

Section F

ELIGIBILITY and IEP Development

Introduction

The law limits eligibility for special education services. The Individualized Education Program (IEP) team must determine that a student meets the three criteria noted in the next section for an IEP to be written and services provided.

Eligibility

Eligibility Criteria

To qualify for special education services, the child must be eligible under one of the following conditions **and** the disability must adversely affect a child's educational performance. Modifications and services in general education **must** have been utilized and documented to ensure that all other means of instruction cannot meet the child's needs without special education.

IDEA categories are limited to the following:

Autism (AUT): A developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three. Characteristics of autism include irregularities and impairments in communication, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not include children with characteristics of the disability ED (Emotionally Disturbed).

Deaf (DEAF): A hearing impairment that is so severe that the student is impaired in processing linguistic information through learning, with or without amplification

Deaf-Blindness (DB): Concomitant hearing and visual impairments, the combination of which causes severe communication, developmental, and educational problems

Emotionally Disturbed (ED): A condition exhibiting one or more of the following characteristics over a period of time and to a marked degree. An inability to learn which intellectual, sensory, or health factors cannot explain:

1. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers
2. Inappropriate types of behavior or feelings under normal circumstances
3. A general pervasive mood of unhappiness or depression
4. A tendency to develop physical symptoms or fears associated with personal or school problems

The term ED includes students who are schizophrenic. The term does not include students who are socially maladjusted, unless it is determined that they exhibit one or more of the characteristics listed above.

Established Medical Disability (EMD) - ages 3-5 only: A disabling medical condition or congenital syndrome that the IEP team determines has a high predictability of requiring special education and services

Hard of Hearing (HH): A hearing impairment, whether permanent or fluctuating, which adversely affects a student's educational performance, but which is not included under the definition of "Deaf" in this section

Mental Retardation (MR): Student has significantly below average general intellectual functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period

Multiple Disabilities (MD): Concomitant impairments (e.g., mentally retarded-blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes severe educational problems. The term does not include deaf-blind students.

Orthopedic Impairment (OI): A severe orthopedic impairment which adversely affects a student's educational performance. The term includes impairments caused by congenital abnormalities, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, etc.).

Other Health Impairment (OHI): Student has limited strength, vitality, or alertness due to chronic or acute health problems (e.g., heart condition, tuberculosis, rheumatic fever, AIDS, asthma, ADD/ADHD sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, etc.)

Specific Learning Disability (SLD): A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, minimal brain dysfunction, dyslexia, expressive or receptive language, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

In determining whether a student has a specific learning disability, a Local Educational Agency (LEA) may use a process that determines if the student responds to scientific, research-based intervention a part of the assessment procedures.

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.

If the standardized tests do not reveal a severe discrepancy, the IEP team may find that a severe discrepancy does exist; provided that the team documents that the severe discrepancy between ability and achievement exists as a result of a disorder in one or more basic psychological processes. The area, degree, basis, and method used in determining the discrepancy must be clearly stated. The team should consider:

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

Speech or Language Impairment (SLI): A communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment which adversely affects a student's educational performance

Traumatic Brain Injury (TBI): An injury to the brain caused by an external physical force or by an internal occurrence, such as a stroke or aneurysm, resulting in total or partial functional disability or psychosocial maladjustment that adversely affects educational performance. The term includes open or closed head injuries resulting in mild, moderate, or severe impairments in one or more areas, including 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 include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

Visually Impaired (VI): A visual impairment which, even with correction, adversely affects a student's educational performance. The term includes both partially seeing and blind students.

The Individualized Education Program (IEP)

IEP General Information

The IEP team is responsible for reviewing the assessment results, determining eligibility, determining the content of the IEP if special education services are required, and making recommendations for appropriate service (appropriate services must commence on the date determined by the IEP Team). In making these determinations, all general and categorical

programs must have been considered, and where appropriate, used to meet a student's educational needs.

The IEP (if required) includes a direct relationship between the present levels of performance, the goals and objectives (if required), and the specific educational services to be provided. The contents of the IEP must be made available to the student's teachers and other educational service providers.

It is the LEA's responsibility to assist the parents in fully participating in the IEP process. This includes, but is not limited to, provision of parent rights, explanation of rights as necessary, and arranging for interpreters for parents whose primary language is other than English or for parents who are deaf. A copy of the IEP is provided to the parents at no cost, and **when requested**, it is in the primary language of the parents.

The IEP offers students educational opportunities that promote maximum interaction with nondisabled peers in the **least restrictive environment (LRE)**. Special and general education staff coordinates instruction and curriculum.

An IEP meeting must be convened by LEA staff prior to the discontinuation of current services, including those provided by an outside agency. A report must also be developed as a means to document assessment rationale to discontinue service.

