



# Special Education Rights for Children and Families



JUDICIAL COUNCIL  
OF CALIFORNIA

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OPERATIONS AND PROGRAMS DIVISION

CENTER FOR FAMILIES, CHILDREN & THE COURTS

## Is your child struggling in school?

If you are a parent, foster parent, guardian, or a person who holds education rights for a school-age child who is struggling in school, this information is for you. There are many reasons why a child may do poorly in school or not want to attend school regularly, including behavioral or emotional issues, language issues, medical problems, or learning disabilities. In addition, students who are in foster care may have experienced trauma that affects their ability to focus on school or leads to some of these behaviors and issues.

### What about a child who is not yet in school?

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A child under the age of 3 with a disability may be eligible for services from a Regional Center through California's Early Start program. To learn more, visit the website of the Department of Developmental Services at [www.dds.ca.gov/EarlyStart/index.cfm](http://www.dds.ca.gov/EarlyStart/index.cfm).

## It is important to ask for help if your child:

- Has difficulty reading, writing, or doing math;
- Has a hard time sitting still, concentrating, and following directions;
- Has problems with speaking or pronunciation;
- Often forgets where things are;
- Loses track of time;
- Has difficulty understanding concepts such as up and down, left and right, or front and back;
- Has problems with motor skills such as holding a pencil;
- Has trouble with personal routines for daily living; or
- Seems withdrawn or has trouble making friends.

### What do we mean by “parent”?

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For purposes of special education, a parent is a person who has the right to make educational decisions for a child. This person can be a foster parent, a guardian, a surrogate parent, or another responsible adult appointed by the court. If there is no one available to represent the child, the court itself may act as the parent for this purpose. A school district may appoint an “educational surrogate” to hold education rights for a child when the child’s biological parent cannot be located and the court is not involved in the child’s life. **Here, we use “parent” to mean anyone who holds education rights for a child.**

This information describes the process for identifying the need for special education and the services and supports the school can provide if your child is found eligible to receive them.

## **Why is it important to identify my child’s needs for special education services as early as possible?**

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Not all disabilities are easy to recognize. Learning disabilities, in particular, may be difficult to identify, especially since children with learning disabilities often have average or above-average intelligence. Yet intelligence alone is not enough to guarantee success in school. Without special services, children with learning disabilities may have difficulty learning and may become frustrated and choose to skip class or even drop out of school.

## **What if my child does not speak, read, or write English?**

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The inability to speak, read, write, or understand English is *not* a disability. However, students who have limited proficiency in English may also have a learning disability or experience other learning challenges. A child with limited English proficiency who is being evaluated for special education eligibility has the right to be tested in his or her native language. In addition, parents who are limited English proficient should receive information about special education and their child’s evaluation in their native language.

## **What kind of help will my child receive if he or she is eligible for special education?**

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Special education gives instruction and supports that are specially designed to meet the unique needs of a child whose disability affects his or her educational performance or ability to learn in a regular classroom. These special services are provided at no cost because state and federal law requires that all children in public schools who are eligible for special education receive a *free and appropriate public education*.

A child who is found eligible for special education may receive a variety of services, including speech and language therapy, psychological services, physical and occupational therapy, and counseling services. The child may also receive transportation and other supports needed to access and benefit from his or her education.

## Where will my child receive special education services?

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According to both state and federal law, children with disabilities must receive their education in the *least restrictive environment*. This means that your child must receive instruction with nondisabled peers to the maximum extent appropriate.

If, however, your child's disability is so severe that education in a general education classroom is not possible, even with support, your child should receive services in a more specialized environment. The school district must offer a range of placements for children, including:

- Instruction in the general education classroom (modified with appropriate supports);
- Resource specialist services (often called “pull-out” services because a child is usually “pulled out” of the classroom to receive them);
- Instruction in special classrooms and centers;
- Instruction in special schools for the visually impaired or for students who are deaf or hard of hearing;
- Home instruction;
- Placement and instruction in a residential facility such as a hospital or other institution; and
- Placement in an appropriate nonsectarian, nonpublic school.

## How will I know if my child needs special education?

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Both state and federal law list specific disabilities that may qualify a student to receive special education services. These disabilities include:

- intellectual disability
- hearing impairment, including deafness
- speech or language impairment
- visual impairment, including blindness
- emotional disturbance
- orthopedic impairment
- other health impairment
- specific learning disabilities
- autism
- traumatic brain injury

If your child has one of these disabilities *and the disability is interfering with his or her access to a basic level of education*, your child should qualify for special education.



