

EDUCATION ADVOCACY MANUAL

NLSLA Education Rights Practice



Neighborhood Legal Services
of Los Angeles County

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—ADVOCACY BASICS—

How do you request a student's education records?

Education records are maintained by an educational agency, like a school or school district and document a student's cumulative educational history. They typically include, but are not limited to, grades, transcripts, course schedules, class lists, health records, attendance records, discipline records, and contact logs. If the student has a disability and receives services under the Individuals with Disabilities Education Act ("IDEA") or Section 504 of the Rehabilitation Act ("Section 504"), their education records will also include Individualized Education Programs ("IEP") or Section 504 Plans, evaluations, protocols, and service logs. Records may take the form of documents, emails, media, or recorded materials.

State and federal regulations¹ require school districts to comply with a parent's request to inspect and review their student's education records. In California, parents have the right to receive all student records within **five business days** of a written or oral request. As a parent, you also have the right to authorize a legal representative to request the records on your behalf as long as you provide them with a signed authorization to release information and records (see below).

Reviewing education records is a critical part of effectively advocating on behalf of your student, as they will help you better understand the student's needs, show the interventions that have and have not worked in the past, and allow you to compare and monitor academic and behavioral progress over time.

The steps below outline how to request your student's education records.

1. *Determine who the Education Rights Holder ("ERH") is.*

Under the Family Educational Rights and Privacy Act ("FERPA"), only a student's parent, legal guardian, or education rights holder has the legal right to inspect and review a student's education records. As previously stated, you can also authorize advocates, such as an attorney, to request records as long as they can demonstrate they have your permission.

The ERH could be:

- Biological parents, unless their rights have been limited or terminated by a court;

¹ 34 C.F.R. §§ 99.10, 300.613; 20 U.S.C. § 1232(g); Cal. Educ. Code § 49069.7, 56504.

- Adoptive parents with an adoption order;
- Legal guardians with letters of guardianship from a court; or
- Responsible adults appointed by the court to hold education rights via a **JV-535** form or a minute order (e.g., foster parents, relative caregivers, or Court Appointed Special Advocates).

If you are the ERH but are a person other than the student's biological parent, make a copy of the document that proves that you have education rights (i.e., the adoption order, JV-535 form, or the letter of guardianship). You may need to attach this to the records request you send to schools/districts.

If an attorney is requesting your student's records on your behalf, be sure they have signed Authorization to Release Information and Records. You can use the one found in [Appendix A](#).

A copy of this form should be attached to every records request the attorney sends to a school, district, or local education agency ("LEA"), as it shows the custodian of records that they have your permission as the ERH to request and receive the student's educational documents.

Remember that if the ERH is someone other than a biological parent, you may need to attach a copy of the ERH's proof of education rights (i.e., adoption order, JV 535, etc.).

2. *Compose a letter to the district/school using the sample Record Request Letter included in [Appendix B](#).*
3. *Fax the records request, authorization from the ERH (if applicable), and the ERH's proof of education rights (if applicable) to every school and district the student has attended.*

This may mean you are sending several records requests. It is very important that you fax the records request and keep the fax confirmation for your file in case there is a dispute with the school over whether it received the records request. You may also send records by certified mail and keep the receipt as proof.

It is good practice to follow up a records request 2 days later with a phone call to the custodian of records to ensure the request was received.

4. *Mark your calendar for **5 business days** from the day you send each request. By law, schools and districts only have 5 business days to respond to each records request they receive.*

If by the 5th day you have not received the records, contact the school to ask that they send the records immediately. If the school does not have the records you ask for, get this in writing.

If no records are provided within the 5-day window and you have contacted the school to no avail, you can do one of the following:

- (1) If your student is in special education, send a compliance complaint threat letter, found at Appendix C. If the district is still unresponsive, you may need to file a compliance complaint. More information on filing compliance complaints is found in the Special Education Advocacy Section below;
- (2) If your student is not in special education and the district does not provide records within 5 days, you can submit a complaint through your district's local complaint process. Refer to the district's website for governing procedures; or
- (3) File a complaint with the Student Privacy Policy Office, the federal government office that enforces FERPA. Information on how to submit a complaint alleging violations of rights under FERPA can be found here: <https://studentprivacy.ed.gov/file-a-complaint>.

5. *Organize and review the records.*

Once you receive the records, organize them chronologically and by school year,² and read through them to make sure you received everything you requested. You should make sure you received all report cards, attendance records, transcripts, behavior notes/suspension notices, IEPs, and service logs (if the student is in special education).

If the student is in special education, pay attention to the IEP dates to make sure the school held an IEP every year and reassessed the student every three years. More information on IEPs is provided below.

If any records are missing, contact the school and request the missing documents.

² Typically, school years go from August of one year to July of the next.

—SPECIAL EDUCATION ADVOCACY—

—SPECIAL EDUCATION LAWS AND IMPORTANT TERMS—

The right to special education services in California public schools is guaranteed by both federal and state laws.

The federal laws that protect students with disabilities include:

- The Individuals with Disabilities Education Act (“IDEA”);
- Title II of the Americans with Disabilities Act (“ADA”);
- Section 504 of the Rehabilitation Act (“Section 504” or “504”);
- The Code of Federal Regulations (“C.F.R.”).

California laws include:

- The California Education Code (“Cal. Educ. Code”);
- The California Code of Regulations (“CCR”); and
- The California Welfare and Institutions Code (“WIC”).

These laws ensure that students with disabilities receive “special education and related services.”³ The special education program the school provides must be specially designed to meet each eligible student’s unique needs so they can make progress in school.

All special education programs must give students with special needs a “free, appropriate, public education” (“FAPE”) in the least restrictive environment (“LRE”). What that means for each student is defined by the student’s individualized education program (“IEP”).

Working in special education law requires advocates to be familiar with several acronyms and terms that are used in school documents, correspondences, and meetings. See [Appendix D](#) for a glossary of common special education terms.

³ 20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300 et seq., Cal. Educ. Code § 56000 et seq., 5 Cal. Code Regs. § 3000 et seq.

What is a Free Appropriate Public Education?

IDEA and Section 504 of the Rehabilitation Act guarantee students with disabilities the right to a “free appropriate public education,” or a “FAPE.” Schools are responsible for ensuring that all students in special education receive a FAPE. Each letter in FAPE comes with its own set of privileges and protections that students with disabilities have a right to demand.

➤ **FREE**

“Free” means that all students eligible for special education receive services at public expense.

➤ **APPROPRIATE**

“Appropriate” means that IEPs must be “appropriately ambitious in light of [a child’s] circumstances.”⁴ While the practical meaning of this standard is still being settled in light of recent Supreme Court cases, students are entitled to IEPs that are tailored to their needs and designed to help them make more than “minimal” progress.

➤ **PUBLIC**

“Public” refers to the public-school system. Children with disabilities, regardless of the nature and severity of those disabilities, have the right to be educated under the public’s supervision with the accountability that provides.

➤ **EDUCATION**

“Education” means that an eligible student must be provided with the education and services outlined in their education program.

How to advocate for students when FAPE is violated or denied to students will be discussed further below.

⁴ See Endrew F v. Douglas Cty Sch. Dist RE-1, 580 U.S. ____ (2017)

What is the least restrictive environment?

Students with special needs must have the chance to receive a FAPE in the least restrictive environment. Least Restrictive Environment (“LRE”) requires students with disabilities to be educated alongside their non-disabled peers to the maximum extent appropriate.

Special classes, separate schooling, or removal from regularly scheduled classes should only occur when the IEP team determines that the student’s disability makes education in general education classes impractical, even with the use of supplemental aides or services.⁵

The school’s plan for how a student will receive a FAPE in the least restrictive environment is laid out in the student’s individualized education program, or “IEP.”

What is an Individualized Education Program?

The term “individualized education program,” or “IEP,” refers to three different things. It means (1) the team meeting where the student’s educational needs are discussed, (2) the process used to determine what those needs are, and (3) the written plan schools make to meet those needs.

The IEP is essentially a legal document and process that lays out the program of special education instruction, supports, and services that eligible students with disabilities need to succeed in school. Each IEP must be specially designed to meet a student’s unique academic, behavioral, and health needs.

More information on how a student becomes eligible for an IEP, who should be on the IEP team, and what should be discussed at the meeting can be found below.

⁵ 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114

—SPECIAL EDUCATION ELIGIBILITY—

Schools should follow the steps below to determine if a student is eligible for special education services through an IEP.

When is a student “eligible” for special education services?

To be eligible for special education under the IDEA, a student must be 0-22 years old and fall within one or more specific categories of qualifying conditions:⁶

- Autism
- Specific learning disability
- Speech or language impairment
- Emotional disturbance
- Traumatic brain injury
- Visual impairment, including blindness
- Hearing impairment, including deafness
- Intellectual disability
- Multiple disabilities
- Other health impairments
- Orthopedic impairment
- Deaf-blindness

If you want more information on the criteria for each eligibility category, visit <https://allianceforchildrensrights.org/resources/special-education-eligibility-checklist/>.

How does a student become eligible for special education?