Mandatory IEP Meetings

The IEP team meets when any of the following occurs:

1. The student has been formally assessed
2. The student demonstrates a lack of anticipated progress
3. The teacher requests a meeting to develop, review, or revise the IEP
4. The parent requests an IEP meeting. This meeting must be held within 30 calendar days of receipt of parent's written request, not counting school breaks of more than five (5) days
5. At least annually to review the child's progress, the IEP, and the appropriateness of placement, and to make any necessary revisions
6. When a student with an existing IEP transfers into a LEA from outside San Luis Obispo County, the prior IEP must be reviewed and updated within 30 calendar days, and the student is provided services similar to those in the prior LEA for up to 30 calendar days.
7. When an eligible special education student has been suspended for more than a total of ten (10) days within a school year (see suspension explanation *Section I*)
8. When an eligible special education student is being considered for expulsion
9. When discontinuing a service

IEP Meeting Notification

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1. All attempts must be made to schedule a student's IEP team meeting at a time that is mutually convenient for the parent/legal guardian and school personnel.
2. Parents must be notified of the reason, time and place of the IEP meeting in writing prior to the meeting date.
3. The IEP notice is to be in the language or means of communication understood by the parent, to the extent possible.
4. All IEP team members, including DIS staff, are provided a copy of the written *Notice of Meeting* form and notified of any changes.
5. The *Notice of Meeting* is filed in the student's record.
6. More than one *Notice of Meeting* form and multiple telephone calls may be needed to get the IEP team member together.
Please note: Initial placement and changes of placement cannot occur without the parent/legal guardian's signature. If a student is presently in a program, that program continues until a new IEP is developed and signed by the parent/legal guardian.
7. If after several **documented** meetings have been scheduled and the parent/legal guardian is unable to attend, other team member may meet to complete the IEP. A member of the IEP team is designated to obtain the parent/legal guardian's signature in a timely manner.
8. Participation may be by phone/teleconference.

IEP Team Membership

Each IEP team shall include, but not be limited to, the following people:

1. The parents (including surrogate parent, legal guardian, or representative designated by the parent) of the student
2. At least one special education teacher, or where appropriate, at least one special education provider
3. A representative of the LEA who is qualified to provide, or supervise the provision of specially designed instruction to meet the needs of children with disabilities; is knowledgeable about the general curriculum and the availability of resources of the local agency
4. At least one regular education teacher if the child is, or may, participate in the general education setting

When appropriate, the team may also include:

1. The student for whom the meeting is held
2. Staff conducting the assessment of the student or knowledgeable of the assessment procedures used and capable of interpreting the results
3. At the discretion of the parent or the LEA, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. The determination of this knowledge/expertise shall be made by the party who invites the individual to be a member of the IEP team.

4. A team member who has observed the child in an age-appropriate setting, if the child is younger than five years and/or is not enrolled in any school
5. A representative from County Mental Health to discuss recommendations based on that agency's assessment of the student to determine that the student qualifies for mental health services and develop goals.
6. Representatives of other public agencies who provide, or may provide, services to the student to participate in the coordination of appropriate services (e.g., Tri-Counties Regional Center, Probation, Department of Rehabilitation, Department of Social Services)

Excusal from IEP Meetings

Although the Education Code allows for excusal of individual members of the IEP team from all or part of an IEP meeting, this practice is expected to be the exception, not the rule.

Members can only be excused if:

1. Their area of curriculum or related services is not being modified or discussed
2. After consultation with the member and the member being required to submit written input prior to the meeting and,
3. The parents and the LEA designee agree in writing to this excusal

In the vast majority of the IEPs it is expected that a general education representative will be in attendance. The general education representative is the student's teacher unless they are not in general education and then it is a teacher who is knowledgeable of the mainstreamed environment. If the student has more than one general education teacher only one is required to be in attendance.

If a general education teacher is not in attendance at a meeting and general education is discussed then the meeting should be adjourned and continued when the appropriate general education representative can be present. If the administrative designee is in doubt whether a general education representative should be in attendance it is most defensible to require such attendance.

Changes to the IEP

After the annual IEP is completed, changes may be made to the IEP by means of an Addendum. These changes may be agreed upon in two manners. Most often the IEP team comes back together and agrees on the changes. In this case, notification of an IEP meeting must be sent out following the standard procedure and excusal of members must follow the standard processes of mutual agreement. This may also be accomplished if both the LEA and the parent agree in writing by a meeting between the LEA special education administrator or designee and the parent. Teachers or school personnel if not designated by the special education administrator, or designee, are not allowed to amend IEPs by this process. Whether the IEP changes are made with a full team or by a meeting between the parents and LEA, changes are documented on the SELPA Addendum form.