Although your child’s school has a legal responsibility to identify students who are eligible for special education services, school personnel may not discover that your child needs help. *If you suspect that your child has a disability that entitles him or her to special education, it is critical that you request an assessment.*

### **What is an assessment?**

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An assessment is an evaluation process that usually involves tests, interviews, and observations designed to identify your child’s strengths and evaluate specific issues related to school performance. For example, if you suspect that your child has speech and language problems and you request an assessment of those issues, a speech and language professional will participate in the assessment. The assessment results may also identify the types of special education services your child needs.

### **Who can request an assessment?**

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A parent, teacher, or other service provider, such as a school psychologist or even your family physician, can request an assessment (called a “referral for assessment”). A referral for assessment must be in writing and should be addressed to the local educational agency (LEA), usually your local school district.

A letter requesting an assessment should state:

- your child’s full name;
- your child’s date of birth;
- your name, address, and phone number;
- whether your child is currently enrolled in school and, if so, the name of the school;

- whether your child has ever received special education services; and
- that your child is having learning problems that you think might require special education services and that you want an evaluation.

Deliver the request for assessment to your child’s teacher or school principal. If your child is not enrolled in school, address it to your school district’s director of special education. If you do not find anything called “Special Education” in your school district’s phone book or website, look for something like “Programs for Exceptional Children” or “Student Services,” which is often what special education departments are called. Be sure to keep a copy of your referral letter with the date of delivery to the school district.

### **What happens after the referral for assessment?**

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- +15 days** Once the school district receives the request for assessment, it must give you a proposed assessment plan within 15 days. The plan must specify the types of assessments to be conducted. It must also state that no special education services will result from the assessment without your consent in writing.
- +15 days** Once you receive the school’s proposed assessment plan, you may review it to decide whether to consent to the plan. If you agree to the plan, you must sign and return it to the school district within 15 days.
- +60 days** Once the school receives the signed assessment plan, it has 60 calendar days to conduct the assessment and hold a meeting to discuss the results of the testing. If the school term ends or a vacation of more than 5 days occurs during the assessment period, the non-school days do not count toward the 60-day time period.

### **How is eligibility for special education decided?**

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After you have agreed to an assessment plan, the school district should begin the assessment and schedule a meeting with you to discuss the results. As a parent, you may be asked to participate in testing by answering additional questions about your child’s functioning at home and at school. You have the right to request a copy of the assessment results in your native language.

You also may request that the written results be given to you *before* the meeting, to give you time to review them and prepare any questions.

At the meeting, the evaluators and professionals who work with your child will present the results of the testing and will give their opinion on whether your child should be considered eligible for special education.

As a parent and member of the team, you should also be asked to give your opinion. The final decision as to whether your child is eligible for special education is a *team decision*.

### **What is the relationship between a child’s disability category and the services offered?**

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Part of the eligibility determination involves deciding which disability category applies to a child based on the results of the assessment. However, regardless of which disability category applies, a child who is determined to be eligible for special education may receive *any* of the special education services and supports that are provided by the school district. For example, the team may decide that a student is eligible for special education because of an emotional disturbance. However, there may be indications from the assessment that the student needs help with speech and language, too. This student may receive speech and language therapy in addition to counseling services and any other service or support that addresses a need identified through the assessment.



### **What can I do if the school district believes that my child is not eligible for special education services based on its assessment, and I disagree?**

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If you disagree with the school district’s assessment, you have the right to request an independent assessment from qualified specialists, at public expense. This request should be made in writing and directed to the school district.

## **What will happen if the school district believes that my child is eligible for special education services based on its assessment, and I agree?**

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If the results of the assessment are clear and the team agrees that your child is eligible for special education services, the school district will probably propose a plan, called an Individualized Education Program (IEP), for services for your child.

### **What is an IEP?**

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An IEP, or Individualized Education Program, describes both a process and a written document. Once your child is found eligible for special education, you will participate in the process by attending an IEP meeting at your child's school at least once a year. At this meeting, you and the other members of the team will write an IEP document that describes your child's educational needs and the services that will be provided to meet those needs.



The IEP should include:

- a statement of your child's present levels of educational performance;
- a statement of measurable goals, including short- and long-term objectives;
- a statement of the special education and related services that your child needs;
- an explanation of the extent to which your child will not participate with nondisabled children; and
- projected dates for services to begin.

## Who develops the IEP?

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As the child's parent, you are an essential member of the IEP team.