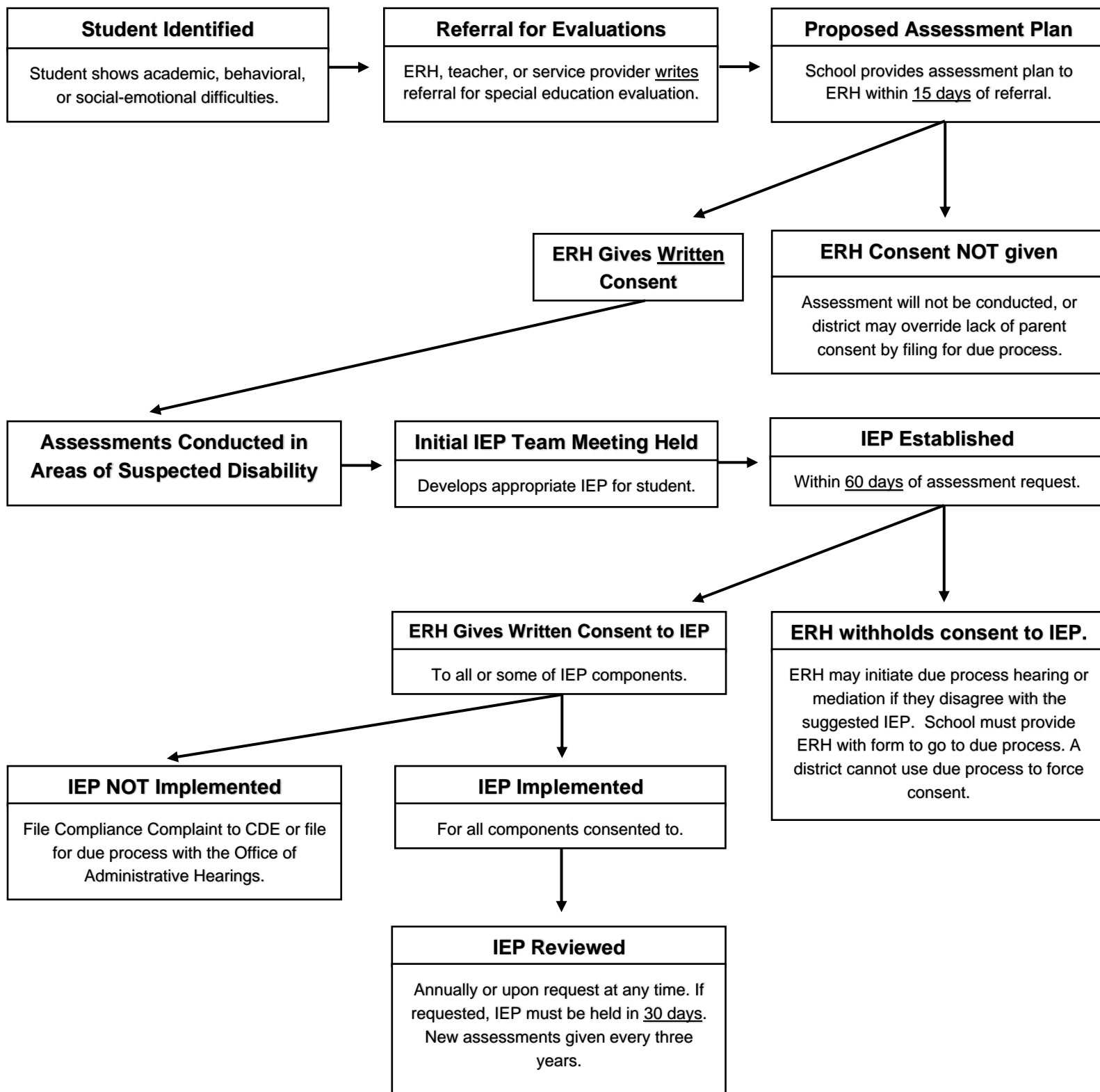
The law requires that schools follow specific steps and timelines when it comes to identifying students who need special education, responding to assessment requests, scheduling IEPs, and assessing students.

There are typically four steps involved in special education eligibility: (1) identifying a struggling student who may need services; (2) referring the student for evaluation; (3) evaluating the student; and (4) holding the initial IEP. Each of these steps is explained in detail below.

On the next page, you will also find a timeline for how students are found eligible for special education and what deadlines you need to pay attention to in this process.

⁶ 20 U.S.C. § 1401(3)

SPECIAL EDUCATION ELIGIBILITY TIMELINE⁷



⁷ Thank you to Public Counsel for adaptation of their timeline resource.

STEP 1 – How does a school identify a struggling student?

Who can ask for special education services?

Anyone—including a teacher, parent, education rights holder, counselor, or administrator—can identify a child as possibly needing special education services and refer them for evaluation, but schools are required to look for and find students with disabilities who need services.

A school may argue that a student needs a doctor's note or a recommendation from a teacher before evaluating them for an IEP. This is NOT true.

Does a school have a responsibility to look for students with possible disabilities?

The IDEA legally mandates that schools identify, locate, and evaluate all students who have disabilities or need special education services. This requirement is known as the “Child Find” mandate.⁸

Child Find applies to all children from birth to 21 years old, including children who attend public, private, or charter schools, homeless or migrant children, and children who are wards of the state.⁹

Child Find requires a school to have a plan to identify and assess students who may need special education. The school must notify the public of this plan.

Common signs that a student may have a disability or need special education include:

- Poor grades or attendance;
- Difficulty with classroom activities or assignments;
- Speech and language problems;
- Problems with memory or attention; and/or
- Social or emotional problems.

⁸ 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111; Cal. Educ. Code § 56300

⁹ 20 U.S.C. 1412(a)(3)

STEP 2 – How is a student referred for special education evaluation?

Before a student can start receiving special education services, they must be evaluated to see if they are eligible. Remember, in order for a student to be eligible for special education, they must be 0-22 years old and fall under one of the disability categories listed above.

Does the school have to make the referral?

No. Anyone can refer a student for special education evaluation.

If a school suspects¹⁰ a student of having a disability, the school must refer them for evaluation within a reasonable time.¹¹ Whether or not a student has a suspected disability is a low threshold—if a student shows any of the signs listed above, the school should probably evaluate them.

A school's failure to identify or evaluate a potentially eligible student for special education may amount to a due process violation for which some administrative law judges will award compensatory services or even money damages, depending on the jurisdiction.¹² Information concerning filing due process complaints can be found below.

If the school has not made a referral, you can ask for an evaluation on your student's behalf. See [Appendix E](#) for sample special education assessment or reassessment request forms that you can use to request evaluations for a student.

How can you request a special education evaluation?

1. Write a letter or complete the Special Education Assessment Request Form found in [Appendix E](#) outlining the student's academic and behavioral needs.
2. Submit the letter or form to your student's principal or special education coordinator.
3. Get proof that the request was submitted and received by the school in case the school does not respond to the request or there is some other dispute. You can do the following to get proof:

¹⁰ 20 U.S.C. § 1414(a)

¹¹ W.B. v. Matula, 67 F.3d 484 (3rd Cir. 1995)

¹² See Pamela Wright & Pete Wright, *The Child Find Mandate: What Does It Mean to You?*, WRIGHTSLAW (Jan. 1, 2019), <https://www.wrightslaw.com/info/child.find.mandate.html>

- If delivering in person, get a timestamp on the form and keep a copy;
 - Fax the form and keep a copy of the confirmation sheet showing it was received; and
 - Send it by certified mail and keep the receipt.
2. Get the school's response. The school is legally required to send a response to an assessment request within 15 calendar days of receiving it. They can respond by either (1) sending an assessment plan or (2) sending a written refusal to complete the assessment.

NOTE: You should not accept any other responses than the two listed above. The school may try to get you to agree to a parent-teacher conference or a Student Study Team ("SST") meeting instead of doing the assessment requested. You do not have to agree to these.

3. Review the assessment plan. If you agree, sign and return it within 15 calendar days. Before you sign, make sure the school is doing all the necessary assessments (i.e., cognition, academics, motor, processing, social-emotional, behavioral, attention).

Request in writing on the assessment plan to receive a copy of the assessment report(s) 5 business days before the IEP meeting.

What if the school refuses to assess the student?

- Get an explanation from the school
- Have the ERH pay for their own evaluation from a doctor. Note that the school does not usually have to pay for this.
- File a due process complaint, a request for mediation with the district, or a complaint to the California Department of Education. More information can be found at the end of this manual.

What is an SST meeting?

An SST, or Student Study Team, meeting is designed to help support students having some kind of trouble in general education classrooms.

It is not part of the IEP process nor is it designed to support students in special education.

Some schools will try to schedule an SST meeting before assessing a student for an IEP to see if non-special education services or interventions will work.

STEP 3 – What happens when the school evaluates a student for special education eligibility?

Once the school agrees to evaluate the student based on a referral and you have signed off on the assessment plan, the school has 60 calendar days to complete all of the assessments on the plan and schedule an IEP meeting.

What kinds of assessments should the school do?

Below are the types of assessments that the school should do and that you or the ERH can request:

- Neuropsychological assessments (assessing intellectual level, language skills, nonverbal or visual skills, memory, attention, organization, judgment, academic skills, and emotional status);
- Speech and language evaluations (assessing the student's written and verbal use, understanding, and expression of language);
- Psycho-educational evaluations (assessing present levels of performance in reading, math, spelling, writing, and intelligence quotient¹³);
- Educational evaluations (assessing grade level performance);
- Occupational and physical therapy evaluations (assessing sensory motor skills); and
- Personality or projective evaluations (assessing emotions and psychological triggers).

Can you get a second opinion if you disagree with the results of the district's assessments?

Yes. You can request that assessments be completed by an independent educational evaluator if you disagree with or have reason to doubt the findings district-administered assessments. In most cases, the district has to pay for the student to get an independent educational evaluation ("IEE").

When you request an IEE, the district must give you information on where to get an independent evaluation, a list of qualified examiners in the area, and a copy of district policies related to pricing guidelines and other standards. You can also choose your own evaluator, even if your evaluator is not on a district's list.

¹³ CDE has banned intelligence quotient (IQ) tests for Black students following two federal court decisions, *Larry P. v. Riles*, 793 F.2d 696 (9th Cir. 1984) and *Crawford v. Honig*, 37 F.3d 485 (9th Cir. 1994).

The district can respond to a request for an IEE in one of two ways:

- (1) It can make sure you get an IEE at no cost to you, or
- (2) It can file for a due process hearing to prove that the assessments it did were appropriate. More information on due process hearings will be given later.

See [Appendix F](#) for a form that can be used to request an objective evaluation by an independent educational evaluator.

STEP 4 – When is the initial IEP and what happens at the meeting?

The school has 60 days after you consent to the assessment plan to evaluate your student and hold an initial IEP meeting.

At the initial IEP meeting, the team will discuss the assessment results and reach an agreement about whether the student is eligible, and if so, under which eligibility category. More information about eligibility categories is provided below and in [Appendix G](#).

What happens if the school does not complete the assessments or hold the IEP within 60 days?

If the school violates this timeline (or any other timeline within IDEA or California law), see the section below on filing compliance complaints or scheduling a due process hearing.

Where is the IEP meeting held?

The IEP meeting can be held at the school, district office, or sometimes virtually with a team of people, called the IEP team.

Who is on the IEP team?

The IEP team is made of several people who know the student or are qualified to evaluate or provide services to the student.¹⁴ The IEP team must include:

- Education rights holder (e.g., parent, guardian, or appointed representative);
- General education teacher;
- Special education teacher;
- District representative who can authorize money for service provision; and

¹⁴ 20 U.S.C. § 1414(d)(1)(B); Cal. Educ. Code § 56341(b)

- Someone qualified to explain the student's assessments.

