the reason for the referral and to whom the referral was sent into the referral database. A referral shall be generated and forwarded to the Search and Serve Coordinator along with all referral information for determination of assessment. The coordinator will return the completed log to the Project Facilitator who will generate the AO2 for the district notification of the referral; Parent/Guardian Notification of Screening letter and the informational letter to the district. Referral information shall be held by the Search and Serve office for one year after the original referral date.

### Referrals Originating for Member Districts for KCSOS Assessment, Services or Placement

Districts who wish to refer students to the Kern County Superintendent of Schools Special Education programs for assessment or services may follow the procedures as set forth below through the Search and Serve office. Referrals must originate from the Special Education administrator of the referring district. In support of the LEA Assurances of the Local Plan with regard to Least Restrictive Environment, the Search and Serve office has developed guidelines for the referral process to support districts in their efforts to provide services to students in the LRE.

### *Assessment Requests*

Districts who wish to request assessments from the Kern County Superintendent of Schools Assessment Team will complete the Search and Serve Referral process for Assessment/Related Services (DIS) Request in the Search and Serve online system and attach the necessary supportive documentation such as screening information, SST documents and/or

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prior assessment and IEP reports. If the referral is for Adaptive Physical Education or Occupational Therapy assessment, teachers or IEP teams should complete the screening tools available on the SELPA web site under Search and Serve and upload a copy of the screen with the referral. Once all referral information has been input and all necessary documents have been entered into the Search and Serve online system, the referral will be submitted to the Search and Serve office for consideration. It is assumed that districts will complete assessments based on their available resources and KCSOS assessment will be accessed only in unusual circumstances or for 2<sup>nd</sup> opinion assessments.

### *Services Requests*

Districts who wish to request Kern County Superintendent of Schools services will complete the (DIS) Related Services Request in the Search and Serve online system and upload the current IEP and assessment reports that support the request for services.

### *Placement Requests*

Districts that refer a student for Kern County Superintendent of Schools placement based on transfer status will complete a Search and Serve Referral for Joint Meeting/Placement Consideration in the Search and Serve online system and upload a copy of the current IEP and assessment reports from the student's previous placement, birth certificate, immunizations, and the home language survey.

Districts who intend to request a joint meeting to discuss possible Kern County Superintendent of Schools placement for a student whom they are assessing, will make a referral for a joint meeting, completing the Search and Serve Referral for Placement Consideration in the Search and Serve online system, and include, at a minimum, a draft psycho-educational assessment, draft academic assessment and, if applicable, a draft speech assessment, with the referral. The referral will also include current immunizations, birth certificate, and the home language survey. The packet must be received in the Search and Serve office a minimum of 10 business days prior to the scheduled IEP. The referral should include a copy of the *Parent/Guardian Notice of IEP*, if available.

Districts who request a joint meeting to discuss possible Kern County Superintendent of Schools placement for a student currently being served in the district, will complete a Search and Serve Referral for Placement Consideration in the Search and Serve online system and upload the current IEP, current assessment reports and evidence of district's attempts to provide appropriate supports and services. The IEP must include annual goals and objectives that address the needs identified through the assessments and the present levels of performance. The assessment reports must concur with the identified eligibility category as noted on the IEP. The referral should also include the birth certificate, home language survey, and current immunizations.

In addition to these requirements, for students whom the district wishes to be considered for placement within a KCSOS program for students with Emotional Disturbance, the following must be a part of the referral:

- The student must have an educational disability, most likely Emotional Disturbance or Other Health Impaired.
- The student must have a current Behavior Intervention Plan (BIP) with at least one adjustment.
- The BIP must have been implemented for at least 30 days and must be accompanied by supportive data to show lack of adequate progress.
- The referral must show evidence that the IEP team has confirmed implementation of a series of intensifying supports.
- Student should have, or have been referred to, mental health services/supports of some type in the educational setting

The IEP must include behavior and/or social/emotional goals.

## Pre-Referral Activities

A student shall be referred for special education and related services only after the resources of the general education program have been considered, and when appropriate, utilized as per current law. If parents and/or general education staff have concerns regarding a student's academic or behavioral performance, the Student Success Team (SST) is the usual venue for ensuring that all appropriate general education resources have been attempted prior to referral including response to intervention. Each LEA within the Kern County Consortium SELPA has a Student Success Team (or a team providing the equivalent service using a different title). The Student Success Team meeting allows the documentation of concerns and which strategies are being implemented or will be implemented to attempt to address the student's concerns related to their learning. Areas that are important to discuss and document during the SST meeting are:

- 1) Developmental/medical history
- 2) Attendance/school enrollment history
- 3) Review of vision, hearing, speech and language screenings
- 4) Behavior and Academic Performance and results of any interventions

The SST or other appropriate staff will ensure and document that all appropriate general education resources have been exhausted before referring a student to special education.

Examples of general education interventions prior to referral include the following:

- 1) Consultation with specialists and/or other staff;
- 2) Modification of the general program and/or accommodations for the student to facilitate access to core curriculum;
- 3) Utilization of general program resources, (e.g. counselors, Response to Intervention, Title I resource programs; tutorials; English language development programs; migrant

programs; reading & math interventions programs; behavioral intervention programs; 504 accommodation plans, summer school);

- 4) Parent/guardian conferences; and
- 5) Referral to appropriate community agencies.

It is not mandatory, however for a student to go through the SST process before being referred to special education if pre-referral interventions have been attempted and can be documented. Either way, the SST process or the documentation of pre-referral interventions in the place of the SST are the responsibility of the general education staff.

In the event that a parent makes a written request for a special education evaluation, the member LEA must respond within 15 days. Should the member LEA determine testing is merited, they would respond by developing an assessment plan with the parent and providing a Prior Written Notice (PWN) along with Procedural Safeguards.

## Written Referral

All referrals for special education and related services must be documented. When a parent makes a verbal referral, appropriate staff shall offer assistance to the parent to put the request in writing. All school staff referrals should also be in writing and should include a brief reason for the referral, documentation of the resources of the general education program that have been considered and/or utilized, and the results of the interventions attempted. This documentation, however, should not delay the time lines for completing the assessment plan or assessment.

## Notice of Procedural Safeguards

Parents of children with disabilities from ages three through twenty-one have specific rights under the Individuals with Disabilities [Improvement] Act (IDEIA). These rights are called Procedural Safeguards. Any person serving as a surrogate parent, and adult students aged eighteen or over who received special education services, are also entitled to these Procedural Safeguards.

The Kern County Consortium SELPA maintains a copy of the "Notice of Procedural Safeguards and Parents' Rights" in the SIRAS Document Library and on the SELPA website.

A copy of the "Notice of Procedural Safeguards and Parents' Rights" must be offered to the parent a minimum of one time yearly. Best practice suggests giving it to the parent to review at the start of every IEP meeting. The member LEA should ensure that the parent(s) understands; if not, the LEA should provide further clarification and document receipt on the signature page of the IEP.

In the Kern County Consortium SELPA, parents will be provided with a notice of procedural safeguards in their native language at least upon;

- 1) Initial referral or parental request for evaluation and annually thereafter;
- 2) When sending out an Assessment Plan and/or Prior Written Notice
- 3) The first occurrence of the filing of a due process or compliance complaint;

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- 4) When a decision is made to apply disciplinary action that constitutes a change in placement (suspension of more than 10 days or expulsion); and
- 5) Upon request by a parent or adult student.

Native language is summarized and defined under IDEIA; further the procedural safeguards notice must be:

Written in a language understandable to the general public; and provided in the native language of the parent or in another mode of communication that is used by the parent, unless it is clearly not feasible to do so as per §300.503(c).

- 1) If the native language or other mode of communication used by the parent(s) is not a written language, then the LEA must take steps to ensure:
- 2) The notice is translated orally or by other means to the parent in his/her native language or other mode of communication;
- 3) The parent understands the content of the notice; and
- 4) There is written evidence that these requirements have been met as per §300.503(c)

### Over-Identification and Disproportionality

Each LEA must develop and implement policies, procedures, and practices that prevent determination of eligibility for special education based upon racial or ethnic factors. Failure to do so may result in a disproportionate percentage of racial or ethnic groups in special education generally or in specific disability categories. Annual evaluations of over-identification and disproportionality are conducted by the California Department of Education (CDE). LEAs that are found to be out of compliance are required to conduct self-reviews and engage in corrective action.

Citations: E.C. § 56300 and 56301, E.C. § 56303, 5 C.C.R. § 3021, E.C. § 56301 (d)(2), 20 U.S.C. § 1412 (a)(24)

## Chapter 3 - Surrogate Parent Volunteer Procedural Guidelines and Designation of Educational Representative

### Surrogate Volunteer Definition

An adult appointed by the district to represent a student whenever the student does not have parental representation and has been referred for, or is currently being served in, special education.

### Parent Definition

- Any person having legal custody of a child.
- Any adult pupil for whom no guardian or conservator has been appointed.
- A person acting in the place of a natural or adoptive parent including a grandparent, stepparent or other relative with whom the child lives.
- A foster parent if the natural parents' authority to make educational decisions on the child's behalf has been specifically limited by court order, the foster parent has an ongoing, long-term parental relationship with the child, the foster parent is willing to make decisions required of parents regarding special education and the foster parent has no interest that would conflict with the interests of the child.
- Any person appointed as a Surrogate Volunteer.

Parent does not include the state or any political subdivision of government.

### Administration of the Program

*The SELPA will be responsible for the following administrative tasks:*

- Developing a training program for surrogate volunteers.
- Issuing a SELPA: *Surrogate Volunteer Training Certificate* to candidates who successfully complete the training.
- Developing forms.
- Maintaining a master list of Surrogate Volunteers.

*The Districts will be responsible for the following administrative tasks:*

- Notifying and asking placing agencies in the County to indicate the parent's location and educational rights status using SELPA form: *Parental Status Data and Search Documentation Form*.
- Determining student status and assigning a Surrogate Volunteer when appropriate.
- Recruiting Surrogate Volunteers.
- Processing *Surrogate Parent Volunteer Application* forms for Surrogate Volunteers.
- Maintaining a record of the name of the surrogate volunteer assigned to each individual with disabilities who requires a surrogate.

### When to Appoint Surrogate Volunteers

*Surrogate Volunteers will be appointed under the following circumstances:*

- Parent cannot be located or a court removal of the parent's educational rights to represent the child.
- If a student is a dependent or ward of the court, the specific information provided by the agency representative shall be deemed as documentation that the parental rights to make educational decisions have been removed or limited by the court.
- If parental education rights have been specifically removed by the court, the student shall be assigned a Surrogate Volunteer, unless the judge overseeing the child's care has appointed an individual to act as a surrogate parent and that individual meets the requirements to legally be a surrogate parent.
- If one parent or legal guardian retains the right to make educational decisions on the student's behalf, and the parent or legal guardian is willing to represent the student, **no** Surrogate Volunteer will be assigned.

**Note:** If reasonable efforts have resulted in a failure to locate the parent or to obtain parent status notification from the placing agency, an interim Surrogate Volunteer may be appointed. This may be necessary to facilitate timely IEP review and/or parent consent for special education assessment. Ongoing efforts to determine student status should, however, continue.

**Important:** A local education agency shall make reasonable efforts to ensure the appointment of a surrogate parent not more than 30 days after there is a determination by the local education agency that a child needs a surrogate parent. (20 U.S.C. 1415(b)(2))

### Determining Student Status

The districts will be responsible for determining the student's status. The basis for making a decision to appoint Surrogate Volunteers will be determined by the absence of any adult who has the officially recognized right to be the educational representative of that child.

Each district must document the efforts that have been made toward a reasonable search of student's parents. This must consist of a minimum of three search attempts conducted over a three-week period utilizing two or more types of contact techniques. These search attempts must be made prior to an assignment of a surrogate parent.

Status of students already enrolled will be determined by the program operator. "New" incoming student's status will be determined by the district of residence.

*The following steps are recommended for determining student status:*

Class lists can be used to identify the following 4 groups of students who **do not** require surrogate volunteers:

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- 1) All special education students who reside with parent.
- 2) All special education students who have a parent or guardian.
- 3) All voluntary placements where parent retains educational rights.
- 4) All non-conservator students who are 18 years or older. (If conserved, conservator may have been given rights, as specified by the court.)

Records of the special education students who do not fall within the above categories should be further analyzed to determine the need for surrogate volunteer appointment. Information that needs to be addressed is: parent name, date of birth, residential placement, dependency status, status of parent educational rights and location of parent. If new student records are incomplete, the placing agency should be notified that the student cannot be placed in an educational program until the following information has been received:

- 1) Copy of current IEP
- 2) Designation of status of parents
- 3) Identity of the individual responsible for representing the educational interests of the child.

The placing agency is responsible for notifying the SELPA prior to placing a school-age child with exceptional needs in a Licensed Children's Institution or Foster Family Home within the Special Education Local Plan Area. This step is to take place prior to placement in order to determine whether the requirements in the written IEP can be met.

#### Selecting Surrogate Volunteers

*Persons selected as surrogate volunteers shall:*

- 1) Show that they do not have any conflict of interest. Districts should consider the following factors when determining if there is a conflict of interest:
  - a) Is the person employed by a district or any public agency involved in education or care of the child?
  - b) Does the person hold a position that might restrict or bias his/her ability to represent the child's educational needs?
  - c) Does the person hold a position that might subject his/her to administrative influence or reprimand for acting as the child's educational representative?
  - d) Does the person have interests that might restrict or bias his or her ability to advocate for all of the services required to ensure a free appropriate public education for an individual with exceptional needs?
- 2) Have knowledge and skills that ensure adequate representation of the child.
- 3) Not be an employee of the public or private agency involved in the education or care of the child.

Social workers, probation officers, employees of any public agencies or group homes and LCI's may not act as Surrogate Volunteers if they are employed by an agency involved in the



education or care of the child. Foster parents may be surrogate volunteers if there is not a conflict of interest.

As far as practical, a surrogate parent should be culturally sensitive to his or her assigned child.

When appointing a Surrogate Volunteer, the district shall, as a first preference, select a relative caretaker, foster parent or court appointed special advocate, if any of these individuals exist and is willing and able to serve. If the child is moved from the home of the relative caretaker or foster parent who has been appointed as a surrogate parent, the local education agency shall appoint another surrogate parent if a new appointment is necessary to ensure adequate representation of the child.

### Recruiting Surrogate Volunteers

Each district will recruit its own Surrogate Volunteers. The district administrator will send a list of potential Surrogate Volunteers to the SELPA. The SELPA will maintain an updated master list of trained or potential Surrogate Volunteers.

*The following resources are recommended for locating potential Surrogate Volunteers:*

- Local school parent associations
- Community Advisory Committee (CAC)
- Retired Teachers Associations
- Rotary, Lions, Kiwanis
- Big Brother, Big Sisters, Foster Grandparents
- American Association of University Women (AAUW)
- University graduate students
- Parents/foster parents of other special education students

### Role of Surrogate Volunteers

The surrogate parent may represent the child in matters relating to special education and related services, including the identification, assessment, instructional planning and development, educational placement and revising the IEP, and in all other matters relating to the provision of free appropriate public education of the child. This representation includes providing written consent to the IEP including non-emergency medical services, mental health services and occupational or physical therapy services provided through California Children Services.

The surrogate parent is required to meet with the child at least one time. He/she may also meet with the child on additional occasions, attend the child's IEP Team meetings, review the child's educational records, consult with persons involved in the child's education and sign any consent relating to IEP purposes.

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The surrogate parent shall comply with all federal and state laws pertaining to confidentiality of student records and shall use discretion in any necessary sharing of information with appropriate individuals for the purpose of furthering the interests of the child.

#### Liability

Surrogate Volunteers are held harmless when acting in their official capacity except in acts or omissions found to have been wanton, reckless, or malicious (Government Code 7579.5(1)).

#### Access to Records

The Surrogate Volunteers will be able to review the student's education records at the school or district. They will be given a copy of the student's current IEP. At the end of their term, the district will request that all copies of IEPs be returned to the IEP chairperson.

#### Training Surrogate Volunteers

The Kern County Consortium SELPA will conduct training and ongoing consultation with potential Surrogate Volunteers in the following areas:

- Surrogate Parent Law
- Cultural Sensitivity
- IEP process
- Team Process/Team Building
- Procedural Safeguards

#### Term of Surrogate Volunteer Appointed

A Surrogate Volunteer's term of appointment will be for one academic year or if applicable until the end of the extended school year session. The district will be responsible for monitoring the Surrogate Volunteers and determining if the term of appointment should be renewed. A Surrogate Volunteer's appointment will be automatically terminated at the end of each school year or for any of the following reasons:

- Conflict of interest.
- Student is no longer eligible for special education.
- Another responsible adult is appointed to make educational decisions for the student.
- Parent is located and/or
- The student reaches the age of 18 unless the student is deemed by a court to be incompetent.

If the student reaches age 18 and the student chooses not to make educational decisions for him or herself, the surrogate may continue to act on the student's behalf.

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## Designation of Educational Representative

Any parent or guardian who maintains the right to make educational decisions for his or her child may designate another adult to represent the interests of the child for purposes of educational and related services. In such cases the SELPA: *Designation of the Educational Representative* form should be used. The form gives the person designated the full rights for educational decision-making on behalf of the student and remains in effect until canceled by the parent of adult student.

Regardless of whether designated on a long-term basis or for only one meeting, the Educational Representative will sign the *Consent for Placement* page on the line reserved for the Parent/Guardian. A copy of the *Designation of Educational Representative* form and the *Notice of IEP Meeting* including the designated representative should be attached to the IEP as documentation of the designation.

## Chapter 4 - Assessment

An individual assessment of the student's educational needs shall be conducted before any action is taken with respect to the initial placement of an individual with exceptional needs in special education. Reassessments must be conducted as a specified by law.

### Legal Requirements of the Assessment

Once parental consent for the assessment has been obtained, the case manager shall distribute a copy of the signed assessment plan to all staff conducting the assessment. Parent consent is not required before reviewing existing data as part of an assessment or reassessment.

All assessments shall be conducted by persons knowledgeable of the suspected disability, including assessment of students with suspected low incidence disabilities and shall be conducted by a multi-disciplinary team, when appropriate. Special attention shall be given to each student's unique educational needs, including the need for specialized services, materials, and equipment. Tests and other assessment materials must meet all the following requirements:

- 1) Are selected and administered so as not to be racially, culturally, or sexually discriminatory;
- 2) Are provided and administered in the language and form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is not feasible to do so;
- 3) Are used for the purposes for which the assessments or measures are valid and reliable;
- 4) Are administered by trained and knowledgeable personnel and are administered in accordance with any instructions provided by the producer of the assessments, except that individually administered tests of intellectual or emotional functioning shall be administered by a credentialed school psychologist;
- 5) Include those that are tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient;
- 6) Intelligence tests are NOT administered to African-American students (Larry P vs. Riles, 1979 and Larry P. Task Force Report of 1989); for these students, alternative assessments must be used in place of standardized test designed to yield IQ scores;
- 7) Are selected and administered to best ensure that a test administered to a student with impaired sensory, manual, or speaking skills produces test results that accurately reflect the student's aptitude, achievement level, or any other factors the test purports to measure and not the student's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure.

The student is assessed in all areas related to the suspected disability including, if appropriate, health and development, vision, including low vision, hearing, motor abilities, language function, general ability, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social, emotional, and behavioral status. For all initial and triennial reviews, students shall have had a hearing and vision screening unless parent permission was denied. A health and developmental history are obtained, when appropriate.

In addition to assessing all areas related to the suspected disability, assessment should include reviewing the student's strengths; conducting at least one observation of the student in the classroom and other age-appropriate settings that are related to the suspected disability; and reviewing and considering information provided by the parent, including any independent assessments.

No single measure or assessment is used as the sole criterion for determining whether a student is an individual with exceptional needs or determining an appropriate educational program for a student.

Screening or observation by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an assessment for eligibility for special education and related services. A screening includes basic tests or procedures used for all children in a school, grade, or class. Mass screenings used in connection with child find activities are not considered evaluations and thus do not require prior parental notice and consent.

## Reassessment

A reassessment of the student shall be conducted not more frequently than once a year, unless the parent and LEA agree otherwise and at least once every three years, unless the parent and LEA agree in writing that a reassessment is not necessary. The purpose of the reassessment is to determine if the student continues to be a student with exceptional needs and if so, whether additions or modifications to the IEP are needed to enable the student to meet his/her annual goals. A triennial reevaluation must be conducted on or before the calendar date that is three years from the initial IEP meeting or previous triennial IEP meeting. Additional data obtained through full standardized testing is often not necessary for reassessment. An assessment report containing all of the required components must be completed to document the data that was reviewed and continuing eligibility.

A student must be reassessed before determining that he or she is no longer a student with a disability except when termination of eligibility is due to graduation from secondary school with a regular diploma, or to exceeding age eligibility under State law. In such cases, the LEA must provide the student with a summary of the child's academic achievement and functional performance including recommendations on how to assist the student in meeting the student's post-secondary goals.

As part of the reassessment, the IEP team must review the following;

- 1) Existing records and assessment data;
- 2) Current classroom performance;
- 3) Information provided by the parent; and
- 4) Teachers' and related service providers' observations.

If, following this review, it is believed that no additional assessment data are needed to determine continuing eligibility; the case manager shall document this determination using SELPA-approved forms and present them to the parents. In these forms, the parents are informed that they have the right to request additional assessment. If the parents agree with the IEP team's findings and do not request additional assessment data, no additional assessment data needs to be gathered. The relevant notices and forms must be given to the parents early enough to complete a full assessment, if parents request it, before the IEP meeting due date.

If the IEP team determines that additional assessment data is needed or the parent requests additional data, the legal requirements for conducting assessments as outlined previously in this chapter must be followed.

Parent consent to conduct a reassessment is not required if the LEA can demonstrate that it has taken reasonable measures to obtain consent and the parent has failed to respond.

## Preschool to Kindergarten or First Grade Transition Assessment

Preschool children identified as individuals with exceptional needs must be reassessed prior to transitioning from a preschool program to kindergarten or first grade. This reassessment may include standardized testing; criterion referenced testing, observation and/or review of records. Personnel providing special education services to the child are responsible for completing this reassessment and writing a summary report. The intent is to ensure that that gains made by the student through special education services are not lost by too rapid of a removal from these services.

In preparation for the transition into kindergarten or first grade, the IEP team needs to conduct a reassessment. A reassessment may be a review of student records if all necessary information is current and available. The *Kern County Consortium SELPA Preschool Transition to Kindergarten* form (see Procedural Manual Forms) can be completed by the appropriate staff in advance of the transition to kindergarten or first grade meeting. The information provided on the form could be used to assist the IEP team in determining recommendations for the transition.

Whenever possible, the transition meeting should include a kindergarten or first grade teacher to ensure that a smooth transition occurs. As part of the transition process a means of monitoring continued success of the child shall be identified by the IEP team for those children of kindergarten or first grade who are determined to be eligible for less intensive special education services.

## Components of the Assessment Report

Assessment results must be documented in a written report that contains, but is not limited to, all of the components listed below:

- 1) Educationally relevant health, developmental, and medical finding, if any;
- 2) Relevant behavior noted during the observation of the student in an appropriate setting and its relationship to the student's academic and social functioning;
- 3) A determination concerning the effects of environmental, cultural, or economic disadvantage, when appropriate;
- 4) Whether assistive technology and services are needed;
- 5) For students with low incidence disabilities, whether there is a discrepancy between achievement and ability that cannot be corrected without special education and related services;
- 6) For students with learning disabilities, whether there is a discrepancy between achievements and ability that cannot be corrected without special education and related services;
- 7) Whether the student may need special education and related services; and
- 8) The basis for making the determination of eligibility.

In addition to the required components listed above, the following are recommended for inclusion in the assessment report to document consideration by the assessment team:

- 1) A statement regarding the validity of the assessment and the tests used;
- 2) Information provided by the parent; and
- 3) An independent assessment, when provided by the parent.

Every assessment report, integrated and individual, must include all required components. Reports must be completed for all assessments, including reassessments where no additional assessment data is collected and assessments conducted for the purpose of obtaining additional information. Parents are provided a copy of the assessment report with documentation of how eligibility or non-eligibility was determined.

## Eligibility Criteria

To qualify for special education and related services under the IDEA, Part B, a student must be between the ages of three and 21 years and be determined by an IEP team to meet the definition of one or more of the categories of disability specified under the IDEA (described below). Additionally, the student must require special education and related services as result of his disability or disabilities.

The implementing federal regulations of IDEA 2004 further state that a child shall not be determined to be a child with a disability if the “determinant factor” is a “lack of appropriate instruction in reading, including the essential components of reading instruction to include:

- 1) Explicit and systematic instruction in phonemic awareness;
- 2) Phonics;
- 3) Vocabulary development;
- 4) Reading fluency, including oral reading skills; and
- 5) Reading comprehension strategies.

IDEA 2004 retained the previous law’s exclusion from eligibility for determinant factors of limited English proficiency and lack of instruction in math.

### Autism

Autism is a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a student’s educational performance. Other characteristics often associated with autism are:

- 1) Engagement in repetitive activities and stereotyped movements;
- 2) Resistance to environmental change or changes in daily routines; and
- 3) Unusual responses to sensory experiences.

### Emotional Disturbance

Because of a serious emotional disturbance, a student exhibits one or more of the following characteristics:

- 1) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

This characteristic requires that a student is so severely emotionally disturbed that he or she cannot learn, despite appropriate educational interventions and efforts of the student. All other possible reasons for a student’s inability to learn have been ruled out (e.g., other types of disability, motivation factors, behavioral disorders, social and cultural factors, attendance issues, health factors).

- 2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

The term “unable” does not include “unwilling” or lacking social skills if the student is capable of learning social skills.

- 3) Inappropriate types of behavior or feelings under normal circumstances.

To qualify under this characteristic, the behaviors must be psychotic, overtly bizarre, or potentially or actually harmful to the student or to others.

- 4) A general pervasive mood of unhappiness or depression.



His characteristic requires that the student must demonstrate actual, overt symptoms of depression. Depression caused by immediate and identifiable environmental stressors are insufficient for meeting the requirement.

- 5) A tendency to develop physical symptoms or fears associated with personal or school problems.

Physical symptoms should have no demonstrated organic etiology and should not appear to be under conscious control. Fears and phobias include persistent and irrational fears of particular objects, activities, individuals or situations that result in consistent avoidance behavior or a significant rise in anxiety or panic when the source cannot be avoided.

- 6) Schizophrenia

The term does not apply to students that are socially maladjusted, unless it is determined that they have an emotional disturbance as detailed above.

These characteristics must have been exhibited over a long period of time (typically at least six months) and to a marked degree. To qualify as being exhibited to a marked degree, the characteristics must be pervasive, as evidenced through demonstration across almost all domains (school, home, and community) and with almost all individuals, and intense enough to produce significant distress either to the individual or to others in his or her environment.

#### Established Medical Disability

The definition of an established medical disability (EMD) is as follows: Education Code §§ 56441.11(b)(1)(N) and 65441.11(d) identify an EMD for children between the ages of three and five years, inclusive, as "... a disabling medical condition or congenital syndrome that the individualized education program determines has a high predictability of requiring special education and services."

California Longitudinal Pupil Achievement Data System (CALPADS) Code Sets guide indicates that EMD can be used for ages 3 through 5.

All IEP teams within the Kern County Consortium SELPA will only apply this definition to children who are between 3 years, 0 months and 5 years, 11 months of age, as identified in the California Longitudinal Pupil Achievement Data System (CALPADS) Code Sets guide.

This area of disability is very limited in application and should only be used when a child has a medical or congenital condition as cited above and does not meet eligibility in any of the other 13 areas.

#### Hearing and Visual Impairments (Deaf/Blindness)

A student has concomitant hearing and visual impairments, the combination of which causes severe communication, developmental, and education problems and cannot be accommodated

in general education. A state licensed ophthalmologist and a state licensed audiologist must verify the presence of both deficits.

#### Hearing Impairment (Deafness and Hard of Hearing)

A student has a hearing impairment, whether permanent or fluctuating, that impairs the processing of linguistic information through hearing, even with amplification, and which adversely affects educational performance. Processing linguistic information includes speech and language reception and speech and language discrimination. The student must have a written diagnosis/report of hearing impairment from a licensed or credentialed audiologist with a specialization in clinical or rehabilitation services in audiology. This diagnosis/report should specify the range, nature and degree of hearing impairment. This report must be current and provide measures of audio logical functioning both with and without amplification.

#### Intellectual Disability

A student has significantly below average general intellectual functioning, existing concurrently with deficits in adaptive behavior manifested during the developmental period or incurred as the result of disease or trauma that adversely affects educational performance.

#### Language or Speech Impairment

A student demonstrates difficulty understanding or using spoken language to such an extent that it adversely affects his or her educational performance and cannot be corrected without special education and related services. The difficulty in understanding or using spoken language is assessed to be due to one of the following disorders:

##### *Articulation Disorder*

The student displays reduced intelligibility or an inability to use the speech mechanism that significantly interferes with communication and attracts adverse attention. Significant interference in communication occurs when the student's production of single or multiple speech sounds on a developmental scale of articulation competency is below that expected for his or her chronological age or developmental level and which adversely affects educational performance. The student does not meet criteria for an articulation disorder if the sole assessed disability is an abnormal swallowing pattern. The student also does not meet criteria for an articulation disorder when the student exhibits atypical speech resulting from a lack of familiarity with the English language or dialectical patterns resulting from the use of non-standard English.

##### *Abnormal Voice*

A student has an abnormal voice that is characterized by persistent, defective voice quality, pitch, or loudness.

##### *Fluency Disorders*

A student has a fluency disorder when the flow of verbal expression, including rate and rhythm, adversely affects communication between the student and the listener.

### *Language Disorder*

A student has an expressive or receptive language disorder as exhibited by a score of at least 1.5 standard deviations below the mean, or below the 7th percentile, for his or her chronological age or developmental level in one or more areas of language development including morphology, syntax, semantics, or pragmatics as assessed by:

- 1) Two or more standardized tests, or
- 2) One or more standardized tests and inappropriate or inadequate usage of expressive or receptive language as measured by a representative spontaneous or elicited language sample of a minimum of fifty utterances. The language sample must be recorded or transcribed and analyzed and the results included in the assessment report. If the student is unable to produce the sample, the language, speech, and hearing specialist shall document why a fifty-utterance sample was not obtainable and the contexts in which attempts were made to elicit the sample.
- 3) When standardized tests are considered to be invalid for the specific student, expected language performance level shall be determined by alternative means as specified in the assessment plan.

### Multiple Disabilities

The student demonstrates concurrent impairments in at least two areas. The combination of these impairments requires unique modifications and support not available in programs designed solely for one of these impairments.

### Other Health Impairment

A student has limited strength, vitality, or alertness due to chronic or acute health problems, including but not limited to a heart condition, cancer, leukemia, rheumatic fever, chronic kidney disease, cystic fibrosis, severe asthma, epilepsy, lead poisoning, diabetes, Tourette's Syndrome, tuberculosis and other communicable infectious diseases, and hematological disorders such as sickle cell anemia and hemophilia, that adversely affect a student's educational performance. When applied to children with ADD/ADHD, this definition includes a child's heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment. In accordance with Section 56026 (e) of the Education Code, such physical disabilities shall not be temporary in nature, as defined in Section 3001 (x). The student must have a written diagnosis from a licensed physician indicating that he/she has a severe medical condition resulting in limited strength, vitality or alertness.

### Orthopedic Impairment

A student has a severe orthopedic impairment that is not temporary in nature and adversely affects the student's educational performance. Such orthopedic impairments include impairments caused by congenital anomaly, impairments caused by disease, and impairments from other causes. The student must have a written diagnosis from a licensed physician or surgeon that he or she has a severe orthopedic impairment that results in a serious impairment of locomotive and/or other motor functions.

### Specific Learning Disability

A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, and cognitive abilities. The term "specific learning disability" includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, intellectual disability, of emotional disturbance, or of environmental, cultural, of economic disadvantage, or of limited English proficiency.