The IEP team consists of:

- the child's parents (see *What do we mean by "parent"?*);
- at least 1 general education teacher, if the child receives or will receive services in a general education classroom;
- at least 1 special education teacher or provider (for example, a speech therapist or occupational therapist);
- a qualified representative of the school district or LEA;
- the person who conducted the assessment or someone who can interpret the results of the assessment, if the results of an assessment are being discussed;
- other individuals who have knowledge or special expertise about the child, at the discretion of the parents or LEA; and
- the child (as appropriate; however, must be invited to participate when discussing career and education goals after high school).

## How soon after the IEP meeting will my child receive help?

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At the meeting, you will be asked whether you consent to the IEP developed for your child. If you need more time to review the IEP and other materials before consenting, you may ask for the meeting to be continued at another time. Once you give your consent in writing, the school district must implement the IEP as soon as possible. If you do not consent, the district is not required or allowed to provide the proposed services to your child.

## What can I do if the IEP team agrees that my child is eligible, but I do not agree with the level or type of services offered in the IEP?

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Parents are an important part of the development of the IEP. They should be asked to give their opinions on the services offered, including the type, frequency, and location where services are provided. If you disagree with the school district about the proposed level or type of services, you have several options:

- You may refuse to sign the IEP at the initial meeting and take it home to review further. If you refuse to sign the IEP, the school district is not required or allowed to provide the proposed special education services to your child. If the purpose of the IEP is to determine eligibility, your

child will not be considered eligible until you sign the initial IEP. If you are attending an annual review of an existing IEP and you refuse to sign the IEP, the prior plan will remain in effect until resolution.

- You may sign the IEP and write a note next to your signature saying that you agree for the school district to start providing services to your child, but you do not agree that the offer of services is appropriate. This can be done with a simple sentence on the signature page or can be written up in a “Parents’ Addendum to the IEP,” which lays out your concerns in greater detail.

One situation in which this can be helpful is when the parents and the school district agree on the *type* of service offered (such as speech therapy), but do not agree on the *amount* offered (more or less speech therapy than the parents believe is appropriate for the child’s needs). Signing only an authorization of services can allow the student to start receiving important services while protecting the parents’ right to oppose the IEP and allowing for continuing negotiations with the school district.

### **What can I do if the school district fails to implement the services agreed on in the IEP?**

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If a parent or a person who holds educational decision-making rights agrees to an IEP and the school fails to implement the agreed services and supports, a parent or educational rights holder may file a complaint with the California Department of Education’s Special Education Division at [www.cde.ca.gov/sp/se/qa/cmplntproc.asp](http://www.cde.ca.gov/sp/se/qa/cmplntproc.asp).

This process is only used when a school district fails to provide the services and supports that are agreed on by the IEP team. If a parent or educational rights holder disagrees with the school about eligibility or about what services will be provided, this is resolved through a hearing process. See *What is the “right to request a hearing”?*

### **How often will my child’s IEP be reviewed?**

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An IEP meeting must be held at least annually. However, if you are concerned about problems with your child’s current IEP or feel that a new, unaddressed educational issue has arisen for your child, you do not have to wait until the annual IEP meeting to have these issues reviewed. Instead, you can request that an IEP meeting be held to discuss your concerns. Once the school receives your meeting request, the meeting must be held within 30 days.

## Will my child ever be reassessed?

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Once your child is receiving special education, the school must reassess your child every 3 years. These reassessments are called *triennial reviews*. If necessary, a teacher, parent, or caregiver may request a reassessment sooner.

## What if my child hurts himself or others, or is destroying property?

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Because such behavior may interfere with your child's IEP goals, the school is required to develop a *behavior intervention plan* for serious behavior problems that cause a student to harm himself or others, or that are destructive. The behavior intervention plan is intended to bring about positive behavioral changes. It should be incorporated into your child's IEP.

## What if my child is in special education and is suspended or expelled from school?

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A student may be suspended from school if the principal determines that the student has committed one of the acts described beginning in section 48900 of the California Education Code. Suspension rules apply to special education students just as they apply to nondisabled students. However, if a special education student is suspended for more than 10 consecutive school days (or 10 cumulative days for the same or similar offenses) or there is a decision to expel the student, the district must call an IEP meeting to determine whether the behavior leading to the suspension is a *manifestation* (a result) of the student's disability or whether the behavior is a result of the school's failure to implement the student's IEP. This meeting is called a *manifestation determination* and requires the attendance of the parent and other relevant members of the IEP team, as determined by the school and the parent.



## **What if the team determines that the misconduct was *not* a manifestation of my child’s disability?**

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If the team determines that the conduct was not a manifestation of your child’s disability and that the placement was appropriate, then your child will be subject to regular disciplinary procedures, including expulsion.

## **What if the team determines that the misconduct was a manifestation of my child’s disability?**

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If the team determines that the conduct was a manifestation of your child’s disability or that the behavior resulted from the school’s failure to implement the IEP, your child may not be expelled and the school must take measures to address his or her behavior.