The team may also include any other people or experts who know or are qualified to advocate on behalf of the student. This can include an attorney, the student's therapist, or a tutor. The student is also able to attend if appropriate.

What Should Be Discussed at the IEP Meeting

The idea behind the IEP is that all students have unique needs, and their education should be individualized and appropriate to meet those needs. Instead of a one-size-fits-all approach, the law encourages IEP teams to work together to make a plan that effectively addresses a student's academic, social, and emotional needs.¹⁵

Every meeting must discuss:

- The student's current levels of academic performance, often called "present levels of performance" or "PLOPS";¹⁶
- Annual goals and objectives, which must be objective, measurable, and responsive to all noted areas of weakness;¹⁷
- Accommodations or modifications to the student's curriculum or classroom expectations;¹⁸
- Special education and related services available to the student based on their disability;¹⁹
- When, where, and how often the student will receive services;²⁰
- What the student's "least restrictive environment" is and where they should be placed;²¹
- Whether the student will be assessed on state standardized tests and whether they will get any kind of support for these tests;²² and
- Whether the student will be given assistive technology to help with classwork.²³

¹⁵ 20 U.S.C. § 1414(d)(3)(A); Cal. Educ. Code § 56342(a)

¹⁶ 20 U.S.C. § 1414(d)(1)(A)(i)(I)

¹⁷ 20 U.S.C. § 1414(d)(1)(A)(i)(II), Cal. Educ. Code § 56345(a)(2)

¹⁸ 20 U.S.C. § 1414(c)(1)(B)(iv), Cal. Educ. Code § 56345(a)(4)

¹⁹ 20 U.S.C. § 1414(d)(1)(A)(i)(IV), Cal. Educ. Code § 56345(a)(4)

²⁰ 20 U.S.C. § 1414(d)(1)(A)(i)(IV), (VII), Cal. Educ. Code § 56345(a)(4), (7)

²¹ 20 U.S.C. § 1412(a)(5); 20 U.S.C. § 1414(d)(1)(A)(i)(V), Cal. Educ. Code § 56345(a)(5)

²² 20 U.S.C. § 1414(d)(1)(A)(i)(VI)(a)

²³ 20 U.S.C. § 1414(d)(3)(B)(v)

Can the IEP team discuss behavioral concerns?

Yes. In addition to the topics listed above, the team is also able to discuss any behavior issues the student may be having and respond to these issues by creating a Behavior Support Plan (“BSP”), also called a Behavioral Intervention Plan (“BIP”), before or preferably after a Functional Behavioral Assessment (“FBA”) has been completed.²⁴ See [Appendix H](#) for a form you can use to request an FBA.

Can the IEP team make a plan to help a student once they leave school?

Yes. If the student is at least 16 years old or in need of a plan for transitioning them from school to an independent living environment, postsecondary education, or supported employment, the team can also create an individualized transition plan (“ITP”), which may include goals and services during and after the transition.²⁵

Can you record the IEP meeting?

You have the right to tape record an IEP meeting with 24 hours' notice.

What are other types of IEP meetings?

- **Initial IEP** – The initial IEP is the first team meeting where team members review the results of the assessments the student was given, determine whether the student is eligible for services, and set out which services are appropriate for the eligible student.
- **Annual IEP** – A student’s IEP, services, placement, accommodations, and academic progress must be reviewed by the IEP team at least once a year. This yearly review is called the annual IEP.

Tips for Drafting an Appropriate IEP

- Make sure statements describing present levels of performance (“PLOPs”) are accurate, as these become the foundations for goals and objectives.
- Make sure goals and objectives are appropriate and ambitious. An appropriate goal or objective addresses a specific need and works to move a student toward independence in that skill. Goals must also be “measurable.” This means they should be able to be tracked using percentages, steps, or numbers of tries.
- Make sure the IEP specifies which services the student should get, how often they should get these services, where these services should be provided, and who should provide them.
- Make sure that there are no errors in the IEP, like incorrect names, services, or goals.

²⁴ 20 U.S.C. § 1414(d)(3)(B)(i)

²⁵ 20 U.S.C. § 1414(d)(1)(A)(i)(VIII)

- Triennial IEP – The school is required to give a student a new set of assessments every three years to see if the student has made progress or needs additional supports, although the student may be reevaluated more often if you or the school request it. The assessments are reviewed at the triennial IEP meeting to see if the student still needs special education, if they need more or fewer services, or their placement needs to be changed.
- 30-Day Transfer IEP – If a student who had an IEP in effect in another California district transfers to a new California district, the new district must hold an IEP within 30-days to review the existing IEP and ensure that it continues to provide a FAPE.
- Manifestation Determination Review – Also referred to as an “MDR,” this meeting takes place when a student has been removed from classes for a code of conduct violation for more than 10 days. This meeting determines whether there is a relationship between a student’s disability and the behavior subject to discipline. More information on MDRs is provided below.
- Transition IEP – When a student is preparing to exit the K-12 setting, a transition IEP meeting reviews the student’s continued needs and plans for after high school.
- **You are also able to request an IEP at any time. The school must schedule an IEP at your request within 30 days. See **Appendix I** for a sample letter you can use to request an IEP meeting.**

—ELIGIBILITY UNDER SECTION 504—

If a student is not eligible for special education, they may still be eligible for services under Section 504 of the Rehabilitation Act.

For a student to be eligible for special education, they must have a disability that would benefit from special education and related services. If they have a disability but are not eligible for special education services under the IDEA, they may be eligible for certain services under Section 504 of the Rehabilitation Act.

What is Section 504?

Section 504 of the Rehabilitation Act (referred to as “Section 504”) is a civil rights law that prohibits discrimination against people with disabilities. It acts to ensure that a student with a disability has equal access to an education.

When is a student eligible for services under Section 504?

To be eligible for services under Section 504, a student must meet the definition of a qualified “handicapped” person. A qualified “handicapped” person is defined as someone who has or once had a physical or mental impairment that substantially limits a major life activity or is regarded as handicapped by others. Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks.

What kinds of disabilities qualify a student for 504 services?

Here are some examples of disabilities that usually (but not always) fall under Section 504 instead of the IDEA:

- Students who use wheelchairs or are missing limbs;
- Students with medical conditions, such as epilepsy, diabetes, AIDS, arthritis, allergies, asthma, ADHD, cancer, spinal bifida, or cerebral palsy;
- Students with diagnoses such as depression or anxiety.

See [Appendix J](#) for a form you can use to request non-special education support services under Section 504.

What kinds of services can a student get with a 504 plan?

Many parents and districts are unaware that students with 504 plans can receive special education services. A 1993 memorandum from the Office for Civil Rights states that a child who has a disability within the meaning of Section 504 but not the IDEA is entitled to receive special education services that the placement team deems are necessary.²⁶

This means that the scope of aids and services available under Section 504 will be substantially similar to those available under the IDEA. Some of these include:

- Extra time on tests;
- Short breaks from class;
- Speech or language therapy;
- Study skills classes;
- Special classroom seating;
- Study guides for exams and assignments;
- Assistive technology or other specialized devices;
- Accessible transportation; and
- Counseling.

What are the differences between IDEA and Section 504?

There are a few important differences between the IDEA and Section 504 in terms of the protections that each provide students.

1. *Disputes and Resolution*

If there is a conflict with a school or district, students in special education have due process protections that students with 504 plans do not have. For example:

- IDEA gives you the option of filing for a “due process” hearing at the state Office of Administrative Hearings (“OAH”) when you disagree with how a school or district is handling a student’s IEP. See below for more information on due process hearings.
- IDEA has a “stay put” provision requiring that a school keep using the most recent IEP during a dispute and until the dispute is resolved.²⁷
- IDEA requires that a school give you prior written notice of any proposed change in a student’s placement.²⁸

²⁶ 19 IDELR 876

²⁷ 20 U.S.C. § 1415(j); 34 C.F.R. § 300.516(a)

²⁸ 20 U.S.C. § 1415(b)(3)

If the student has a 504 plan, the protections available during a conflict with a school or district are much fewer:

- Section 504 does not have any procedures for OAH due process hearings. Disputes are resolved at district offices by district officers.
- Section 504 does not have a “stay put” provision, so 504 plans can be changed during a dispute.
- There is no requirement under Section 504 that you get prior notice before your student’s placement is changed.

2. Assessments and Reassessments

Assessments for special education eligibility under the IDEA must be completed whenever a student is “suspected” of having a disability. Evaluations must assess all areas that might be affected by the student’s disability, including health, vision, hearing, processing, social and emotional status, general intelligence, academic performance, communication, and motor functioning.²⁹ Reassessments under IDEA must be performed **at least once every three years**, or more often if needed or requested.

Section 504 does require students to be assessed and reassessed, but evaluations are not as comprehensive or completed as often. Assessments for 504 eligibility look at standardized tests or benchmarks the student has taken, teacher recommendations, physical needs, and behavior. Students with 504 plans are only reassessed before there is a significant change in placement.

What if a student qualifies for services under both IDEA and Section 504?

If the student qualifies for both special education and Section 504 services, it is better to ask that the student be placed in special education, as the IDEA gives the student more protection and support.

²⁹ 20 U.S.C. § 1414(b)(3); Cal. Educ. Code § 56320(f); 34 C.F.R. § 300.304(c)(4)

—WHAT TO DO WHEN A SCHOOL IS NOT IMPLEMENTING AN IEP—

When a school fails to implement an IEP or violates FAPE, you can file a compliance complaint to make the district follow the IEP.

Determining How a School Has Violated FAPE

IDEA protects students from both “procedural” and “substantive” violations of FAPE. The type of violation is important because it determines what a court or the Department of Education will order the district to do or give you when it breaks the law.

- A “procedural” violation can happen when the school or district does not follow timelines, give you proper notice, or provide you with requested documents.
- A “substantive” violation can happen when the school or district fails to provide your student with an IEP or educational program that is reasonably calculated to enable your student to receive educational benefits.