The IEP team determines whether a student meets the criteria established above using a severe discrepancy model (i.e., determining whether the student has a severe discrepancy between intellectual ability and achievement); a process that determines if the student responds to scientific, research-based intervention; or establishing evidence that the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state- approved grade-level standards, or intellectual development. When a discrepancy model is used, no single score or product of scores, test or procedure shall be used as the sole criterion for the decision of the IEP team as to the student's eligibility for special education. When standardized tests are considered to be valid for a specific student, a severe discrepancy is demonstrated by:

- 1) Converting the achievement test score and the ability test score into common standard scores, such as using a mean of 100 and a standard deviation of 15;
- 2) Computing the difference between these common standard scores;
- 3) Comparing this computed difference to the standard criterion that is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests;
- 4) Evaluating whether the computed difference to the standard criterion that is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests;
- 5) Determining that any resulting severe discrepancy is corroborated by other assessment data that may include other tests, scales, instruments, observations and work samples, as appropriate.

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

- 1) Data obtained from standardized assessment instruments;
- 2) Information provided by the parent;
- 3) Information provided by the student's present teacher;
- 4) Evidence of the student's performance in the general and/or special education classroom obtained from observations, work samples, and group test scores;
- 5) Consideration of the student's age, particularly for young children; and
- 6) Any additional relevant information.

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

The discrepancy shall not be primarily the result of limited school experience or poor school attendance.

Whether or not a student exhibits a severe discrepancy, a student may be determined to have a specific learning disability if:

- A. The student does not achieve adequately for the student's age or does not meet State-approved grade level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving, and
- B. The student does not make sufficient progress to meet age or State-approved grade-level standards in one or more areas identified above when using a process based on the student's response to scientific, research-based intervention or the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disorder.

### Traumatic Brain Injury

Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition, language, memory,

attention, reasoning, abstract thinking, judgment, problem-solving, sensory, perceptual, and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. The student must have a written diagnosis from a licensed physician that he/she has a severe medical condition due to traumatic brain injury.

### Visual Impairment

A student has a visual impairment that, even with correction, adversely affects a student's educational performance. A student whose vision cannot be used as a major channel of learning is typically identified as blind. Partially sighted students demonstrate central visual acuity ranging from 20/70 to 20/200 in the better eye, after the best correction. Legally blind students demonstrate visual acuity of 20/200 or less, after best correction, or better than 20/200 if there is a field defect in which the widest diameter of the visual field is no greater than 20 degrees. The student must have a written report of an eye examination by a licensed ophthalmologist that verifies the visual impairment.

For additional information regarding assessment, please see the *Kern County Consortium SELPA Guidelines for Compliant & Defensible Psycho-educational Assessments* located in the Appendices.

Citations: (E.C. § 56320(a)-(d)) (E.C. § 56320(e)-(f)) (E.C. § 56329(a)(3)) (E.C. §56381(a)(1)-(2)). (E.C. § 56381(b)(1)) (34 C.F.R. § 300.300(c)(2)) (E.C. § 56327(a)-(h)) (E.C. §56329(a)(3)) (E.C. § 56026(a)-(c)(3)-(4)) (5 C.C.R. § 3030(g)) (5 C.C.R. § 3030(i); Identification and Assessment of the Seriously Emotionally Disturbed Child, CDE, 1986) (5 C.C.R. § 3030(b)) (5 C.C.R. § 3030(a)) (5 C.C.R. § 3030(h)) (5 C.C.R. § 3030(c) and E.C. § 56333) (34 C.F.R. 300.8(c)(7)) (5 C.C.R. § 3030(f)) (5 C.C.R. § 3030(e)) (5 C.C.R. § 3030(j); E.C. § 56337; 34 C.F.R. § 300.8(c)(10); and 34 C.F.R. § 300.309(a)(1-3)) (34 C.F.R. 300.8(c)(12)) (5 C.C.R. § 3030(d) and E.C. § 563500)

## Chapter 5 – The IEP Team Meeting

### Circumstances Requiring an IEP Team Meeting

IEP team meetings are required under a variety of situations. An IEP team meeting must be held:

- 1) When an initial or subsequent formal assessment has been conducted (including triennials);
- 2) When the student's placement of instruction, services, or both as specified in the IEP are to be initiated, changed, or terminated. This includes placement changes due to discipline;
- 3) When a student demonstrates a lack of anticipated progress;
- 4) When a teacher requests a meeting to develop, review, or revise the IEP;
- 5) At least annually to review progress, goals, placement and related services, and supplementary aids and services and to make any revisions to the IEP;
- 6) Within 30 days of receiving a request for a meeting from a parent to review and/or revise the IEP;
- 7) Within 30 days of making an interim placement of a student transferring from a district outside of the SELPA into any special education program;
- 8) Following a behavioral emergency;
- 9) When a manifestation determination must be made due to student discipline issues.

### Required Members of the IEP Team

Each meeting to develop, review or revise the IEP of an individual with exceptional needs shall be conducted by a team. The IEP team shall include all of the participants discussed below.

- 1) One or both of the student's parents, a representative selected by the parent, or both or surrogate parent, when appropriate. The parent or guardian shall have the right to present information to the IEP Team in person or through a representative and the right to participate in meetings, relating to eligibility for special education and related services, recommendations, and program planning.
- 2) Not less than one general education teacher if the student is, or may be, participating in the regular education environment. If more than one general education teacher is providing instructional services to the student, one general education teacher may be designated by the LEA to represent the others. The regular education teacher of a

student with exceptional needs shall, to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in determining appropriate positive behavioral interventions and supports and other strategies for the student, and the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student.

- 3) Not less than one special education teacher of the student, or if appropriate, not less than one special education provider of the student. In the case of a child previously served under Part C, an invitation for the initial IEP should be sent to the Part C services coordinator or other representatives of the Part C system to assist with the smooth transition of services.
- 4) An administrator or designee representing the LEA, special education local plan area, or county office who meets all of the following:
  - a) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of individuals with exceptional needs;
  - b) Is knowledgeable about the general education curriculum;
  - c) Is knowledgeable about the availability of resources of the LEA; and
  - d) Has the authority to commit school level resources of district resources.
- 5) An individual who can interpret the instructional implications of the assessment results. This individual may already be a member of the team as described above in items 1 through 4.
- 6) For students with suspected learning disabilities, at least one member of the IEP team shall be qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. At least one team member shall observe the student's academic performance and behavior in the areas of difficulty in the student's learning environment, including the regular classroom setting. In the case of a child who is less than school aged or out of school, a team member shall observe the child in an environment appropriate for a child of that age.
- 7) Whenever appropriate, the student with exceptional needs. Beginning with the IEP meeting to be in effect when a student reaches the age of 16, or younger if determined appropriate by the IEP Team, the student shall be invited to attend the IEP meeting. As part of the participation of an individual with exceptional needs in the development of an IEP, the student with exceptional needs shall be allowed to provide confidential input to any representative of his or her IEP Team.



## Additional Members of the IEP Team

When appropriate, the team shall also include the following persons:

- 1) At the discretion of the parent, guardian, or the LEA, other individuals who have knowledge or special expertise regarding the student including related services personnel, as appropriate. The party who invites the individual to be a member of the IEP team shall make the determination of whether the individual has knowledge or special expertise regarding the student.
- 2) If necessary, interpreters for parents whose primary language is other than English or who are deaf, in order to ensure that parents understand the proceedings of the IEP meeting.
- 3) In the case of transition services, the district, SELPA, or county office shall invite a student with exceptional needs to attend his or her individualized education program meeting if a purpose of the meeting will be the consideration of needed transition service for the individual.

If the student with exceptional needs does not attend the IEP Team meeting, the district, SELPA, or county office shall take steps to ensure that the student's preferences and interests are considered.

- 4) The district, SELPA or county office also shall invite any agency representative(s) that is/are likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the local education agency shall take other steps to obtain participation of the other agency in the planning of any transition services.
- 5) In the case of a student with exceptional needs who has been placed in a group home, the district, SELPA or county education office shall also invite a representative of the group home to participate in the IEP meeting.

## Excusing IEP Team Members

IEP team members may be excused from attending a meeting, in whole or in part, provided that both the parent and the local educational agency agree and the parent's agreement is in writing prior to the IEP meeting, when:

- 1) The team member's area of the curriculum or related services is not being modified or discussed; or
- 2) The team member's area of the curriculum or related services is being discussed; however, the team member submits written input into the IEP development before the meeting.

The parent must give written consent to excuse an IEP team member from a meeting under both of the options described above (See Excusal of IEP Team Member form located in the Procedural Manual Forms). Should the parent consent, the excused IEP team member will:

- 1) Contact the parent(s) and review the information about their student prior to the meeting so parent may ask any questions;
- 2) Provide written information for the IEP team members to include in discussions.

If the parent does not consent, either prior to or at the beginning of the IEP meeting, the meeting must be rescheduled so that the team member in question may attend. Holding the meeting and just adding them later does not allow them to participate in the discussions held with the other members of the team as is the intent of the law.

## Responsibilities of the IEP Team

The IEP team shall:

- 1) Review results of any assessments and identify areas of need;
- 2) Determine eligibility (initial and reassessments);
- 3) Determine present levels of academic achievement and functional performance for each area of identified need;
- 4) Develop goals and, if appropriate, short-term objectives or benchmarks for each area of identified need; and
- 5) Determine appropriate supports, placement, and related services.

## Notice of the IEP Team Meeting

The IEP team meeting shall be scheduled at a mutually agreed upon time and place. Parents shall receive *Notice of IEP Meeting* early enough to ensure an opportunity to attend. It is recommended that the written notice be sent approximately ten days prior to the meeting date. The notice of the meeting shall indicate the purpose, time, and location of the meeting and who shall be in attendance; for district personnel, the position must be listed, not individual names. The notice must also include a reminder to the parents of their right to bring other people to the meeting who have knowledge or special expertise regarding the individual with exceptional needs. For students transferring from an infant/toddler program to a preschool program, the notice must indicate the right to have the Early Start service coordinator attend. Beginning not later than the first IEP in effect when a student turns 16, the notice also must indicate that a purpose of the meeting will include consideration of the postsecondary goals and transition services for the student and that the LEA will invite the student and a representative of any agency that may be involved in providing transition services.

## Parent Participation in the IEP Team Meeting

Every attempt shall be made to convince parents to participate in each IEP meeting since they have the right to participate in all meetings relating to eligibility for special education and related

services, recommendations for educational placement, and program planning. Parents also have the right to present information to the IEP team in person or through a representative. If no parent or guardian can attend the IEP meeting, the LEA shall use other methods to ensure parent or guardian participation, including individual or conference/video calls.

## Holding an IEP Team Meeting without Parent Attendance

A meeting can be conducted without a parent in attendance if the case manager, or other district representative, is unable to convince the parent that he or she should attend in person or through a conference call or if the LEA has been unsuccessful in reaching the parent/guardian. Prior to holding a meeting without the parent in attendance, there should be at least three attempts to convince the parent to attend using at least two different means of contact. The case manager shall maintain a record of his/her attempts to arrange a mutually agreed upon time and place, including:

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

## Provision of Parent Rights

Parents of children with disabilities from ages three through twenty-one have specific rights under the Individuals with Disabilities [Improvement] Act (IDEIA). These rights are called Procedural Safeguards. Any person serving surrogate parent and adult students aged eighteen or over who received special education services are also entitled to these Procedural Safeguards.

The Kern County Consortium SELPA maintains a copy of the "Notice of Procedural Safeguards and Parents' Rights" in the SIRAS Document Library and on the SELPA website.

A copy of the "Notice of Procedural Safeguards and Parents' Rights" must be offered to the parent a minimum of one time yearly. Best practice suggests giving it to the parent to review at the start of every IEP meeting. The member LEA should ensure that the parent(s) understands; if not, the LEA should provide further clarification and document receipt on the signature page of the IEP.

In the Kern County Consortium SELPA, parents will be provided with a notice of procedural safeguards in their native language at least upon;

Initial referral or parental request for evaluation and annually thereafter;

- 1) When sending out an Assessment Plan and/or Prior Written Notice
- 2) The first occurrence of the filing of a due process or compliance complaint;
- 3) When a decision is made to apply disciplinary action that constitutes a change in placement (suspension of more than 10 days or expulsion); and

- 4) Upon request by a parent or adult student.

Native language is summarized and defined under IDEIA; further the procedural safeguards notice must be:

Written in a language understandable to the general public; and provided in the native language of the parent or in another mode of communication that is used by the parent, unless it is clearly not feasible to do so as per §300.503(c).

- 1) If the native language or other mode of communication used by the parent(s) is not a written language, then the LEA must take steps to ensure:
  - 2) The notice is translated orally or by other means to the parent in his/her native language or other mode of communication;
  - 3) The parent understands the content of the notice; and
  - 4) There is written evidence that these requirements have been met as per §300.503(c)

## Types of IEP Meetings

### Initial IEP

IEP is convened at the conclusion of the assessments conducted to determine initial eligibility. Initial IEP's can only be held when the student is first evaluated for special education or re-entering into special education.

The purpose of the initial IEP is to review all assessment data/reports, develop present levels and determine eligibility. If eligible, the team goes on to address all areas of need through goal development, determination of needed supports and services. Once service needs are identified, the team must consider the continuum of placement options & determine where services should be delivered. What is the student's least restrictive environment? The place most closely aligned to the general education placement the student would otherwise attend. Annual reviews, reviews in general and triennials all flow from the initial IEP meeting.

### Annual Review IEP

Once a student has been found to be eligible for special education and related services, a review of the IEP placement, related services and supplemental aids and services shall be held annually. The annual review procedures should be conducted so that the IEP that is to be the basis of an upcoming school year's programming is finalized prior to the start of the new school year. There must be an IEP in effect at the beginning of each school year.

Parents shall be provided with a copy of their Procedural Safeguards at the annual IEP team review. The case manager shall be responsible for coordination of the annual review. IEP reviews must be conducted by at least the minimum required membership of the IEP Team that made the initial placement. Each IEP review shall be conducted in accordance with the notice and scheduling requirements for the initial assessment.

### Triennial Review IEP

A reevaluation of the student shall be conducted at least once every three years or more frequently, if conditions warrant a reevaluation, or if the student's parent or teacher requests a reevaluation and a new individualized education program needs to be developed. If the reevaluation so indicates, a new individualized education program shall be developed.

As part of any reevaluation, the individualized education program team and other qualified professionals, as appropriate, shall do the following:

- 1) Review existing assessment data on the student, including assessments and information provided by the parents of the student, current classroom-based assessments and observations, and teacher and related services providers' observations.
- 2) On the basis of this review and input from the student's parents, identify what additional data, if any, is needed to determine:
  - a) Whether the student continues to have a disability.
  - b) The present levels of performance and educational needs of the student.
  - c) Whether the student continues to need special education and related services.
  - d) Whether any additions or modifications to the special education, related services and supplemental aids and services are needed to enable the student to meet the measurable annual goals set out in the individualized education program of the student and to participate, as appropriate, in the general curriculum.

If the IEP team and other qualified professionals, as appropriate, determine that no additional data is needed to determine whether the student continues to be an individual with exceptional needs, the District shall provide prior written notice to the student's parents of that determination and the reasons for it, and the right of the parents to request an assessment to determine whether the student continues to be an individual with exceptional needs; however, the District shall not be required to conduct an assessment unless requested by the student's parents.

No reevaluation shall be conducted unless the written consent of the parent is obtained prior to reevaluation except when the District has taken reasonable measures to obtain consent and the parent has not responded.

The regulations require that the District have a record of its attempts to request consent for reevaluation in meeting the reasonable measure requirement. At least three attempts must be made to contact the parent by note, telephone, home visit, and or by mail. All attempts must be documented.

The Triennial Review is also used for reevaluations for transition from preschool into Kindergarten. The Triennial Review will reset the next IEP date to one year from the date of the meeting and the next Triennial Review date to three years from the date of the meeting.

A reevaluation (with all elements of a Triennial Review) is required for out of state students to reestablish eligibility and need for services. If new assessment will be conducted, an

Assessment Plan will be generated with a 60-day timeline for completion of the assessment, with an IEP meeting held no later than the end of the 60 days. However, if the team determines there is adequate information already available in the student's record and that no additional testing is needed, the *Triennial Review Summary* (located under Tools/Added Forms/Triennial) is completed and presented at a Triennial Review meeting within 30 days.

### Transition IEP

An IEP is held to transition from infant to preschool, preschool to kindergarten, elementary to junior high, junior high to high school, from public school setting to NPS or reverse.

### Addendum/Amendment IEP

An Addendum or Amendment can be used to make minor changes to the IEP (e.g. add accommodations or an additional goal). The Addendum requires an IEP team meeting; the Amendment does not. Neither meeting can be used for a change in placement.

### Other Review IEP

An IEP meeting shall be held at least annually and more frequently if requested by the parents or a member of the IEP team. The IEP review meeting must be held within 30 days of the request for the meeting. The purpose of a review IEP shall be to discuss additions and/or revisions to the IEP that are necessary to provide a free appropriate public education (FAPE) for the student. Other Review to be used for meetings when a portion of the IEP is being revised, not considered to be an Annual Review. For a review IEP team meeting, only those IEP team members whose services are being discussed are required to attend, although all members of the IEP team must receive a copy of the revised IEP document/addendum IEP.

Other Reviews may be conducted for a number of reasons:

- 1) Parent Request
- 2) Behavior
- 3) Review Progress
- 4) Additional Assessment (to look at the need for additional service – not an evaluation to determine eligibility)
- 5) Change Placement
- 6) Transfer to Kindergarten, Middle School, or High School
- 7) Consider Exiting

### Review IEP (Interim 30-day Transfer – 30-day Administrative Placement/Transfer)

If a student with a disability (who had an IEP that was in effect in a previous district within the state) transfers to a new district in the same state, and enrolls in a new school within the same school year, the new district (in consultation with the parents) must provide the student with FAPE, including services comparable to those described in the previously held IEP, until it adopts the previously held IEP or develops, adopts, and implements a new IEP. The review IEP must take place within 30 days of enrollment in the new district.

In the case of a student with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP in effect from another state, the district must provide the student with FAPE, including services comparable to those described in the previous IEP, in consultation with the parents until such time as the LEA/District conducts an evaluation, if determined to be necessary, and develops a new IEP, if appropriate.

To facilitate either an in-state or out-of-state transfer, the new district where the student now resides shall take reasonable steps to promptly obtain the student's records, including the IEP, any supporting documents and other records concerning the provision of special education or related services. The prior district where the student was enrolled shall take reasonable steps to promptly respond to the request from the new district.

The Review (30 day) is typically not used when a student transfers into the district from out of the state or from within the SELPA. Transfers from out of state require a Triennial Review meeting. Transfers from a district within the SELPA do not require an IEP meeting unless the district feels it is necessary to change parts of the IEP from the previous district. In this case, changes to the IEP could be done through an Addendum or Other Review/Addend IEP.

#### Manifestation Determination IEP

A "manifestation determination" means the evaluation of the relationship between a student's disability and act of misconduct that must be undertaken when a district proposes to take specified serious disciplinary actions such as suspension or expulsion. Whenever a student has reached or is close to reaching the 10th day of suspension and there is a pattern of behaviors and/or the student is being considered for expulsion, a manifestation determination meeting is required. Only if the district concludes, after performing a manifestation determination review that the misconduct was not related to the student's disability, can it impose the proposed disciplinary sanction (except for removals due to special circumstances (i.e. weapons, drugs or infliction of serious bodily injury which can be made without regard to whether the behavior is a manifestation of the disability).

Within 10 school days of any decision to change the placement of a child for a disciplinary reason, a school district must convene an IEP team meeting to determine whether the misconduct is a manifestation of the child's disability. A child may not be disciplined for conduct that is a manifestation of the disability.

The manifestation determination review is conducted by the district, the parents, and relevant members of the IEP team as determined by the district and the parent. This review does not have to be conducted by the full IEP team. The individuals involved in making the manifestation determination are charged with reviewing all relevant information in the student's file, including the IEP, any teacher observations and any relevant information provided by the parent. The purpose of this review is to determine the following:

- a) If the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or

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- b) If the conduct in question was the direct result of the district's failure to implement the IEP. The suspension/expulsion shall not go forward.
- c) If the behavior in question is a manifestation of the student's disability (considered to be the case if either of the two previous items is found to be true.

Citations: (E.C. § 56343(a)) (34 C.F.R. § 300.16) (E.C. § 56343(b)) (E.C. § 56343(c)) (E.C. § 56343(d))(E.C. § 56343.5) (E.C. § 56325(a)(1)(5 C.C.R. § 3052(i)(7)(20 U.S.C. 1415(k)(1)(E)(i)(I))(E.C. § 56341(b)(1)-(5) and (c))(E.C. § 56341(b)(6)-(7); (d)(3); and (i))(E.C. § 56342(a)(1)-(4) and 34 CFR 300.306(1))(34 C.F.R. 300.322(a)-(b) and E.C. § 56341.5(c))(E.C. § 56341.5(a); E.C. § 56304(a); and E.C. 56341.1(f)) (E.C. § 56341.5(h))



## Chapter 6 – Required Components of the IEP

The IEP is the written documentation developed in a meeting of the individualized education program team. SELPA approved forms are required in order to ensure that all required components of the IEP are included in the document.

### Required Components

- 1) The present levels of the student’s academic achievement and functional performance, including the following:
  - a) For a school-age child, how the student's disability affects the student's involvement and progress in the general curriculum; and
  - b) For a preschool-age child, as appropriate, how the disability affects the child's participation in age-appropriate activities.
- 2) Measurable annual goals that are developed based on the need determined during the discussion of the student’s present levels. There must be a direct relationship between the results of any evaluations, the present levels of academic achievement and functional performance, and the educational services to be provided. These goals should be designed to:
  - a) Enable the student to be involved in, and progress in, the general education curriculum; and
  - b) Meet each of the student's other educational needs that result from the student's disability.
- 3) A description of how the student’s progress toward meeting the annual goals will be measured, and when periodic reports on the student’s progress will be provided (such as through quarterly or other periodic reports, concurrent with the issuance of report cards). The frequency must match that of progress shared with the parents of students in general education.
- 4) The specific special educational instruction, related services, and supplementary aids and services, based upon peer reviewed research to the extent practicable, to be provided to, or on behalf of, the student. The IEP shall also include a statement of the program modifications or supports for school personnel that will be provided for the student to:
  - a) Advance appropriately toward attaining the annual goals;
  - b) Be involved and progress in the general curriculum, and to participate in extracurricular and other nonacademic activities; and
  - c) Be educated and participate with other students, both with disabilities and those who are non-disabled.

- d) In order to clarify the LEA's FAPE offer and make it understandable to parents/guardians and all IEP team members, the IEP documents should clearly delineate the exact frequency of delivery, specific duration, and specific location of each related service to be afforded to the student. The modality (i.e. individual, group, or consult) can be noted on the IEP documents. Most related services are provided on a daily, weekly, or monthly basis. Related services are generally not offered with an annual frequency of delivery; for more information please see 'Supplementary Aids and Services' section of this manual.
- 5) An explanation of the extent, if any, to which the student will not participate with non-disabled students in the general education class and extracurricular and nonacademic activities.
- 6) The individual modifications in the administration of state or district-wide assessments of student achievement that are needed for the student to meaningfully participate in the assessment.
- 7) If the IEP team determines that the student will not participate in a particular state or district-wide assessment of student achievement (or part of an assessment), a statement of the following:
  - a) Why that assessment is not appropriate for the student;
  - b) How the student will be assessed, and the reason that the alternative assessment is appropriate.
- 8) The projected date to begin the services and modifications described in the IEP, and the anticipated frequency, location, and duration of those services and modifications.
- 9) Beginning not later than the first individualized education program to be in effect when the student is 16 years of age, and updated annually thereafter, the following shall be included:
  - a) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills.
  - b) The transition services, including courses of study, needed to assist the student in reaching those goals.

## Supplementary Aids and Services

Supplementary aids and services must be provided when required to enable individuals with exceptional needs to progress towards their goals, be involved in and progress in general education, participate in extracurricular and nonacademic activities, and be educated to the maximum extent appropriate with non-disabled children. Supplementary aids and services include assistive technology devices, interventions, accommodations, program modifications,

and supports to school personnel. The IEP must include frequency, location, and duration of each.

- 1) In the case of a student whose behavior impedes his or her learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.
- 2) In the case of a student with limited-English proficiency, consider the language needs of the student as those needs relate to the student's individualized education program.
- 3) In the case of a student who is blind or visually impaired, provide for instruction in braille, and the use of braille, unless the individualized education program team determines this is not appropriate for the student. The determination can only be made after an assessment of the student's reading and writing skills, needs, and appropriate reading and writing media, including an assessment of the student's possible future needs for instruction in braille or the use of braille.
- 4) Consider the communication needs of the student. In the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, both with peers and professional personnel, their academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode.
- 5) Consider whether the student requires assistive technology and services.
- 6) Supports that are not provided on an ongoing basis and can be provided to the student in a relatively short amount of time across the school year, may be provided by the LEA as a supplementary support. For example, if a service is provided twice per year for a total of two hours, this service can be provided as a supplementary support.

## Statewide Testing

Students with IEPs must be included in statewide and district-wide assessment programs. Parents of all students have the right to exempt their child from participating in statewide assessments. The IEP team, however, must develop the IEP with the expectation that the student will participate in the assessments since the parent exemption is not part of the IEP process. The IEP must specify the assessments that are appropriate for the student, and any needed accommodations and/or modifications, even if the parent has completed a request for exemption. If the parent of a student receiving special education and related services does complete a request for exemption, however, the assessments identified in the IEP may not be administered. There are several statewide assessment programs for which this requirement applies. IEP teams decide, on an individual basis, which tests or test versions will be administered.

Certain accommodations and modifications are allowed for state and district-wide standardized assessments. If a student is to be tested using an accommodation or modification, it must be stated in the IEP. A copy of the Matrix of Test Variations, Accommodations, and Modifications for Administration of California Statewide Assessments can be obtained on the California Department of Education website or by contacting the Site Testing Coordinator. This matrix identifies the specific accommodations and modifications that are allowed for each test for that academic year. Accommodations and modifications can only be used for statewide testing if those same accommodations and modifications have been identified in the IEP as required by the student as a regular part of his or her instruction. See the section in this chapter on “Supplementary Aids and Services” for more information about instructional accommodations and modifications.

## Transportation

### Definition of Special Education Transportation

Special education transportation is defined in federal regulations as a related service. As a related service, transportation must be provided if it is necessary for the student to benefit from special education instruction and to receive FAPE. There are two types of special education transportation defined in California Education Code.

- 1) “Special education transportation” is defined as, “The transportation of severely disabled special day class students, and orthopedically-impaired students who require a vehicle with a wheelchair lift, who received transportation in the prior fiscal year, as specified in their individualized education program.”
- 2) “Home-to-school transportation” is defined as, “The transportation of individuals with exceptional needs as specified in their individualized education programs, who do not receive special education transportation as defined in subdivision (d).”

### Eligibility for Special Education Transportation

Based upon the education codes cited above, the IEP team must determine if a student meets one of the following criteria in order to be eligible to receive transportation as part of the IEP:

- 1) Has a severe disability and is enrolled in special day class for students with severe disabilities;
- 2) Has an orthopedic impairment and requires a vehicle with a wheelchair lift;
- 3) Has any special needs that cause problems in getting to school in the same manner as non-disabled students (e.g., health, behavioral, capacity to avoid dangerous situations);
- 4) Lives beyond a reasonable distance to his or her school and would not, without transportation, have access to appropriate special education instruction and related services at no cost;

- 5) Has other transportation needs such as mid-day trips to another site for community-based instruction.

#### Length of School Day, Related Services, Extracurricular Events

It should be noted that the use of alternative starting times for all special education students as a site might lead to program compliance concerns. Students receiving special education and related services must be provided with an educational program in accordance with their IEP for at least the same length of time as the regular school day for their chronological peer group, unless otherwise stated in a student's IEP due to a specified circumstance. A shortened day should not be the long-term remedy for behavioral issues. If provisions for "early" or "late" transportation are made available for students within the general education program due to extracurricular events, provisions for equal opportunity to these events for students with exceptional needs who require special transportation must also be made.

#### Special Education Transportation Options

Special education transportation options may include, but are not limited to, the following:

- 1) Regular school bus with or without accommodations (e.g., student is typically picked-up at a designated "bus-stop");
- 2) Special education bus (e.g., student is picked-up at home or day care, delivered to assigned school, and returned to home or day care);
- 3) Public transportation with a reimbursement of the cost to the parents or direct payment by the school district; and
- 4) Parent transportation with a reimbursement for mileage.

For safety purposes, when transportation is being provided between home and school on a public school bus, the road that the home is located on must be of appropriate width to allow two-way traffic or have sufficient turnouts to allow safe passage, and must be maintained in reasonably good condition. Driveways shall have adequate turn-around space at all times, and shall allow adequate visibility for safe entrance and exit of the school bus. If it is determined that there are unsafe conditions, and IEP team will be convened to discuss options.

The IEP should specify the type of special education transportation that the IEP team has agreed will be appropriated for the student.

#### Participation of Transportation Staff in IEP Team Meetings

The case manager should automatically invite transportation staff to participate in IEP team meetings when: a) the student needs the use of adaptive or assistive equipment; b) it is possible the school bus equipment may be required to be modified (ex. student needs an air conditioned bus); c) the student exhibits severe behavioral difficulties and a behavior intervention plan is to

be implemented on the bus; d) the student is medically fragile and requires special assistance; or e) the student has other unique needs. Transportation staff often have information regarding supports/services available to the students of which the rest of the IEP team is unaware. Upon completion, Transportation should then be given a copy of the IEP.

### Initiating, Changing, or Canceling Transportation Services

Each LEA is responsible for establishing procedures for initiating, changing, or canceling special education transportation services. These procedures must be designed to respond to the requested action in a timely manner in order to prevent denial of FAPE.

### Significant Health Issues

If a student who is eligible for special education transportation has significant health needs of which the bus driver needs to be aware, the LEA must provide the information and any necessary training to the personnel involved with the student during transport. If the student has a Health Care Plan as part of his/her IEP, the bus driver and other transportation personnel must know and understand its content and be aware of their responsibilities regarding student health and any emergency procedures.

## Extended School Year (ESY)

ESY means the period of time between the close of the one academic year and the beginning of the next academic year. ESY services must be provided for each individual with exceptional needs who requires special education and related services in excess of the regular academic year, as determined by the IEP team. These students are typically those who have disabilities that will continue indefinitely, or for a prolonged period, and for whom interruption of the educational program may cause regression with limited recoupment capacity. Generally, such students are placed in special classes, but other students may also require ESY. ESY should consider the student's time in Gen Ed listed in the IEP. ESY also needs to have the same hours per day as offered to general education population for summer school (applies to the 20 days of ESY only).

### What ESY is:

- An exception, not a rule;
- Based on the student's unique needs that are critical to overall educational progress/benefit as determined by the IEP team;
- Designed to maintain student mastery of critical skills and IEP objectives achieved during the regular school year;
- Designed to maintained a reasonable level of readiness to begin the next year;
- Focused on specific critical skills where regression, coupled with limited recoupment due to extended time off, may occur without ESY.

What ESY is not:

- A mandated service for all students with disabilities;
- Respite care or a summer recreation program;
- Designed to maximize educational opportunities for any student with disabilities;
- Necessary for all students with disabilities to continue instruction on all the previous year's IEP goals during the ESY period;
- Required if listed on the IEP; parents may choose to refuse the ESY;
- Designed to help students with disabilities advance in relation to their peers or to provide education beyond what is in the IEP;
- Intended for students who exhibit random regression solely related to transitional life situations or medical problems;
- Necessarily subject to the same LRE considerations as during the regular school year because the same LRE options are not always available;
- Designed for making up for poor attendance during regular school year, or as the primary means for

When to Consider ESY

When determining if a student requires and ESY program, the IEP team should consider whether:

- 1) The nature and/or severity of the student's disability prohibits the student from receiving meaningful benefit from his or her educational program during the subsequent year without ESY services;
- 2) There is documentation that a significant regression in critical life skills, and/or difficulty in recovering those skills within a reasonable period of time (eight weeks), will occur in the subsequent year without ESY services;
- 3) There is documentation that a significant increase in the frequency, duration, or intensity of interfering behaviors (e.g., stereotypic, ritualistic, aggressive, self-injurious) that will reduce the student's ability to benefit from his or her educational program during the subsequent year, will occur without ESY services.
- 4) The severity of the disability is a primary consideration in determining eligibility for ESY. The IEP team should consider the student's age, severity of the disability, presence of medically diagnosed health impairments, attainment of self-sufficiently, and development of emerging, critical skill that will be lost due to interruption. Other factors to consider are regression rate and recoupment time in relation to rates observed in their non-disabled peers, behavioral and physical problems, curricular areas that would be adversely impacted, and vocational needs.