## **What if I disagree with the conclusions of the team?**

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If you disagree with the team’s conclusions—either about the appropriateness of your child’s placement or the manifestation determination—or with its decision to rely on certain information, you have the right to request a hearing.

## **What if my child has not yet been determined to be eligible for special education?**

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If your child has not been found eligible for special education and has engaged in misconduct, he or she may still be protected from discipline or expulsion if the school knew that your child had a disability before the disciplinary action. The school is considered to have known of the disability if the parent had expressed concern in writing or submitted a request for assessment—or if the child’s teacher or another district employee had expressed concern about the child’s behavior—to the director of special education or other supervisory personnel.

## **What rights do parents and other educational rights holders have?**

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With respect to the provision of a free and appropriate public education, federal and state law gives children and their parents certain rights:

- The right to examine all records relating to their child;
- The right to participate in all meetings related to the identification, evaluation, and educational placement and program of their child;
- Procedures to protect a child’s rights when the parents are not known or cannot be located pending the appointment of a surrogate parent; or other educational rights holder;
- The right to written notice in the parents’ native language *before* a school proposes or refuses to initiate change in the identification, evaluation, or educational placement of their child;
- The right to mediation; and
- The right to present complaints about the identification, evaluation, or educational placement of their child.

### **What is the “right to request a hearing”?**

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You have the right to request a hearing if you disagree with the school district about the identification, evaluation, or educational placement of your child or the provision of a free and appropriate public education. The hearing (often referred to as a “fair hearing” or an “administrative hearing”) is conducted by the state; your child may attend the hearing with you.

If your case goes to a hearing in front of a judge, you have the right to:

- be accompanied by an attorney or other expert;
- present, confront, cross-examine, and compel the attendance of witnesses;
- receive a written or electronic record of the hearing;
- prohibit the introduction of evidence that has not been disclosed at least 5 days before the hearing;
- receive written or electronic findings of fact and a decision no more than 45 days after the school has received the hearing request; and
- receive reasonable attorney fees if you are the prevailing party.

Mediation is available in special education cases. You may request mediation instead of a hearing and you may make your request at any point in the hearing process. If you decide to participate in mediation, you will have the opportunity to meet with school district representatives in the presence of a trained mediator. The mediator can help you resolve the disagreement instead of going in front of a judge for a hearing, which can take longer and cost more money.

To learn more about your hearing rights and the hearing process, including the option for mediation, visit the website of the Special Education Division of the Office of Administrative Hearings at [www.dgs.ca.gov/oah/SpecialEducation.aspx](http://www.dgs.ca.gov/oah/SpecialEducation.aspx). A list of frequently asked questions and answers (FAQs) is available in English, Spanish, Tagalog, Hmong, Vietnamese, and Chinese.

## **Where can I receive more information or assistance?**

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There are a number of resources on the Internet with information for students with disabilities and their parents. (If you are the parent or the person who holds the educational decision-making rights for a foster child, your child's dependency attorney can help you find resources to address a suspected disability.) In addition, the following websites provide up-to-date information on special education rights and responsibilities:

Special education for children from birth through age 3:

### **Alliance for Children's Rights**

<http://kids-alliance.org/programs/education/special-education/>

Free or low-cost legal assistance with special education matters:

### **Office of Administrative Hearings, Attorney Advocate List**

[www.documents.dgs.ca.gov/oah/SE/Attorney%20Advocate%20List.pdf](http://www.documents.dgs.ca.gov/oah/SE/Attorney%20Advocate%20List.pdf)

Special education and school discipline:

### **California Foster Youth Education Task Force**

[www.cfyetf.org/publications\\_11\\_3259084835.pdf](http://www.cfyetf.org/publications_11_3259084835.pdf) (see Fact Sheet No. 10)

**Federal and state laws:** Individuals with Disabilities Education Act (IDEA), 20 U.S. Code § 1400 et seq.; federal regulations relating to the IDEA, 34 Code of Federal Regulations § 300.1 et seq.; Cal. Educ. Code §§ 56000 et seq. (special education) and 48900 et seq. (school discipline); Cal. Gov. Code § 7579.5 (surrogate parents).

This information is based on laws in effect as of September 2016. Federal and state laws can change at any time.

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For additional copies, please contact:

Judicial Council of California  
Center for Families, Children & the Courts  
455 Golden Gate Avenue, San Francisco, CA 94102-3688  
1-415-865-7739 | [cfcc@jud.ca.gov](mailto:cfcc@jud.ca.gov)



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