Below are examples of *substantive* violations previous courts found:

- A school district failed to provide proper modifications and accommodations to a student’s IEP;³⁰
- A student’s IEP did not include sufficient language therapy or access to a one-on-one aide;³¹
- A school failed to implement a student’s behavior management plan and did not provide math instruction required by the IEP;³²
- A school district placed a student in an isolated special education class when general education would have been appropriate.³³

Below are examples of *procedural* violations of FAPE:

- A student’s IEP did not include measurable goals or adequate descriptions of services;³⁴
- A school district committed three serious procedural violations demonstrating a *pattern* of procedural violations – (1) failure to review evaluative data when developing the IEPs, (2) failure to conduct a

³⁰ D.S. v. Bayonne Board of Education, 602 F.3d 533 (3d Cir. 2010)

³¹ L.R. v. Manheim Township School District, 540 F.Supp. 2d 603 (E.D. Pa. 2008)

³² Van Duyn ex. Rel. v. Baker School District, 502 F.3d 811 (9th Cir. 2007)

³³ Daniel R.R. v. State Board of Education, 874 F.2d 1036 (5th Cir. 1989)

³⁴ Rodrigues v. Fort Lee Board of Education, 458 Fed. Appx. 124 (3d Cir. 2011)

functional behavior analysis, and (3) failed to provide inadequate speech-language instruction;³⁵

- A school district failed to identify a student's disability after the student had repeated behavioral issues and was referred for behavioral support services;³⁶
- A school district failed to involve parents in the IEP process, provide parents with notice of changes to the IEP, and adhere to procedural timelines;³⁷
- A school held an IEP meeting and drafted the IEP without the student's parent present.³⁸

What happens if the district violates FAPE?

When a school or district denies a student a FAPE by committing a substantive or procedural violation, the Office of Administrative Hearings, a court, or the Department of Education may order the district to fix or remedy the violation.

Below are the types of relief that, depending on the violation, courts may order:

- Compensatory services – a court will add up the number of service hours the student missed due to the district's violation and will order the district to make them up.
- Injunctive relief – typically, an injunction in this context will look like a court ordering a district to follow the IEP as it is written or adhere to legal timelines and notice requirements.
- Compensatory damages – a court will sometimes require the district to reimburse you for any money or other expenses spent to provide your student with the services the district was supposed to give them.

In the past, courts have been much more willing to force districts to give students compensatory services when there has been a *substantive* violation of FAPE.

A court will usually only order an injunction for a procedural violation. A procedural violation on its own is usually not enough of a reason for the court to order compensatory services, unless there are many procedural violations, or one violation is especially serious.³⁹

³⁵ R.E. v. N.Y.C. Dep't of Educ., 694 F.3d 167 (2d Cir. 2012)

³⁶ School Board of City of Norfolk v. Brown, 769 F.Supp 2d 928 (E.D. Va. 2010)

³⁷ Fuhrmann on Behalf of Furhmann v. E. Hanover Board of Education, 993 F.2d 1031 (3d Cir. 1993)

³⁸ L.G. ex. Rel. E.G. v. Fair Lawn Board of Education, 486 Fed.Appx. 967 (3d Cir. 2012)

³⁹ R.E. v. N.Y.C. Dep't of Educ., 694 F.3d 167 (2d Cir. 2012)

Filing a Compliance Complaint

When a district appears to have violated an education code or special education law with respect to a student with disabilities, you can file a compliance complaint with the California State Department of Education (“CDE”).⁴⁰

A compliance complaint must be filed within 1 year of the alleged violation.⁴¹ If this deadline is missed, it is likely CDE will reject the complaint.

To file a compliance complaint:

1. Draft a letter fully describing the student’s situation. In particular, state which services are owed to the student, which timelines were not met, and which laws were violated. Include all facts supporting your claim and the dates on which you believe the violation(s) occurred. You can also include and reference documents, emails, pictures, or other pieces of evidence. Propose a possible resolution. See [Appendix K](#) for a sample letter.
2. Send your compliance complaint letter to:

California Department of Education
Special Education Division
Complaint Resolution Unit
1430 N Street, Suite 2401
Sacramento, CA 95814-5901
3. If you do not hear from CDE within 10 days, call 800-926-0648 to follow up. You can also fax your complaint to CDE at 916-327-3704.

What happens after you file a complaint?

Once you have filed your complaint, an investigator from the CDE will follow up and come to a conclusion in writing of whether the district was “out of compliance” with the law or with the student’s IEP.

How long will it take to hear about my complaint?

Federal and state law require the CDE to investigate and resolve all complaints within 60 calendar days, unless the complaint involves a simple or urgent compliance issue. If a complaint is simple or urgent, you can request that CDE “fast track” the investigation. Examples of urgent issues are:

⁴⁰ Cal. Educ. Code § 56500.2; 34 C.F.R. § 300.151-152

⁴¹ 34 C.F.R. § 300.153(c), Cal. Educ. Code §§ 56043(x), 56500.2(b)

- A student's IEP requires that a bus bring the student to school, but the bus has not come for two days;
- A student needs an instructional aide, and one has not been provided;
- A principal told a student's parent not to bring them back due to behavior issues.

During CDE's investigation, the district might ask you to try mediation to resolve the complaint. If you agree, CDE will oversee this process,⁴² but it will also suspend its investigation.⁴³

What will a decision mean?

If CDE finds that the district is out of compliance, it will order the district to start following the law and can require the district to give the student compensatory services. CDE might also order the district to turn in a "corrective action plan," which explains the steps the district will take to make sure the issue does not happen again.

Alternatively, CDE may find that the matter is best dealt with locally. In this case, file your complaint with the district using the Uniform Complaint Procedure ("UCP"), explained further below.

If CDE finds no violation, your complaint will be dismissed.

Can you appeal if you disagree with CDE's decision?

Yes. If you disagree with CDE's decision about how to handle the complaint, you can file a request for reconsideration within 30 days with the State Superintendent of Public Instruction. The Superintendent has 60 days to respond in writing.⁴⁴

CDE will give you information on how to appeal its decision when it responds to your complaint.

Do you have to file a compliance complaint with the state? Can you file with the district instead?

Yes. You can also submit a compliance complaint to the school district's superintendent of schools or director of special education.⁴⁵ All districts have a

⁴² 34 C.F.R. 300.152(a)(3)(ii)

⁴³ 34 C.F.R. 300.152(b); The CDE's Special Education Dispute Resolution Process is available at <https://www.cde.ca.gov/sp/se/qa/pseng.asp>.

⁴⁴ 5 C.C.R. § 3204

⁴⁵ 5 C.C.R. § 4630(b)(2)

process known as the Uniform Complaint Procedure (“UCP”) to respond to complaints. If this is not posted on the district website, call the district to have them send you a copy.

The compliance complaint letter you write to the school district should have the same details and facts included in the letter drafted to the CDE, including details and facts about what services you believe the district has not provided to the student, which timelines were not met, and which laws were violated. You should also propose a resolution.

Once the district gets your complaint, it has 60 calendar days to investigate and give you an answer. This timeline can only be extended with your written consent.⁴⁶

The district is allowed to ask you to participate in mediation or alternative dispute resolution (“ADR”) to resolve the complaint informally. You do not have to agree to this, and the district cannot make mediation mandatory.⁴⁷ Also, any mediation agreed to does not extend the district’s 60-day timeline.

If you disagree with the district’s decision, you can appeal to the CDE.

⁴⁶ 5 C.C.R. § 4631(a)

⁴⁷ 5 C.C.R. § 4631(f)-(g)

—WHAT TO DO WHEN YOU DISAGREE WITH A SCHOOL OVER AN IEP—

When you disagree with the school about whether a student is eligible for special education services, what should go in their IEP, or how the IEP should be carried out, you may want to file for a due process hearing.

What if you disagree with the IEP?

When you disagree with a school's decision on your student's eligibility, placement, program needs, or related services, either you or the district can ask for a due process hearing.⁴⁸ At a due process hearing, both you and the district can present evidence, call witnesses and experts, and submit any reports or evaluations that support their positions.

Due process hearings take place at the Office of Administrative Hearings ("OAH") and are presided over by a state hearing officer. Both you and the district have a right to be represented by attorneys at this hearing.

What happens to a student during the dispute/hearing?

During a due process hearing, the student is protected by "stay put," which means that the last undisputed IEP and placement cannot be changed until a final decision is rendered.⁴⁹

Can the ERH get a written copy of the district's decision on the IEP so that you can use it to file for due process?

Yes. Before you file for due process, the school district has to provide you with written notice of what it has decided to do or not do and why.⁵⁰ If the district fails to provide this notice, they will have committed both a procedural and substantive rights violation.⁵¹

This is called the "prior written notice" requirement, and it means that the district has to provide you with written notice within a "reasonable time" before it proposes or refuses to:

- Change a student's eligibility category or determine that the student is no longer eligible for special education;
- Initiate or change an evaluation;

⁴⁸ 34 C.F.R. § 300.507(a); Cal Educ. Code § 56501(a)

⁴⁹ 20 U.S.C. § 1415(j); Cal. Educ. Code § 56505(d)

⁵⁰ 34 C.F.R. § 300.503(a)

⁵¹ Union School District v. B. Smith, 15 F.3d 1519 (9th Cir. 1994)

- Change a student's educational placement; or
- Change a component of a student's IEP.

What if English is not your primary language?

This notice must be translated into your native language⁵² and have:

- A full explanation of all procedural rights available to the student, including the right to file for due process;
- An explanation of the action the district is taking and the other options the district considered in reaching its conclusion;
- A description of other factors relevant to the decision; and
- A statement of your rights.

Are there other options besides a hearing?

If you are in a dispute with the school or district but would like to try to work it out before or instead of having a due process hearing, you can also request a non-attorney mediation conference. Mediation gives you the chance to work out the conflict with a neutral and experienced OAH mediator. It can be faster, easier, and less expensive than a due process hearing.

Both you and the district can bring an attorney to the mediation, unless you have not requested a due process hearing yet. In this case, neither you nor the district can bring an attorney. Non-attorney mediation is also available even if you have requested a hearing if both you and the district agree to it.

To request an OAH mediation, submit the form found in [Appendix L](#) to:

Office of Administrative Hearings
Special Education Unit
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833-4231

Once you make the request, mediation must be scheduled within 15 days and completed within 30 days.

If you do not want a mediation or the mediation is not successful, you can still file for due process.

⁵² Notice must be translated unless translation is clearly unfeasible.

How do you file for a due process hearing?

Both you and the district can file for and be represented by attorneys at a due process hearing. California law does not allow students to file for due process unless they are emancipated or wards of the court.⁵³

Due process usually involves the following steps:

- Requesting the due process hearing;
- Resolution Meeting;
- Mediation (optional);
- Due process hearing; and
- The right to an appeal.