Data Collection

When considering ESY for any student, the IEP team must consider data collected during the previous year(s) to determine the student's need based on items 1 through 3 above. This decision should be based on multiple factors, although there may be rare instances where the IEP team might consider ESY services based on a single criterion. Data collection may be in the form of teacher observations, informal and formal tests, benchmark measures, running records, progress toward IEP goals, etc.

The following chart is included to assist IEP team members with the process of collecting data to determine need for ESY:

<i>At or Before the First Progress Report of School Year</i>
<ul style="list-style-type: none"><li>• Collect data regarding progress toward IEP goals and other critical needs.</li><li>• Compare to previous data to determine if the student recouped skills from previous year, and the length of time it took to achieve that recoupment.</li><li>• Use data collected as the basis for ESY eligibility discussion at the next annual review, reassessment review, or amendment IEP.</li><li>• Continue instruction and document progress.</li></ul>
<i>At or Before Subsequent Progress Reports</i>
<ul style="list-style-type: none"><li>• Collect data as described for first progress report</li><li>• Review data before and after any break from school (e.g. Thanksgiving, Winter, or Spring Break) to determine if student may have experienced a significant regression/recoupment problem that cannot be corrected through re-teaching (Re-teaching time should equal the length of the break, for example, 1 week break =1 week of re-teaching the skill).</li><li>• Use data collected as the basis for ESY eligibility discussion at the next annual review, reassessment review, or amendment IEP.</li><li>• Continue instruction and document progress.</li></ul>
<i>Two to Three Months Prior to the End of the School Year</i>
<ul style="list-style-type: none"><li>• Gather data collected over the course of the school year.</li><li>• If the data indicated the student has a need for ESY and this has not yet been addressed, convene an amendment IEP team meeting and document the need as requested on the appropriate IEP form.</li><li>• If the team determines services are warranted, follow the LEA process for notifying the special education administrator.</li></ul>



*Recommended Timelines for Data Collection*

- At the end of regular school year
- At the end of any summer program
- At the beginning of subsequent school year
- In preparation for each progress report
- Before and after school vacations and when student has been out of school for other reasons

The lack of clear evidence of regression/recoupment factors may not be used to deny an ESY program if the IEP team determines the need for such a program, and includes it in the IEP. For students who do not require an ESY program, access to the general education summer school program should be made available as appropriate.

Summer school classes are not required in order for a child to receive FAPE in contrast with those services provided in ESY. In addition, a school district can choose not to provide summer school. Summer school usually focuses on opportunities for secondary students to recover credits, or summer intervention programs that assist in the development of skills for students at risk of retention. Summer intervention classes, when available, may be appropriate for students with disabilities who are working toward grade level standards.

Legal Requirements for Operation of ESY

An ESY program must be provided for a minimum of 20 instructional days, including holidays. For reimbursement purposes, a maximum of 55 instructional days, excluding holidays, shall be allowed for students with severe disabilities, and 30 instructional days, excluding holidays, for all other eligible students. In order to qualify for average daily attendance revenue, ESY must be provided for the same length of time as for general education students at the same age level who are attending summer school in the district in which the ESY is provided, and not less than the minimum school day for that age unless otherwise specified in the IEP. Additionally, the special education and related services offered during ESY must be comparable in standards, scope, and quality to the special education program offered during the regular academic year. Integration in the general education classroom, if specified on the IEP, is not required during ESY if the district operating the ESY does not offer a regular summer school program.

## Emergency Plans

Education Code Section 56345(a)(9)(A) requires an individualized education program to include a “description of the means by which the [IEP] will be provided under emergency conditions, as described in Section 46392 as delineated below, in which instruction or services, or both, cannot be provided to the pupil either at the school or in person for more than 10 school days.

The description of the means by which the IEP will be provided under emergency conditions shall include all of the following:

- Special education and related services;
- Supplementary aids and services;
- Transition services, as defined in Section 56345.1; and
- Extended school year services.

The requirement to include these contents applies to initial IEPs and “the next regularly scheduled revision of an individualized education program that has not already met [the above described] requirements.” (Ed. Code Section 56345(a)(9)(B).)

Emergency conditions, as noted in Section 46392 are described as:

If the average daily attendance of a school district, county office of education, or charter school during a fiscal year has been materially decreased during a fiscal year because of any of the following, the fact shall be established to the satisfaction of the Superintendent by affidavits of the members of the governing board or body of the school district, county office of education, or charter school and the county superintendent of schools:

- (1) Fire.
- (2) Flood.
- (3) Impassable roads.
- (4) Epidemic.
- (5) Earthquake.
- (6) The imminence of a major safety hazard as determined by the local law enforcement agency.
- (7) A strike involving transportation services to pupils provided by a non-school entity.
- (8) An order provided for in Section 41422.

## Prior Written Notice

IDEA requires prior written notice to parents whenever the LEA proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student. This notice creates a clear record of what, when, and why action is being proposed or denied and can avoid future factual disputes between the parents and the LEA. The Kern County Consortium SELPA encourages the use of the SELPA-approved template with a(n) initial, triennial and/or other IEP where a possible change of placement is a known consideration. If written notice is not provided

and dispute leads to due process proceedings, it may be determined that the LEA denied the student a free and appropriate public education (FAPE) and must, therefore, provide such things as reimbursement to the parents for private services and attorney's fees.

#### Element of the Written Notice

Legal mandates specify that the content of the written notice must include:

- 1) A description of the action proposed or refused;
- 2) An explanation of the why the LEA proposes or refuses to take action;
- 3) A description of each assessment procedure, record, or report used as a basis for making the decision;
- 4) A description of other options the agency considered and why those options were rejected;
- 5) A description of other factors that are relevant to the decision;
- 6) A statement of the availability of procedural safeguards and how to obtain a copy; and
- 7) Sources for parents to contact or obtain assistance in understanding the provisions of the law.

#### Written Offer of Educational Placement

When the action being proposed or denied is an educational placement, the descriptions provided in the written notice should include, but not be limited to, the following specific information:

- 1) Type of placement or service (e.g. specialized academic instruction, occupational therapy);
- 2) The school site where the placement or service is located;
- 3) Provider/Agency (e.g. special education teacher/LEA, physical therapist/CCS);
- 4) Names and qualifications of personnel, if relevant;
- 5) The daily schedule, if relevant;
- 6) Special equipment to be provided; and
- 7) Any other features of special relevance to the student such as class size, peer tutoring, socialization groups, etc.

#### Providing the Notice

The notice may be given prior to or at the same time that the LEA requests the parents' consent to the action. Notice can be provided through any one or combination of the following documents: on the IEP, in a separate written notice form, in a letter, and/or in any other clear written statement.

#### Final Considerations

For the "average" IEP, view the IEP document as the offer of educational placement, making sure that it has addressed each of the critical elements, including information that is recorded in

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the notes. For difficult or complex IEPs, follow the same steps as for the average IEP, but follow-up with a letter that summarizes the offer of educational placement and refers to the IEP as the complete statement of the offer. Always ensure that the parent is provided with a copy of the *Notice of Procedural Safeguards and Parents' Rights* in their native language.

The taking of IEP notes is highly encouraged during any IEP team meeting; they document the discussions that occurred, the questions asked and answered, and the participation of all of the team members. Notes provide the opportunity to clarify: who attended the meeting (as signatures are not always legible), the parent concerns and how they were addressed by team members, the rationale(s) for offers made, and any other specific issues that may have been brought up during the meeting. This is not only helpful in assuring the team members that all pieces of the IEP have been documented, but can provide needed information should any disagreements between the parents and the LEA occur at a later date.

## Consent for Implementation of the IEP

Informed parental consent is required prior to initiation of initial special education services. If a parent refuses to provide such consent, the LEA shall not be considered to be in violation of the requirement to provide FAPE and shall not request due process to override the lack of consent (OSEP letter to Fulfrost, 2004).

However, once there is a signed IEP and services have been implemented, if a parent refuses to provide consent for services deemed necessary by the LEA to provide the student FAPE and a meaningful educational benefit, the LEA is required to request due process to override the lack of consent and prove their offer constitutes the best educational program for that student. Until the decision is reached by an Administrative Law Judge, the student remains in the placement that had been previously agreed upon by the IEP team.

Citations: (E.C. § 56345 (a)(1)-(7) & (a)(9)(A-B))(E.C. § 56033.5; E.C. § 56341.1(b)(5) and (c); E.C. § 56345(a)(4))(20 U.S.C. § 1412(a)(16) and E.C. § 56385) 20 U.S.C. § 1412(a)(16) and E.C. § 56385(a)(6)) (E.C. § 56345(b)(3) and 34 C.C.R. § 3043) (34 C.C.R. § 3043(d-h)) (E.C. § 56500.4(a)) (E.C. §56500.4(b)(1)-(7))(34 CFR § 300.24), (EC § 41850(d)), (EC § 41850(b)(5)) (E.C. § 56346(a)) (E.C. § 56346(b)) (E.C. § 43692))

## Chapter 7 – Additional Considerations in Developing the IEP

### Behavior Intervention

The Kern County Consortium SELPA believes that all students are individuals with unique needs capable of growth and change. This includes students whose behaviors are problematic and may need the assistance of specific interventions in order to be successful. The vast majority of behavioral difficulties can be prevented with implementation of appropriate classroom management techniques. For individual students who do not respond to typical classroom management strategies, individualized behavioral interventions, supports, and strategies must be developed and included in the IEP.

#### Creating a Positive Classroom Environment

The most effective intervention is prevention, which involves the use of effective instructional approaches and classroom management systems. Approaches include: establishing expectations/routines, and positive reinforcements, visual/visible supports, behavior-specific praise, non-verbal communication, etc. The classroom teacher may need to seek the assistance of colleagues, administrators, mentor teachers, the school psychologist, or a program specialist for assistance in developing a positive classroom environment.

#### Behavioral Interventions, Supports, and Strategies

Creating a positive classroom environment promotes and encourages appropriate behavior for most students. Individual students, however, may develop problematic behaviors that have an adverse impact on their learning and/or the learning of others. In this case, the IEP team must consider the use of behavioral interventions, supports, and strategies to address that behavior. The student's case manager consults with the school psychologist to determine if these behaviors are serious. If they are not serious, but could become serious, behavioral goals may be written to assist the student in learning more appropriate behaviors. If it is determined that the behaviors are serious, a Functional Behavioral Assessment (FBA) should be conducted by trained professional: In the KC Consortium SELPA, the Continuum of Behavior Interventions and Supports (COBIS) training is strongly recommended for any certificated staff conducting an FBA and/or writing a Behavior Intervention Plan (BIP). A BIP needs to be developed if the environmental modifications recommended in the Functional Behavior Assessment (FBA) are not sufficient to address the problem behavior. Alternately, a student may exhibit sudden, unpredictable behavior that poses a clear and present danger of serious property damage or physical harm to the student or others. An interim behavior plan must be developed while further assessment is conducted to determine whether a systematic BIP is necessary. Any type of behavioral intervention, support, or strategy that is used, should consider the student's physical freedom and social interaction, be administered in a manner that respects human dignity and personal privacy, and ensures a student's right to placement in the least restrictive environment.

#### *Behavioral Goals*

When an IEP team has identified behavior as an area of need (even though it may not yet be serious), legal mandates require that present levels of academic achievement and functional performance along with a corresponding goal be developed. The purpose of a behavioral goal is to achieve general positive behaviors, (e.g., participate in class activities, complete assignments, etc.) or for reduction or elimination of problem behavior (e.g., hitting, getting out of seat, fighting at recess, etc.). Under IEP notes, consider describing the IEP team discussion as follows: “The IEP team has concluded that John does not yet demonstrate behavior that impedes his learning or that of others, however, the team believes that the identified behavior needs to be addressed to prevent it from becoming more serious. Two behavioral goals were added to the IEP and John’s progress in this area will be carefully monitored. If necessary, a behavior intervention plan may be developed in the future.”

### *Developing the Behavior Intervention Plan*

When an IEP team is developing a BIP, the following procedures should be followed:

- 1) Discuss issue thoroughly with parent and obtain their consent for the assessment;
- 2) The school psychologist, a Board Certified Behavior Analyst (BCBA) in good standing with the Behavior Analysis Certification Board (BACB), or another COBIS-trained professional, in collaboration with the IEP team, assesses the student’s behavioral needs by reviewing student records, conducting interviews, and conducting observations;
- 3) Using this information, the team completes a draft of each section of the SELPA-approved BIP form in preparation for development of the final plan;
- 4) An IEP team meeting is held and the plan is finalized;
- 5) The plan is attached to the initial, annual, triennial, or amendment IEP as appropriate;
- 6) The plan is implemented and reviewed as agreed upon;
- 7) The plan is revised as often as necessary and appropriate.

### *Prohibited Interventions*

An LEA shall not authorize, order, consent to, or pay for the following:

- 1) Any intervention that is designed to, or likely to, cause physical pain, including, but not limited to, electric shock;
- 2) An intervention that involves the release of noxious, toxic, or otherwise unpleasant sprays, mists, or substances in proximity to the face of the student;
- 3) An intervention that denies adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities;
- 4) An intervention that is designed to subject, used to subject, or likely to subject, the student to verbal abuse, ridicule, or humiliation, or that can be expected to cause excessive emotional trauma;
- 5) Restrictive interventions that employ a device, material, or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment or similar techniques may be used by trained personnel

- as a limited emergency intervention;
- 6) Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room;
  - 7) An intervention that precludes adequate supervision of the student; or
  - 8) An intervention that deprives the student of one or more of his or her senses.

### Emergency Interventions

Emergency interventions not specified in a student's BIP shall be used only when necessary to control unpredictable, spontaneous behavior that poses clear and present danger of serious physical harm to the student or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior. Emergency interventions shall not be used as a substitute for systematic BIPs. Emergency interventions shall only be used long enough to contain the behavior. Upon prolonged use of an emergency intervention, staff shall seek assistance of the principal or law enforcement agency, as applicable to the situation. Only emergency interventions approved by the SELPA may be used. At this time, Crisis Prevention Institute (CPI), and Professional Assault Crisis Training (Pro-Act) are SELPA-approved.

The following emergency interventions shall not be used:

- 1) Locked seclusion, unless it is a facility otherwise licensed or permitted by state law to use a locked room;
- 2) Employment of a device or material or objects that simultaneously immobilize all four extremities, except techniques such as prone containment that may be used as an emergency intervention by staff trained in such procedures; and
- 3) An amount of force that exceeds that which is reasonable and necessary under the circumstances.

Parents/guardians shall be notified within one school day whenever an emergency intervention is used or serious property damage occurs. A behavior emergency report shall immediately be completed, kept in the student's file, and forwarded to the LEAs superintendent or designee for review. This report shall include:

- 1) The name and age of the student;
- 2) The setting and location of the incident;
- 3) The name of the staff or other persons involved;
- 4) A description of the incident and the emergency intervention used and whether the student currently has a systemic behavior intervention plan; and
- 5) Details of any injuries sustained by students or others, including staff, as a result of the incident.

All behavioral emergency forms shall immediately be forwarded to, and reviewed by, a designated responsible administrator. SELPA forms have been developed for completing the behavior emergency report.

If the behavior emergency report is for a student who does not have a BIP, the designated responsible administrator shall, within two days, schedule an IEP team meeting to review the emergency report, determine the necessity for an FBA and for an interim behavior plan. If the IEP team determines that an FBA and/or an interim behavior plan are not required, the team shall document the reasons for that determination.

If the behavior emergency report is for a student who has a BIP, any incident involving a previously unseen serious behavior problem or where a previously designed intervention is not effective shall be referred to the IEP team. The IEP team shall review the incident and determine whether the student's plan needs to be modified.

## Determining Need for Additional Assistance

Whenever an IEP Team is considering the need for an additional assistance for a student, a major factor to be considered is personal independence. A student's current educational performance should be reviewed to determine where support is indicated. Natural support and existing staff support should be used whenever possible to promote the least restrictive environment.

### Categories of Additional Assistance

There are four general areas within which a student may require additional assistance at school. These four categories are listed below along with information about what the student's IEP must include for each area:

1) Health/Personal Care Issues

When a need for additional support is due to a health care need, a specialized health care plan will need to be developed.

2) Behavior Intervention Services

When determining the need for additional support as a result of a student's behavioral difficulties, the student's IEP needs to include appropriate goals and objectives. If the IEP deems it appropriate based on present levels of performance, the IEP Team should initiate an assessment to assess the need for Behavior Intervention Services (BIS). BIS may also be deployed as a result of a Behavior Intervention Plan.

3) Instructional Support

When determining a need for additional support due to an instructional need, the IEP team must utilize a student's present levels of performance to support this recommendation. The IEP should specify how any additional personnel will be utilized to support the teacher in implementing the student's goals and objectives and what attempts will be made to transition to other available classroom resources and supports.

4) Inclusion Support



When determining the need for additional support to be more fully included with their peers, the IEP team should review appropriate student performance information to support this recommendation. The IEP should specify how the additional personnel will be utilized to support the student within a general education environment and what attempts will be made to transition to other available classroom resources and supports.

## English Learners

When developing the IEP for a student who is an English Learner (EL) special care must be taken to ensure the development of an IEP with linguistically appropriate goals, objectives, programs, and services.

For English learners, the IEP must address the language needs of the student. It should include the student's English proficiency level; linguistically appropriate goals and objectives; how English language development will be provided in areas of reading, oral language, and written language; the language of instruction appropriate to the level of the student's linguistic development; and the required instructional strategies appropriate for the student's language needs.

### Determination of English Proficiency

All students (in kindergarten through grade twelve) whose primary language, based on the Home Language Survey (HLS), is not English, must take the English Language Proficiency Assessment for California (ELPAC) to determine if they are English learners. ELPAC must be given within 30 calendar days after they are enrolled in a California public school for the first time. In addition, the ELPAC must be administered annually to identified English learners until they are reclassified as fluent English proficient (RFEP), based on the criteria for reclassification established by the local school district in accordance with state law. This requirement applies to all students including those who are receiving special education and related services unless the IEP team establishes the need for an alternative English proficiency test. In determining how a student's English language proficiency will be assessed, the IEP team must review:

- 1) The appropriateness of administering the ELPAC with or without accommodations;
- 2) The possible need to use alternative assessments in one or more required domains (listening, speaking, writing, reading) as appropriate; and
- 3) If it is determined that alternative assessments are required, the IEP must identify what those alternative assessments will be in each of the four domains and why they are needed.

### Linguistically Appropriate Goals and Objectives

Linguistically appropriate goals and objectives (when needed) should be appropriate for the cognitive level and the linguistic development of the student. Additionally, they should specifically state the language that will be used to accomplish the goal.

### English Language Development

Students identified as English learners must receive English language development continuously until they are reclassified as fluent English proficient (RFEP). This requirement includes students who receive special education services. English language development may be provided in either general or special education. The IEP must specify in which setting the student will receive these services.

### Instructional Strategies

Regardless of their disabilities, English learners must receive instructional services and strategies designed for non-native English speakers. Those services and strategies should be identified in the IEP. The most common services and strategies include:

- 1) Comprehensible input in English (e.g., total physical response, natural approach, language experience approach, Specially Designed Academic Instruction in English (SDAIE), and English instruction at the student's proficiency level);
- 2) Primary language support (can be provided by a teacher, instructional assistant, volunteer, peer, etc.);
- 3) Primary language instruction; and
- 4) Cross-cultural training.

### Reclassification

Reclassification is defined as the process by which students who have been identified as English learners (EL) are reclassified as fluent English proficient (RFEP), when they have demonstrated that they are able to compete effectively with English-speaking peers in mainstream classes. Students with disabilities, including severe cognitive disabilities, are to be provided the same opportunities to be reclassified as students without disabilities.

Multiple criteria must be utilized in determining whether to reclassify a student as proficient in English including, but not limited to, all of the following:

- 1) Assessment of language proficiency using an objective assessment instrument;
- 2) Teacher evaluation, including, but not limited to, a review of the student's curriculum mastery;
- 3) Parental opinion and consultation; and
- 4) Comparison of the student's performance in basic skills against the performance of English proficient students of the same age to determine whether the student is sufficiently proficient in English to participate effectively in a curriculum designed for students of the same age whose native language is English.

The IEP team should be involved in determining whether an EL student receiving special education and related services will be reclassified. The consideration of reclassification may be initiated by LEA staff or by parents. The IEP team should verify that all LEA criteria have been

met. Parents must be consulted prior to reclassification and must be notified of a change in their child's classification. Multiple criteria must include ELPAC scores (or alternate proficiency assessments if identified on the IEP), comparison of student performance in basic skills, teacher evaluation, and parent opinion.

The CDE does not provide or recommend a list of alternative assessments, but does provide the following guideline:

- Alternative assessments used should be ones that can be used to compare the proficiency of the student with that of English proficient students with similar learning disabilities.

Additional information regarding English learners, English language development, instructional strategies, and reclassification is available in Meeting the Needs of English Learners with Disabilities Resource Book produced by the SELPA Administrators of California.

## Low Incidence Books, Materials, and Equipment Funds

### Funding Background

State funds are available to purchase, repair, and conduct inventory maintenance for specialized books, materials, and equipment as required for students who have a primary or secondary low incidence disability (e.g., deaf-blind, deaf, hard-of-hearing, severe orthopedic impairment, and/or visual impairment). Funds may be used for all students with a low incidence disability (0 through age 21). Purchasing specialized equipment and materials for infants with low incidence disabilities is also an allowable expenditure for Part C funds. It is permissible to "pool" funds to be used by one or more students with low incidence disabilities. There is no legal limit on the amount of funding for any particular student. As a condition of receiving these funds, each SELPA is required to ensure that the items purchased are coordinated as necessary. The Executive Director for the Kern County Consortium SELPA is responsible to ensure all districts in the Consortium have access to Low Incidence funds.

### Use of Funds

Each item to be purchased needs to be specialized (i.e., relates to a need or needs resulting directly from the low incidence disability, as indicated in the comprehensive assessment in all areas related to the student's disability, including staff who are credentialed/knowledgeable of the low incidence disability area(s). For example, large print or braille books for students with visual impairments would qualify for funds while regular textbooks and workbooks would not. Bolsters and mats for young children should be a part of basic equipment and would not qualify, while specialized or adapted feeding and self-care equipment, needed by children because of their severe orthopedic impairments, would qualify.

Low incidence funds may NOT be used to:

- Support staff development;
- Purchase medical therapy units for California Children's Services;
- Purchase medical equipment needed for providing specialized health care;
- Construct or alter facilities; or
- Supplant books, equipment, and materials that have been provided by other agencies or funding provided through the base program for general or special education students. For example, basic computers or other basic technology should not be purchased with low incidence funds unless it can be clearly demonstrated to fulfill a specialized function, format, or adaptation directly related to the student's low incidence disability.

As a condition of receiving these funds, the SELPA shall ensure that:

- The appropriate books, materials and equipment are purchased
- The use of equipment is coordinated as necessary
- The books, materials and equipment are reassigned within the SELPA once the student/district that originally received the equipment no longer needs them
- As per the SELPA's Allocation Plan, the amount of the monies deemed appropriate by the Superintendents' Executive Council is transferred to the Kern County Superintendent of Schools' Division of Special Education for support of itinerant services for students with low incidence disabilities.

There may not be adequate low incidence funding to provide for low incidence identified needs as documented on the IEP of eligible students with low incidence disabilities. If funds are exhausted in any given year and there are remaining requests, the request will be returned to the LEA Special Education Administrator. The LEA will be responsible for purchasing the equipment using LEA funds.

#### Procedures for Accessing Low Incidence Funds

- 1) The IEP team determines the student's educational need for equipment through collaborated medical and educational assessments and the IEP process. Assessment is required on case-by-case basis. Full IEP documentation of need is required for all requests.

To fulfill these requirements, a written assessment report or (present levels of performance) must be completed including but not limited to the following:

- a) How the equipment assists the student's instruction in accordance with the IEP.
- b) How often the equipment will be used or is needed.
- c) How the equipment better facilitates integration in the classroom.
- d) Specific projected student outcomes.

- 2) The IEP team determines eligible low incidence disability and documents on IEP.
- 3) IEP documentation includes:
  - a) Justification statement that is related to the student's unique educational needs as identified in the assessment report or through present levels of performance.
  - b) Assessment, goals and objectives must correlate to the justification statement of need.
  - c) Goals/objectives should not address specific low incidence equipment. They should be written to address the student's needs, such as inability to write due to orthopedic impairment, and types of adaptations that can be used to address the writing deficiency. Include environment in which the equipment will be used. This is important if home use is warranted.
  - d) Present levels that reflect assessment information and need for support.
  - e) Identification of low incidence disability.
- 4) Complete the *Low Incidence Equipment Funds Request* form (see Appendices).
- 5) Include the current IEP.
- 6) Include all supportive documentation pertinent to the low incidence funds request (e.g. assessment report, specific catalog ordering information, etc.).
- 7) Send the request packet to the districts' Special Education Administrator or designee for approval and authorizing signature. Once approved, it will then be sent to the SELPA Executive Director for review.
- 8) Once approval is granted, the SELPA Executive Director will process the purchase. It will be inventoried and sent to the site indicated on the request form. Check to make sure the appropriate inventory tag(s) are attached to the equipment.

### Inventory

The State Budget Act requires the LEA to coordinate activities such as purchasing, and reassigning of equipment with the SELPA. The SELPA office will develop and maintain an inventory of all equipment, materials, and supplies purchased with low incidence funds that are over \$500.00. LEA's are responsible for notifying the SELPA when low incidence materials or equipment is no longer required for a particular student. Unused equipment will be returned to the SELPA. If another student in the same LEA needs the equipment, the LEA will notify the SELPA of the change of student and will send the office Request Form as documentation.

### Repair Guidelines

- Equipment under \$150.00 will not be repaired unless under warranty.
- Equipment over \$150.00 would be considered on a case-by-case situation.

### Redistribution of Unused Items

Unused special books, supplies, and equipment purchased with low incidence funds must be shared with neighboring SELPA's. When a student moves into a district within the Kern County Consortium SELPA with low incidence equipment already purchased for them in their last placement, it is the responsibility of the LEA of attendance to secure or document that the equipment could not be transferred. Documentation should be attached to the *Low Incidence Equipment Funds Request* form when asking for equipment to be repurchased.

### Obsolete Equipment

All obsolete equipment will be removed from the inventory and disposed of according to State and Federal laws and regulations.

## Suspension and Expulsion

### Removals Not Considered a Change in Placement

School personnel may suspend a student who has an IEP as long as the removal does not constitute a change in placement. Removals that do not constitute a change in placement are days of suspension that total 10 or fewer consecutive school days within the school year and additional removals for separate incidents of not more than 10 consecutive days in the same school year, provided that a pattern is not evident.

### Removals Considered a Change in Placement

Prior to disciplinary action of a student who has an IEP that may constitute a change in placement (i.e., expulsion, suspension of more than ten consecutive school days within the school year, or any number of school days within the school year that constitutes a pattern), school personnel must:

- 1) Notify the student's parents on the date the decision is made to take the disciplinary action; and
- 2) Convene an IEP team meeting within 10 school days of any decision to take disciplinary action that may change the placement of a student with an IEP.

A pattern should be considered present when:

- 1) The days of suspension total more than 10 cumulative school days in a year;
- 2) The student's behavior is substantially similar to previous incidents that resulted in suspension;
- 3) The length of each suspension is significant;
- 4) The total amount of time that the student has been suspended is significant; or
- 5) There is close proximity between the dates of the suspensions.

### *IEP Team Meeting (Manifestation Determination)*

The parent/guardian of the student must be notified of the IEP team meeting and must be invited to attend. The notice of IEP team meeting is typically given to the parents by the case

manager at a meeting called and facilitated by the site administrator to notify the parents of the behavior incident and the proposed disciplinary action. A *Notice of Procedural Safeguards and Parents' Rights* is to be included with the meeting notification. If the parent does not attend the meeting called by the site administrator, the case manager should contact the parent by other means in order to provide notice of the IEP team meeting.

LEAs are required to notify a foster youth's attorney and the appropriate representative of the county child welfare agency of pending expulsion proceedings if the decision to recommend expulsion is a discretionary act, pending proceedings to extend a suspension until an expulsion decision is rendered if the decision to recommend expulsion is a discretionary act, and, if the foster child is an individual with exceptional needs, pending manifestation determinations.

In preparation for the IEP team meeting, the school psychologist will facilitate collection of pertinent data by reviewing student records; conducting interviews with the student, parents, and staff; and conducting classroom observations, when possible. This data is summarized in a written report and discussed at the IEP team meeting. The purpose of the IEP team meeting is to determine whether the conduct in question was:

- 1) Caused by, or had a direct and substantial relationship to the student's disability;
- 2) The direct result of the district's failure to implement the IEP; and
- 3) A manifestation of the student's disability (considered to be the case if either of the two previous items is found to be true).

If the IEP team determines that the behavior was a manifestation of the student's behavior, the team must also review and revise or develop a Behavior Intervention Plan (BIP), as appropriate.

SELPA approved forms have been developed for documenting the decision of the IEP team. The parent and student are not required to consent to the IEP for action to proceed, nor is parental consent required as a condition of a final decision to expel, unless the parent has appealed the manifestation determination (see Manifestation Determination form in Appendices).

#### *Moving Forward Following the IEP Team Meeting*

If it is determined that the student's behavior was not a manifestation of his or her disability and that the student's IEP was being implemented at the time of the alleged misconduct (or the behavior was not the direct result of a failure to implement the IEP), school personnel may apply disciplinary procedures to the student in the same manner and for the same duration as those procedures are applied to students without disabilities.

If a student is being considered for expulsion, a copy of the IEP is submitted to the site administrator for inclusion in the expulsion packet.

If it is determined that the student's behavior was a manifestation of his or her disability or that the student's IEP was not being implemented and that the alleged misbehavior was the direct result of that failure, the student shall not be subject to the disciplinary procedures being



considered. The IEP team shall return the student to the placement from which he or she was removed unless the parent and LEA agree to change the placement. Additionally, if the IEP team determined that the IEP was not being implemented, it must take immediate steps to remedy that deficiency.

Required Educational Services during Periods of Suspension/Expulsion

LEAs are only required to provide educational services to students with disabilities who have been suspended for 10 days or less in the school year, if it provides services to students without disabilities who are similarly suspended. Beginning on the 11th day of suspension and/or during a student's period of expulsion, interim alternative educational services must be provided.

Those services must enable the student to:

- 1) Continue to participate in the general education curriculum;
- 2) Continue to receive IEP services and modifications determined by the team; and
- 3) Receive services/support designed to address and prevent recurrence of misbehavior.

The student's IEP team determines the appropriate alternative educational setting for these services.

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student has engaged in any of the following behaviors while at school, on school premises, or at a school function under the jurisdiction of an LEA:

- 1) Carries a weapon or possesses a weapon at school;
- 2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance;
- 3) Has inflicted serious bodily injury upon another person.

*Appeal of the Manifestation Determination Decision*

The parent may appeal the IEP team decision regarding the manifestation determination by requesting an expedited hearing. When a hearing has been requested, the child must remain in an interim alternative educational setting pending the decision of the hearing officer or until the disciplinary action has been served or the student has been in the interim alternative educational setting for 45 days, whichever occurs first, unless the parent and the LEA agree otherwise.

Protections for Students Not Currently Determined Eligible for Special Education

Students who have not been determined to be eligible for special education and related services may assert any of the protections related to disciplinary action as specified above if the LEA had knowledge that the student had a disability before the behavior that precipitated the disciplinary action occurred. Such knowledge is deemed present when:



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- 1) The student's parent has expressed concerns in writing to school staff that the student is in need of special education and related services and/or requested an assessment;
- 2) The student's teacher, or other school personnel, has expressed specific concerns about the student's behavior directly to supervisory personnel of the LEA; or
- 3) There is a current written referral to special education.

The LEA would not be deemed to have knowledge that the student had a disability if the parent has not allowed an assessment of the student, has refused services, or if the student has previously been evaluated and found ineligible for special education and related services.

If the student does not meet any of the three criteria above, the parent may still request an assessment. If that occurs, an assessment, if determined appropriate, must be conducted in an expedited manner. Until the assessment is completed, the student remains in the educational placement determined by school authorities (including suspension or expulsion) without educational services. If found eligible, special education and related services must be provided and the procedures listed above for disciplinary action must be followed.