Exit Criteria

A student may no longer qualify for special education services when the IEP team determines that one or more of the following criteria exist:

1. The needs, which were originally identified when the student was found eligible, have been addressed to the extent that the student can adequately function in the general school program without special education instruction or service (Evaluation report required)
2. The student no longer meets eligibility criteria for special education services as determined by a complete evaluation (Evaluation report required)

Evaluation report not needed:

1. The student graduates from high school with a regular diploma
2. When students turn 22 years of age during the months of January to June, inclusive, they may continue in their educational program to the end of the fiscal year, including any extended year program
3. When students turn 22 years of age during the months of July, August and September, they may continue their educational program to the end of the extended year program only
4. When students turn 22 years of age during the months of October, November and December, the educational program may continue until December 31 of that year
5. The exception is when the student would otherwise complete their IEP at the end of the current fiscal year or unless the person has not had an individual transition plan in place from the age of 20. In these cases the student may continue in their educational program until the end of the fiscal year.

IEP Contents

The IEP shows a direct relationship between the present levels of performance, the goals and objectives (if required), and the specific educational services to be provided. The IEP includes, but is not limited to, all of the following:

1. Statement of eligibility
2. The present levels of the child's educational performance including how the child's disability affects the child's involvement and progress in the general curriculum
3. The annual goals, including short-term instructional objectives (if required)/benchmarks
4. The specific educational instruction, related services, and supplementary aids and services required for the child
5. The extent to which the child will be able to participate in general education programs

6. The projected date for initiation and the anticipated duration of such programs and services
7. Appropriate objective criteria, assessment procedures, and schedules for determining, on at least an annual basis, whether the short-term instructional objectives (if required) have been achieved
8. Physical education needs
9. Means of reporting progress
10. A statement of the transition needs of the child which is focused on courses of study
11. Beginning at age 14, or younger if determined appropriate by the IEP team, a statement of needed transition services, including, when appropriate, a statement of the interagency responsibilities or needed linkages
12. Parental consent to all parts of the IEP
13. A statement of the program modifications or supports required

When appropriate, the IEP will also include, but not be limited to, all of the following:

1. Pre-vocational career education for children in kindergarten and grades one to six
2. Vocational education, career education or work experience education, or any combination of these, in preparation for paid employment, including independent living skills training for children in grades seven to twelve
3. For children whose primary language is other than English, linguistically appropriate goals, objectives (if required), programs, and services
4. Extended school year needs to be determined by the IEP team whether or not it is required for the student
5. Provisions for the transition into regular class program if the child is to be transferred from a special class or center, or nonpublic, nonsectarian school into a regular class in a public school for any part of the school day
6. Appropriate specialized services, materials, and equipment for students with low incidence disabilities
7. A behavioral intervention plan

Individual Transition Plan (ITP)

Transition Planning to Post-Secondary

State and Federal laws require additional content shall be included in the IEP no later than the first IEP to be in effect when a student is 16 years old. This additional content shall include:

1. Appropriate measurable postsecondary goals based upon age-appropriate transition assessment relating to training, education, employment, and when appropriate independent living skills and
2. Transition services including courses of study.

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Transition goals shall be documented on the SELPA form designated for this use. Transition goals must contain the components required of all goals including a measurement standard. transition services (EC 56345.1) refer to a coordinated set of activities for a student that are as follows:

1. Designed within an outcome-oriented process that promotes movement from school to post-school activities
2. Are based upon the student's needs taking into account the student's preferences and interests
3. Include instruction, related services, community experiences, the development of employment and other post-school living objectives (if required)

Agencies other than a LEA or the SLOCOE may participate in providing the transition services. However if such an agency fails to provide transition services described in the IEP, the LEA shall reconvene the IEP team meeting to identify alternative strategies to meet the transition services needs.

Transition from Preschool to Elementary School (EC 56455)

Prior to transitioning a student from a preschool program to kindergarten or first grade, a reassessment of the student shall be conducted to determine if the student is still eligible for special education services.

Transition Planning from Early Start to Preschool Settings (EC 56426.9)

An IEP shall be developed by the LEA where the student resides in conjunction with the Early Start personnel, TCRC staff, and if appropriate, the SLOCOE for students enrolled in Early Start services prior to their third birthday. This planning should start at age 2.6 and culminate with an IEP allowing for educational placement as close to the child turning three as possible.

See Section C and the Birth to Three Interagency Agreement with Tri Counties Regional Center.

Revised and approved by SEOC on October 19, 2006

APPENDIX

[Date]

[To Parent]

We have agreed to excuse [name of IEP team member], who normally provides information at the meetings concerning [curriculum or service area], because of a conflict in schedules. This excusal is based on:

- The fact that this team member's area of curriculum or related service is not being modified or discussed in the upcoming meeting;
- or
- This team member's area of curriculum or related service is being discussed and the member will submit pertinent written input prior to the meeting.

We feel this excusal is warranted and if you agree by signing and returning the enclosed copy of this letter, this excusal is allowable under the 20 U.S.C 1414 (d)(1)(C) of the Federal Law (IDEA).

Sincerely,

[Name]
Special Education Director / Designee

Enclosure

Parent signature

Date