(1) Requesting the Due Process Hearing

The first step is to file your due process complaint with OAH. Mail or fax a written complaint enumerating the relevant facts supporting your position, the legal issues, the law or education code sections supporting your position, and a proposed remedy to:

Office of Administrative Hearings
Special Education Division
2349 Gateway Oaks Drive
Sacramento, CA 95833
Phone: 916-263-0880

See **Appendix K** for a form you can use to request a hearing. Make sure to include specific information about how the district violated its FAPE obligations to the student as well as contact information for you, the school, and the district.

(2) Resolution Meeting

After you file the complaint, the school has 15 days to schedule a resolution meeting with you and relevant members of the IEP team. At this meeting, you and the school will try to solve the issues you brought up in your complaint. You or the school can choose to waive this meeting if you both agree.

The school must send someone to the meeting with the power to make decisions in your case. Note that if you come to the meeting with an attorney, the district can also bring its attorney.

It is very important that you file for due process within 2 years from the date you knew or should have known about the issue.

This deadline does not apply to situations in which the district told you that it resolved an issue but did not, or where the district did not give you information that it legally had to.

⁵³ Cal. Educ. Code § 56501(a)

(3) Mediation (optional)

Unlike non-attorney led mediation, mediation after a due process request is filed is binding if an agreement is reached and can involve attorneys. Mediation is optional, but it will be automatically offered to you once you file for due process.

If you agree to mediation, it must be scheduled within 15 days and completed within 30 days of the request.

(4) Due Process Hearing

The due process hearing is a formal procedure where both you and the school district present a case to the OAH hearing officer. It runs like a mini trial.

Both you and the school district can call and question witnesses, present evidence, have an attorney, have the student present, and record the hearing.

It is important to pay attention to who has the “burden of proof” at the hearing. If you file for due process, then you have the burden of proof, meaning that you would have the responsibility of proving that the services the district offered were inadequate. If the school files, they have to prove the services they provided the student were adequate.

(5) Right to an Appeal

Both you and the district have the right to appeal a decision from OAH in either federal or state court. You must file this appeal within 90 days of the OAH hearing decision.

—WHAT TO DO WHEN A SCHOOL DISCRIMINATES AGAINST A STUDENT BECAUSE OF A DISABILITY—

When a district or school does not give a student with a disability an educational benefit that it gives to nondisabled students, you can file a discrimination complaint with the Office for Civil Rights (“OCR”).

When can you file a complaint for discrimination?

Schools that get money from the government cannot discriminate against students with disabilities by keeping them from participating in school programs or activities. If you believe that the school is discriminating against your student because of their disability, you can file a complaint with the United States Department of Education’s Office for Civil Rights (“OCR”) under Section 504.⁵⁴

Common special education issues that are raised in OCR complaints include:

- Problems in how the school is built, such as a lack of wheelchair-accessible ramps or elevators for students in wheelchairs;
- Lack of access to programs required by an IEP or 504 plan;
- Failure to implement an accommodation that was included in an IEP or 504 plan.

A student does not have to qualify for special education or Section 504 services to file an OCR complaint. For example, you can file a complaint with OCR on behalf of a student with behavioral problems who has been excessively suspended from school (i.e., for a total of 10 days or more) without the school first meeting to see if the behavior is caused by a disability.

How do you file an OCR discrimination complaint?

To file an OCR complaint:

1. Fill out the form attached in [Appendix M](#) or use the link found on the attached form to fill it out electronically. **You must file the complaint within 180 days of when the discrimination happened** unless the deadline is extended by an OCR official.
2. Once you file the complaint, OCR will “promptly” acknowledge that it has received it. As soon as you get this notice from OCR, you have 20 days to give them written consent to investigate or OCR will close the complaint.

⁵⁴ 34 C.F.R. § 104.4(a)

3. If OCR investigates and finds that the school is out of compliance with the law, they will send out a “Letter of Finding” explaining how the school failed to meet legal standards and what it needs to do. The school can either fix the problem or risk being monitored by OCR, having funding withheld, or being referred to the Department of Justice for legal action.

Can you file a discrimination complaint with CDE instead?

Yes. If you think the school or district is discriminating against the student because of their disability, you can also file a CDE complaint using the “Uniform Complaint Procedures.”⁵⁵

You must file this type of complaint within 6 months of either (1) when the discrimination actually happened to the student or (2) when you learned that the discrimination happened.

The district superintendent can extend this timeline by 90 days if you submit a written request documenting the need for the extension.

The process for this type of complaint is the same Uniform Complaint Procedure described above. Write a letter to the school district that includes as many details and facts as you can about how the school is discriminating against the student, when the discrimination took place, and who was involved. Once the district gets your complaint, it has 60 calendar days to investigate and give you an answer. This deadline may only be extended with your written permission.⁵⁶

⁵⁵ 5 C.C.R. §§ 4600-4687

⁵⁶ 5 C.C.R. § 4631(a)

—SCHOOL DISCIPLINE- RELATED ADVOCACY—

—SCHOOL DISCIPLINE IN CALIFORNIA PUBLIC SCHOOLS—

In California, do students have any rights when it comes to being removed from classes due to discipline?

Yes. Students in California have a right to due process before they can be removed from class or excluded from school for disciplinary reasons.

Additionally, the California Education Code provides that there are only certain offenses for which a student can be subjected to exclusionary discipline (i.e., suspensions, expulsions, or involuntary transfers). Students with disabilities are given additional state and federal protections.

Who makes discipline policies: schools or the state?

Although both federal and state law apply to the discipline of students in school, districts are given discretion to formulate and implement their own discipline policies and procedures as long as they do not violate the law.

Advocacy for students in school discipline-related cases will involve independent research into the relevant school district's policies and procedures to identify the rules that affect students in that particular district.⁵⁷

⁵⁷ For more information on defending students in discipline proceedings, see <https://www.lsc-sf.org/wp-content/uploads/2016/02/LSC-Expulsion-Defense-Manual.pdf>.

—OFFENSES FOR WHICH A STUDENT CAN BE SUSPENDED OR EXPELLED—

In California, students may only be suspended or expelled for certain offenses listed in the Education Code. Of these, a few are known as “zero tolerance” offenses, requiring mandatory expulsion from the school district.

What is a suspension?

Briefly, a suspension is a form of school discipline that temporarily removes a student from class or from school.

Where does a student go when they are suspended?

A suspension can be “in school,” where the student is placed in a separate, supervised classroom. It can also be “out of school,” where the student is prohibited from attending school or classes entirely.⁵⁸

What is an expulsion?

An expulsion means that a student is prohibited from attending traditional schools in a particular school district for a period typically lasting no longer than one calendar year.⁵⁹ In most cases, the student may still attend an alternative school in the district.

Can a school suspend or expel a student for any reason?

No. The Education Code limits the behaviors for which students can be suspended or expelled. These offenses are enumerated in Section 48900 of the Education Code.

What are some of the offenses listed in the Education Code?

Among the Education Code’s enumerated offenses warranting suspension or expulsion are:

- Causing physical injury;
- Possession of a weapon or other dangerous object;
- Possession or sale of a controlled substance or intoxicant;
- Theft or robbery;
- Damage to school property;
- Possession of drug paraphernalia;

⁵⁸ Cal. Educ. Code § 48911.1

⁵⁹ Cal. Educ. Code § 48925

- Sexual assault or battery, or attempted sexual assault or battery;
- Hazing or bullying; and
- Terroristic threats.

Can a student be suspended or expelled for behavior that happens anywhere?

No. For a student's actions to warrant suspension or expulsion under the Education Code, the conduct in question must be "related to school activity or school attendance occurring within a school."⁶⁰ The statute defines this as offenses committed (1) on school grounds, (2) while going to or coming from school, (3) during lunch (whether on or off campus), and (4) during or while traveling to or from a school-sponsored activity.⁶¹

Are there offenses for which a student cannot be suspended or expelled?

Yes. Certain offenses cannot be grounds for suspension or expulsion under the Education Code.

Willful Defiance

"Willful defiance" is often defined in schools as behavior that disrupts school activities or disobeys requests from teachers or administrators. Recent legislation has permanently banned suspensions for "willful defiance" in grades 8 or below. No student in any grade can be expelled for willful defiance.⁶²

Absences or Lateness

Students cannot be suspended or expelled for absences or lateness.⁶³ Alternative district processes must be available to address truancy issues.

"Aiding and Abetting"

A student who "aids or abets" in the infliction or attempt to inflict physical injury may be *suspended*, but not expelled.⁶⁴ The only exception to this is when an aiding or abetting student is adjudicated in juvenile court for the offense.

⁶⁰ Cal. Educ. Code § 48900(s)

⁶¹ But see Cal. Educ. Code § 48900(r)(2)(A), noting that cyberbullying may be the basis for suspension or expulsion although the electronic acts may be created or transmitted on or off the school site. However, the requirement that the offense relate to school activities or attendance still applies. Cal. Educ. Code § 48900(s).

⁶² Cal. Educ. Code § 48900(k)

⁶³ Cal. Educ. Code § 48900(w)

⁶⁴ Cal. Educ. Code § 48900(t)

Age-Dependent Offenses

Some offenses—sexual harassment, hate violence, and intimidation of others—are only grounds for suspension or expulsion if the student is in grades 4 to 12.⁶⁵

Does a school have to suspend or expel a student if they commit one of the offenses listed in the Education Code?

No. Unless a student has committed a very serious offense, schools have significant discretion in deciding whether to suspend a student or recommend them for expulsion.⁶⁶ Schools are able to and encouraged to explore alternatives to suspension and expulsion that are age-appropriate, designed to address the student's behavior, and maximize the time the student spends learning in the classroom.

For which types of offenses can a school exercise discretion?

The Education Code⁶⁷ creates three categories of offenses that can lead to a suspension or recommendation for expulsion, these being (1) discretionary offenses, (2) medium-discretion offenses, and (3) mandatory expulsion (i.e., “zero-tolerance”) offenses.

These categories differ in the amount of discretion a school official has in deciding whether to suspend a student or recommend them for expulsion and determine the legal standard that must be applied in an expulsion hearing.⁶⁸

1. Discretionary Offenses⁶⁹

For most student behaviors, school officials have discretion on whether to suspend or recommend expulsion. Principals, superintendents, and other school officials are free to provide alternatives “that are age-appropriate and designed to address and correct the misbehavior.”⁷⁰

These “fully discretionary” offenses⁷¹ include:

- Stealing;
- Damaging property;

⁶⁵ Cal. Educ. Code §§ 48900.2-48900.4.