#### Suspension from Bus Transportation

A suspension from school bus transportation is regarded as a suspension from school if failure to provide transportation prohibits the special education student from receiving the services specified in the IEP. A student with an IEP who is excluded from school bus transportation is entitled to an alternative form of transportation to school at no cost to the parent or student.

#### Appeals

If the parent/guardian disagrees with the decision of the IEP team in reference to the manifestation determination or interim alternative educational setting, he or she may appeal the decision by requesting a due process hearing. An LEA may request a due process hearing if it believes that maintaining a student, whose behavior has been determined to be a manifestation of his or her disability, in his or her current placement is substantially likely to result in injury to the student or others, and parent will not consent to an alternate placement. In either case, the administrator and/or case manager should ensure that the parent receives a copy of the *Notice of Procedural Safeguards and Parents' Rights* and information about how to file for a due process hearing.

If the parent requests the due process hearing, the LEA must arrange to convene a resolution session within seven days of receiving notice of the due process complaint unless the parent and LEA agree, in writing, to waive the resolution session. If not resolved through a resolution session or mediation, a due process hearing will occur in an expedited manner and a decision will be rendered within 30 days of the date that the request for a due process hearing is filed. When an appeal has been made, the student must remain in the interim alternative educational setting pending the decision of hearing judge; or until the expiration of the 45-day time period in the case of a student who has engaged in behavior involving weapons, drugs, or serious bodily injury as described above.

### Readmission of an Expelled Student with Disabilities

Readmission procedures for a student with disabilities are the same as those for all students. Upon the student's readmission, an IEP team meeting shall be convened to determine whether a new IEP needs to be established.

### Involvement of Law Enforcement Authorities

IDEA does not prohibit a school or district from reporting a crime committed by a student with disabilities to the appropriate law enforcement authorities. Further, IDEA does not prohibit law enforcement and judicial authorities from applying the law to crimes committed by a student with disabilities. If such action takes place and the student is arrested or cited, the LEA must ensure that special education and discipline records are transmitted to the authorities to whom the crime was reported to the extent permitted by the "Family Educational Rights and Privacy Act".

### Transition Planning – High School (age 16 to 22)

The term "transition services," means a coordinated set of activities for an individual with exceptional needs that does all of the following:

- 1) Is designed within a results-oriented process, that is focused on improving the academic and functional achievement of the individual with exceptional needs to facilitate the movement of the pupil from school to post-school activities, including postsecondary education, vocational education, integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation.
- 2) Is based upon the individual needs of the pupil, considering the strengths, preferences, and interests of the pupil.
- 3) Includes instruction, related services, community experiences, the development of employment and other post school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
  - a) Transition services for individuals with exceptional needs may be special education, if provided as specially designed instruction, or a designated instruction and service, if required to assist a pupil to benefit from special education.
  - b) If a participating agency, other than the local educational agency, fails to provide the transition services described in the individualized education program of the pupil, the local educational agency shall reconvene the individualized education program team to identify alternative strategies to meet the transition service needs for the pupil set out in the program.

Transition services (designed with a results-oriented process focused on improving the academic functional achievement of the child) must be addressed not later than the first IEP to

be in effect when the child turns 16 years of age, or younger if deemed appropriate by the IEP team.

Note: When a student exits from special education as a result of earning a diploma or aging out, the LEA shall provide the student with a summary of their academic achievement and functional performance along with recommendations for assisting the student in meeting their post-secondary goals.

#### California Core Messages for Transition (CalSTAT)

- Age-appropriate transition assessments
- Education and training
- Career development and employment
- Independent living
- Interagency collaboration
- Evidence-based transition practices and predictors
- Student self-advocacy and self-determination skills
- Academic achievement and functional performance summaries

#### Philosophy

Transition is all about planning for a student's future and how academic courses, functional curriculum, and vocational activities help move a student towards future goals.

#### The Goal of Transition

The goal of transition is to provide the student with all the skills, knowledge, and support necessary to make their post-school goals a reality.

The following actions should occur prior to an IEP meeting where transition is discussed:

- Age-appropriate Transition Assessment
  - Prepare the student and family for the transition process.
  - Help student and family make a connection between the student's abilities and future career/living situation.
  - Discuss H.S. Diploma and Certificate of Completion and what each means.
  - Encourage student and family to explore adult living and employment options.
  - Help the student and family describe student's disabilities and any accommodations that may be needed.
  - Give the student opportunities to discover what he/she can do, cannot do, or do with support.
  - At age 17 or earlier, discuss Age of Majority and what it means to the student and family.
- Transition Assessments

Transition Assessments

Federal Guidance: Each year, the transition assessments should be revisited in a more specific manner, targeting the student's development. Assessment should address all components of transition. Basic assessment strategies include: interest surveys, portfolios, observation, interviews and computer-based questionnaires. Transition assessment includes career/vocational assessments and evaluation of other transition issues (academic skills, readiness for transition, life skills, resources, and eligibility for support systems). Assessments should validate postsecondary goals, identify needed transition services, and help students and their families set goals and plan their future.

-Secondary Transition Planning: The Basics, CA Transition Alliance

Gather Information from student, parents, and schools staff regarding:

- 1) Student's vision for the future
- 2) Student's present levels of functioning as related to transition:
  - a) Work Experience
  - b) Recreation and Leisure
  - c) Home/Independent Living
  - d) Community Participation
  - e) Postsecondary Training and Learning
  - f) Related Services

(Discussion about transition or future planning should begin prior to the IEP meeting so that the team is focused throughout the meeting on helping the student work towards his or future goals)

### Participation in a Transition IEP

#### *Student Role*

Participates, communicates preferences and interests, communicates strengths, and takes part in the IEP development. If the student is not in attendance, the team should ensure that the student's interests and preferences were considered in the planning process.

The child should be invited to the IEP meeting if the purpose of the meeting is consideration of the child's postsecondary goals and the transition services needed to achieve those goals.

IDEA regulations comments indicated that if the student is a minor, the parents (unless education rights have been limited or extinguished) have the authority to determine whether the student should attend the IEP team meeting.

It is the public agency's obligation to take other steps to ensure that the student's preferences and interests are considered if the child is unable to attend the meeting.

#### *Parent/Family Role*

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Supports the student, reinforces the value of an individual program, and provides information about student's strengths in areas where assistance is needed.

*Special Education Teacher Role*

Provides information, provides teaching strategies including accommodations and/or modifications, suggests course of study related to student's post-school goals, identifies related services, provides input into transition service needs, links student and parents with appropriate post-school services, coordinates all people, agencies, services or programs involved in the transition planning process.

*General Education Teacher Role*

Assists in planning a course of study, assists in identifying and providing modifications and adaptations, support, and positive behavioral strategies or interventions.

Not less than one regular education teacher of such child (if the child is, or may be, participating in regular education) must participate in the transition IEP.

*LEA Representative Role*

The LEA representative's primary responsibility is to support staff and allocate resources. The representative should be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities. The representative should be knowledgeable about the general curriculum and the availability of resources of the LEA. Additionally, the LEA representative has the authority to commit the LEA to implement the IEP. The LEA may designate another staff member of the IEP team if these criteria are met.

*Other Specialists Role*

These may be personnel that can interpret the instructional implications of evaluation results. This specialist may be one of the team members already listed.

*Other Appropriate Agency Personnel*

Provide information about services, eligibility criteria, explain difference between entitlement of school programs and eligibility of adult services, and assist in identifying community or adult services.

This would require, to the extent appropriate, and with the consent of the parent or a child who has reached the age of majority, that a representative of a participation agency that is likely to be responsible for providing or paying for transition services be invited to the meeting.

What to include in the Transition IEP

- The student
- *Transition to Adult Life and Agencies* form

- The student's transition service needs (including courses of study-Certificate Course of Study form or Diploma Course of Study form) needed to assist the child in reaching postsecondary goals
- Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills
- Beginning not later than one year before the child reaches the age of majority under state law, a statement that the child has been informed of the child's rights under Part B, if any, that will transfer to the child on reaching the age of majority under §300.520 [see 20 U.S.C.1415(m)].

### Goals and Objectives

The annual goals and short-term objectives and benchmarks of the IEP should support the student's expressed postsecondary vision. School goals and vision should be based upon the student's present levels of performance, and reflect the statement of needed transition.

### Agency Linkage

An outside agency, other than the public agency (usually the school district), that is likely to provide the needed services, and/or support to help facilitate the student's progression to his or her post school goal or vision.

A representative from any agency that is likely to be responsible for providing or paying for transition services may be invited to the IEP beginning when the student is 16 or younger if appropriate with parental consent or consent of adult student.

### Note Page(s)

While not an ED Code or Federally mandated requirement, IEP Notes have become extremely important in today's world of litigation and rapid-paced decisions. No longer can IEPs simply be filling out the checkboxes and required items; the notes provide essential details to assist the current, and any future, IEP Team in knowing exactly how decisions were made and when.

IEP Notes are:

- Used to document the proceedings at the IEP – Parent rights given and explained, PLOPS were reviewed, Goals/Benchmarks were reviewed and agreed to, etc.
- Used to document attendees (as one cannot always read signatures and remembering two years later can be difficult), questions/answers, changes, team member concerns, agreement on certain challenging topics, information that does not fit on one of the IEP pages, etc.

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- Very useful for Due Process situations – often need to refer to IEPs from 2-3 years back and team member memory is not sufficient. It is better to over-document than under-document.
- Can be used to document a specific follow-up item, such as a provider that needs to write another goal on “Reading Comprehension” and the team must disband. Writing “Teacher will prepare a Reading Comprehension goal with benchmarks and send it home to parent(s) for review by \_\_\_\_\_. If agreed to, it will become part of this IEP.” will document the discussion and the follow-up timeline.
- Used to detail out the District’s offer of FAPE to clarify what is on the “Services Page” if necessary.
- If you are uncomfortable facilitating IEP and scribing, please let your supervisor know so that someone may be assigned to assist you prior to the IEP meeting. This is certainly recommended when there may be attorney’s present or when very complicated decisions are being discussed.

Rule of Thumb: For every page/topic of the IEP, there should at least be one comment made regarding the discussion of that page/topic. It may be as simple as, “Parent Rights and Procedural Safeguards were given to Parent.” or it may be a paragraph depending on the conversations.

IEP Notes: Ideas and Examples

*Careful of Acronyms:*

- a) The CAASPP and the AA were explained to Mom. She had no questions.
- b) The State Testing for General Education (CAASPP) and the Alternate Assessment (AA) were explained to Mom. The team recommended that student name take the CAASPP because the accommodations and modifications would be sufficient for him/her to access the test and to do his/her best. Mom stated that made sense to her and that she understood.

*Not necessary to mention everyone by name:*

- a) Darren asked a question about who paid for Transportation. Mr. Thomas then said it was paid for by the parents. The attorney, Julie, corrected him and said it was provided by the district. Darren then asked about an aide on the bus. Mr. Thomas . . . .
- b) Transportation and who was responsible for payment was brought up. The team discussed that the district was ultimately responsible to provide transportation that gave the student access to his/her services; the team needed to decide what type of transportation was needed by student name to successfully get to school. After a discussion, it was determined that student name would ride the general education bus with his/her peers as he/she was capable of the wait at the stop and had the required behavior to maintain on the bus ride.

*Careful of tone:*

- a) Dad demanded that his child be given special seating in class to accommodate his/her vision needs until the family was finally able to get him/her the glasses he/she has needed all year.
- b) Dad requested that student name be allowed to sit in the front row until the glasses that have been ordered could be fitted to him/her. The team agreed to this accommodation.

*Please finish ideas:*

- a) Parents asked questions regarding the classrooms at school name and autism specific classrooms.
- b) Parents asked questions regarding the classrooms at school name and autism specific classrooms. The team discussed the classes at school name and how they were not age appropriate for student name as they were preschool. The team also discussed the autism specific classrooms within the district; student name's current teachers felt that student name was making progress with the types of supports and services in place and he/she didn't need to move to a more restrictive environment. After the classroom supports were discussed, parents agreed that a classroom focused on more intense discrete trial formats was too restrictive for their child.

Or

- a) Parent said student name has been diagnosed with ADHD and will be starting medication at the end of the week.
- b) Parent said student name has been diagnosed with ADHD and will be starting medication at the end of the week. The team discussed the need for medication to be given at school; it was determined that parents will start by giving it to him/her at home in the morning and data on his/her behavior will be taken to take back to the physician in a month to see if another plan is necessary.

*Careful of Brain Fade/Sentences with no completion:*

- a) District Psychologist said that the student did not qualify for Special Education supports and services under the area of Autism, but that . . . .
- b) Ms. White said that the student was doing well in the general education classroom except that he was having some difficulty with . . . .

Actual IEP Notes with Questions & More Helpful Version

***IEP Notes – Too Abbreviated***

**IEP Meeting for:** *Charlie Brown*



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**Meeting: Annual Review**

IEP Notes:

IEP Team assembled at 2:42 PM

Present Levels of Performance were read by Mrs. WhaWha, Special Education Teacher.

Goals were presented by Mrs. WhaWha and Mr. Schroeder, General Education Teacher. Mom wanted another reading goal, but Mr. Schroeder convinced that it wasn't necessary.

State Testing was discussed

ESY was discussed.

Mom had a question about Transportation – she was given Ms. Snoopy's phone number to call.

IEP Team adjourned at 3:30 PM

\*\*\*What are the first, obvious challenges with those notes?

Present Levels were read, but it doesn't say if parent had any input.

Mom was "convinced" the additional reading goal wasn't necessary – what does that mean?

Mom was just given Transportation's number to figure it out herself.

What types of things were discussed in State Testing and ESY?

***IEP Notes – Much More Helpful***

**IEP Meeting for: Charlie Brown**

**Meeting: Annual Review**

IEP Notes:

IEP Team assembled at 2:42 PM

In Attendance: Charlie Brown, student; Mrs. Brown, Mom; Mrs. WhaWha, Special Education Teacher; Mr. Schroeder, General Education Teacher; Mr. Linus, Principal. Mrs. Woodstock, Speech Pathologist, was unable to attend – she had contacted Mom before the meeting and presented her with Charlie's progress and her draft goals. Mom had given written permission for her to miss the meeting.

Mom was given a copy of her Procedural Rights and Safeguards; she had no questions at this time.

Present Levels of Performance were reviewed by Mrs. WhaWha; Mom was asked her input on Charlie's Strengths and Challenges from her perspective and they were included. Mr. Linus clarified the meaning of the term "Standard Score."

Draft Goals were presented by Mrs. WhaWha and Mr. Schroeder, General Education Teacher. The Team agreed that they were appropriate. Mom wanted another reading goal; after discussion and Mr. Schroeder explaining that Mom's goal was already included as a step toward the goal they had written, Mom agreed that she felt the goals were fine.

State Testing was discussed. Accommodations were suggested by the Team and written into the IEP. Charlie will be taking the test along with his general education peers with accommodations.

ESY was discussed; Mom felt that Charlie needed the break from the formal educational environment for the summer and that he would not have difficulties recouping the information he had learned. Then Mrs. WahWha voiced concern that Charlie needed structure in order to be consistent in his behavior and his progress. Mom felt that she could provide that structure and that the family's traveling over the summer would enhance his education. After further discussion, Mom agreed that the IEP could reflect an offer of ESY, but that he may not attend depending on how the family felt closer to the timeframe.

Mom had a question about Transportation and the times that Charlie was picked up and dropped off – she felt he was on the bus for too long a period. Mr. Linus explained that the Transportation Division handled those specifics, but asked if there was a specific reason for her concern. Mom said her pediatrician had said that he was overheating in the afternoons due to the long bus ride home (1.5 hours). Mr. Linus called Mrs. Snoopy, the Director of Transportation and the afternoon bus ride will be altered; she will work directly with Mom.

IEP Team adjourned at 3:30 PM

Citations: (EC § 56520(b)(1)), (EC § 56520(b)(3)), (EC § 56521.2(a)(1-8)), (EC § 56521.1(a-c)), (EC § 56521.1(d)(1-3)), (EC § 56521.1(e)(1-5)), (EC § 56521.1(f)), (EC § 56521.1(g)), (EC § 56521.1(h)), (20 USC § 1414 (d)(3)(B)(i)), (20 USC § 1414(d)(4)), (5 CCR § (i)(9))(EC § 313(f)), (EC § 313 (f)(4)), (EC § 56345(b)(2)), (34 CFR § 300.24(a)(2)(ii)) (E.C. § 52164.1(a))(34 CFR § 300.530(b)(1)), (34 CFR § 300.530(c)), (34 CFR § 300.530(e) & (h)), (34 CFR § 300.530(e)(1)-(2) & (f)(1)), (34 CFR § 300.530(f)(2) and (e)(3)), (34 CFR § 300.530(g)(1)-(3)), (34 CFR § 300.532), (34 CFR § 300.533), (34 CFR § 300.534(b)(1)-(3)), (34 CFR § 300.534(d)(2)), (34 CFR § 300.535), (34 CFR § 300.536(a)(1)(2)), (EC § 48915.5(c))(EC § 56345.1.(a)), (EC § 56345 (B)(8)(a)), (§ 1401(34) of Title 20 of the United States Code), (§ 1414(d)(6) of Title 20 of the United States Code), (34 CFR § 300.43(b)), (34 CFR § 300.321(b)(1)), (34 CFR § 300.321(b)(2)), (34 CFR § 300.321), (34 CFR § 300.321(b)(3))

## Chapter 8 – Placement and Services

### Program Continuum

#### Continuum of Services

Once a student is eligible for special education, a continuum of program options is available in the least restrictive environment within the Kern County Consortium SELPA member districts. The *Continuum of Placement Options* available in the SELPA can be found in the appendix as well. The following are general descriptions of environments where special education and related services are provided in the SELPA.

#### 1) *General Education*

Placement in the general education program shall occur when the student's educational needs can be addressed through adaptations of the general education program.

#### 2) *Co-Teaching*

Placement in the general education program shall occur with both the general education and special education teacher providing instruction to all students and adapting materials to the students as necessary, but instruction is provided by both teachers. There are a variety of models available.

#### 3) *Push-In Services*

Placement in the general education program with the special education services being provided within the general education environment. Examples would be: a special education teacher providing small group instruction in the room, a staff member providing support for re-direction or behavior, providing specific accommodations/modifications, etc.

#### 4) *Resource Specialist Program (RSP)/Mild-moderate/Learning Center*

Students have learning needs that have been identified by the Individualized Education Plan Team and may require special education instruction and services. These students are assigned to general education classroom teachers for majority of a school day. The resource specialist collaborates with the general education teacher.

#### 5) *Related Services*

Related services shall be available when the instruction and services are necessary for the student to benefit educationally from his or her instructional program. Some students may need assistance in special areas.

6) *Special Classes*

Students may need specialized academic instruction for a majority of the day in a self-contained special day class on an integrated or isolated site to accommodate their special needs. Specially trained personnel staff these classes. Placement in a special class shall only occur when the student's goals and objectives cannot be met in a less restrictive environment.

7) *Nonpublic, Nonsectarian School Services*

Students may need educational services and programs that are not offered by the public schools. These students may attend state certified non-public and non-sectarian schools on a full or part-time basis. This placement recommendation is based on the IEP team decision that an appropriate public program is not available.

8) *State Special Schools*

Students may need a special school such as one of those operated by the state for severely handicapped children. These schools may be considered as a placement option when the IEP team has determined that no appropriate placement is available within the SELPA.

9) *Residential Schools*

Students may require educational services and program in combination with a residential placement. These schools may be considered as a placement option when the IEP team has determined that no appropriate placement is available within the SELPA.

10) *Home/Hospital Instruction*

Home/Hospital Instruction is provided to students when medical conditions such as those related to surgery, accidents, short-term illness, or medical treatment for chronic illness restricts their ability to receive instruction in any other setting than their home. If a physician's note is provided stating the need for Home/Hospital instruction, certain criteria must be met which include:

- a. *Must have report from attending physician/surgeon/psychiatrist*
- b. *Diagnosis*
- c. *Diagnosis shares how it impacts school attendance*
- d. *Dates to begin and end*

District has to share this information with the parent before they can consider HH. The determination, however, is still an IEP-team decision.

The SELPA has developed an *LRE Flowchart* that can be used by IEP teams to ensure that appropriate supports and services are in place prior to considering more restrictive placements (see Appendices).

## Exit Criteria

A student will be exited from special education and related services due to one of the following reasons:

- 1) Following an assessment, it is determined that the student no longer meets the criteria specified in any of the qualifying areas;
- 2) Following an assessment, it is determined that the student's needs can be met within the general education program with or without accommodations;
- 3) The student has exceeded age eligibility; or
- 4) The parent has revoked consent.

When a student is exited to general education, a plan to facilitate the student's transition to a less restrictive environment will be developed, including a plan to assist the receiving teacher.

### Exceeding Age Eligibility

Students are no longer eligible for special education and are exited when they graduate from high school with a regular high school diploma or reach the age of 22 years. It is not necessary to conduct an assessment for students exiting under these circumstances, but the IEP team must provide the student with a summary of his or her academic achievement and functional performance including recommendations on how to assist the student in meeting his or her post-secondary goals.

Any student who becomes 22 years of age during the months of January to June, inclusive, while receiving special education and related services may continue his or her participation in the program for the remainder of the current school year, including any extended school year program. If the student becomes 22 years of age in July, August, or September, he or she may not begin a new school year unless the student is in a year-round school program and is completing his IEP in a term that extends into the new school year, in which case the student may complete that term. Any student who becomes 22 years of age during the months of October, November, or December, while receiving special education and related services, shall be exited from the program on December 31 of the current school year, unless the student would otherwise complete his or her IEP at the end of the current school year.

No LEA may develop an IEP that extends these eligibility dates, and in no event may a student be required or allowed to attend school under the provisions of this part beyond these eligibility dates solely on the basis that the student has not met his or her goals or objectives.

The same procedures are used when considering whether to dismiss a student from a particular program or service while continuing to serve the student in other special education programs and/or services.

Revocation of Consent

If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the LEA:

- 1) May not continue to provide special education and related services to the child, but must provide prior written notice before ceasing the provision of special education and related services;
- 2) May not request mediation or due process in order to obtain agreement or a ruling that the services may be provided to the child;
- 3) Will not be considered to be in violation of the requirement to make a free appropriate public education (FAPE) available to the child because of the failure to provide the child with further special education and related services; and
- 4) Is not required to convene an IEP team meeting or develop an IEP for further provision of special education and related services.
- 5) If the parent ever decides to seek special education services in the future, a written request for assessment must be provided by the parent. Following parent consent, the student will receive an initial assessment to determine eligibility for services.

The provision of prior written notice and discontinuation of special education and related services must occur in a timely manner, usually within no more than two weeks from the date that the written revocation of consent was received. The Kern County Consortium SELPA has developed templates that LEAs can use to: a) communicate with a parent following a verbal request for revocation; b) provide the parent with a sample letter to use for revocation of consent, and c) provide the required prior written notice.

(E.C. § 56001(h) and § 56381(h))(E.C. § 56381(c)(1)-(2))(E.C. § 56026(c)(2)-(4))(E.C. § 56026(c)(4)(A)-(C))(E.C. § 56026(c)(4)(D))(34 CFR § 300.300(b)(4)(i)-(iv))

## Chapter 9 – Educationally Related Mental Health Services (ERMHS)

Effective the 2023/2024 school year, SELPA member LEAs receive all applicable ERMHS funds. Member LEAs may retain those funds and operate their own local ERMHS services or utilize the KCC SELPA to provide ERMHS for all applicable students. The determination as to which entity (SELPA or LEA) will provide ERMHS to each member LEA's students is subject to approved Program Transfer requirements.

The following guidelines apply to SELPA operated ERMHS programs.

### Referral for ERMHS

#### General Referral Procedures

- 1) Kern County Consortium SELPA member districts will utilize SELPA standardized forms and procedures for ERMHS referrals (see Appendix).
- 2) Referrals made for ERMHS assessment should generally be made for students currently in special education or where an assessment plan is being developed on a student suspected of having exceptional needs (see Concurrent Referrals).
  - a) Referrals are to be made following discussions at the Individualized Education Program (IEP) team meeting. Referral packages shall be provided to the Kern County Consortium SELPA office within five (5) working days of the Local Educational Agency's (LEA's) receipt of written parental consent for the referral of the pupil for ERMHS assessment.
- 3) Referrals are to be made between the designated contact persons.
  - a) The procedures set forth are not designed for use in responding to psychiatric emergencies or other situations requiring immediate response. In these situations, a parent or member LEA may seek services from public programs or private providers as appropriate.

#### Active IEP Referral

When an individual with an active IEP is being referred for ERMHS, the LEA should ensure that:

1. The student has emotional or behavioral characteristics that:
  - a) Impede educational progress as measured by: standardized achievement tests reported in scores and compared to measured ability when appropriate; teacher observations; work samples; grade reports reflecting classroom functioning; or other measures determined to be appropriate by the IEP team.

- b) Are associated with a condition that cannot be described solely as a temporary adjustment problem. A temporary adjustment problem is defined as one that can be resolved with less than 3 months of school counseling.
  - c) Are significant, as indicated by their rate of occurrence and intensity.
2. A written parental/guardian consent has been obtained for referral to the ERMHS provider as well as permission to send information to the ERMHS provider.
    - a) A probation officer or social worker is notified if the student is a ward or dependent of the Juvenile Court.
  3. The student has been unresponsive to a series of intensifying school-based social, emotional, or behavioral interventions within the current school year.

The LEA shall be responsible for the following:

1. Obtaining written parental/guardian consent to send and receive information to the ERMHS provider. This ERMHS referral information shall include the following:
  - i) A fully completed *Referral Packet (See Appendix)*.
  - ii) IEP indicating “referral for ERMHS” documented on the IEP “Notes” page.
  - iii) Release of Information form signed by parents/guardians allowing the LEA and the ERMHS provider to send and receive information.
  - iv) All available psychological reports.
  - v) Other appropriate reports including but not limited to teacher observations, behavioral contracts, behavioral plans, IEP goals/objectives related to behavior, or behavioral assessments.
  - vi) Evidence of the students’ unresponsiveness to a series of intensifying school-based social, emotional, or behavioral interventions within the current school year including the duration and frequency of all applicable interventions that includes the job title of the provider of each intervention, and a summary of the students’ databased response to each intervention.
  - vii) Indicating whether the child is a ward or dependent of the juvenile court and the worker’s name and phone number.
2. Referral information as described above shall be sent to the individuals designated by the Kern County Consortium SELPA.
3. For exception to the above procedures, see information on Interim Placements and Concurrent Referrals.

#### Interim Placements

- 1) LEA must forward a copy of the existing IEP and completed referral to the Kern County Consortium SELPA office for implementation of services designated on the existing IEP during the 30-day interim placement.



- 2) ERMHS Services will only commence once SELPA ERMHS department receives the IEP documents

Concurrent Referrals

- 1) LEA may make a concurrent referral when there is a reasonable suspicion ERMHS services may be necessary to provide a student with free appropriate public education (FAPE).
- 2) When an individual is concurrently referred for ERMHS to determine the need for services, the LEA must review all available information.
- 3) The LEA shall be responsible for the following:
  - a) A fully completed Referral Packet (See Appendix).
  - b) Release of Information form signed by parent/guardian allowing LEA and the ERMHS provider to send and receive information.
  - c) All available reports (psychological reports may not be available).
  - d) Evidence of the students' unresponsiveness to a series of intensifying school-based social, emotional, or behavioral interventions within the current school year including the duration and frequency of all applicable interventions that includes the job title of the provider of each intervention, and a summary of the students' databased response to each intervention.
  - e) Indicating whether the child is a ward or dependent of the Juvenile Court and the worker's name and phone number.
- 4) The LEA shall call and provide written notice to the proper Kern County Consortium SELPA Representative to apprise them of the concurrent referral.
- 5) The LEA and ERMHS provider will communicate regularly during the assessment process regarding findings.

A completed ERMHS Referral Packet will include:

- 1) ERMHS Checklist form
- 2) Referral for ERMHS form
- 3) Referral Baseline Information form
- 4) A completed Parent Consent form
- 5) Evidence of the students' unresponsiveness to a series of intensifying school-based social, emotional, or behavioral interventions within the current school year including the duration and frequency of all applicable interventions that includes the job title of the provider of each intervention,
  - o In the case of serious and severe circumstances, immediate referral may be considered by the Director of Regional Services, SELPA.
- 6) A copy of recent IEP and relevant reports (including psychological assessment).

### Recording ERMHS on an IEP

- 1) ERMHS providers should be indicated via the SIRAS drop down menu.
- 2) The codes assigned to ERMHS should be used and the location will be the school site.
- 3) Duration and frequency of service are to be included.
- 4) The IEP team should include goals and objectives related to the origin ERMHS referring problem and baseline performance.
- 5) ERMHS services should be explicitly tied to IEP goals.

### Assessment Process Guidelines

Once a referral has been made for ERMHS services a SELPA ERMHS Provider will arrange and conduct an ERMHS Service Assessment. Based on this assessment the Provider will present a Report to the IEP team that will help inform the type, duration and frequency of ERMHS services, if recommended.

The general assessment procedure is an ordered sequence that begins when a fully complete Referral Packet is obtained by the SELPA ERMHS department

- 1) The provider will arrange with the student's school site/parents to perform an assessment.
- 2) The provider will complete an ERMHS Service Assessment.
- 3) The provider will notify the student's case manager to request an IEP to discuss ERMHS services within the 60-day time frame.
- 4) The provider will attend the IEP.

### SELPA ERMHS Level of Need and Services

SELPA ERMHS Services are delivered based on student needs and agreed upon by the IEP Team. ERMHS is an individually delivered mental health service for students with disabilities or student's under assessment for a qualifying disability. The SELPA ERMHS Clinicians provide services defined in applicable California Education Code as Individual Counseling, Group Counseling, Social Work Services, Behavior Intervention Services, and Parent and Family Training. Please see applicable California Education Code and Definitions for further detail on the definition of these services.

### Transfer/Interim Placements

For policies regarding transfer of social emotional related services please see Kern County Consortium SELPA policy on transfer students under the section IV: IEP Meetings.

If a student with a disability (who had an IEP that was in effect in a previous district within the state) transfers to a new district in the same state, and enrolls in a new school within the same school year, the new district (in consultation with the parents) must provide the student with FAPE, including services comparable to those described in the previously held IEP, until it

adopts the previously held IEP or develops, adopts, and implements a new IEP. The review IEP must take place within 30 days of enrollment in the new district.

In the case of an out-of-state transfer, a new assessment is appropriate to determine student needs and services.

## ERMHS Services Transition to Alternative Educational Placements

### Rationale (per Local Plan)

Students enrolled in alternative education programs operated by the Kern County Superintendent of Schools Office shall, in addition to the individualized curricular program access and instruction, continue to receive comparable special education services and modifications and accommodations that were in place prior to enrollment in the alternative program for the initial thirty-day enrollment period while a record review and student observation period is completed. The continuation of appropriate services requires the close collaboration and support of the district of residence and the alternative education program. The intent of this policy is to provide a consistent approach to the collaboration necessary to support students who have demonstrated a need for alternative education programs and have the additional consideration required by special education needs.

### ERMHS Services in Alternative Education

ERMHS services are to be provided to the extent necessary to enable the student to appropriately advance towards achieving the social emotional goals and objectives or benchmarks detailed in the student's IEP. The programmatic and fiscal responsibility for these services only shall be determined by the referring SELPA via the IEP Process.

### Change of Service Providers

- 1) Arrange for a case consultation and all consents and disclosures to be signed by the appropriate legal parties.
- 2) Provide a minimum of one coordinated meeting with client to introduce and transition services.
- 3) Approve these services with the Behavioral Health Coordinator.

## Residential Placement

Some students with educationally related mental health needs will require placement out of the home into a residential facility in order to receive FAPE. This is a decision that is made by the IEP team, including the parents/guardians.

- 1) Prior to the determination that a residential placement is necessary for the pupil to receive special education and mental health services, the expanded IEP team shall

consider less restrictive alternatives. This meeting requires the attendance of a SELPA ERMHS Administrative Representative.

- 2) The IEP team shall document the alternatives to residential placement on the SELPA *Consideration of Residential Placement Form*. (See appendix)

When the expanded IEP team recommends a residential placement, it shall document the pupil's educationally related mental health needs that support the recommendation for residential placement. This documentation shall identify the special education related mental health services to be provided by a residential facility listed in Section 60025 that cannot be provided in a less restrictive environment pursuant to Title 20, United States Code Section 1412(a)(5) (see '*Consideration of Residential Placement Form*' in SIRAS and Appendices).

A SELPA ERMHS Representative, in consultation with the IEP team's administrative designee, shall identify a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment.

The residential placement shall be in a facility listed in Section 60025 that is located within or in the county adjacent to, the county of residence of the parents of the pupil with a disability, pursuant to paragraph (3) of subsection (a) of Section 300.552 of Title 34 of the Code of Federal Regulations. When no nearby placement alternative which is able to implement the IEP can be identified, this determination shall be documented, and the SELPA ERMHS Representative shall seek an appropriate placement which is as close to the parents' home as possible.

- Rates for care and supervision shall be established for a facility listed in Section 60025 in accordance with Section 18350 of the Welfare and Institutions Code.

Residential placements for a pupil with a disability may be made out of California only when no in-state facility can meet the pupil's needs.

Out-of-state placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code Sections 11460 (c)(2) through (c)(3). For educational purposes, the pupil shall receive services from a privately operated non-medical, non-detention school certified by the California Department of Education.

## Coordination of Residential Placement

When the expanded IEP team determines that it is necessary to place a pupil with a disability in residential care, a SELPA ERMHS Representative shall ensure that:

- 1) The educationally related mental health services are specified in the IEP in accordance with Title 20, United States Code Section 1414(d)(1)(A)(vi).
- 2) Educationally related mental health services are provided by qualified mental health professionals.

- a) Upon notification of the expanded Individualized Education Program team's decision to place a pupil into residential care, a SELPA ERMHS Representative will perform case management services as described in subsections (b) and (c).
- b) A SELPA ERMHS Representative shall coordinate the residential placement as soon as possible after the decision has been made to place the pupil in a residential placement, pursuant to Section 300.342 of Title 34 of the Code of Federal Regulations.
  - i) The residential placement plan shall include provisions, as determined in the pupil's Individualized Education Program, for the care, supervision, mental health treatment, and education of a pupil with a disability
  - ii) The local education agency shall be responsible for providing or arranging for the special education and non-mental health related services needed by the pupil.
  - iii) When the expanded Individualized Education Program team determines that it is necessary to place a pupil with a disability in a community treatment facility, a SELPA ERMHS Representative shall ensure that placement is in accordance with admission and, continuing stay, and discharge criteria of the community treatment facility.
- c) Case management shall include, but not be limited to, the following responsibilities:
  - i) To convene a meeting with the parents and representatives of public and private agencies, including educational staff, and to identify an appropriate residential placement from those defined in Section 60025 and excluding local inpatient, private psychiatric, and state hospital facilities.
  - ii) To identify, in consultation with the Individualized Education Program team's administrative designee, a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment.
  - iii) To complete the payment authorization in order to initiate payments for residential placement in accordance with Section 18351 of the Welfare and Institutions Code.
  - iv) To assure the completion of the financial paperwork or contracts for the residential placement of a pupil with a disability who is seriously emotionally disturbed.
  - v) To develop the plan and assist the family with the pupil's social and emotional transition from home to the residential placement and the subsequent return to the home.

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- vi) To facilitate the enrollment in the residential placement of a pupil with a disability who is seriously emotionally disturbed.
- vii) To notify the local education agency that the placement has been arranged and to coordinate the transportation of the pupil to the facility if needed.
- viii) To conduct quarterly face-to-face contacts at the residential facility with a pupil with a disability who is seriously emotionally disturbed to monitor the level of care and supervision and the provision of the mental services as required by the Individualized Educational Program.
- ix) To notify the parent and the local education agency or designee if there is a discrepancy between the level of care, supervision, or provision of mental health services and the requirements of the Individualized Education Program.
- x) To schedule and attend the next expanded Individualized Education Program team meeting with the expanded Individualized Education Program team's administrative designee within six months of the residential placement of a pupil with a disability every six months thereafter as long as the pupil remains in residential placement.

## **Chapter 10 – Early Start, Part C**

Early Start services, as outlined in IDEA, Part C, ensure early intervention services to children with disabilities, ages birth through three years, and their families, in a coordinated family-centered manner. Two lead agencies are responsible for these services: the California Department of Education (CDE) and the California Department of Developmental Services (DDS). Other agencies such as county offices of education, the Family Resource Network, Public Health, Social Services and Head Start collaborate with these lead agencies to meet the needs of eligible children and their families.

Within the Kern County Consortium SELPA, Kern County Superintendent of Schools provides some services to eligible children through the Early Start Program. An interagency agreement has been developed between the SELPA, the participating LEAs, and the Kern Regional Center. This agreement outlines the process that is used by the involved agencies for identifying, referring, assessing, and serving eligible children. A copy of this agreement can be obtained by contacting the Kern County Consortium SELPA office. Additionally, other services may be obtained by Regional Center through local providers of occupational, speech/language, and/or physical therapy; the determination of services is based on the individual needs of the child and family.

## Chapter 11 – Parentally Placed Private School Students

### Child Find

The Kern County Consortium SELPA or LEA will:

- 1) Annually inform local private schools of the provisions in Federal Law that address the issue of students enrolled by their parents in private schools who may be eligible for special education services. The LEA will invite representatives of private schools (including private school administrators, teachers, parents and students) located within its boundaries to an annual meeting to discuss issues including, but not limited to, criteria for special education eligibility and special education referral procedures under federal and state laws and regulations. If the private school representatives do not attend, the information will be mailed to them by the LEA.
- 2) Ask private schools to list and specify disabilities of students enrolled in the school who may be eligible for special education services and the districts of residence of those children. The LEA performing this task will be the district where the private school is located (District of Location).
- 3) Ensure that child-find activities undertaken for private school students are comparable to activities undertaken for children ages three to 22 with disabilities in public schools. This may include dissemination of the special education Child-Find brochures in English and Spanish to all private schools in the SELPA annually. LEAs are required to locate, identify, and assess any student who may need special education.
- 4) Offer a Free and Appropriate Education (FAPE) to all children ages three to 22 with disabilities enrolled by their parents in private schools who are determined to be eligible for special education services.

### Referral

- 1) A student shall be referred for special education instruction only after the resources of the general education program have been considered and, where appropriate, utilized.
- 2) If, after considering, and where appropriate utilizing general education resources, it is determined that a private school child may require special education services, the private school staff or parent may make referral for a special education evaluation to the District of Location.

### Assessment

- 1) Following receipt of a referral for assessment/special education, the District of Location shall develop an assessment plan and provide it to the parent within 15 calendar days (except in instances where the district determines that an assessment for special



education is not warranted and formal written notice of the district's refusal to conduct an assessment is provided to the parent). The District of Location will notify the District of Residence in writing when a referral for assessment/special education has been received.

- 2) The District of Location will request permission from the parent to exchange information with the District of Residence in order to facilitate communication between the two districts regarding the assessment and subsequent activities. If the parent declines consent to exchange information, the District of Location will not share assessment information with the District of Residence; however, the District of Residence is required to attend the IEP meeting.
- 3) The District of Location and the District of Residence may enter into an agreement that, with written parental consent, allows the District of Residence to collaborate with the District of Location in the initial evaluation or to conduct the initial evaluation.
- 4) The assessment for special education eligibility must include evaluation in all areas related to the suspected disability and shall be completed and an eligibility meeting convened within 60 calendar days from the date of receipt of the signed assessment plan (not counting days of school vacation as specified in E.C. 56344).

## Individualized Education Plan and Free and Appropriate Public Education

The District of Residence and District of Location must convene an IEP meeting to determine eligibility for special education and related services. The student's District of Residence must provide an offer of FAPE through the development of an IEP. Following parent consent of the IEP and enrollment of the student in the public school, the district will implement the developed IEP.

### Individual Service Plan

If the parents agree that a FAPE was made available to their child if enrolled in a public placement, but decline public placement, the District of Location will document the parents' agreement that FAPE was made available and develop an *Individual Service Plan* (ISP). To the extent appropriate, the ISP must be developed in accordance with IEP requirements.

The parent, a private school representative, appropriate assessors and service providers, the student, as appropriate, and others as determined necessary are to be in attendance at the ISP meeting. The ISP will describe the specific services and the location at which they will be provided to the student.

A SELPA approved ISP form has been developed in SIRAS for this purpose. Students receiving services through an ISP must be entered into the SELPA SIRAS student database. The plan type for each student must be coded as either plan type "20" (ISP) or "70" (eligible-no IEP/IFSP/ISP, private school placement).

If a private school child with disabilities remains in a private school placement in subsequent years, the District of Location providing the service will contact the child's parents annually to schedule an ISP team meeting to review the child's ISP. Additionally, the District of Location will conduct reevaluations of a private school child with a disability if conditions warrant reevaluation or if the child's parents or teacher request a reevaluation, but at least once every three years following the procedures outlined in the *Procedural Guide* section of this chapter.

### Three-year Reevaluation for Parentally Placed Private School Students with Disabilities

Parentally placed private school students who have previously been identified as having a disability whose parents have declined special education services are also required to be offered a reevaluation every three years, but if parent consent for the evaluation is denied, the district is not obligated to initiate a due process hearing regarding the issue of assessment. (Documentation of the district's proposal to conduct a three-year reevaluation for such children must be kept on file.)

The same procedures should be used for private school students as are employed for students with disabilities attending public school to determine the scope of reevaluations, for conducting the reevaluations, and for writing a three-year reevaluation report.

If the parent consents to reassessment, the District of Residence and District of Location must convene an IEP meeting to determine continued eligibility for special education and related services. Representatives from the child's District of Residence must participate in the meeting convened to review the results of the triennial assessment to develop an IEP for the child that offers FAPE in the public schools.

If the parents wish to continue the enrollment of their child in a private school and decline the offer of FAPE in the public program, then the parents and the District of Location will convene a meeting to determine continued eligibility for special education and develop an Individual Services Plan.

### Annual Notice of Availability of FAPE

After a private school child has been determined eligible, and annually thereafter (either at the beginning of each new school year or coinciding with the date of determination of initial eligibility for special education), the District of Residence will notify the student's parents in writing of the student's ongoing eligibility and of the continuing availability of FAPE. Included in the notice will be a statement informing the parent that the district will develop an IEP if the parents express an interest in returning their child to a public (or publicly funded) program.

If the parents of a private school child with a disability indicate their interest of enrolling the child in public school and receiving special education services through an IEP, the district in which the child resides is responsible for developing an IEP that offers FAPE in the public schools.

District of Location and District of Residence may not share information regarding a student without a release of information signed by the parent or guardian.

## Private Preschool Students with Disabilities

Children between the ages of three and five years, inclusive, are considered to be preschoolers. Parentally placed private school children with disabilities in this age range shall be evaluated and provided services, as appropriate, by the District of Residence via an IEP.

## Parents' Rights and Procedural Safeguards for Parentally Enrolled Private School Students with Disabilities

- 1) Parents of parentally enrolled private school students are to be provided with a complete copy of the SELPA's parents rights document upon initial referral for evaluation, at the time each annual review Individual Services Plan meeting notice is provided, or when a reevaluation is to be conducted.
- 2) Parents of parentally enrolled private school students with disabilities do not have the right to request a due process hearing regarding the provision of services offered through a Private School Services Plan.

## Procedural Guide for Private School Initial Assessments

DOR refers to the District of Residence, the district where the student resides. The DOL is District of Location, the district where the private school is located.

- 1) The referral is received by the DOL from the private school, the parents, KCSOS Search and Serve, or the DOR.
- 2) The DOL notifies the DOR in writing that a referral has been received.
- 3) The DOL creates a SIRAS file for the student and inputs the student information.
- 4) The DOL and DOR determine involvement and role of the DOR in the assessment. If the DOR requests and the parent consents, the DOR may complete the assessment.
- 5) The DOL sends *Notice of Referral, Consent to Assess*, and a district release of information to the parent. The release of information is included in order to exchange information and forward assessment data to the DOR.
- 6) The DOL obtains consent for assessment and notifies the DOR that consent has been received.
- 7) The DOL completes the assessment (and shares the assessment information with the DOR if consent for the release of information was received).
- 8) The DOR, DOL, and parent schedule the IEP for a mutually agreeable time. The DOL

sends the Notice of IEP Meeting to the parents.

- 9) The DOL transfers the SIRAS file to the DOR.
- 10) The DOR writes the IEP based upon the assessment data from the DOL.
- 11) The DOR and DOL attend the IEP and make an offer of FAPE if the student is eligible for services.
- 12) If the parent consents to the IEP and enroll the student in the public-school district, the DOR implements the IEP.
- 13) If the parents decline to enroll the child in public school (declining the offer of FAPE), the DOL will then convene an ISP.
- 14) The DOR transfers the SIRAS file back to the DOL.
- 15) The DOL will hold an annual ISP and will notify the DOR in writing prior to each meeting. The DOR is not required to attend unless the parents have expressed an interest in returning to the publicly funded program and accepting the offer of FAPE.

## Procedural Guide for Private School Triennial Assessments

- 1) DOL will notify in writing the DOR of the upcoming triennial assessment.
- 2) The DOL and DOR determine involvement and role of the DOR in the assessment. If the DOR requests and the parent consents, the DOR may complete the assessment.
- 3) The DOL sends *Notice of Referral, Consent to Assess*, and a district release of information to the parents. The release of information is included in order to exchange information and forward assessment data to the DOR.
- 4) The DOL obtains consent for assessment and notifies the DOR that consent has been received.
- 5) The DOL completes the assessment (and shares the assessment information with the DOR if consent for the release of information was received).
- 6) The DOR, DOL, and parent schedule the IEP for a mutually agreeable time. The DOL sends the *Notice of IEP Meeting* to the parents.
- 7) The DOL transfers the SIRAS file to the DOR.
- 8) The DOR writes the IEP based upon the assessment data from the DOL.
- 9) The DOR and DOL attend the IEP and make an offer of FAPE if the student is eligible for services.
- 10) If the parent consents to the IEP and enroll the student in the public-school district, the

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DOR implements the IEP.

11) If the parent declines to enroll the child in public school (declining the offer of FAPE), the DOL will then convene an ISP.

12) The DOR transfers the SIRAS file back to the DOL.

13) The DOL will hold an annual ISP and will notify the DOR in writing prior to each meeting. The DOR is not required to attend unless the parent has expressed an interest in returning to the publicly funded program and accepting the offer of FAPE.

Citations: (20 U.S.C. § 1412(a)(10)(A)(ii) and E.C. § 56171)(20 U.S.C. § 1412(a)(10)(A)) (34 C.F.R. § 300.13; §300.23; and §300.25)

## Chapter 12 - Student Records

### Parents

Under *Family Educational Rights and Privacy Act (FERPA)*, parents have the right to inspect and review their children's education records and seek to amend them in certain circumstances. Access to educational records must be granted no later than five business days following the date of the request. In addition, an educational agency subject to FERPA may not have a policy or practice of disclosing education records, without the written consent of the parent or eligible student (see *Joint Guidance on FERPA and HIPPA in Appendices*).

### Educationally Related Mental Health Records

Records of educationally related mental health services are considered "education records" because they are (1) directly related to a student and (2) maintained by the school or party acting for the school. "Treatment records" are excluded from the definition of educational records under FERPA (see *Joint Guidance on FERPA and HIPPA in Appendices*).

Student health information, maintained by a school district, is education records protected by FERPA. The HIPAA Privacy Rule excludes educational records from its coverage. See the exception at paragraph (2)(i) to the definition of "protected health information" in the HIPPA Privacy Rule 45 CFR § 160.103.

Parents have the right under FERPA to inspect and review these health and medical records because they are "educational records" under FERPA. See 34 CFR §§ 99.10-99.12. Parents do not have the right to inspect and review mental health "treatment records."

In addition, these records may not be shared with third parties without written parental consent unless the disclosure meets one of the exceptions to FERPA's general consent requirement. For instance, one of these exceptions allows schools to disclose a student's health and medical information and other "education records" to teachers and other school officials, without written consent, if these school officials have "legitimate educational interests" in accordance with school policy. See 34 CFR § 99.31 (a)(1). Another exception permits the disclosure of educational records, without consent, to appropriate parties in connection with an emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals. See 34 CFR §§ 99.31 (a)(10) and 99.36.

### Type of Records

All pupil records are classified as Mandatory Permanent, Mandatory Interim or Permitted. Regulations governing access, transfer, and destruction of records vary according to their classification. **Special Education Pupil Records are classified as Mandatory Interim Records** 5 CCR 432(2)(C). Therefore, school districts must protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.

- Mandatory permanent student records are those records which are maintained in

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perpetuity and which schools have been directed to compile by state law, regulation or administrative directive. (5 CCR 430)

- **Mandatory interim student records** are those records which the schools are directed to compile and maintain for stipulated periods of time and are then destroyed in accordance with state law, regulation or administrative directive. (5 CCR 430)
- Permitted student records are those records having clear importance only to the current educational process of the student. (5 CCR 430)

## Safeguards

One official at each agency (school) must assume responsibility for ensuring the confidentiality of any personal identifiable information. All persons collecting or using personally identifiable information must receive training of instruction regarding the state policies and procedures as stated in the annual program plan. Each agency (school) must maintain for public inspection a current list of names and positions of those employees who have access to personal identifiable information.

### Location of Pupil Records

Records for each individual pupil shall be maintained in a central file at the school attended by the pupil. When records are maintained in different locations a notation in the central file as to where such other records may be found is required.

Following are the procedural guidelines:

- All confidential records must be kept in a locked location.
- An access log must be kept in each file.
- An access log must be kept indicating when and who access was given plus when and who records were sent outside the district.
- A list of district personnel who routinely have access to student files must be posted in the room in which the files are located.
- All others must be identified in the file log prior to accessing file.

Special Education information and material to be included in the student record file:

- Copies of IEPs. Less than or equal to three years old
- Assessment plans and reports, less than or equal to three years old
- Communication to and from parents, including all mandatory information, less than or equal to three years old
- Transition plans (included as necessary)
- Positive behavior support/intervention plans (included as necessary)
- Last district annual or triennial, even if older than three years.
- Last district psycho-educational report

### Transfers

Confidential records and/or information may be transferred between public schools and public school districts within the state of California without written permission by parent, guardian or student over 18 years of age. Records may be transferred by facsimile or secure browser to appropriate personnel.

Transfer of confidential records and/or information to a public school or district outside the state does require the written consent of parent, guardian, or student over 18 years of age (unless a parent or guardian obtains conservatorship).

Transfer of confidential records and/or information to a private school or any private or public agency or other individual does require the written consent of the parent, guardian or student over 18 years of age (unless a parent or guardian obtains conservatorship).

### Access to Student Records

Access means a personal inspection and review of a record or an accurate copy of a record, an oral description or communication of a record or receipt of a copy of a record.

Those granted access are prohibited from releasing information to another person or agency without written permission from the parent or legal guardian. If the student is 18 or older, the right of consent belongs to the student unless a parent or guardian obtains conservatorship.

Students who are married are considered to be emancipated minors even if younger than 18 years of age.

State and federal laws permit access to records according to the following listings.

#### Mandatory Access

- Natural parents, adoptive parents or legal guardian of student younger than age 18 or dependent student age 18 or older (within 5 days of request)
- School officials and employees for legitimate educational purposes
- School Attendance and Review Board (SARB) members
- Other public schools (California) where student has enrolled or intends to enroll
- Federal, State, and county officials for program audit or compliance
- Agencies specified by law in cases of child abuse
- Those so authorized in compliance with a court order
- Private schools or out-of-state schools of anticipated or new enrollment

#### Permitted Access

- Appropriate persons in an emergency
- Agencies or organizations in connection with student applying for financial aid
- Accrediting associations



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- Organizations conducting studies of behalf of the district
- Private schools or out-of-state schools (to mandatory interim and permitted student records)
- The person or agencies authorized by parent or guardian with custody (or student of age 18 or older)

#### Prohibited Access

If an agency or person is not included, the above access can only be granted through written permission. Such permission must:

- 1) Specify the nature of the information to be released; and
- 2) Specify the purpose for which the information is released

In addition, the recipient must be informed of, but need not acknowledge in writing restrictions upon further release to another agency or person without specific written authorization.

#### Parent Access to Student Records

Parents must be notified, in writing, of their rights to inspect and review the school records of their students. This must be done at the time of initial enrollment and annually thereafter. If 15 percent of pupils enrolled speak a single primary language other than English, as determined from census data in the preceding year, then all notices, reports, statements, or records sent to parent or guardian of pupil by school shall, in addition to being written in English, be written in primary language, and may be responded to either in English or primary language.

A lack of English fluency should not preclude parent or guardian from exercising their educational rights. The school shall take reasonable steps to ensure parents and guardians are properly notified in English and in their home language of rights and opportunities available to them.

The notice should contain the following specific information:

- The types of records and information contained therein.
- The position of the official responsible for the maintenance of each type of record.
- The location of the log or record required to be maintained.
- Criteria used by the district to define “school officials and employees” and in determining “legitimate educational interest.”
- The policies of the district for reviewing and expunging records.
- The right of the parent to access student records.
- The procedures for challenging the content of student records.
- The cost, if any, charged to the parent for reproducing copies of records.
- The categories of information that the institution has designated as directory information.
- Any other rights stated in the California Education Code and the right to file a complaint with the Department of Health, Education and Welfare (HEW).

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- Notice of all locations where copies of the policies and procedures regarding the General Education Provisions Act and confidential student records may be obtained.
- The right to inspect and review also includes responses to reasonable requests.

Parents may request explanations and interpretations of the records and additionally, have the right to have a representative inspect and review the records. The parent must make the request in writing. The request is given to a certificated staff member who interprets the records where necessary. The certificated staff member may schedule an appointment with the parent within five days to review the contents of the student's file with the parent. If photocopies are requested, copy the materials and provide the records to the parent within five days of the request.

Even though records from physicians may be stamped "Confidential" or a psychologist's report contains sensitive or potentially upsetting information, the parent or eligible student has full rights of access.

#### Log of Request for Information

All requests of individuals or agencies, with the exception of other school officials and parents, must be recorded in a record or log of requests for information. The log or record must be open to the inspection of a parent and the school officials. The log or record must contain the following information: the name of the requesting party and the legitimate interest of the party. The log should be kept with the student's educational records.

#### Transfer of Special Education Records

Special Education student records and mandatory to:

- California Public Schools
- California Private Schools
- Out-of-state Public Schools
- Out-of-state Private Schools

A copy of the records should be retained when these transfers occur. A minimum recommendation for records that should be retained is:

- Parent permission for assessment
- Parent permission for placement
- Evaluations (i.e., medical, psychological, educational)
- Current individualized educational plan

#### Consent to Release Student Records

- A district to district record transfer does not have to be in writing.

- Written consent must specify the records to be released, identify the party or class of parties to whom records may be released, state the purpose(s) of the disclosure and be signed and dated by the parent of the eligible student.
- The recipient of the records must be notified that the transmission of information to others without the written consent of the parent is prohibited; however, information may be shared with other persons within the educational institution obtaining access, as long as such persons have a legitimate interest in the information.
- Whenever a student reaches the age of 18 years or is attending an institution of post-secondary education, the permission or consent required of, and the rights afforded to, the parents or guardian of the student shall thereafter only be required to, the student – unless a court of competent jurisdiction has granted another individual conservatorship over the student.

### Purging Information from a Student’s Special Education File

The special education file for African-American students should be reviewed when the student transfers into the district or is being reevaluated. The file shall be permanently sealed if it contains information or reference to I.Q. tests or prohibited tests. The records are to be opened only for litigation purposes, official state or federal audits, or upon parent requests.

The parents shall be notified that the records will be sealed. The parent shall be informed of the court decision, which prohibits the use of intelligence test for African-American students for any purpose related to special education. Additionally, prior to sealing the records, a qualified professional should identify appropriate data to be copied and purge all references to information from I.Q. tests or prohibited tests. The remaining data should then be transferred to the student’s current special education file.

- 1) Review the student’s special education file for information pertaining to I.Q. or other prohibited tests.
- 2) Remove any prohibited protocols and all assessment reports which contain prohibited information.
- 3) Copy the original assessment report.
- 4) The following information shall be redacted from the duplicated copy utilizing white out:
  - a) Any reference to a test instrument which yields an I.Q. score or standard score that is an indication of cognitive functioning.
  - b) Any test data summary scores from the test instrument(s).
  - c) Commentary in the report which discusses the student’s performance on the test instruments(s).
- 5) Duplicate copy of the purged report. File this in the student’s special education file.

- 6) Seal the original report, any relevant protocols, and a copy of the letter sent to the parent/guardian in an envelope. Indicate the student's name and the document destruction date of five years hence on the outside of the envelope. Also, attach a label indicating the envelope is sealed per Larry P. ruling, and only to be opened for purposes of litigation, official state or federal audits, or upon parent request.
- 7) Place notification in the student's special education file regarding the sealed envelope.
- 8) Forward the sealed envelope to the district's Special Education Office.
- 9) The special education administrator will notify the parent in writing.

### Amendment of Records

If parents desire to challenge the content of student records, they must establish that specific grounds exist and provide a written request to correct or remove the information.

Grounds may include:

- Inaccurate information
- Information is unsubstantiated personal conclusion or inference
- Information is a conclusion or inference outside the observer's area of competence
- Information is not based on personal observation
- Parents of African-American students will be notified that records are being purged of all references to I.Q. Data

The agency must decide whether to amend the information within a reasonable time agree receipt of the request to amend. If the agency refuses to amend the information, it must inform the parent(s) of the refusal and advise the parent(s) of their right to a hearing, as per district policy.

### **Destruction of Student Records**

Destruction of records containing Personally Identifiable Information (PII), under part B of the IDEA requires LEAs to (1) inform parents of children with disabilities when the PII collected, maintained, or used is no longer needed to provide educational services to the child; and (2) destroy PII at the request of the parent once it is no longer needed. 34 CFR §§ 300.624(a), (b). Mandatory interim student records may be classified as disposable after determining that their usefulness has ceased or after the student has left the district. Destruction shall be after the third year in which they are deemed disposable. Parental notification for destruction of records required by 34 CFR §300.624(a) is normally provided to the parent or adult student at an earlier date, when the student graduates or otherwise leaves the district (see OSEP's letter to Patrick Zacchini, February 27, 2017). Permitted student records may be maintained for as long as they have an appropriate education purpose. They may be destroyed when their usefulness ceases. The method of destruction shall assure that records are not available to possible public inspection in the process of destruction. The typically used method is shredding.

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Citations: (EC § 48985), (EC § 49061(b)), (EC § 49064), (E.C. § 49061(e)), (E.C. § 49068), (E.C. § 49069), (EC § 49063), (E.C. § 49070(a)-(c)), (EC § 49076(a)(1)), (E.C. § 49076(1)(2)), (EC § 49076.5(a-b)), (EC § 49077), (52 CCR § 432(b)(2)), (52 CCR § 432(b)(3)), (52 CCR § 437) (34 CFR § 99.3); (5 CCR 432(2)(C)); (5 CCR 430); 34 CFR §300.624(a); 34 CFR §300.624(b)

## Chapter 13 – Student Data

### Kern County Consortium SELPA’s Special Education Data

The Kern County Consortium SELPA’s Student Information System for Special Education is SIRAS, an IEP-development/Data Collection system that collects state-level required data points used to analyze Performance Indicators specific to special education. Each SELPA must maintain a local database that can interact with the CALPADS software in order to populate the state-required fields. SIRAS data reporting periods will correspond with the CALPADS reporting periods. Data collected through SIRAS and its subsequent uploads to CALPADS allows local and state level analysis of student-level issues, program issues, district-level issues, SELPA-level issues, and state-level issues. In a few instances, levels of funding are also identified through data reported in CALPADS, such as funding for low incidence equipment and materials.

Kern County Consortium SELPA staff will support all member districts in the reporting of required SIRAS to CALPADS data by assisting with the review of data for accuracy, providing technical support, local software compatible with CDE software, and ongoing training. SELPA staff will support the development and ongoing implementation of a data collection system, which is responsive to the data needs of member districts.

### State Performance Goals and Indicators

Each State must have a State Performance Plan (SPP) in place and must review the plan at least once every six years. States are required to establish measurable and rigorous targets for each of the 20 goals or indicators established at the federal level. Each state must submit an Annual Performance Report (APR) related to its progress on achieving the established targets. CDE reports annually regarding whether each LEA has met the established target criteria in each of 17 indicators (the other 3 goals are specific to state-level requirements). The 17 indicators are defined below:

1) *Graduation Rate*

Performance on this indicator is measured by the percentage of special education students in 12<sup>th</sup> grade who graduated with a diploma.

2) *Dropout Rate*

Performance on this indicator is measured by the percentage of students in 7<sup>th</sup> grade and higher who exit special education by dropping out of school.

3) *Student Academic Proficiency Rates*

Performance on this indicator is measured by the percentage of students on IEPs who met the state testing performance targets in ELA and Math for the standard and

alternate assessments. It also measures the gap in proficiency rates for students on IEPs and all students against grade level academic achievement standards.

4) *Suspension & Expulsion*

Performance on this indicator is measured by whether the percentage of special education students who are expelled or suspended for more than ten days is disproportionate to the to the general population, both overall and by race/ethnicity.

5) *Least Restrictive Environment*

Performance on this indicator is measured by the amount of time that students, between the ages 6 and 22 years, receive special education and related services in settings apart from their non-disabled peers.

6) *Preschool Least Restrictive Environment*

Performance on this indicator is measured by the percentage of parents of children receiving special education and related services report that schools facilitated their involvement as a means of improving services and results.

7) *Preschool Outcomes*

Performance on this indicator is measured based upon a calculation of the progress made by preschool children in special education.

8) *Parental Involvement*

Performance on this indicator is measured by the percentage of parents of children receiving special education and related services report that schools facilitated their involvement as a means of improving services and results.

9) *Disproportionate Representation Overall*

Performance on this indicator is measured by whether the percentage of students receiving special education and related services is disproportionate to the percentage of general population over all.

10) *Disproportionate Representation by Disability Categories*

Performance on this indicator is measured by whether the percentage of students receiving special education and related services is disproportionate to the percentage of general population by disability.

11) *Eligibility Evaluation*

Performance on this indicator is measured by the percentage of students whose eligibility for special education was determined within 60 days of receipt of parental consent for evaluation (target is 100%).

12) *Early Childhood Transition (from Part C to Part B)*

Performance on this indicator is measured by the percentage of students aged 3 years who received special education under IDEA-Part-C and transferred to IDEA-Part B, and had an IEP developed before their third birthday (target is 100%)

13) *Secondary Transition Goals and Services*

Performance on this indicator is measured by the percentage of students aged sixteen years and above whose IEPs include coordinated and measurable postsecondary goals and transition services (target 100%).

14) *Post-School Outcomes*

Performance on this indicator is measured by the percentage of students who are competitively employed, enrolled in a postsecondary school, or both, within one year of leaving high school.

15) *Resolution Sessions*

Performance on this indicator is measured by the percent of hearing requests that went to Resolution Session and were resolved there.

16) *Mediations*

Performance on this indicator is measured by the percent of Mediations held that resulted in Mediated Agreements.

17) *State Systemic Improvement Plan*

Performance on this indicator is measured by comparing current and prior year assessment scores for students with disabilities who are also part of the Local Control plan groups (English Language Learners, Students in Poverty, and Students in Foster Care) who achieved or met the standard for English Language Arts/Mathematics Assessments.

Indicators 1, 2, 3, 5, 6, 7, 8, 14, 15, 16, and 17 are considered performance indicators while the others are considered compliance indicators. State-level support and/or possible sanctions are applied to those LEAs who do not meet the established targets for compliance indicators.

Much of the data used to complete the APR is derived from each SELPA's CALPADS data submissions. Some information is gathered through review of other sources of data. If an



analysis of this data indicated any areas of noncompliance, corrective action must be undertaken at the state and/or local level.

Each participating LEA is responsible for complying with these requirements and participating in the review, revision, and implementation of changes to policies, procedures, and practices related to identified problems.

## Importance of Accurate Data

Each LEA is held accountable for compliance with state and federal laws related to providing special education services. For that reason, it is imperative that the data reported through CALPADS is as accurate as possible. To do so requires that each IEP team and LEA establish and maintain a system of reviewing incoming IEPs to ensure that they are accurate and complete and to ensure correct data entry. Doing so will also allow LEAs to have positive outcomes during state program reviews and to successfully address individual student complaints.