⁶⁶ Cal. Educ. Code § 48900(v)

⁶⁷ Cal. Educ. Code § 48915

⁶⁸ See <http://www.cde.ca.gov/ls/ss/se/expulsionrecomm.asp> for a chart from the California Department of Education describing and categorizing the different levels of offenses.

⁶⁹ Cal. Educ. Code §§ 48915(e), 48900(v)

⁷⁰ Cal. Educ. Code § 48900(v)

⁷¹ Cal. Educ. Code §§ 48915(e), 48900(f)-(m)

- Possessing tobacco;
- Bullying;
- Sexual harassment;
- Vulgarity; and
- Possessing an imitation firearm.

2. Medium-Discretion Offenses⁷²

If a school official determines that a student has committed one of the following acts, they have discretion to *not* recommend expulsion if they determine that it would be (1) inappropriate under the circumstances or (2) that an alternative means of correct exists that would address the conduct:

- Causing serious bodily injury, except in self-defense;
- Possession of a knife or other dangerous object;
- Possession or use of a controlled substance, unless substance is prescribed;
- Possessing less than one ounce of marijuana;
- Robbery or extortion; and
- Assault or battery upon a school employee.

School officials must make their determination about whether or not to suspend a student or recommend expulsion “as quickly as possible to ensure the pupil does not lose instructional time.”⁷³

For this type of offense as well as for mandatory expulsion offenses, the conduct must actually be “committed at school or at a school activity off school grounds” to be the basis for an expulsion recommendation.⁷⁴

3. Mandatory Expulsion (“Zero Tolerance”) Offenses⁷⁵

School officials must *immediately* suspend and recommend expulsion for students who are shown to have committed any of the following offenses:

- Possessing, selling, or furnishing a firearm;
- Brandishing a knife at another person;
- Selling a controlled substance;
- Committing or attempting to commit sexual assault or sexual battery; or
- Possession of an explosive.

⁷² Cal. Educ. Code § 48915(a)

⁷³ Cal. Educ. Code § 48915(a)(2)

⁷⁴ Cal. Educ. Code S 48915(a), (c)

⁷⁵ Cal. Educ. Code § 48915(c)

The above are “zero tolerance” offenses, which are subject to a stricter legal standard. While these offenses automatically lead to expulsion, California’s Attorney General has stated that a school district may not adopt its own zero tolerance policy or add to the above list of zero-tolerance offenses. The full text of this statement is found at <https://oag.ca.gov/system/files/opinions/pdfs/97-903.pdf>.

Can a student be suspended or expelled for a first offense?

Generally, for a first offense, schools must show that they have tried a less-restrictive alternative to suspension or expulsion, such as warnings, parent conferences, or detention.⁷⁶

However, a student may be suspended or expelled for their first offense if the school official determines that the student (1) committed a zero-tolerance offense for which suspension is required, (2) the student committed a medium-discretion offense, or (3) the student’s presence in school causes a danger to others.⁷⁷

In any other case, the school can only suspend or expel a student “when other means of correction fail to bring about proper conduct.”⁷⁸ These other means of correction can include:

- A conference with you and the student;
- Referring the student to the school counselor, psychologist, social worker, or another school support service provider;
- Providing the student with a behavior support plan;
- Referring the student for a psychosocial or psychoeducational assessment for the purposes of determining whether an IEP or 504 plan is necessary;
- Participating in a restorative justice program or positive behavior support approach with tiered interventions; or
- Enrolling the student in an after-school community-based program.

If your student has committed a first offense, you should request that the school provide you with discipline logs documenting the other means of correction that they have attempted. If alternatives to suspension have not been tried, schedule a meeting with the principal or superintendent to advocate for reinstatement with a behavior plan to address the student’s behavior.

⁷⁶ Cal. Educ. Code § 48900.5

⁷⁷ Cal. Educ. Code §§ 48900.5(a); 48915(c)

⁷⁸ Cal. Educ. Code § 48900.5(a)

—THE SUSPENSION PROCESS—

There are several procedures that a school must follow to suspend a student and protections that an advocate may invoke to help a suspended student be reinstated.

Can a teacher suspend a student from their class?

Yes. Any teacher may suspend a student from their class (and only that class) for the day of the suspension and the following day. The student cannot attend that class, or any other class scheduled during that period.⁷⁹

Does the teacher have to inform the student's caregiver of the suspension from class?

Yes. The teacher, upon suspending the student, must immediately report the suspension to the principal and invite the student's caregiver to a conference "as soon as possible."

Who can suspend a student from school?

Only the superintendent, the school principal, or the principal's designee has the authority to suspend a student from school.⁸⁰

Are there due process procedures the school has to follow before they can suspend a student from school?

Yes. California and federal law require that schools follow certain procedures before the school can decide to suspend a student.⁸¹

➤ NOTICE

Schools must provide you with two kinds of notice before a student is officially suspended.

First, the school must make a "reasonable effort" to call you.⁸² Second, the school must notify the student's caregiver *in writing* once the student's suspension becomes official.⁸³

⁷⁹ Cal. Educ. Code § 48910

⁸⁰ Cal. Educ. Code § 48911(a)

⁸¹ *Goss v. Lopez*, 419 U.S. 565 (1975); *Charles S. v. San Francisco Unified School District*, 20 Cal. App. 3d 83 (1971)

⁸² Cal. Educ. Code § 48911(d)

⁸³ Cal. Educ. Code § 48911(d)

➤ CONFERENCE

The school's principal or designated administrator must hold an informal pre-suspension conference with the student to inform them of why they are being suspended and allow them an opportunity to tell their side of the story and present any evidence they have.⁸⁴

Does the caregiver have to attend the informal conference?

No. While it is encouraged, the student's caregiver does not have to attend the informal pre-suspension conference. However, schools are prohibited from making a student's reinstatement *contingent* upon a caregiver's compliance with a request for a conference.⁸⁵

Does the school always have to hold a pre-suspension conference?

Not always. The only situation in which a student can be suspended before a conference is held is when there is an "emergency." Here, the school must show that the student presents a "clear and present danger to the life, safety, or health" of students or school personnel.⁸⁶

What does it mean for a student to present a "clear and present danger"?

The clear and present danger test requires the school to show that the student poses a danger that is both extremely serious and extremely imminent.⁸⁷

What happens if an emergency exists?

If such an emergency exists, the school has two school days to hold the required conference, unless the student is unable to attend due to incarceration or hospitalization or the student waives his right to a conference.⁸⁸

How long can a suspension last?

Generally, suspensions may last for **no more than 5 consecutive school days**, unless the student's suspension is extended by the school pending an expulsion hearing (see below).⁸⁹

⁸⁴ Cal. Educ. Code § 48911(b)

⁸⁵ Cal. Educ. Code § 48911(f)

⁸⁶ Cal. Educ. Code § 48911(c)

⁸⁷ Thompson v. Sacramento City Unified School District, 107 Ca. App. 4th 1352 (2003)

⁸⁸ Cal. Educ. Code § 48911(c)

⁸⁹ Cal. Educ. Code 48911(a)

A student who is suspended from class by a teacher, as stated above, can only be excluded from that teacher's class for the day of the suspension and the following day.⁹⁰

Is there a limit on days of suspension in a single school year?

Yes. Unless a student is on an extended suspension, the Education Code expressly prohibits a school from suspending a student for more than **20 schooldays** per school year.⁹¹ However, if a student is transferred to another regular school, opportunity school,⁹² or continuation school, the maximum number of schooldays for which a student can be suspended increases to 30.

How to advocate for a student facing suspension for excessive days?

If your student has been improperly suspended for an excess number of days, this may be addressed through a complaint through the district's local complaint process. The complaint should include details and facts about when and for how long the student in question has been suspended this year and how many days the suspensions in question exceed the Education Code's limit.

You can also use this violation to contest an expulsion by arguing the school's use of excessive suspensions constitutes a procedural violation or is evidence of the school's failure to employ appropriate alternative means of correction.

Does a school have to provide a suspended student with work to do?

Students or caregivers may request that teachers provide them with the homework and classwork they will miss during the suspension, and teachers must provide homework for any student suspended more than two days.⁹³

If the student has an IEP or Section 504 plan, the school must provide them with their education program if they are suspended for any time beyond 10 days.⁹⁴

What is an extended suspension?

A student can be placed on an extended suspension when they have been recommended for expulsion. Here, the school may extend the student's

⁹⁰ Cal. Educ. Code § 48910(a)

⁹¹ Cal. Educ. Code § 48903(a); note that per Cal. Educ. Code § 48903(b), a district may, but is not required to, count suspension days from when the student was in another district in the same school year.

⁹² Opportunity schools are established to provide additional support for students who are habitually truant, insubordinate, disorderly while at school, or struggling academically.

⁹³ Cal. Educ. Code. § 48913.5

⁹⁴ 34 CFR 300.530

suspension beyond the 5 consecutive day limit if the school determines that the student's presence "would cause a danger to persons or property or a threat of disrupting the instructional process."⁹⁵

Are there due process procedures the school must follow with extended suspensions?

An extension of suspension is seen as a separate, additional suspension. Therefore, due process requirements must be complied with again, meaning that the school official's decision to extend the suspension must again be preceded by notice and a meeting.⁹⁶

Can you request that inaccurate or misleading information be edited from your student's records, even if the student is suspended?

Yes. You have the right to request that edits be made to student records if you believe that the information contained therein is inaccurate or misleading. If the district declines to revise the student's records upon request, you are entitled to assert comments into your student's file explaining your concerns.⁹⁷

Can a suspension be appealed or challenged?

There is no right to appeal a suspension provided for in the Education Code. However, some districts have policy mechanisms that allow you to challenge suspensions. Request these policies from the district.

Any procedural violations can be challenged using the district's local complaint process, as outlined above.

If you feel that your student is being suspended for discriminatory reasons, you may also file a complaint using district or CDE UCP processes or with the Federal Department of Education's Office of Civil Rights.

⁹⁵ Cal. Educ. Code. § 48911(g)

⁹⁶ Montoya v. Sanger Unified School District, 502 F. Supp. 209 (C.D. Cal. 1980); Cal. Educ. Code § 48911(g); note that these conferences are typically not attended by attorneys unless the student is under the jurisdiction of the dependency or delinquency system. In this case, California Education Code § 48911(g) requires that the district invite the student's court-appointed attorney and appropriate child welfare agency to the meeting.