## Electronic IEP Development/Local Student Database

All LEAs within the SELPA must use the SELPA approved web-based IEP system for development of IEPs and maintenance of the SIRAS/CALPADS data system. SIRAS Systems is a comprehensive database system that collects and compiles data, develops statistical reports, and performs error checks.

Questions regarding the SELPA-wide implementation and functioning of SIRAS Systems should be directed to the SELPA Administration. Please visit the SIRAS Systems webpage located at <https://siras-kern.org> or contact technical support at (844) 337-4727 for information about this system, including training and other resource materials and guides. In the event that the web-based IEP system is not available, IEPs can be completed using PDFs located at <http://kern.org/selpa/forms/>.

## Fiscal Data Reporting

The California Department of Education (CDE) requires each SELPA to collect specified data and transmit it to them on due dates specified by the type of report. The Kern County Consortium SELPA shall collect, prepare and submit all fiscal information required by the CDE Special Education Division, including statistical data, program information, and any required fiscal information related to the programs and services for students with disabilities in the Kern County Consortium SELPA in accordance with established timelines. The Executive Director of the SELPA is responsible to collate all the necessary information from all 48 LEAs and then submit them.

## LCAP PARTICIPATION

Beginning with the 2020-21 school year, SELPAs are required to consult with each LEA within their boundaries regarding their individual LCAP. Specifically, Education Code 52062(a)(5) says:

“The superintendent of the school district shall consult with its special education local plan area administrator or administrators to determine that specific actions for the individuals with exceptional needs are included in the local control and accountability plan or annual update to the local control and accountability plan, and are consistent with strategies included in the annual assurances support plan for the education of individuals with exceptional needs.”

The Kern County Consortium SELPA has developed a collaborative consultation process which includes the following options for LEAs in the Kern County Consortium SELPA to satisfy their district's SELPA LCAP Consultation.

LEAs can choose one of the following:

- Attend one of the COE/KCSOS LCAP Trainings
- Participate in the DA or Continuous Improvement Process (CIP) provided through COE/KCSOS
- Attend a SELPA LCAP Consultation Group Session
- Invite SELPA to one of your LEA's DA support meeting (if COE/KCSOS is not your LEAs provider for supporting DA)
- SELPA can conduct an LCAP review alongside COE/KCSOS

## Chapter 14 - Dispute Resolution

### Local Intervention

Parents concerned about their child's education are encouraged to contact the child's teacher, school principal, or LEA special education administrator to discuss their concerns. Informal conversation often resolves the problem and helps maintain open and positive communication. Disagreement is normal and a natural part of life; however, it is how it is approached and dealt with that determines everyone's level of comfort with decisions made.

Because communication is so important in the development of a child's educational program, the Kern County Consortium SELPA has embraced the concept of Alternative Dispute Resolution and has become one of many SELPAs in California to begin using its principles to attempt to resolve conflict prior to moving to more formal levels.

### Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) is a no-cost process for resolving conflicts, one that respects the dignity of individuals while creating mutually satisfying solutions. ADR Resolves disagreements and conflicts by focusing on communication, collaboration, negotiation, and mediation to achieve agreements that meet the interests of all the parties involved. ADR provides a variety of options for districts and families seeking to work toward resolution at the local level; your first level of contact for starting this process is your district's Special Education Director. If there are still concerns, the SELPA Intake Coordinator can be contacted to assist in finding the option that best fits the need at the time.

#### Informal Strategies:

- *SELPA Coordinator Consultative Support*

Parents or LEA staff can reach out to SELPA ADR Lead Coordinator to troubleshoot potential issues or concerns as they occur. This may involve counseling the family on the IEP process as well as reviewing the current IEP. This includes explaining exactly what the IEP says and what it may mean for the student. Consultative support for districts may mean assisting and guiding one or more members of the IEP team with questions about substantive issues in the IEP. The goal is to be proactive and clarify any potential areas of confusion or miscommunication. If this does not resolve the conflict, other ADR options should be explored.

- *Mobilizing Internal District Resources*

Identification and implementation of prevention strategies that build and strengthen parent connections to service providers and the school community as a whole.

- a. Develop frontline staff skills in communicating with parents and conducting inclusive, collaborative meetings designed to reach consensus. (See “Formal Facilitated IEP”).
  - b. Hold IEP planning meetings led by a skilled and experienced educator/coach in which the internal team has the opportunity to discuss sticking points, critically examine IEP questions and data, brainstorm options, and practice positive strategies for reaching consensus.
  - c. Identify and request the support of a district staff member who may have a positive, previous relationship with the parent or student, or is especially skilled in communicating with parents. This could be a teacher or administrator who is not directly involved in the current situation who can take on the role of an “internal neutral”.
- *Informational Interviewing and Intervention*

As implied, this strategy involves the SELPA Coordinator gathering information through interviews with both the parent and district. The purpose is to identify the crux of the disagreement by exploring the position of both parties. With permission, the SELPA Coordinator will share the differing viewpoints with each party and then assist them in finding common ground to achieve a resolution.

- *File Review*

A SELPA File Review is a review of the issue in conflict (i.e. speech minutes) by a third party who may offer a fresh perspective or opinion. The purpose of the file review is to gather information and offer analysis to the current area of conflict. The file review is specifically, not a compliance review.

- *Student/Environmental Observation*

This process provides the opportunity for a neutral third-party exploration of the issue at conflict. The observation may be utilized to support discussion of IEP implementation, continuum of services, environmental issues and/or examining student needs. A Student/Environmental Observation is not a teacher evaluation and does not include evaluation of the teacher performance.

## Formal ADR Strategies:

If the level of conflict is too significant for informal resolution, parties may agree to initiate formal ADR strategies.

- *Formal Facilitated IEP*

The KCC SELPA provides recurring opportunities for educators to be trained as an

IEP Facilitator. IEP meetings are led by a neutral facilitator using specific strategies to help build and improve relationships among team members. Strategies include pre-meeting preparation, clarifying the agenda and meeting outcomes, enforcing working agreements, focusing on the IEP process, managing time, and ensuring participation by all team members. The goal is to achieve a signed IEP that all team members feel represents all the issues needed to educate that student. Please note\*\* similar strategies can be used by IEP teams without a formal facilitator to conduct a collaborative IEP meeting.

- *Local Mediation*

Parents and districts may choose to participate in no-cost, impartial local mediation if desired. Local mediation uses an effective problem-solving method through a trained mediator who will discuss possible solutions and develop agreements that are mutually acceptable to both parties. It is a safe, low-pressure process. The final agreements will be committed to writing in the finalized IEP.

When disputes develop between the LEA and the parent regarding a student's educational program that cannot be resolved at the local level, it is sometimes necessary to utilize more formal procedures to resolve those disputes. There are three types of dispute resolution proceedings. Each proceeding is designed to address a different kind of dispute.

## Due Process

When the parents of a student with disabilities and the LEA disagree about the child's identification, assessment, educational placement, or provision of FAPE, either side can request a due process proceeding.

There are three levels to the hearing process:

- 1) *Resolution Session/Meeting*

When a parent files a due process hearing request, the district is required to schedule a resolution meeting within 15 days of receipt of the complaint with the parents and the relevant members of the IEP team. The purpose of the meeting is to attempt to reach resolution at an early stage.

- 2) *Mediation Conference*

If the resolution session is not successful or is waived by either party, a mediation conference is conducted. This is an informal meeting between the district, parent, and an administrative law judge. The mediation conference must be scheduled by the state within 15 days of receiving the request for due process hearing.

- 3) *Formal Administrative Fair Hearing (Due Process)*

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If the mediation conference is not successful or is waived by either party, an administrative fair hearing is scheduled. This is a formal hearing conducted by an administrative judge from the Office of Administrative Hearings. At the hearing, both sides present evidence through submitting documents and by calling witnesses. The administrative law judge evaluates the evidence, determines the prevailing party, and directs corrective action, if any. This step must be held and a decision made within 45 days of the State's receipt of the request for a hearing.

Either party may request to have only a mediation conference instead of requesting a formal administrative fair hearing. If the issue is not resolved through mediation, a formal hearing can then be requested.

Mediation and hearing requests must be made in writing and sent to:

Office of Administrative Hearings Special Education Division  
2349 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833-4231  
Phone: (916) 263-0880  
Fax: (916) 263-0890

## Compliance Complaints

When it is believed that the LEA may have violated any part of special education law, a parent, individual, public agency, or organization can file a complaint with the California Department of Education (CDE). The party filing the complaint must forward a copy of the complaint to the other party at the same time it is filed with the CDE. Within 5 days of receiving the complaint, the CDE must review it to decide if it is a matter for state or local investigation.

If it is determined to be an appropriate complaint for state investigation, an investigator interviews both sides, reviews documentation, and then decides whether the complaint is justified and what corrective action (if any) must be taken. A report of that investigation must be made within 60 days.

Complaint forms are available online at <http://www.cde.ca.gov/sp/se/qa/cmplntproc.asp> and may be filed with the superintendent of the LEA or sent directly to:

California Department of Education  
Special Education Division Procedural Safeguards Referral Service  
1430 N Street, Suite 2401  
Sacramento, CA 95814  
Phone: (800) 926-0648  
Fax: (916) 327-3704  
Email: [speceducation@cde.ca.gov](mailto:speceducation@cde.ca.gov)

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## Civil Rights Issues

It is the responsibility of the Office for Civil Rights in the Department of Education and the Office of Civil Rights in the Department of Health and Human Services to enforce federal laws prohibiting discrimination against persons on the basis of race, color, national origin, sex, age, gender identification, and/or mental and physical disabilities and to investigate discrimination complaints.

If a parent or other individual believes that his or her rights have been violated because of his or her disability, or his or her child's disability, by an educational institution receiving federal assistance, a written complaint can be submitted to:

Regional Director, Office of Civil Rights, Region IX  
50 Beale Street, Suite 7200  
San Francisco, CA 94105  
Phone: (415) 486-5555  
TDD (877) 521-2172  
Fax: (415) 486-5570  
Email: [ocr.sanfrancisco@ed.gov](mailto:ocr.sanfrancisco@ed.gov)

Citations: (Title VI, Civil Rights Act of 1964; Title IX, Civil Rights Act of 1972; Section 504 of the Rehabilitation Act of 1973; and Title II of the Americans with Disabilities Act of 1990)(34 C.F.R. § 300.153)(E.C. §§ 56501-56507)

# Part II

## Administrative Policies and Procedures





## Chapter 1 – Access to the General Education Core Curriculum

Each LEA shall ensure that students, ages 3-years to 22-years with disabilities, will have access to all state adopted core curriculum and supplementary materials.

Each member LEA acknowledges that, unless provided in a student's IEP, in order for students with disabilities to improve in or meet the rigorous academic standards and to fully demonstrate both their conceptual and procedural understanding in mathematics, reading, writing, speaking, and listening (English Language Arts), their instruction must include access to all core curriculum and supplementary materials available within their district; for preschool students this would include the Preschool Learning Foundations (PLFs) with which one can gauge development in a general education curriculum for students ages 0-years through 5 years.

Each LEA shall ensure all staff, both general and special education, have access to training in:

- Information about current literacy and learning research.
- State adopted standards and frameworks.
- Increased participation of students with disabilities in statewide student assessments.
- Research-based instructional strategies for teaching reading to a wide range of diverse learners in order to increase the percentage of children with disabilities who are literate.

Each LEA must also ensure that their instruction includes:

- All required core curriculum, as noted above;
- Incorporating supports and accommodations, which includes, but is not limited to:
  - Supports and related services designed to meet the unique needs of these students and to enable their access to the general education curriculum;
  - An IEP which includes annual goals aligned with, and chosen to facilitate their attainment of grade-level academic standards: and
  - Teachers and specialized instructional support personnel who are prepared and qualified to deliver high-quality, evidence-based, individualized instruction and support services.

## Chapter 2 – Charter Schools

This policy applies to all charter schools that are chartered by an LEA member of the Kern County Consortium SELPA, or that were granted a charter by the Kern County Board of Education on appeal, or that were granted a charter by the State Board of Education where oversight responsibilities have been assigned to a SELPA-member LEA.

As students enrolled in charter schools are entitled to special education services provided in a similar manner to students enrolled in other public schools, charter schools within the SELPA shall comply with all requirements of all applicable state and federal law regarding provision of special education services (Education Code 56000 et seq., Individuals with Disabilities Education Act 20 U.S.C. Chapter 33). A charter school shall not discriminate on the basis of disability against any student in its admission criteria. Students enrolled in charter schools shall receive services in a manner similar to students enrolled in other public schools within the SELPA. A charter school LEA shall be treated the same as all other SELPA-member LEAs by the administrative unit, the SELPA governance bodies, and the SELPA Executive Director.

### Charter Petition and Review by SELPA

Prior to approval or renewal of a charter, the superintendent or designee of the chartering entity should consult with the SELPA Executive Director regarding the sufficiency of items related to the provision of special education services contained within the petition. The petition should include assurances that:

- 1) All eligible students enrolled in the charter school will receive appropriate special education services in accordance with applicable state and federal laws and regulations, as well as the local plan;
- 2) The district where the student resides, if different than the chartering entity, is not responsible for providing special education services to students that are enrolled in the charter school;
- 3) No student otherwise eligible to enroll in the charter school will be denied enrollment due to a disability or to the charter school's inability to provide necessary services;
- 4) Staff members providing special education services are appropriately credentialed;
- 5) The facility used by the charter school does not present physical barriers that would limit an eligible student's full participation in the educational and extracurricular program; and
- 6) Disenrollment, suspension, and expulsion policies and procedures shall ensure that the protections of federal and state law are afforded to special education students.

Each charter petition must contain a reasonably comprehensive description of the charter school's educational program. This description should include information about the specialized

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instruction and services available at the charter school and the procedures for ensuring that students are referred, assessed, and served in a timely manner. The petition or a memorandum of understanding (MOU) must also identify the entity that will be responsible for providing special education instruction and related services, reference any anticipated transfer of special education funds between the granting entity and the charter school for the purposes of providing special education and related services, and include provisions for allocations of deficits in special education funding.

In the event of any disputes arising between educational entities, including the SELPA and its member LEAs, regarding the provision of special education services in the charter school, the petition should outline the resolution procedures that will be used.

## Categories of Charter Schools

For the purpose of provision of special education services, charter schools shall be deemed either a public school within the chartering LEA or an LEA that receives funds and provides services independent of the chartering entity. All approved charter schools will be deemed public schools within the chartering entity until the charter school has been deemed an LEA using these Procedures and the local plan. The determination whether to be another school of the chartering LEA or to become an LEA is left to the charter school. Chartering entities within the SELPA may not grant a charter that requires the charter school to become an LEA unless the charter school has, in its petition or otherwise, given verifiable written assurances that it intends to and will become an LEA for purposes of providing special education and related services.

### Public School within a School District or County Office

Charter schools that are deemed to be public schools within the chartering entity will participate in state and federal funding in the same manner as other schools or programs within the chartering entity. The chartering entity will determine the policies and procedures necessary to ensure that the protections of special education law extend to students in the charter school in the same manner as students enrolled in other schools or programs administered by the chartering entity.

The chartering entity will:

- 1) Receive all applicable special education funds as specified in the Distribution of Special Education Funds policy and ensure that the allocated funding is distributed to the charter to provide or procure special education and related services and/or is used by the LEA to provide or procure special education and related services to the charter;
- 2) Represent the needs of the charter school in the SELPA governance structure;
- 3) Be responsible for ensuring that all eligible students enrolled in the charter school are appropriately referred, assessed and served consistent with all applicable provisions of state and federal law, in a timely manner, and in the same manner as a student with

disabilities who attends another public school of that LEA, no matter where the child may live; and

- 4) Ensure that the charter contributes an equitable share of its charter school block grant funding to support LEA-wide costs for special education instruction and services, including, but not limited to, special education instruction and services for student with disabilities who are enrolled in the charter school.

#### Charter School as an LEA within the SELPA

A charter school that includes in its petition for establishment or renewal, or that otherwise provides verifiable written assurances that the charter school will participate as an LEA for the purposes of providing special education instruction and services, may apply to become a member of the Kern County Consortium SELPA or another SELPA. A request from a charter school to participate in the Kern County Consortium SELPA will be treated in the same manner as such a request from a school district. The charter petition or other written assurances should state that prior to final approval of a request to be deemed an LEA, the charter school will be deemed a public school within the chartering entity.

Charter schools that wish to become member LEAs in the Kern County Consortium SELPA must submit their application on or before February 1<sup>st</sup> of the school year proceeding the school year in which the charter school anticipates operating as a member LEA within the SELPA. On a showing of good cause, the Superintendents' Executive Council may, in its sole discretion, waive the deadline and process a late application. An application form is available from the SELPA office and must be used by all applicants. The SELPA Executive Director and the appropriate advisory committees will review the application and develop an action recommendation for the Superintendents' Executive Council. The Superintendents' Executive Council will take action to approve or disapprove the charter school as a member LEA.

The Superintendents' Executive Council decision will be based on whether the charter school has met all requirements to be included as a member LEA of the SELPA. These requirements include:

- 1) Assurance that all enrolled individuals with exceptional needs (ages birth to 22 years) have access to appropriate special education programs and services;
- 2) Assurance that the LEA, through employment or contract, can provide the appropriately credentialed staff necessary to meet federal and state special education mandates;
- 3) Assurance that the LEA will follow all applicable SELPA policies and procedures;
- 4) Utilization of SELPA approved forms;
- 5) Attendance at SELPA sponsored meetings and trainings; and
- 6) Agreement to indemnify and hold harmless the SELPA and each of the member entities.

If approved, LEA status will become effective on or as of July 1 of the school year following the year during which the application was submitted. Prior to final approval and full acceptance as a member LEA, a charter school that has commenced operations will continue to be deemed a public school of the chartering district. If disapproved, the SELPA administrator will provide the applicant with a written finding that delineates the reason(s) for disapproval.

Once deemed a member LEA, the charter school, like other member LEAs shall:

- 1) Fully participate in governance of the SELPA in the manner outlined in the local plan and shall choose a representative to the Special Education Administrators Committee;
- 2) Accept all responsibilities of an LEA in the implementation of the local plan;
- 3) Fully comply with policies and procedures outlined in the local plan and procedural handbooks;
- 4) Contribute to, participate in, and receive the benefits of regionalized services;
- 5) Receive state and federal funding for special education in accordance with the Distribution of Special Education Funds policy;
- 6) Be responsible for all costs incurred in the provision of special education and related services including but not limited to instruction, services, transportation, nonpublic school/agency placements, inter/intra SELPA placements, due process proceedings, complaints and attorney fees, without regard for the location in which the student may reside; and
- 7) Document that all state and federal special education funds apportioned to the charter school are used for the sole purpose of providing special education instruction and/or related services to identified students with disabilities.

Following approval by the Superintendents' Executive Council, the SELPA local plan must be amended, the governing boards of all participating LEAs must approve the amendment, and the amended local plan must be submitted to CDE for final approval. If the approval of a charter school as an LEA requires a change in the Distribution of Special Education Funds policy, such change shall be adopted pursuant to the policy making process outlined in the local plan.

Citations: (EC §§ 47640-47647)

## Chapter 3 - Disputes between Participating Entities

In the event of a disagreement between local education agencies (LEAs), local education agencies and the Administrative Unit, local education agencies and/or the Administrative Unit (AU) and the SELPA regarding the distribution of funding, responsibility for services provision and any other governance activities specified in the Local Plan, it is the intent of the Superintendents' Executive Council that issues be resolved at the lowest level possible in the governance structure outlined in the local plan.

If an LEA disagrees with a decision of practice of another LEA or the SELPA Office, that LEA has the responsibility to discuss and attempt resolution of the disagreement with the party or parties directly involved. The parties involved will present the issues to their respective superintendents, or designees, who will attempt to resolve the matter. Either party may request the direct assistance of the SELPA Executive Director, or his/her designee.

In the event the initiating or other affected agencies disagree with a decision of the Superintendents' Executive Council, the dispute will be resolved through the following alternative dispute resolution procedure:

- 1) The dissatisfied party shall issue a written request for formal dispute resolution to be considered by an independent review panel. The written request shall include a description of the concerns to be addressed, with sufficient specificity to permit the independent review panel to clearly comprehend the disagreement and to formulate a response to the disagreement. In addition, the dissatisfied party shall detail the potential resolution to the problem. The written request shall be submitted to the SELPA Executive Director.
- 2) The Superintendent of the AU, or his/her designee, shall establish a list of persons from nearby SELPAs, districts or county offices, who are knowledgeable in the area of special education and who would be willing to serve as a member of such panel.
- 3) From the list of available panel members, the LEA or county office that requested the review, and the Superintendent of the LEA/AU, acting for the Superintendents' Executive Council, shall each select a representative for the panel. These representatives will also select one additional neutral member to serve as the chairperson.
- 4) The independent review panel shall meet as often as necessary to consider the facts of the complaint and prepare a written report and recommendations for consideration by the Superintendents' Executive Council.
- 5) At the next scheduled meeting of the Superintendents' Executive Council, after considering the report of the independent review panel, the Council must take one of the following actions. All voting will be in accordance with the voting procedures of the SEC:
  - a) Vote to reaffirm the previous action of the Superintendents' Executive Council

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- b) Vote to rescind the previous action of the Superintendents' Executive Council
- c) Vote to modify the previous action of the Superintendents' Executive Council to comply or partially comply with the recommendations of the independent review panel.

Any costs resulting from this process are to be shared equally by the LEA(s) or county office that requested the review.

Citations: (E.C. 56205(B)(5))

## Chapter 4 – Funding and Income Distribution

Both federal and state law requires assurances that all eligible students residing within a SELPA have equal access to special education programs and services regardless of their district of residence.

To accomplish this goal, the Superintendents' Executive Council (SEC) is required to:

- 1) Have a process for allocating funds in accordance with laws and regulations;
- 2) Develop an annual budget allocation plan; and
- 3) Monitor the use of special education funds.

### AB 602 Funding

Funds available for distribution are those allocated to the SELPA from the California Department of Education, less the funds received for low incidence equipment and services, regionalized operations and services, direct instructional support of program specialists, out-of-home care, specialized accounts, and special education grant funds allocated by the California Department of Education for personnel development. The SEC may, at its discretion, change funding for SELPA operations for circumstances that warrant a change.

The basic underlying principle of the Kern County Consortium SELPA is to apportion revenue to each member district on the basis of ADA (greater of current or prior year). Modifying that principle is an “off-the-top” distribution to the SELPA Administrative Unit of \$650,000 apportioned to four special accounts created by the SEC and administered by the SELPA Executive Director. These special accounts are accessed by districts that have extraordinary expenditures during the year as the result of nonpublic school/nonpublic agency services and extraordinary health care costs, by districts that have specified excess legal expenditures resulting from due process hearings and CDE complaints, by the SELPA to fund California Children Services Medical Therapy Unit facilities and equipment, and by the SELPA to fund specialized projects.

The SEC will review the unexpended balances for each of the special accounts in November and determine how the “off-the-top” distribution shall be allocated for the current fiscal year.

### Small District Protection

The SEC established a principle for select small districts. (Small districts are defined as having a P2 ADA of 250 or below in the current year or in the previous year according to the P2 count. If a district drops below 250 ADA, the district may make a written request to join the small district protection. The list will be updated each fiscal year by the SELPA Executive Director). These districts receive the services of KCSOS to educate their students and receive a billback for those services. If the revenue apportioned to those districts is greater than the billback, these



districts revenue apportionments are capped at the billback amount. "Recaptured" revenues are redistributed back through the apportionment.

In addition, these districts are guaranteed revenue to equal, at a minimum, 60% of the amount of the billback. In other words, if the final billback amount for the district is \$100,000, the district is guaranteed a minimum of \$60,000 in revenue.

Districts may opt out of the small-district protection.

- If a district has opted out, it may request to return to the protection program:
  - A written request to return must be submitted to the SEC by February 15<sup>th</sup> for the upcoming fiscal year.
  - An incentive plan will apply for a three-year period (See example below):
    - The district will carry an additional fiscal responsibility of 20% above the district portion of the bill back cost in the first year.
    - 10% in the second year, and
    - 5% in the third year.
- Once a district opts out of the plan, they will remain out for a minimum of two years.
- If a district was removed from Small District Protection due to an ADA above 250, and in subsequent years they drop below 250 ADA, they may request re-admittance in writing to the SEC. In this case, the additional fiscal responsibilities would not apply.

District Revenue	Billback Expense	Apportioned to District for Billback		District "Out-of-Pocket" Billback Expense	SELPA "Out-of-Pocket" Billback Expense	Amount "Re-captured" by SELPA
\$75,000	\$200,000	\$120,000	60%	\$80,000	\$45,000	0

- In the 30-20-10 Plan, the district would pay an additional percentage beyond the \$80,000:

Year	Additional %	Additional Expense	District "Out-of-Pocket" Billback Expense Based on \$80,000	SELPA "Out-of-Pocket" Billback Expense Based on \$120,000
1	20%	\$16,000	\$96,000	\$104,000
2	10%	\$8,000	\$88,000	\$112,000
3	5%	\$4,000	\$84,000	\$116,000
4	0%	\$0	\$80,000	\$120,000

## Cost of Living Adjustment

All districts and LEA charter schools will receive COLA, if available, based on the prior year's K-12 ADA at P-2.

## Special Education Property Taxes

The SELPA receives Local Special Education Property Taxes as part of its AB 602 apportionment. In order to ease the accounting burden, all of the property tax revenues are retained at KCSOS, with the appropriate offset made through state revenues. This allocation of property taxes does not adversely impact the total revenue apportioned to any SELPA member district.

## Regionalized Services and Program Specialists

RSPS funds are allocated by the state directly to SELPAs for the operation of the SELPA.

Should revenues ever not keep up with the budgetary needs of SELPA, SELPA budgetary deficits will be allocated to Districts by reducing their ADA revenue allocation; this process will be accomplished for three years, reviewed annually at the SEC November fiscal meeting. After the third year, the revenues/allocation will be reviewed and the Allocation Plan further defined.

## Personnel Development for SELPAs

These funds are allocated directly to SELPAs to provide training for educators and families.

## Funds to Support Students with Low Incidence Disabilities

Funds for low incidence equipment, materials, and supplies as well as for low incidence services are restricted to support of students in the following disability categories: hard-of-hearing, deaf, visual disability, severely orthopedically impaired, and deaf-blind. The funds are administered through the Kern County Consortium SELPA and include receipt of funds, expenditure of funds, maintenance of an inventory for items over \$500, development of procedures for exchange of equipment, and reporting to the state. The expenditures shall be delineated as follows:

- a) The amount specified by the Superintendents' Executive Council of the funds received through the AB 602 allocation will be used by the SELPA to purchase equipment required to support special education and related services as delineated in each IEP for students with low incidence disabilities. Requests will be made to the SELPA by LEAs who have a low-incidence equipment need for a student.
- b) The remainder of the funds each year shall be delineated for supporting the County Office Itinerant Services for students with low incidence disabilities (Itinerant Teachers of

the Orthopedically Impaired, Visually Impaired and/or Deaf/HOH or an Audiologist.) (See the *Low Incidence Books, Materials, and Equipment Funds* section in Chapter 7 of Part I in this manual for further information).

- c) The SELPA Executive Director will report the balances in the Low Incidence Funds to the Superintendents' Executive Council each year at the SEC's November meeting. A determination will be made as to the appropriateness of the amount maintained by SELPA for the purchase of equipment.
- d) The District of Service (if different from the DSEA) is typically responsible for the ordering of needed LI equipment.
- e) AB 605 took effect January 1, 2020 and added section 56040.3 to the Education Code. This new Education Code requires local educational agencies (LEAs) to allow students to use school-purchased assistive technology devices at the student's home or in other settings when the student's individualized education plan (IEP) team decides on a case-by-case basis that access to those devices is necessary in order for the student to receive a free appropriate public education (FAPE). LEAs must continue to provide students with exceptional needs who require the use of assistive technology devices to have continued access to the devices, or comparable devices, (1) Until alternative arrangements for providing the student the device, or comparable device, can be made, or (2) two months from the time the student disenrolled from the original LEA; whichever occurs first.

## Infant Entitlement

The SELPA receives Infant Entitlement Grants that support programs for children from birth through 3 years and are generated through J-50 reporting. These grants are distributed to the KCSOS Special Education Division to provide IDEA Part C, Early Start Programs.

## Preschool Grant Distribution

The SELPA receives two preschool grants that are used to provide services and supports to students with disabilities, aged three through five: The Federal Preschool Grant and Preschool Local Entitlement. All funds are allocated based on district of residence.

The grants are distributed to member districts using the procedure outlined below:

- 1) Preschool students (by district of residence) will be identified using the December unduplicated count.
- 2) The SELPA will determine the number of preschool students receiving specialized academic instruction in a special day class (SDC) setting and the count of related services provided, regardless of setting.
- 3) Each SDC student will receive a weighting factor of 1.0 and each related service will receive a weighting factor of .25.

- 4) The weighting factor totals will be determined for all districts and summed. The SELPA sum of weighting factors will be used as the denominator for the allocation of both preschool grants.

## Out-of-Home Care Funding Distribution

The Out-of-Home Care Program provides funding through the Special Education Assembly Bill 602 formula to special education local plan areas (SELPA) for foster youth, pupils placed in the short-term residential therapeutic program (STRTP), and three other types of facilities located within each SELPA's geographic boundaries.

Funding for each SELPA is based on five data components: the sum of cumulative enrollment for foster youth reported through California Longitudinal Pupil Achievement Data System; the average daily population at STRTP provided by the Department of Social Services; and pupil count data in community care, intermediate care, and skilled nursing facilities provided by the Department of Developmental Services as of April 1.

Funding for each SELPA is calculated as follows: the sum of cumulative enrollment for foster youth multiplied by the foster youth rate; average daily population at STRTP multiplied by the STRTP rate; pupil counts for community care multiplied by the community care rate; pupil counts for intermediate care multiplied by the intermediate care rate; and pupil counts for skilled nursing multiplied by the skilled nursing rate.

Funds are paid through the Principal Apportionment. Principal Apportionment amounts are calculated three times for each fiscal year: The First Principal Apportionment (P-1) is certified by February 20th, the Second Principal Apportionment (P-2) is certified by June 25th and the Annual calculation is certified by February 20th of the following year (with that year's P-1 certification).

## Mental Health Services Grants

### Federal IDEA Allocation

These funds are restricted for the provision of educationally related mental health services as required by student IEPs. The grant is allocated directly to LEAs.

### State Proposition 98 Allocation

These funds are allocated directly to LEAs. For students served in COE-operated programs, the SEC has determined those services will be provided by KCC SELPA ERMHS staff; each service will be billed to the DSEA. The cost per service will be approved by SEC on an annual basis. SEC will determine the amount of funds each LEA will contribute to a Residential Treatment Center (RTC) SELPA special account for LEAs to have access to (See the *Residential Placement* section in Chapter 9 of Part I in this manual for further information).

## Hosting Special Day Class Students

It is the intent of the Kern County Consortium SELPA that educating students with disabilities in a special day class be provided in the least restrictive environment. A sufficient number of classroom facilities needs to be identified each year so that a continuum of physical settings is available.

### District Operated Special Education Programs

Each district of residence is responsible for providing classroom space for any and all programs operated by the district for general and special education students. If classroom space is needed for special education programs, it is the district's responsibility to convert the use of classrooms, find, or in some way acquire, classroom space for this purpose. If districts choose to use classroom space for other purposes and it is necessary to provide space for special education program(s), the district will acquire a trailer, portable/relocatable, or mobile classroom, at their own expense and place it in reasonable proximity to the general education population for students in the equivalent grades.

### KCSOS Operated Special Education Programs

Classroom space needed for special education programs operated by the KCSOS Division of Special Education will be provided within existing or new district facilities whenever possible through a lease arrangement or with a provision of space for placement of KCSOS facilities on school grounds.

Classroom space for the KCSOS programs will be determined based on a student census in early October using the September 30 review of KCSOS counts by district of residence. A list of the students being provided programs by KCSOS will be given to each district in the Consortium. This list will include a review of existing facilities and an estimate of the facilities that will be needed the following school year. At that time, districts will notify KCSOS of the probability that they will reclaim classroom space currently used for the KCSOS programs housed within the district. Districts must notify KCSOS of any change in classroom provisions/locations no later than April 1.

Each district where a class is located shall be responsible for providing LRE facilities and LRE provisions described in the students' IEPs (i.e. mainstreaming and inclusion in activities, both curricular and extra-curricular). The District shall also provide utility and custodial services. The district shall charge KCSOS for these facilities in accordance with the *Agreement for Utility and Custodial Services* or a *Special Education Classroom Lease Agreement*.

The district remains responsible for providing adequate temporary housing until repairs can be completed in the event of a natural disaster or similar emergency situation.

Exceptions due to geographical considerations and restrictions will be made. Districts in which the small size of the district population or the size of district facilities would cause the impact of

a special education program to be too great will be excluded from the requirement to provide classroom space.

## Maintenance of Effort

The Kern County Consortium SELPA shall meet Maintenance of Effort (MOE) regulations requiring the federal funds be used only to pay the excess costs of providing special education and related services to children with disabilities and to supplement and not supplant state and local funds for special education (34 CFR §300.203-300.205).

The SELPA Administrative Unit, as the grantee of federal funds from the California Department of Education, shall distribute all or part of the federal funds received to participating Local Education Agencies (LEA) within the SELPA through a sub-granting process and shall annually conduct and report to the State Education Agency (SEA) the required MOE information. The LEAs within the Kern County Consortium SELPA shall compile and submit budget and expenditure information including SEMA and SEMB reports to the KCSOS. The three required comparison tests are as follows:

### First and Second Comparisons

Grant year Budget to Prior Actual Expenditures (SEMB) and 2<sup>nd</sup> Interim Report

- Each LEA will submit to the SELPA the required MOE documentation each year.
- Budgeted local or state and local expenditures must equal or exceed prior year expenditures for each LEA and for the SELPA, as a whole.
- Comparison is made before the allocations of Part B funds are made to the LEAs.

Section 1: Each year, LEA's should record any of the exceptions listed below. These items will reduce the amount required to meet MOE:

- The voluntary departure or departure for just cause, of special education or related service personnel, who are replaced by qualified, lower-salaried staff
- A decrease in the enrollment of children with disabilities
- The termination of the obligation of the agency to provide a program of special education to a particular child with disabilities that is an exceptionally costly program because the child:
  - Has left the jurisdiction of the agency
  - Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
  - No longer needs the program of special education
- The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities

Section 2: LEAs who received a "meets requirement" compliance determination from CDE and have not been found to be significantly disproportionate may also reduce their MOE requirement. Under these conditions, the LEA may reduce the level of local or state and local expenditures otherwise required by the LEA MOE requirement by:

- Calculating 50 percent of the increase in federal sub-grant allocation received for the current fiscal year compared to the prior fiscal year, and reducing their state and local MOE requirement by that amount.
- The LEA must spend the calculated “freed up” local, or state and local funds on activities that are authorized under the Elementary and Secondary Education Act (ESEA) of 1965. This includes any activities under Title 1, Impact Aid, and other ESEA programs.

### Section 3: MOE Test

- Either local or state and local funding sources are used for comparison at the SELPA level as well as for each individual LEA.
- When the capability exists to isolate “local only” funding sources the comparison may be made using only “local” resources.
- Comparison may be either total amount or a per capita (per child with a disability unless some other basis is permitted by the SEA for determining “per capita”) basis (34 CFR §300.203).

If the SELPA as a whole passes Comparison 1 or 2, the SELPA as a whole, is eligible to receive Part B funding.

If the SELPA fails Comparison 1 or 2, the SELPA, as a whole, and all of its participating members will be ineligible to receive Part B funding until budgetary revisions are made by LEAs that did not meet the MOE requirement in order to enable the SELPA, as a whole to meet MOE requirements.

At the November and April SEC meetings, the SELPA Administrative Unit will provide a summary of MOE calculations for review and action. For LEA sub-grant recipients that do not meet the MOE requirement, the SELPA Executive Director shall do the following:

- Notify the District Superintendent
- Notify the District Business Official
- Notify the SELPA Administrative Unit District Advisory Representative

### Third Comparison

#### Prior Year Actuals vs. Second Prior Year Actuals (SEMA)

- Actual local or state and local expenditures must equal or exceed prior year expenditures
- Comparison is made after unaudited actuals data is submitted to CDE following the end of the fiscal year
- The comparison will occur annually

Section 1: Each year, LEA’s should record any of the exceptions listed below. These items will reduce the amount required to meet MOE:

- The voluntary departure or departure for just cause, of special education or related service



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- personnel, who are replaced by qualified, lower-salaried staff
- A decrease in the enrollment of children with disabilities
- The termination of the obligation of the agency to provide a program of special education to a particular child with disabilities that is an exceptionally costly program because the child:
  - Has left the jurisdiction of the agency
  - Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
  - No longer needs the program of special education
- The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities

Section 2: LEAs who received a “meets requirement” compliance determination from CDE and have not been found to be significantly disproportionate may also reduce their MOE requirement. Under these conditions, the LEA may reduce the level of local or state and local expenditures otherwise required by the LEA MOE requirement by:

- Calculating 50 percent of the increase in federal subgrant allocation received for the current fiscal year compared to the prior fiscal year, and reducing their state and local MOE requirement by that amount.
- The LEA must spend the calculated “freed up” local, or state and local funds on activities that are authorized under the Elementary and Secondary Education Act (ESEA) of 1965. This includes any activities under Title 1, Impact Aid, and other ESEA programs.

### Section 3: MOE Test

- Either local or state and local funding sources are used for comparison at the SELPA level as well as for each individual LEA.
- When the capability exists to isolate “local only” funding sources the comparison may be made using only “local” resources.
- Comparison may be either total amount or a per capita (per child with a disability unless some other basis is permitted by the SEA for determining “per capita”) basis (34 CFR §300.203).
- If the SELPA, as a whole, still fails Comparison 3 after applying the exceptions, the SELPA will be billed by the State for the amount the SELPA, collectively, failed to spend from local or state and local funds to maintain its level of effort. The SELPA AU will then invoice the LEA(s) or adjust the apportionment of the individual sub-grant recipient/s that failed MOE Comparison 3 for the amount the LEA(s) failed to spend from local or state and local funds to maintain its level of effort.

If the SELPA, as a whole, passes Comparison 3 but one or more individual LEA sub-grant recipients fail to spend from local or state and local funds to maintain their level of effort, CDE will invoice the LEA for the amount that the LEA failed to spend from local or state and local funds to maintain their level of effort. The LEA must pay the amount owed to CDE from its state and local funding in the budget year.



For the purposes of Maintenance of Effort, the SELPA Administrative Unit is the recipient of the federal funds from CDE and is, in turn, a grantor of all, or part, of those funds as sub-grants to participating LEAs.

## Subsequent Year Tracking Form - MOE

CDE requires a Subsequent Year Tracking form for each individual LEA and a cumulative one for the SELPA is encouraged. It tracks the MOE numbers for the tests and the results from, currently, the school year 2011-12 to the current school year's expenditure projections. Should a LEA not pass a certain test in the current year, the form goes back and compares the budget to the last time the LEA passed the test; LEAs are being tracked carefully. This form is due at the same time as the MOE information in mid-November.

## Reimbursement of Legal Fees

The Kern County Consortium SELPA maintains a Fund for Legal Services that is available for payment of legal fees incurred by a parent/guardian, an LEA, or KCSOS where one or more are a party to an administrative proceeding or court proceeding, under the circumstances described below.

### Application for SELPA Legal Fund Reimbursement

The LEA shall in all cases, make application for funds in writing to the SELPA Executive Director. When applying for funds, the LEA/KCSOS will complete the *Kern County Consortium SELPA Legal Fees Application Form*. An application shall be submitted as soon as practical after the LEA/KCSOS has determined one or more of the following:

- a) that a due process case has been filed (for parents' attorney fees only),
- b) when a mediator has been assigned by the Office of Administrative Hearings (OAH), or
- c) when entering into mediations regarding complaints filed with the California Department of Education.

This will facilitate authorization by the SEC in a timely manner.

### Review and Approval

The SELPA Executive Director shall review the application with the LEA and make a recommendation for approval (and level of funding) or disapproval to the SEC. At the SELPA Executive Director's discretion, an ad hoc advisory panel may be designated to review the application. The panel will consist of the SELPA Executive Director, one member of the SEC and one member of the Special Education Administrators Committee (SEAC). The panel will report their recommendations to the SEC. Panel members may not be employees of the LEA/KCSOS whose application is under consideration. As information becomes available, the SELPA Executive Director will also assist LEAs/KCSOS in determining when to apply for SELPA reimbursement.

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The decision of the SEC regarding approval (and level of funding) or denial of an application for funding shall be final and binding. Among other reasons, the SEC may deny funding if it determines that the case has little potential for a positive outcome. Determinations under this policy are not subject to the dispute resolution provisions of the SELPA Local Plan.

#### Legal Fees Eligible for Funding

Eligible fees shall be fees that the LEA/KCSOS is legally obligated to pay as a party to a special education administrative proceeding or court proceeding to an attorney or law firm where the attorney or firm is admitted to practice law in California (including attorneys admitted in other states who are authorized under California law to represent the parent/guardian or LEA on an individual case basis).

#### Eligible Cases

Fees may be paid only in connection with:

- (1) due process cases filed with the Office of Administrative Hearings (OAH) and assigned to a Hearing Officer for parents' attorney's fees only,
- (2) mediations in which a mediator has been assigned by OAH, or
- (3) mediations of complaints filed with the California Department of Education. Fees incurred by the LEA/KCSOS prior to the filing of a case with OAH or of a complaint with CDE, or for purposes other than those described above, are not eligible for payment or reimbursement.

#### Parent/Guardian's Attorney's Fees

To the extent that funds are available in the Legal Services Fund, fees paid to the attorney for the parent/guardian may be reimbursed to the LEA/KCSOS at the proportional rate determined by the SEC for that fiscal year.

#### Legal Firms with Retainers

Districts who employ counsel by means of a retainer may submit evidence of the number of hours expended and the reasonable value of the hours.

#### Reimbursement of Legal Fees

In the event that the SEC approves the application for reimbursement of legal fees, the LEA/KCSOS shall submit invoices and supporting documentation to the SELPA Executive Director in a timely manner. The SELPA Executive Director will review, verify, and submit the annual expenses to the SEC for reimbursement approval. Fees will be proportionally reimbursed to the extent that funds are available in the Legal Services Fund.

## Reimbursement of NPS/NPA Services and Extraordinary Health Costs

### Nonpublic Schools and Nonpublic Agency Costs

After an IEP team, of which a SELPA representative should be a member, has recommended nonpublic school or nonpublic agency services, the district will submit monthly invoices, evidence of payment, and attendance logs to the SELPA Executive Director for review and inclusion in the information provided to the SEC in November of each year.

### Extraordinary Health Costs

Extraordinary health costs are considered to be the costs associated with providing specialized physical health care (EC §49423.5) and/or health and nursing services (5 CCR §3051.12) to students with exceptional needs while enrolled in a public school setting. In order to be considered extraordinary health care costs, these services must be provided by an appropriately Licensed Vocational Nurse or Registered Nurse and must be required to implement the individualized education program (IEP). Furthermore, if an NPA is used for service(s), the NPA used must have a current master contract with the KCC SELPA and there must be ISA for each student where reimbursement is being requested.

After an IEP team has recommended specialized health care and/or health and nursing services, the district will submit monthly invoices or expenditure logs, evidence of payment, and attendance logs to the SELPA Executive Director for review and inclusion in the information provided to the SEC in November of each year.

### Reimbursement

The SELPA Executive Director will compile all district expenditures for SEC reimbursement approval. Reimbursement of allowable expenses may be made up to 70 percent of total educational and/or extraordinary health care costs to the extent that funds are available. Districts are reimbursed on a pro rata scale after approval by the SEC following the year expenses were incurred.

Allowable nonpublic school or nonpublic agency expenses are the daily education rate, travel expenses of the student if out of county/state, and travel expenses of the custodial parent/guardian (up to four trips) at a rate comparable to the LEA conference/mileage policy or the policy of the Administrative Unit of the SELPA in the absence of district policy. Allowable extraordinary health care expenses are the costs associated with providing specialized physical health care and/or health and nursing services to students with exceptional needs less any reimbursement by Medi-Cal and/or private health insurance.

## Residential Placement Costs

Placements made by courts, social services and regional centers and are not made by LEAs are not necessary for the student to receive a free appropriate public education; in most of these

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cases, the student's district of residence (i.e. the district in which their parents or legal guardians reside) is not financially responsible for the costs associated with the residential placement.

LEAs are solely responsible for ensuring that students with disabilities receive special education and related services. These services may include residential care when the individualized education program (IEP) team determines that local services have been exhausted and residential services are necessary for the student to benefit from his or her education.

For students that are being considered for a Residential Treatment Center (RTC) placement, a SELPA representative will need to participate in the IEP-placement process. Should the recommendation be that a student be placed in a Residential Treatment Center (RTC) to be offered Free and Appropriate Public Education (FAPE), the SELPA representative will begin the search for the facility that meets the student's needs and will accept him/her. Once that placement has occurred, the costs will be paid directly from the residential placement special account by the SELPA for such purposes.

Should the SELPA's special account for any Residential Treatment Center (RTC) placements be depleted during a school year, any further expenses will be the responsibility of the LEA(s) placing the students.

#### Reimbursement

The SELPA Executive Director will compile all quarterly residential placement expenditures for SEC reimbursement approval. Reimbursement may be made for 100 percent of residential placement costs to the extent that funds are available for a given quarter. The SELPA reimburses districts after approval at a regularly scheduled SEC meeting. Unused funds are retained by the SELPA and used for the provision of services to students throughout member districts.

## **Chapter 5 – Independent Educational Evaluations**

This policy sets forth the procedures under which students with disabilities are entitled to an independent educational evaluation at public expense in any member local education agency (LEA) of the Kern County Consortium SELPA.

### **Definitions**

Independent Education Evaluation (IEE) means an evaluation conducted by qualified examiner who is not employed by the LEA. Public expense means that the LEA pays for the cost of the evaluation up to the limits established by the LEA or ensures that the evaluation is otherwise provided at no cost to the parents.

### **Procedures for Requesting an IEE**

Parents have the right to an IEE at public expense only if they disagree with an evaluation completed by the LEA. Parents may only request one publicly funded IEE for each evaluation completed by the LEA. The request for the IEE must be received within less than two years' time from the date of the LEA's evaluation. If the request for an IEE is received one year or more from the date of completion of the LEA's evaluation, or if conditions warrant, the LEA may ask to complete a reevaluation in addition to responding to the parent's request. To initiate IEE request, a parent must indicate to the LEA that the parent:

- 1) Disagree with the LEA's evaluation; and
- 2) Requests an IEE at public expense.

If the parent does not put this in writing, the LEA must document the parent's disagreement and request.

The LEA may ask for the parents' reason(s) for disagreeing with the LEA's evaluation, but the parents are not required to provide those reasons. The LEA may not unreasonably delay either providing the IEE at public expense or initiating a due process hearing to defend its evaluation.

### **Procedures for Determining Whether an IEE will be Provided**

Once the parents communicate their disagreement with the LEA's evaluation and request an IEE at public expense, the following procedures will be followed:

- 1) The LEA will provide a copy of the SELPA policy to the parents;
- 2) The LEA evaluation will be reviewed with the parents to identify the areas of disagreement, if the parents choose to provide them;

- 3) The LEA will determine whether it will initiate due process to establish the appropriateness of its evaluations or proceed with obtaining an IEE; and
- 4) If the LEA initiates a hearing and the final decision is that the LEA's evaluation is appropriate, the parents still have the right to an IEE, but not a public expense.

## Options and Procedures for Providing an IEE

If the LEA agrees to provide an IEE at public expense, the assessment will be provided, with the parents' agreement, through the Diagnostic Center of Central California or a private sector provider.

LEA will notify the parent(s) in writing of their agreement to the IEE and a copy of the SELPA IEE Policy will be provided to them. Once the parent notifies the LEA of their chosen assessor, the LEA will initiate a contract with the examiner. Parents will be required to sign a release and exchange of information between the IEE evaluator(s) and the LEA.

## IEE at Private Expense

If the parents obtain an IEE at private expense, the results of the evaluation:

- 1) Must be reviewed by the LEA, and, if it meets its criteria,
- 2) Must be considered by the IEP Team in a decision made with respect to the provision of FAPE to the student; and
- 3) May be presented as evidence at a due process hearing regarding the student.

## Independent Evaluator Criteria

IEEs obtained at public expense must be conducted using all of the same criteria, including the location limitations for the evaluation, minimum qualifications of the examiner, cost limits, and use of approved instruments as those used by the LEA when it conducts an evaluation.

If the LEA observed the student while conducting the evaluation with which the parents disagree, or if its assessment procedures allow in-class observations, the independent examiner will be provided with an equivalent opportunity to observe the student in the current educational setting, and to observe the LEA's proposed setting, if any. This opportunity shall also be provided if the parents obtain an evaluation at private expense.

The LEA shall define the nature and scope of an independent examiner's in-class observations consistent with the right to an equivalent opportunity to observe, but also consistent with its obligations to prevent unnecessary disruption in the class and to protect the privacy interests of other students. This may include, but is not limited to, identifying the time constraints of such observation, LEA personnel who will participate in the observation, and restrictions on student/teacher interactions.

## Location Limitations for Evaluators

Independent evaluators must be located within a 120-mile radius of the LEA of residence. Evaluators outside of this area will be approved only on an exceptional basis, provided parents can demonstrate the necessity of using evaluators outside the specified area. Parents must receive a letter from the LEA if the LEA intends to fund an IEE outside of the approved area. Any expenses beyond the evaluation (i.e., food, lodging, transportation, etc.) are not included in the cost of the IEE.

## Minimum Qualifications for Evaluators

All assessments must be conducted in accordance with the requirements of Federal and State law. Evaluators with credentials other than those listed below will not be approved to conduct an IEE unless the parents can demonstrate the appropriateness of using an evaluator meeting other qualifications. All licenses and credentials must be issued by the appropriate agency or board with the State of California.

Academic Achievement	<ul style="list-style-type: none"> <li>• Credentialed Special Education Teacher</li> <li>• School Psychologist; or</li> <li>• Licensed Educational Psychologist</li> </ul>
Adaptive Behavior	<ul style="list-style-type: none"> <li>• Credentialed Special Education Teacher</li> <li>• School Psychologist; or</li> <li>• Licensed Educational Psychologist</li> </ul>
Assistive Technology	<ul style="list-style-type: none"> <li>• Credentialed or Licensed Speech/Language Pathologist;</li> <li>• Credentialed Assistive Technology Specialist; or</li> <li>• Credentialed Special Education Teacher</li> </ul>
Auditory Acuity	<ul style="list-style-type: none"> <li>• Licensed Educational Audiologist; or</li> <li>• Credentialed or Licensed Speech/Language Pathologist;</li> </ul>
Functional Behavior Assessment	<ul style="list-style-type: none"> <li>• Credentialed Special Education Teacher;</li> <li>• School Psychologist;</li> <li>• Licensed Educational Psychologist;</li> <li>• Board Certified Behavior Analyst</li> </ul>
Cognitive	<ul style="list-style-type: none"> <li>• Licensed Educational Psychologist; or</li> <li>• School Psychologist</li> </ul>
Health (including Neurological)	<ul style="list-style-type: none"> <li>• Licensed Physician; or</li> <li>• School or Registered Nurse</li> </ul>
Motor	<ul style="list-style-type: none"> <li>• Licensed Physical Therapist;</li> <li>• Licensed Occupational; Therapist;</li> <li>• Credentialed Teacher of the Physically Impaired; or</li> <li>• Adaptive Physical Education Teacher</li> </ul>
Occupational Therapy	<ul style="list-style-type: none"> <li>• Licensed Occupational Therapist</li> </ul>
Speech and Language	<ul style="list-style-type: none"> <li>• Credentialed or Licensed Speech/Language Pathologist;</li> </ul>
Social/Emotional/Behavioral	<ul style="list-style-type: none"> <li>• School Psychologist;</li> <li>• Licensed Educational Psychologist; or</li> <li>• Licensed Clinical Social Worker</li> </ul>
Visual Acuity/ Developmental Vision	<ul style="list-style-type: none"> <li>• Licensed Ophthalmologist;</li> <li>• Optometrist; or</li> <li>• Credentialed Teacher of the Visually Impaired</li> </ul>
Functional Vision	<ul style="list-style-type: none"> <li>• Credentialed Teacher of the Visually Impaired</li> </ul>
Vision Perception/Visual Processing/Visual Motor Integration	<ul style="list-style-type: none"> <li>• Credentialed Special Education Teacher; or</li> <li>• School Psychologist; or</li> <li>• Licensed Educational Psychologist</li> </ul>
Orientation & Mobility	<ul style="list-style-type: none"> <li>• Credentialed Teacher of the Visually Impaired</li> </ul>
Transition	<ul style="list-style-type: none"> <li>• Credentialed Special Education Teacher</li> </ul>

The parents may request a list of suggested IEE assessors who meet the SELPA criteria; but the parent is not required to select from the list provided.



## Cost Limitations for an IEE

The cost of an IEE shall be comparable to those costs that the LEA incurs when it uses its own employees or contractors to perform a similar assessment. Costs include: observations, administration and scoring of tests, report writing, and attendance in person or by phone at an IEP team meeting. The maximum cost of an independent psycho-educational evaluation is \$5,150.00. An LEA may agree to pay more than the maximum cost if there are unique circumstances that justify exceeding the limitation. Parents must obtain written permission from the LEA in order to exceed this limitation.

Academic Achievement	\$700.00
Adaptive Behavior	\$700.00
Assistive Technology	\$800.00
Auditory Acuity	\$450.00
Auditory Perception/Auditory Processing	\$800.00
Functional Behavior Assessment	\$4,500.00
Cognitive	\$800.00
Health (including Neurological)	\$500.00
Motor	\$750.00
Occupational Therapy Assessment	\$1,500.00
Speech and Language Assessment	\$2,500.00
Social/Emotional/Behavioral	\$900.00
ERMHS Assessment	\$1,500.00
Visual Acuity/Developmental Vision	\$400.00
Functional Vision	\$450.00
Vision Perception/Visual Processing/Visual-Motor Integration	\$500.00
Orientation and Mobility	\$500.00
Transition	\$500.00

When insurance will cover all or partial costs of an IEE, the LEA may request that the parents voluntarily have their insurance pay the IEE costs covered by their insurance. However, parents will not be asked to have insurance cover independent evaluation costs if such action would result in a financial cost to the parents including, but not limited to the following:

- 1) A decreased in available lifetime coverage or any other benefit under an insurance policy;
- 2) An increase in premiums or the discontinuance of the policy; or
- 3) An out-of-pocket expense such as payment of deductible amount incurred in filing a claim unless the parents are willing to have the LEA reimburse them for the amount of the deductible.

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The LEA will issue payment to the independent evaluator for the costs of the IEE following the LEA's receipt of:

- 1) A written IEE assessment report prepared by the independent evaluator;
- 2) A copy of any and all assessment protocols utilized to conduct the IEE; and
- 3) Detailed invoice(s), including dates of assessment and observation, hourly rates, and other elements customary in the field of practice for the evaluator identifying the costs associated with the IEE.

The written report should meet all required components as specified in State law.

## Release and Utilization of IEE Results

Independent evaluators must agree to release their assessment information and results to LEA prior to receipt of payment for services. The results of the IEE will be considered in the determination of eligibility, program decisions, and placement of the student with disabilities as required by the Individuals with Disabilities Education Act.

Citations: (5 C.C.R. § 3030); (20 U.S.C. § 1401(3)(A)); (20 U.S.C. § 1415(b)(1)); (34 C.F.R. § 300.502); (E.C. § 56136); (E.C. § 56320); (E.C. § 56322); (E.C. § 56327); (E.C. § 56329); (E.C. § 56506)

## Chapter 6 – Distance Learning

Distance Learning is an educational methodology that became prevalent in California following the closure of school districts/charter schools due to a global pandemic. Subsequently, it has changed the face of education, and has offered a variety of new definitions and instructional strategies to deliver high-quality educational programs to students when it is not possible to physically be on a school site. An LEA must offer instruction through distance learning if it is unable to offer in-person instruction in part or fully pursuant to a state or public health order.

Senate Bill (SB) 98 is a budget trailer bill that provided much guidance for school districts for the use and requirements for Distance Learning, specifically for the 2020-21 school year. While the timelines, specific instructional minutes and detailed requirements for distance learning may change in subsequent school years, the basic tenants for Distance Learning are included below.

### **Distance Learning Vocabulary and Definitions** (*Education Code* Section 43503):

**Distance Learning:** instruction in which the pupil and instructor are in different locations and pupils are under the general supervision of a certified employee of the local educational agency (LEA). Distance learning may include, but is not limited to, all of the following:

Interaction, instructions, and check-ins between teachers and pupils through the use of a computer or other communications technology.

Video or audio instruction in which the primary mode of communication between the pupil and certified employee is online interaction, instructional television, video, tele-courses, or other instruction that relies on computer or communications technology.

The use of print, video, and audio materials incorporating assignments that are the subject of written or oral feedback. (*Education Code* Section 43500(a)).

**In-person Instruction:** instruction under the immediate physical supervision and control of a certificated employee of the LEA while engaged in educational activities required of the pupil.

**Blended Learning.** Combination of in-person and distance instruction.

**Independent Study.** Independent Study is provided as an alternative instructional strategy, not an alternative curriculum. Independent study students work independently, according to a written agreement, and under the general supervision of a credentialed teacher or teachers. (Students enrolled in an independent study program for the 2020-21 school year must meet the additional requirements of distance learning. For more information regarding independent study requirements see: <https://www.cde.ca.gov/sp/eo/is/isprogramsummary.asp>)

**Home School.** In California, there are several ways that parents educate their children at home: through an existing private school, through a public charter or independent study program, and in many instances by opening their own private home-based school and submitting a Private School Affidavit to the CDE. However, it is important to note that (1) the CDE does not provide guidance on how to home school, and (2) California statutes do not explicitly authorize homeschooling or differentiate between private schools and home schools. (Students enrolled in a home school program for the 2020-21 school year must meet the additional requirements of

distance learning. For more information on schooling at home see: <https://www.cde.ca.gov/sp/ps/homeschool.asp>)

**Synchronous Learning.** Synchronous learning takes place in “real-time,” with delivery of instruction and/or interaction with participants such as a live whole-class, small group, or individual meeting via an online platform or in-person when possible.

**Asynchronous Learning.** Asynchronous learning occurs without direct, simultaneous interaction of participants such as videos featuring direct instruction of new content students watch on their own time.

**Time Value.** Instructional time for distance learning is calculated based on the time value of synchronous and/or asynchronous assignments made by and certified by a certificated employee of the LEA. Time value for distance learning is different than time value used previously in independent study programs which include an evaluation of the time value of work product.

**Daily Live Interaction:** Daily live interaction is two-way communication between a certificated employee and student each instructional day, at the actual time of occurrence. Daily live interaction is required for every student with both a certificated employee and their student peers.

### **Program Design**

The intent [of the legislature] is that LEAs offer in-person instruction to the greatest extent possible. However, LEAs can, and in some instances must, offer distance learning and/or hybrid models of learning under certain circumstances [specifically] during the 2020–21 school year [*Education Code* Section 43503(a)(2)].

LEAs have the flexibility to determine what model best fits their situation, which includes hybrid and mixed-delivery models, so long as it ensures the safety of students and staff. The chosen model must consider the needs of students and staff, as well as the infrastructure available to the school. The model must also adhere to applicable state or local public health orders or guidance (e.g., wearing face coverings, social distancing requirements, etc.) and include all necessary academic and other supports designed to address the needs of pupils who are not performing at grade level, or need support in other areas. A hybrid model with synchronous and asynchronous teaching mixed with in-person support are the primary methodologies local school districts are planning to use as school re-opens.

### **Requirements for Distance Learning**

If an LEA offers distance learning, it must ensure the following:

- Student access to internet connectivity and devices to participate in the educational program.
- Quality, challenging content aligned to grade level standards equivalent to in-person instruction.
- Supports to address the needs of students.

Special education, related services, and accommodations required by an individualized education program.

Designated and integrated instruction in English language development.

Daily live interaction with certificated employees and peers.

SB 98 provides that "daily live interaction" may take the form of internet or telephonic instruction, or by other means permissible under public health orders. If "daily live interaction" is not "feasible" as part of regular instruction, the governing board of the LEA shall develop, with stakeholder input, an alternative plan for frequent live interaction that provides a comparable level of service and school connectedness. (*Education Code* Section 43503(b)(6))

The purpose of daily live interaction, which occurs with teachers and students, is to provide instruction, monitor progress, and maintain school/social connectedness. The intent of daily live interaction is to ensure each student has live contact at least once each instructional day with a certificated employee, and ideally live contact with peers, even if live contact is not possible as part of daily instruction.

Examples of daily live interaction include in-person and virtual communication or interactions, including but not limited to synchronous online instruction (per statute) and phone calls where both parties communicate at the time of occurrence. One-way communication, including voicemails, emails, or print materials, is not considered a live interaction.

#### **Other considerations under SB 98**

**Instructional days and minutes for Distance Learning and in-person instruction:** These areas were specifically determined for the 2020-21 school year; these requirements modified the instructional minute requirements, imposing minimum instructional minutes by grade level. SB 98 also provides that LEAs shall not be required to offer the minimum physical education minutes set forth under the Education Code.

**Daily participation logs, weekly engagement records, and attendance for Distance Learning:** SB 98 provides that all LEAs must document daily participation of each student on each school day, in whole or in part, for which distance learning is provided. If the student does not participate in distance learning, then they must be marked absent. Each LEA is also required to ensure that a "weekly engagement record" is completed for each student participating in distance learning.

LEAs must document daily student participation when providing distance learning. LEAs are also required to develop written tiered re-engagement strategies for students who are absent from distance learning for more than three school days or 60% percent of the instructional days in a school week, which may include transitioning the student back to in-person instruction.

For more details regarding Distance Learning, it is best to review documents available on the CDE website: <https://www.cde.ca.gov/ci/cr/dl/index.asp>. In this location they post the most current specific requirements and any changes that occur over the course of time.

## Chapter 7 - Personnel Development

The SELPA shall take steps to assist member LEAs in ensuring that personnel providing special education and related services meet the highly qualified requirements as defined under federal law. This includes providing such personnel opportunities to develop the content knowledge and skills needed to effectively serve children with disabilities. Such steps shall include collaboration with local colleges and universities pertaining to teacher education program design and supervision of student teachers and interns, as well as provision of ongoing staff development activities for school personnel.

The SELPA shall coordinate the ongoing program of personnel development based upon needs assessments that are completed by special educators in the spring of each school year. The SELPA staff develops the needs assessment with input provided by the Special Education Administrators Committee. The SELPA Executive Director approves the resulting annual personnel development plan.

The personnel development plan shall include opportunities for all school personnel to participate in ongoing development activities. Planned activities will be provided in collaboration and coordination with staff development activities offered by LEAs within the SELPA and community agencies.

A reasonable budget to cover necessary expenses for personnel development activities will be developed annually. Efforts will be made to operate the personnel development program within the funding received by the SELPA specifically for staff development.

Evaluation and modification of the personnel development program will occur on a continuing basis.

### Requesting Program Specialist Support

The goal of the Kern County Consortium SELPA is to build the capacity of educators, service providers, and families to affect positive outcomes for children. Consequently, it is the philosophy of the Kern County Consortium SELPA that technical assistance is provided to LEAs proactively to ensure that student outcomes are maximized. Districts are encouraged to seek consultation and/or assistance as soon as a need is determined at the site or district level.

SELPA Program Specialists build capacity through a variety of means including, but not limited to the following:

- LEA support – Provision of feedback and assistance in the provision of special education services through site visits and consultations.
- Centralized and embedded comprehensive staff development – Development and provision of comprehensive series emphasizing evidence-based best practices to enhance implementation of special education programs.

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- Evidence-based practice resources – Research updates made available via the SELPA website.
- Presentations for district use – Provision of professional development resources for LEA use on specific special education topics.
- Crisis Prevention Institute training – Centrally based full certification and refresher certification is provided.
- Program transfer support – LEAs receive support in planning and provision of special education services when transferring programs from another entity.

Program specialists meet with special education administrators at the beginning of the school year to review professional development offerings and to prioritize support needed. LEAs may request additional program specialist services through the SELPA office. LEAs requesting the services of SELPA Program Specialists must complete a *Request for Program Specialist Support* (see Appendices). This form can be accessed on the SELPA's website.