⁹⁷ Cal. Educ. Code § 49070; 34 C.F.R. §§ 99.20(a), 99.21(b)

—THE EXPULSION PROCESS—

California and federal law mandate certain due process procedures and protections for students recommended for expulsion.

Who can expel a student?

While a school can recommend a student for expulsion, only a district's governing board may expel a student. This means that teachers and other school officials do not have the power to order expulsion.

If a student commits an expellable offense, does the school have to recommend expulsion?

Like with suspensions, depending on the student's offense (i.e., whether it is a zero-tolerance offense),⁹⁸ the school has significant discretion in deciding whether to recommend expulsion. This provides several opportunities for advocacy prior to the expulsion hearing.

Procedural Requirements and Timeline of Expulsion Proceedings

1. STUDENT REFERRED FOR EXPULSION

The student's school principal or district superintendent will write an expulsion referral to the governing board alleging that the student has committed an offense worthy of expulsion.

2. NOTICE SENT TO STUDENT

The decision to expel a student must be preceded by a hearing wherein the school and student have opportunities to present evidence. Written notice of the hearing must be sent to the student at least **10 calendar days** prior to the hearing.⁹⁹

The notice must include the date and location of the hearing, the specific facts and charges that are the grounds for the expulsion referral, a copy of the district's disciplinary rules relating to the alleged offense, and notice that you and the student have the right to appear in person, be represented by

⁹⁸ Note that for a zero-tolerance offense, the governing board does not have to expel a student.

⁹⁹ Cal. Educ. Code § 48918(b). Note that this requirement does not entitle a student to *receive* notice 10 days before the hearing.

counsel,¹⁰⁰ inspect and obtain copies of all documents¹⁰¹ the school will use at the hearing, question all witnesses appearing at the hearing, and present evidence on the student's behalf.¹⁰²

3. EXPULSION HEARING

Before a student can be expelled, a student has the right to a fair hearing, at which a student can be represented by an advocate or attorney.

An expulsion hearing must be conducted within **30 schooldays**¹⁰³ of the initial suspension, unless the student requests a postponement¹⁰⁴ or the superintendent extends this deadline for "good cause."¹⁰⁵ If the hearing is not held within the proscribed timeframe, the board loses jurisdiction to expel the student and any action taken at the hearing is invalid.¹⁰⁶

The governing board may conduct the expulsion hearing itself or it may appoint a hearing officer or panel to oversee it.¹⁰⁷ If a hearing officer or panel conducts the hearing, it must submit findings to the governing board within three days of the hearing.¹⁰⁸

4. GOVERNING BOARD VOTES

Following the evidentiary hearing, the governing board will convene to vote on whether to expel the student. A final decision must be made within 10 schooldays of the hearing or 40 schooldays after the student was removed (i.e., suspended) from school following the expulsion recommendation.¹⁰⁹

¹⁰⁰ The Education Code does not require that representation be provided by the district. Students and families must provide for their own representation. Cal Educ. Code § 48918(b).

¹⁰¹ All documents pertaining to a student's suspension and recommendation for expulsion must be translated by the school district if requested. Additionally, there are strong Constitutional arguments to be made in favor of a district-provided translator for the hearing, although the Education Code does not explicitly provide for one.

¹⁰² Cal. Educ. Code § 48918(b)

¹⁰³ Cal. Educ. Code § 48925 defines "schoolday" as a day in which schools are in session or weekdays during the summer break.

¹⁰⁴ See Cal. Educ. Code § 48918(a). A student is entitled to at least one postponement of the hearing, which must be requested in writing. This postponement can be for a period of no longer than 30 days. Any additional postponements are within the governing board's discretion to allow. NOTE: If the student's requested postponement delays the hearing beyond the 30-day timeframe, this cannot be used against the district to dismiss a case under *Garcia*.

¹⁰⁵ Cal. Educ. Code § 48918(a); the superintendent may extend the 30-day timeframe by 5 days if it makes a "good cause" finding that it is "impracticable" for the governing board to comply with the deadline.

¹⁰⁶ See *Garcia v. Los Angeles County Board of Education*, 123 Cal. App. 3d (Cal. Ct. App. 1981)

¹⁰⁷ Cal. Educ. Code § 48918(d)

¹⁰⁸ Cal. Educ. Code § 48918(e)

¹⁰⁹ Cal. Educ. Code § 48918(a)

5. WRITTEN NOTICE TO YOU IN EVENT OF EXPULSION

The governing board must provide you with written notice of its decision to expel the student, your right to appeal, what alternative placement will be provided during the time of expulsion, and your obligation to let any new district know that your student was expelled from the previous district.¹¹⁰

What does the school have to prove at an expulsion hearing?

At an expulsion hearing, the school must prove the following four elements before a student can be lawfully expelled for most offenses:

1. The student committed the offense charged, which must be a lawful ground for expulsion in the Education Code;
2. The offense must be related to school attendance or activities;
3. All procedural and time requirements must have been met;
4. The school must show “secondary findings” for *discretionary* and *medium-discretion* offense (see above), which are that:
 - Other means of correction are not feasible or have failed previously; OR
 - Due to the nature of the student’s actions, the student causes a continuing danger to the safety of the student or others.

The “secondary findings” prong is critical for advocacy in expulsion proceedings. For all offenses other than zero tolerance offenses, it is not enough for the school to prove the student committed the offense in question; rather, the governing board must also find that other means of addressing the student’s behavior are not possible or that the student’s behavior is so severe that it poses a safety concern.¹¹¹

¹¹⁰ Cal. Educ. Code § 48918(j)

¹¹¹ Cal. Educ. Code § 48915(b), (e)

—POSSIBLE OUTCOMES IN EXPULSION PROCEEDINGS—

At the conclusion of expulsion proceedings, there are three possible outcomes: (1) no expulsion recommendation; (2) expulsion; or (3) a suspended expulsion. However, prior to a final decision being made, there are alternative resolutions that an advocate for the student can suggest.

What happens when the board does not recommend expulsion?

If, after the hearing, the governing board decides not to recommend expulsion, the expulsion proceedings end immediately. The school cannot appeal the decision, nor can it seek an alternative decision from the governing board.

If a student is not expelled, must they be reinstated in school?

Yes. Your student must be immediately returned to school without conditions.¹¹²

Can the student voluntarily transfer to another school?

Yes. If you or your student want to transfer to another school, you may submit a voluntary transfer request, and the district must meet with you to discuss placement options.

Can a student be involuntarily transferred to another school, even if they are not expelled?

There is a limited circumstance in which a student may be involuntarily transferred to another comprehensive school or continuation school despite not being expelled. The school is permitted to involuntarily transfer a student if the board determined that the student committed a zero-tolerance offense but found that expulsion would be inappropriate under the circumstances.¹¹³ How to advocate when your student is transferred is further explained below.

What happens if the board recommends expulsion?

If the school has proven all four elements required to support an expulsion recommendation, the governing board may expel the student.

What happens when a student is expelled?

If the student is expelled, they will not be allowed to attend any of the comprehensive schools in the district for the term of the expulsion.¹¹⁴ Expelled

¹¹² Cal. Educ. Code § 48918(e)

¹¹³ Cal. Educ. Code §§ 48918(e), 48432.5

¹¹⁴ Cal. Educ. Code § 48915.2

students can be placed in county-run schools or, depending on the offense, a district-run alternative school.¹¹⁵

When can an expelled student be readmitted to a comprehensive school?

The governing board must set a date where the board will review whether the student can be readmitted to the district. Expulsions for zero-tolerance offenses can be for a full year, while expulsions for lesser offenses may only be for a semester. Readmission is not automatic and subject to board review.

What happens if the board recommends a suspended expulsion?

The governing board can expel a student but suspend enforcement for up to one year, even if the student has met all the criteria for a mandatory expulsion. During this period, the student is deemed to be on “probationary status.”¹¹⁶

If, during this probationary period, the student commits any expellable offenses or violates any of the district’s rules or regulations regarding student conduct, the governing board can revoke the suspended expulsion and immediately expel the student without a hearing.¹¹⁷

Where does a student on a suspended expulsion attend school?

During the suspended expulsion, the student may be permitted to return to their original school or may be assigned to a new educational placement.¹¹⁸

What happens when the terms of the suspended expulsion are completed?

If the student completes the suspended expulsion to the board’s satisfaction, the board *must* reinstate the student in a district school.

Can the student’s records be expunged after a suspended expulsion?

Yes. Once the suspended expulsion period is completed, the board may order that the expulsion proceeding be expunged from the student’s records.¹¹⁹ It is good practice to have the board state in the original suspended expulsion notice that the student’s records will be expunged if they comply with the terms to avoid confusion or dispute when the student later requests the expungement.

¹¹⁵ If the student committed a mandatory or medium-discretionary offense, the student may be barred from attending any district-run school.

¹¹⁶ Cal. Educ. Code § 48917(a), (c)

¹¹⁷ Cal. Educ. Code § 48917(d)

¹¹⁸ Cal. Educ. Code § 48917(a)

¹¹⁹ Cal. Educ. Code § 48917(e)

—ADVOCACY STRATEGIES DURING EXPULSION PROCEEDINGS—

There are a number of red flags to identify at the start of expulsion proceedings that may help you advocate for your student.

Which red flags should be identified as soon as possible?

➤ **Has a hearing date been set?**

Remember, a hearing must happen within 30 days of the incident. The school must only provide you with 10 calendar days' notice by mail.

➤ **Have you requested postponement?**

By law, the student is entitled to one postponement, requested in writing, for a period of not more than 30 calendar days. Keep in mind that unless the student has an IEP, educational services are generally not provided if your student remains on an extended suspension.

➤ **Have you received written notice of the hearing?**

If yes, review it to ensure compliance with the Education Code. If no, use any notice deficiencies to argue that the district cannot expel the student due to failure to meet the Education Code's procedural requirements.

➤ **Is your student in or out of school?**

While the Education Code does not require educational services to be provided to students pending an expulsion hearing (unless the student has an IEP), some local district policies do provide such a protection. Check your district's policy as soon as possible.

➤ **Has there been a meeting about extending suspension?**

If not, attend this meeting and argue that your student should be allowed to return to school as soon as possible to minimize lost instructional time.