Once the *Request for Program Specialist Support* has been received and approved, the specialist will contact the staff member making the request to schedule the observation, consultation, support, or workshop. The specialist will determine, in collaboration with the referring party, the service that will be provided to the district to address the specific request.

When providing consultation to LEA staff, the specialist will provide recommendation(s) to the staff member in need of assistance. It is also essential that the specialist share the recommendation(s) with the district and/or site administrator responsible for special education services associated with the request. District administrators are ultimately responsible for ensuring that quality programming is available to special education students served by their district.

Citations: (E.C. § 56195.7)(b)(2)) (E.C. § 56368)

## **Chapter 8 – Program Review**

The Kern County Consortium SELPA will assist LEAs in conducting ongoing reviews of special education programs including, but not limited to, the following:

- 1) Review and evaluation of SIRAS/CALPADS data, State Dashboard, Annual Performance Review Document, DRDP Results, etc. regarding compliance items in all areas included in the State Performance Plan indicators (SSPI);
- 2) Establishing a process for regular evaluations of educational benefit;
- 3) Participation in the state’s Quality Assurance Process and follow-up activities;
- 4) Program development for the LEA’s CDE directed improvement plan;
- 5) LEA LCAP SELPA Consultation and CA System of Support activities;
- 6) Other reviews as appropriate.

The SELPA will provide training, consultation, and technical assistance to LEAs in addressing any problems that are identified through one or more of these processes.

In cases where identified problems persist following implementation of all of the above procedures, the SELPA Executive Director shall notify the LEA Superintendent and provide recommendations for further corrective action.

Citations: (E.C. § 56195.7)(j)(2))



## Chapter 9 – Program Transfers

It is the intent that all students that require special education intervention receive a free, appropriate public education in the least restrictive environment. As districts experience growth or decline in ADA, and as districts review programs and services offered by the districts to their students, it will be necessary for each LEA to consider special education program and service delivery models. The operation of programs and related services that will facilitate the students being served in the least restrictive environment will be supported by SELPA practices and procedures. The process of changing the delivery of services from one service provider to another will be considered when there are sufficient numbers of students and intent to provide a quality program.

### Legal Reference

No educational programs and services already in operation in school districts or a county office of education shall be transferred to another LEA or a county office of education or from a county office of education to an LEA unless the special education local plan area has developed a plan for the transfer that addresses, at a minimum, all of the following:

- 1) Student needs;
- 2) The availability of the full continuum of services to affected students;
- 3) The functional continuation of the current individualized education programs of all affected students;
- 4) The provision of services in the least restrictive environment from which affected students can benefit;
- 5) The maintenance of all appropriate support services;
- 6) The assurance that there will be compliance with all federal and state laws and regulations and special education local plan area policies;
- 7) The means through which parents and staff were represented in the planning process.

### Program Transfer Procedures

This policy applies to all LEAs, including the Kern County Superintendent of Schools Office Special Education Department in the Kern County Consortium SELPA. The policy incorporates the timeframe established by the California Department of Education (CDE) and must be followed in order to allow an orderly, consistent, legal transfer of program operation that will positively impact the students and employees that will be involved in and affected by the program transfer.

The CDE defines a program transfer and has stated that when the conditions listed below are met, there is a presumptive need to engage in the planning process required. A program transfer is when all of the following conditions are met:

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- 1) The proposed change involves a change in the LEA of service. The movement of students from one service provider to another (LEA) is involved.
- 2) The change involves the movement of funding locally from one service provider (LEA) to another. The transfer of funds could be accomplished through an agreement between LEAs or through the allocation plan developed by the SELPA.
- 3) The change must involve one or more employees who would be affected by the provision of the applicable education code.

It is the intent of the Superintendents' Executive Council that each LEA considering the initiation of special education programs or the transfer of programs being operated by another LEA or by the KCSOS will participate in the planning process. The SELPA has established a set of procedures that assure compliance and equitable consideration for both the sending and the receiving LEAs, which are detailed below:

- 1) The SELPA Executive Director will provide information to all LEAs regarding the program transfer intent process no later than May 30.
- 2) All LEAs are required to notify the SELPA Executive Director by June 15 of their intent to enter into the program transfer planning process. Written notice of the intent to transfer programs or services to an LEA or KCSOS will be provided no later than one year and one day prior to the year in which the transfer will be implemented. This is an intent notification that will permit the LEA to withdraw from the planning process at a later date, but will not allow later inclusion into the planning process.
- 3) An informational meeting will be held by the SELPA for the purpose of reviewing all factors to be considered in a program transfer no later than October 15. This will include process overview, required documentation, funding considerations, personnel issues, services, student count, housing and facilities, equipment and materials, assessment responsibilities, administrative considerations, required reports and data collection, transportation, medical/nursing issues, Regionalized Services support, and other issues as needed.
- 4) The LEA will notify the SELPA Executive Director of the decision to complete the program transfer process no later than January 31.
- 5) A written program transfer plan will be submitted to the SELPA Executive Director no later than February 15. The SELPA Executive Director will review the written plan and, if no changes or additions are required, will submit program transfer recommendation(s) to the Superintendents' Executive Council during the late February meeting.
- 6) The Superintendents' Executive Council will approve, request clarification, or disapprove the SELPA Executive Director's program transfer recommendation(s) during the late February meeting. The SELPA Executive Director will be responsible for notifying the LEA involved of the Council's determination within a week of the meeting.

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- 7) Unless otherwise approved, the receiving LEA shall assume responsibility for program operation on July 1 of the implementation year. The sending LEA will maintain responsibility through the completion of the extended school year (ESY).
- 8) All student records will be transferred to the receiving LEA no later than June 30 unless there is mutual agreement between the receiving and the sending LEA.

## Future Responsibilities

LEAs transferring programs assume responsibility for placing current and future students in those programs unless they meet the criteria for a more restrictive setting. Additionally, responsibility for assessment of students served in the transferred program lies with the receiving LEA.

## Dispute Resolution

In the event that the LEA initiating a program transfer or any other affected LEA disagrees with the decision of the Superintendents' Executive Council, the dispute resolution procedures outlined in Chapter 2 of Part II of the *Kern County Consortium SELPA Procedural Manual* will be followed.

Citations: (E.C. § 56000) (E.C. § 56207)

## **Chapter 10 – Regional and KCSOS Programs**

As part of the Kern County Consortium SELPA's efforts to coordinate the provision of a full continuum of special education and related services, and as a means of ensuring that students with disabilities receive a free and appropriate public education (FAPE) in the least restrictive environment, LEAs may enter into agreements whereby one LEA operates a program, class, or service on behalf of all LEAs within the SELPA or on behalf of several LEAs within an identified geographical zone. These programs, classes, or services will collectively be referred to as regional programs.

For purposes of this procedure all IEP team referrals from an LEA participating in a regional program that is operated by another will be considered IEP team referrals, not inter-district transfers. Placements made into another district as part of an IEP team referral do not require the parent to apply for an inter-district transfer.

### **Forming a Regional Program**

Any LEA or group of LEAs may propose the formation or transfer of a regional program. The proposal must be submitted in writing to the SELPA office. The SELPA Executive Director, who may seek input from appropriate advisory committees, as determined necessary, will review the proposal. If the proposal involves a program transfer from one LEA to another, the SELPA approved program transfer process must be followed.

Following review of the proposal and in accordance with the program transfer process when applicable, the SELPA Executive Director will place the item on the Superintendents' Executive Council agenda for review and action.

An LEA that is proposing to operate a regional program must commit to operating the program for a period of at least four school years following the first day of the first fiscal year beginning after the date on which the Superintendents' Executive Council approved the proposed regional program. If the LEA of operation wishes to cease operation of the regional program at the end of that four years, a written notice of preliminary intent to transfer program(s) from one LEA to another must be given by June 30 of the third year of operation. This will allow the LEA of operation to follow the program transfer procedures outlined in Chapter 7 of this handbook during the fourth year of operation.

### **Written Agreement**

The LEA of operation and LEAs of residence shall enter into a written agreement specifying the student population to be served by the regional program, the responsibilities of each LEA, the method of payment, etc.

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## Referral Process

When a student is being referred to a regional program, the LEA of residence shall:

- 1) Complete a referral packet that includes a current psycho-educational assessment, the most current IEP or IFSP (not required for initial referrals to special education), and any other pertinent documents and submit it to the designated contact person for the LEA of operation;
- 2) Schedule, in collaboration with the LEA of operation, a staffing to include all current and proposed service providers (including those from other agencies) within 15 school days of making the referral;
- 3) Attend the scheduled staffing;
- 4) Attend the IEP team meeting scheduled by the LEA of operation;
- 5) Forward all official records, for students who are placed into a regional program by the IEP team, to the LEA of operation following the IEP team meeting; and
- 6) Arrange for and fund transportation, for students who are placed into a regional program by the IEP team, following the IEP team meeting.

The LEA of operation shall:

- 1) Receive and log referrals;
- 2) Schedule parent visitations as needed;
- 3) Review records of student, conduct observations and/or interviews;
- 4) Attend the staffing scheduled by the LEA of residence;
- 5) Schedule, in collaboration with the designated contact person for the LEA of residence, an IEP team meeting to include all current and proposed service providers (including those from other agencies), if it is determined that the regional program is a possible option following the staffing, to be held within 10 school days of the staffing, unless otherwise agreed upon by both LEAs;
- 6) Provide a copy of the notice of IEP team meeting to parents and all team members;
- 7) Attend the scheduled IEP team meeting; and
- 8) Provide enrollment packets, for students who are placed into a regional program by the IEP team, to parents at or following the IEP team meeting.

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## Interim Placement

When a student moves into the district and requires placement in a regional program, the LEA of residence shall:

- 1) Notify the designated contact person of the LEA of Operation by phone/fax/e-mail within two school days of becoming aware of the student transfer;
- 2) Forward all available documentation, including IEP and parent contact information to the LEA of operation.
- 3) Request complete records from the previous school district and forward to the LEA of operation upon receipt; and

The LEA of Operation shall:

- 1) Review student data and contact the parents immediately;
- 2) Arrange for interim placement to begin no later than five school days from date of referral from the LEA of residence; notify district of residence as to school site/class placement;
- 3) Complete *Interim Placement Notice* and enrollment forms;
- 4) Conduct additional assessment as needed; and
- 5) Adopt the previously approved IEP and transcribe it to Kern County Consortium SELPA forms in SIRAS or develop and implement a new IEP within 30 days of the student's transfer.

## All IEP Meetings Following the Initial or Interim Placement

The LEA of Operation Shall:

- 1) Schedule, in collaboration with the designated contact person for the LEA of residence, an IEP team meeting to include all current and proposed service providers (including those from other agencies);
- 2) Provide a copy of the *Notice of IEP Meeting* to parents and all team members; and
- 3) Attend the scheduled IEP team meeting.

The LEA of Residence shall:

- 1) Attend the IEP team meeting scheduled by the LEA of Operation; and
- 2) Continue to provide any needed transportation.

#### Move to NPS/More Restrictive Placement

The LEA of Operation shall:

- 1) Notify the LEA of Residence that a more restrictive placement is being considered;
- 2) Review all records to ensure that assessments, behavioral reports, behavior intervention plans, counseling, etc. are documented;
- 3) Notify the SELPA Coordinator, Regional Center and/or other pertinent agencies;
- 4) Perform necessary formal and informal assessments if not current (current academic, speech, OT performance levels within the past 12 months; psycho-educational assessment within past 2 years);
- 5) Complete referrals to other agencies; and
- 6) Convene an IEP team meeting including LEA of Residence, SELPA Coordinator to discuss possible referral to NPS or more restrictive level of service.

The LEA of Residence shall:

- 1) Review all records with LEA of Operation;
- 2) Search for available placements, if needed;
- 3) Attend the IEP team meeting and make arrangements for new placement, if indicated;
- 4) Coordinate with other agencies and/or NPS throughout the placement process;
- 5) Coordinate parent visitations; and
- 6) Ensure that contracts are in place.

#### Return to District of Residence

The LEA of Operation or the LEA of Residence may recommend the possible return of a student to district of residence. When this occurs, the LEA making the recommendation shall notify the

other LEA prior to discussing the recommendation with the parents. Following notification, the LEA of Operation shall:

- 1) Prepare a packet of student records (containing a current copy of the student's IEP, the most current full psycho-educational assessment, and any other pertinent documents) and submit it to the designated contact person for the LEA of Residence;
- 2) In collaboration with the LEA of Residence, convene and attend a staffing within 15 school days;
- 3) Convene, in collaboration with the designated contact person for the LEA of Residence, an IEP team meeting, to be held within 10 school days of the staffing;
- 4) Send out the notice of IEP team meeting to parents and all team members;
- 5) Attend the IEP team meeting (for students moving into a less restrictive environment, the IEP must include a transition plan);
- 6) For students who are returned to their district of residence by the IEP team, forward all official records to the LEA of Residence following the IEP team meeting; and

The LEA of Residence shall:

- 1) Schedule parent visitations, as needed;
- 2) Review records of student, conduct observations and/or interviews;
- 3) In collaboration with the LEA of Operation, attend a staffing within 10 school days;
- 4) In collaboration with designated contact person for the LEA of Operation, convene and attend an IEP team meeting (for students moving into a less restrictive environment, the IEP must include a transition plan);
- 5) For students who are returned to their district of residence by the IEP team, provide enrollment packets to parents at or following the IEP team meeting; and
- 6) For students who are returned to their district of residence by the IEP team, make any changes to transportation arrangements that are needed.

## IEP Reviews and Reassessments

The LEA of Operation is responsible for conducting all IEP reviews and reassessments of the student while the student is enrolled in the regional program. The LEA of Residence shall be invited to all IEP team meetings.



## KCSOS Programs

County special education programs are program placement options for LEA students with significant specific needs which cannot (in the opinion of the IEP team) be met within the district of residence or a nearby regional program and for who appropriate program options exist within the KCSOS class settings.

The initial step to determine possible appropriateness is the referral process through Kern County Consortium SELPA Search and Serve. Students may be referred as the result of a 30-day administrative placement when moving to a member LEA from outside of the Kern County Consortium SELPA or when the IEP team recommends a change in placement to a more restrictive setting.

Additionally, member districts may request related services from KCSOS that cannot be provided by their staff. These related services may include speech and language, occupational therapy, adapted physical education, itinerant vision services, itinerant deaf/hard-of-hearing services, audiological services, orientation and mobility training, etc.

Member districts in need of KCSOS program placement options or related services enter into a contractual relationship with KCSOS for those services. The two contracts between the Kern County Superintendent of Schools Division of Special Education and Transportation and the member school districts of the Kern County Consortium SELPA are renewed annually.

The first contract outlines the agreement for reimbursement of the costs of the special education programs provided to the district students by the Kern County Superintendent of Schools Office.

The contract should be reviewed and signed in keeping with the district policy, by the Governing Board or the Superintendent, and returned to:

Administrator  
Division of Special Education Services  
Kern County Superintendent of Schools  
1300 17th Street, City Centre  
Bakersfield, CA 93301

The second contract is the agreement for reimbursement of the costs of the special education transportation provided to the district students by the Kern County Superintendent of Schools Division of Transportation. Members districts who are in need of those services can enter into the contract when needed; the contract is reviewed annually by the Director of Transportation Services.

The contract should be reviewed and signed in keeping with the district policy, by the Governing Board or the Superintendent, and returned to:

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Director  
Division of Transportation Services  
Kern County Superintendent of Schools  
1300 17<sup>th</sup> St.  
Bakersfield, CA 93301

## Disputes

Disputes between the district of operation and the district of residence regarding placement into regional or KCSOS programs or return of student from regional or KCSOS programs to the district of residence shall be resolved using the *Disputes between Participating Entities* process outlined in Chapter 3 of the administrative procedures section of this manual.

## **Chapter 11 – Services in Alternative Education Settings**

It shall be the policy of the Kern County Consortium SELPA that children with disabilities residing in hospitals, licensed children's institutions (LCI), foster homes, juvenile court and correctional programs shall be provided special education and related services as appropriate to their IEPs. Any pupil residing within the SELPA may be referred for special education services.

### **Hospitalized Pupils**

Each district shall be responsible for the provision of special education and related services to individuals with exceptional needs residing in hospitals and other residential facilities located within the geographical area of the district. Each district shall first consider services operated by the district and next by the other districts within the SELPA. If the special education services available within these entities are not appropriate, then the district shall contract with an appropriate service provider for implementation of the pupil's IEP. Sending districts, within and outside of the SELPA, will cooperate in sending any pertinent students records in a timely manner.

### **State Hospital Programs**

No state hospital programs are located within the Kern County Consortium SELPA. The local education agency is to receive prior notice regarding the return of the student to the district. If the district of residence does not receive prior notification, the district will attempt to obtain the current educational records in order to facilitate a timely and appropriate placement into an educational setting.

### **Licensed Children's Institutions (LCI) and Foster Homes**

Each district shall be responsible for the provision of special education and related services to individuals with exceptional needs residing in LCIs and foster homes located within the geographical area of the district. Each district shall first consider services operated by the district, or other districts within the Kern County Consortium SELPA. If the special education services available within the entities are not appropriate, then the district shall contract with an appropriate service provider for implementation of the pupil's IEP. Sending districts, within and outside of the SELPA, will cooperate in sending any pertinent students records in a timely manner.

### **Juvenile Court Programs**

Pupils with exceptional needs who have been placed in juvenile hall and court schools will be provided services as appropriate to their IEP. As identified in the Education Code, procedures for identification, referral, program planning, and review shall be utilized. These procedures are

defined in Part II Chapter 12 and are entitled Alternative Education Court and Community School Programs Operated by KCSOS.

### Adults Placed in Correctional Facilities (Jail)

Adults (aged 18 to 21 years) incarcerated in California adult jails and prisons are entitled to a free appropriate public education (FAPE) if they meet the following criteria:

- 1) Not a graduated with a high school diploma; and
- 2) At the time they turned 18, were identified as an individual with exceptional needs and had an individualized education program (IEP) under the IDEA.

However, an individual who was not identified as an individual with exceptional needs or did not have an IEP under the IDEA in the educational placement prior to his or her incarceration in an adult correctional facility is not entitled to a FAPE.

In December 2013, the California Supreme Court unanimously ruled in *LAUSD v. Garcia* that, under EC § 56041, the school district where the pupil's parent resides is responsible for providing special education and related services to a qualifying individual who is incarcerated in a county jail. This decision means that every school district in California can be held responsible to provide, or contract to provide, special education and related services to eligible incarcerated young adults if the youth's parent resides in the district, even if the student is incarcerated outside of the school district's boundaries. This includes obligations for all of the rights afforded by the IDEA and related state law including child find/search and serve, the provision of FAPE in the least restrictive environment (LRE), and the right to due process.

The following special education requirements do not apply to eligible individuals who are convicted as adults under State law and incarcerated in adult prisons:

- 1) The requirements relating to participation in general assessments; eligible individuals incarcerated in adult prisons are exempted from participation in state and district-wide assessment programs under the IDEA.
- 2) The requirements relating to transition planning and transition services do not apply with respect to such individuals whose eligibility under the IDEA will end because of their age before he or she will be released from prison.
- 3) The IEP Team may modify the individual's IEP or placement notwithstanding the LRE requirements and the IEP contents requirements if there is a bona fide security or compelling legal interest that cannot otherwise be accommodated.

## District of Residence

For eligible adults who, prior to reaching the age of majority, resided within the LEA geographic boundaries, the applicable LEA within the Kern County Consortium SELPA shall ensure they have available to them a FAPE. If the parent relocates to a new district of residence, the new district of residence shall become the responsible LEA. If the student is conserved, the residence of his or her conservator shall control placement. LEAs shall provide the services themselves or contract with one of the high school districts in the SELPA to provide them as necessary.

Citations: (E.C. § 56040)

## Chapter 12- Inter-SELPA Permits

The Kern County Consortium SELPA encompasses a wide-range of geographic areas. Due to the location and size of some LEAs within the SELPA, services for certain students may be limited within the LEA or in a particular geographic region. The Kern County Consortium SELPA shall assist LEAs in obtaining inter-SELPA permits, when necessary, to provide appropriate services to students.

The LEA of residence is responsible for the education of all students within their attendance areas as defined by their governing board. Free and appropriate educational instruction and services are to be provided to every individual with exceptional needs who is eligible to receive special education instruction and related services. A member LEA of the Kern County Consortium SELPA may seek to obtain appropriate educational instruction and services through an arrangement with another nearby SELPA when rendering the services is not practical or feasible locally. This can be done through the inter-SELPA permit process.

The steps for requesting an inter-SELPA permit are listed below:

- 1) The sending LEA will complete an *Inter-SELPA Permit* and send to the Kern County Consortium SELPA Executive Director providing following information regarding the student:
  - a) Name of Student
  - b) Birthdate
  - c) LEA of Residence
  - d) Address
  - e) Parent Name & Phone Number
  - f) Description of the unique student needs which cannot be met in the SELPA of residence
  - g) Eligibility
  - h) Descriptions of related services required to implement IEP
  - i) Additional data to be considered
  - j) Instructional aide needed (Y) or (N)
  - k) Special equipment needed (Y) or (N)
  - l) Who will provide transportation to inter-SELPA service location (LEA or KCSOS)

\*The inter-SELPA permit must be complete with all current IEP information in order to be processed.

- 2) The SELPA Executive Director will review the inter-SELPA permit to verify that appropriate services are not available within the LEA before signing and sending the permit to the receiving SELPA.

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- 3) The *Inter-SELPA Permit* is forwarded to the receiving SELPA Director for signature.
- 4) Once all signatures are obtained, the SELPA office will provide final copies to the sending LEA and the receiving SELPA.

\*Parent requests should follow the *inter-district permit* process. An inter-SELPA **does not** apply nor is required when a LEA accepts a student based on a parental request for inter-district transfer.

## Funding

The authorized signatures on the *Inter-SELPA Permit* obligate the LEA of residence to provide all funding associated with the costs of the *Inter-SELPA Permit*. The LEA of residence will ensure that the receiving SELPA/LEA receives timely payment for all services rendered.

## Chapter 13 - Nonpublic School/Agency Services

The SELPA recognizes certified nonpublic schools (NPS) and nonpublic agencies (NPA) as one placement/service option in a full continuum of placement/service options provided by LEAs and public agencies. Nonpublic school placement or nonpublic agency services will be provided only when all public school programs have been explored and it is determined by an IEP team that no appropriate placement/service is available in public schools to meet the needs of the individual student in the manner and to the extent required by law.

Before specifying placement in an NPS or services from an NPA, the IEP team must document efforts to utilize public schools. The LEA intending to offer placement in the NPS setting shall notify the SELPA Office sufficiently in advance of placement to allow the SELPA Coordinator to review public school options with the LEA. The IEP will list all placement options discussed and considered, and in the event that the IEP team selects an NPS or NPA option, the IEP will specify the anticipated date of return to the public school setting.

### Placing a Student and Visitation

Prior to providing services through an NPS or NPA, the responsible educational agency must enter into a master contract. The master contract specifies the general administrative and financial agreements between the NPS or NPA and the responsible educational agency. The SELPA limits contracts between member LEAs and nonpublic schools and agencies to those certified by the California Department of Education. The SELPA and member LEAs will determine their authority to visit, observe, monitor and report on the educational programs provided by any NPS or NPA under contract with a member LEA or involved in a potential placement by a member LEA. The LEA representative will visit the nonpublic, nonsectarian school both prior to student placement and at least once annually; both visitations will be reported to the California Department of Education, Special Education Division.

The Kern County Consortium SELPA Executive Director has been authorized to enter into master contracts with NPSs and NPAs on behalf of the member LEAs. Following execution of a master contract, an *Individual Services Agreement (ISA)* must be developed, executed, and implemented by the responsible LEA that outlines the specific special education and related services that will be provided to the individual student. A copy of the approved ISA will be forwarded to the SELPA Office following each IEP. The SELPA Executive Director will provide guidance and assistance in this process when requested.



The master contract will include procedures for billing of NPS or NPA services, attendance reporting requirements, assurances of appropriately credentialed staff, fingerprinting requirements, a written course of study that provides the appropriate credits necessary for graduation, state testing, progress reports, confidentiality of and access to student records, medication permission and documentation, and other items necessary to assure appropriate educational, health and safety practices for the student.

The LEA will schedule an IEP meeting at least every six (6) months and provide notification to the SELPA Office. Whenever necessary, the SELPA Office will have a representative at the IEP meeting. Necessity will be determined in conversation between the LEA Special Education Administrator and the SELPA Coordinator.

The SELPA retains the right to modify the master contract and ISA format without changing the local plan. The most recently approved master contract and ISA are incorporated into the local plan by this reference.

Each LEA that contracts with a nonpublic, nonsectarian school shall evaluate the placement of its pupil(s) in such schools on at least an annual basis as part of the annual IEP review. The LEA representative shall review the master contract, the individual services agreement, and the IEP to ensure that all services agreed upon and specified in the IEP are provided.

Nonpublic, nonsectarian schools are required by the master contract and the IEP to annually evaluate the pupil to determine if he/she is making appropriate educational progress. The LEA representative shall collaboratively review with the nonpublic, nonsectarian school the evaluations conducted by the nonpublic, nonsectarian school to ensure that they were appropriate and valid for measuring pupil progress. The LEA may choose to administer additional assessments as necessary, with parent consent where required, to determine whether the pupil is making adequate educational progress.

## Required Annual Behavioral Training

Nonpublic, nonsectarian schools and Nonpublic Agencies are required by California Education Code to provide an annual behavioral training to their staff. Each LEA with students placed at the nonpublic, nonsectarian school must verify that:

- a. The training has been:
  1. Conducted by persons licensed or certified in fields related to the evidence-based practices and interventions being taught.
  2. Taught in a manner consistent with the development and implementation of individualized education programs are consistent with the requirements of Article 5.2 (commencing with Section 49005) of Chapter 6 of Part 27, relating to pupil discipline.
- b. The content of the training included:

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1. Positive behavioral intervention and supports, including collection, analysis, and use of data to inform, plan, and implement behavioral supports.
  2. How to understand and address challenging behaviors, including evidence-based strategies for preventing those behaviors.
  3. Evidence-based interventions for reducing and replacing challenging behaviors, including de-escalation techniques.
- c. Any new staff member, the training will be provided within 30 days of employment.

## **Chapter 14 – Alternative Education Court/Community Programs Operated by KCSOS**

Students enrolled in alternative education court/community programs operated by the Kern County Superintendent of Schools Office shall, in addition to the individualized curricular program, continue in an interim placement comparable to that contained in the student's pre-disciplinary IEP. Students will continue to receive comparable services, modification and/or accommodations that were in place prior to enrollment in the alternative program. There will be no significant change in the student's instructional setting, method of service delivery, type of related services, or duration and frequency of instruction or related services without consideration of present levels and an Individualized Educational Plan meeting documenting the educational justification for such a change. The continuation of appropriate services requires the close collaboration and guidance from the District of Special Education Accountability (DSEA) and the alternative education program; for the court schools program, the Kern County Superintendent of Schools would be the DSEA. The intent of this policy is to provide a consistent approach to the collaboration necessary to support students who have demonstrated a need for alternative education programs and have the additional consideration required by special education needs.

### Policy Statement

The Juvenile Court and Community Schools of Kern County are administered by the Kern County Superintendents of School's Office (KCSOS). Students in grades K-12 are eligible to attend in the following circumstances:

- 1) Court ordered placement,
- 2) Expelled from their district,
- 3) Parent requested/district approval,
- 4) Referred or placed by probation,
- 5) SARB referred

KCSOS Alternative Education may not be the most appropriate placement for some special education students, even if they meet one of the above criteria. KCSOS works closely with the courts, districts, and other community agencies to provide a productive and successful educational setting. Long-term educational decision-making, including the provisions of FAPE, and fiscal responsibility for students enrolled in KCSOS Community Schools, remains with the DSEA. For students placed in KCSOS Court Schools, KCSOS Court Schools is the DSEA and responsible for the provision of FAPE.

## Procedures for Special Education Students placed in KCSOS Court/Community Schools

### Changes of Placement to KCSOS Court/Community Schools Programs

A change of placement of a special education student to KCSOS Court/Community Schools may be initiated by, among others:

- 1) *Community School Referral based on Parent Request/Probation Referral involving DSEA Approval*

In such case, the DSEA shall submit a “*Community School Referral/Recommendation*” form for placement to KCSOS Community School. The KCSOS Director of Internal Special Education Programs or designee will be provided copies of the most current IEP and supportive assessment documents and be invited to an IEP team meeting to determine if KCSOS is the most appropriate school/placement option.

- 2) *Juvenile Court/Probation Referral without DSEA Involvement*

KCSOS Court Schools may make a 30-day administrative placement when information is not available and subsequent for final placement recommendation according to California Education Code section 56325. When student records are available at entry, KCSOS Court Schools may accept or develop and addendum to an existing IEP, appropriate to meet the needs of the student.

- 3) *DSEA Referral following Expulsion*

The DSEA shall submit a “*Community School Referral/Recommendation*” form for placement to KCSOS Community School. The KCSOS Director of Internal Special Education Programs or designee will be provided copies of the most current IEP and supportive assessment documents. More details on placement of expelled students on IEPs can be found in the *KCSOS Countywide Plan for Expelled Students*.

\*All KCC SELPA member LEAs have agreed to follow the *Manifestation Determination IEP* procedures outlined in Chapter 5 of the Program Procedures section of this manual.

### Special Education Services

KCSOS Alternative Education personnel provide services to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals and objectives to benchmarks detailed in the student’s IEP.

### Student Records

At the time of enrollment into KCSOS Community Schools Program, KCSOS Alternative Education personnel will request and the DSEA shall thereafter, forward copies of the student's IEPs and immunization records to the KCSOS Alternate Education program.

At the time of placement in a juvenile court school, juvenile court school personnel will contact the DSEA to request the student's records. The district of residence will immediately forward copies of the student's school records, including immunization records, current transcripts, the student's current IEP, and most recent triennial and annual evaluation(s).

### IEP Team Meeting and Three-Year Reevaluations

If an initial, annual IEP team meeting and/or triennial reevaluation are pending at the time of enrollment, the responsibility for this activity rests with the DSEA. Alternative Education personnel must be invited to the IEP team meeting. For any and all IEP meetings for students currently placed in KCSOS Community Schools, the DSEA should be formally invited via the *Notice of IEP* form.

### **Additional Procedures for Ineligible Students**

Additional procedures for students who are not currently identified as eligible for Special Education Services placed in KCSOS Alternative Education.

Upon referral, the student's DSEA must inform KCSOS Alternative Education personnel when:

- 1) If, at the time of misconduct giving rise to the placement, the student's DSEA is assessing the student for eligibility for special education services, the district of residence must complete the assessment and conduct an IEP meeting adhering to all statutory time lines and other requirements; and/or
- 2) If while attending an Alternative Education program there is a request for an initial assessment for special education consideration, KCSOS Alternative education will contact the DSEA and discuss the option of the district completing the assessment and or doing a shared evaluation.

Citations: (E.C. § 48645.2)(E.C. § 56325)(E.C. § 56001)(E.C. § 48200)(E.C. § 48204)(E.C. § 48853)(Title 20 U.S. Code Section 1415(k); Title 34 Code of Federal Regulations Section 300.519 et seq)

## **Chapter 15 – Coordination of Services with Other Public Agencies**

The Kern County Consortium SELPA advocates for students with disabilities by supporting a comprehensive coordinated service delivery plan for the students that includes SELPA, KCSOS, local education agencies, state agencies, and local community agencies working together to improve outcomes for children.

The SELPA Executive Director will facilitate and negotiate interagency agreements for the provision and coordination of services by other public agencies that are funded to serve children with disabilities. In addition, the SELPA Executive Director is responsible for communicating with state and local agencies on behalf of member LEAs, as needed.

The Kern County Consortium SELPA has interagency agreements necessary to support the implementation of the local plan, and as required by legal mandates; they have been developed with the following agencies:

- California Children’s Services – pending agreement at the State level
- Kern County Head Start
- San Luis Obispo County Migrant and Seasonal Head Start
- Kern Regional Center

Other interagency agreements will be developed, as needed.

As the LEAs are ultimately responsible for services provided to students with disabilities, if the other agency providing a related service fails to provide the services listed on the IEP, the LEA is responsible and shall provide the service in accordance with an IEP, unless otherwise provided by law, without a disruption in service at no cost to the parent. The LEA would then have the option of seeking reimbursement from the agency through due process.