➤ **Did you sign a Stipulated Expulsion Agreement?**

Sometimes districts will try to convince you to sign a stipulated expulsion agreement immediately after the student was referred for expulsion. This is a written document stating your consent to the expulsion and a waiver all due process rights. It can be presented to you without adequate explanation of the consequences or as a necessary step before your student can begin receiving reenrollment services. If you have signed this agreement and there has been misinformation or coercion, you can argue that the agreement be set aside.

- **Have you waived any procedural rights?**
You should not sign any waivers and read all documents before signing them. Once again, if you have already signed a waiver and there has been misinformation or coercion, you can argue that these be set aside.
- **Does your student have known or unidentified special education needs?**
See below for more information on special school discipline considerations.
- **Are translation services required?**
If you speak a primary language that 15% or more of the school population speak, the district must provide translation services and an interpreter.¹²⁰

What alternatives to expulsion can you ask for?

- **Voluntary Transfers**
In some cases, the district might be willing to transfer the student to another school and drop the expulsion recommendation. While transferring a student in the middle of a school year can be disruptive, it may be a good option for students who are experiencing conflicts with school staff, who want to move to another school, or who are at risk of losing at their hearing.
- **Restorative Approaches to Discipline**
In California, more districts are currently open to Restorative Justice approaches to discipline. Restorative Justice is a process that focuses on redressing harm rather than punishment. Restorative approaches include restorative circles, family group conferences, and peer mediation.
- **Alternative District Counseling Process**
You can push for in-school counseling to address the behavior before the district resorts to expulsion.
- **A Suspended Expulsion/Probationary Period**
Some districts are willing to readmit students under “probationary” status. Readmitted students must follow certain conditions set forth by the district with the understanding that after the probationary period, the expulsion is dropped or expunged from the student’s record.
- **Special Education Assessment**
You can request an assessment for special education if you believe that your student may be eligible for special education services. This process is described further below.

¹²⁰ Cal. Educ. Code § 48985

—APPEALING AN EXPULSION OR SUSPENDED EXPULSION—

You may file an appeal with the county board of education if the outcome of the expulsion hearing is an expulsion or suspended expulsion. A school district may not appeal the board's decision not to order expulsion.

What laws and procedures govern expulsion appeals?

Procedures governing appeals are governed by both the Education Code and local school districts. Before appealing, check both sources.

Which governing body receives expulsion appeals?

The county board is the final administrative word on an expulsion appeal. Beyond that, any further appeals must be filed as a writ with the county or superior court.

Can a student appeal an expulsion or a suspended expulsion?

Yes. You can appeal an expulsion or suspended expulsion order.

Can a district appeal a board's decision not to expel a student?

No. School districts cannot appeal a decision to not expel a student.

How long do you have to file an appeal?

An appeal must be filed within 30 calendar days of the governing board's decision to expel or order a suspended expulsion.¹²¹

After you file an appeal, when must the hearing be held?

The county board must hold a hearing on your appeal within 20 schooldays and issue a decision within 3 days of the hearing, unless the student requests a postponement.¹²²

How long does the county board have to make a recommendation on the expulsion?

The county board has 10 schooldays to make a recommendation.¹²³

¹²¹ Cal. Educ. Code § 48919

¹²² Cal. Educ. Code § 48919

¹²³ Cal. Educ. Code § 48919.5

Can the county board have the Office of Administrative Hearings conduct the hearing?

Yes. If the county board instead uses an OAH hearing officer or administrative panel to conduct the hearing, the officer/panel must make a recommendation to the board within 3 days of the hearing.

On what grounds can an expulsion appeal be filed?

On appeal, questions for review are limited to the following:

1. LACK OF JURISDICTION¹²⁴

Appeals that allege that the governing board acted “with or in excess of jurisdiction” can include (but are not limited to) the following circumstances: (1) the hearing was not conducted within the required timeframes; (2) the expulsion order was not based on a finding that the student committed one of the expellable acts enumerated in the Code; or (3) the student’s conduct was not related to school activities or attendance.

2. LACK OF FAIR HEARING

An allegation of bias or lack of impartiality at the expulsion hearing may be raised on appeal.¹²⁵

3. ABUSE OF DISCRETION¹²⁶

“Abuse of discretion” includes the following circumstances: (1) failure to meet Education Code procedural requirements; (2) failure to make required findings to support an expulsion; or (3) findings are not supported by evidence. To reverse an expulsion for abuse of discretion, the board must find that the abuse of discretion was *prejudicial*.

4. EVIDENTIARY ISSUES

If the county board determines that there is relevant and material evidence that could not have been produced at the hearing through reasonable diligence or that was improperly excluded, it may remand the matter to the school district governing board for reconsideration or it may hold a de novo hearing after providing “reasonable notice” to the student and district.¹²⁷

¹²⁴ Cal. Educ. Code § 48922(a), (b)

¹²⁵ See e.g. *Gonzales v. McEuen*, 435 F. Supp. 460 (C.D. Cal. 1977) (holding that the mere presence of a school superintendent during the school board’s deliberation violated the student’s due process rights and was considered “fundamentally unfair”).

¹²⁶ Cal. Educ. Code § 48922(c)

¹²⁷ Cal. Educ. Code § 48923(a)

How do you file an expulsion appeal?

First, submit a notice of appeal to the county office of education. Submit a copy of the notice of appeal and a written request for the hearing transcript to the school district. The district must provide the student with the hearing transcript and any supporting documents within 10 schooldays of the written request.

Once you have received the transcript and supporting documents, immediately file copies with the county board.¹²⁸

County board appellate procedures typically allow you or your counsel time to submit a full appellate brief after the transcript has been produced but confirm this practice just in case. Contact the county office of education for the appellate filing schedule.

What are other advocacy avenues for contesting an expulsion?

➤ UNIFORM COMPLAINT PROCEDURE

You can file an administrative complaint for discipline discrimination-related matters through the CDE or district's UCP process. This type of complaint is appropriate if an expelled student is assigned to an improper school placement, such as an independent study. Additional grounds include discrimination, harassment, bullying, intimidation, or other violations of the student's rights in the suspension or expulsion process. See above for the process involved with filing a UCP complaint.

➤ OCR COMPLAINT

If your student has experienced discrimination on account of a protected ground during the suspension or expulsion process, you can file a complaint with the federal Office for Civil Rights in the U.S. Department of Education. See above for the process involved with filing an OCR complaint.

¹²⁸ Note that you may have to pay the costs associated with obtaining the hearing transcript, unless you certify to the school district that you cannot afford the costs. If the county board ultimately rules in favor of the student on appeal, then the expelling school district's governing board must reimburse you for any costs paid for the transcript. Cal. Educ. Code § 48919

—SPECIAL PROTECTIONS FOR STUDENTS WITH DISABILITIES IN DISCIPLINE PROCEEDINGS—

Students with disabilities are guaranteed additional protections in school disciplinary matters through the IDEA and Section 504 of the Rehabilitation Act.

Do students with disabilities get more protections in disciplinary matters?

Yes. If a student has an IEP or a Section 504 Plan, special education laws governing discipline of students with disabilities will apply.

What if your student does not have an identified special education need but might need services?

Even if your student does not currently have an identified special education need, protections may still apply if you can show that the school “had knowledge” that the student had an undiagnosed disability and needed services. More information on students with unidentified special education needs is provided below.

Can a student with a disability be expelled for behavior that is caused by their disability?

No. A student may not be expelled, put on an extended suspension, or subjected to repeated school removals for behavior that is a manifestation of a disability.¹²⁹

How does a school determine whether certain behavior is a manifestation of a student’s disability?

To determine if behavior is a manifestation of a student’s disability, the school must hold a meeting called a “manifestation determination review” (“MDR”).

When must the MDR be held?

An MDR must be held within 10 days of the school’s decision to change a student’s placement.¹³⁰ A “change in placement” is defined as a student’s removal or pattern of removals from school totaling more than 10 school days.¹³¹

Does the school have to inform you of the MDR?

Yes. Prior to the MDR, you must receive notice of the meeting, the disciplinary action that triggered it, and all applicable procedural protections.¹³²

¹²⁹ 20 U.S.C. § 1415(k)

¹³⁰ 20 U.S.C. § 1415(k)(1); 34 C.F.R. § 300.536

¹³¹ 34 C.F.R. § 300.536(a)(2)

¹³² 20 U.S.C. § 1415(d), (k)(1)(H); 34 C.F.R. § 300.504(a)(3), 300.530(h)

Who must attend the MDR?

The MDR must include you, the school district, and any relevant members of the student's IEP team.¹³³

What happens at the MDR?

At the MDR, the participants must address (1) whether the student's behavior was caused by or has a "direct and substantial relationship" to the student's disability and (2) whether the behavior was a direct result of the district's failure to implement the student's IEP.

If the answer to either of these questions is "yes," the behavior is considered a manifestation of the student's disability. The school cannot discipline the student for the behavior and must return them to their original placement unless a new placement is agreed upon. Additionally, an IEP meeting must be scheduled to conduct a functional behavioral assessment ("FBA") and create a behavior intervention plan ("BIP") to address the behavior that led to the referral.¹³⁴

If the answer to both questions is "no," the school can take disciplinary action.¹³⁵

What happens if a student with disabilities commits a zero-tolerance offense?

In cases in which a student with special education needs has committed a zero-tolerance offense, a school is entitled to remove that student from school and place them in an "interim alternative education setting" for up to 45 days, regardless of whether the behavior in question is a manifestation of the student's disability. The school must still hold an MDR.¹³⁶

A student can be placed in an interim alternative education setting if the school alleges that the student (1) carried or possessed a weapon, (2) knowingly possessed used, sold or solicited the sale of illegal drugs, or (3) inflicted serious bodily injury on another person.¹³⁷ Note that these zero tolerance offenses are defined by IDEA and do not align with the offenses listed in the Education Code.

¹³³ 20 U.S.C. § 1415(k)(1)(E); If the student is involved in the dependency or delinquency systems, the Education Code requires that the district invite the minor's attorney and appropriate child welfare agency representative.

¹³⁴ 20 U.S.C. § 1415(k)(1)(F)

¹³⁵ 20 U.S.C. § 1415(k)(1)(C)

¹³⁶ 20 U.S.C. § 1415(k)(1)(G)

¹³⁷ *Id.*

What happens if you disagree with the outcome of the MDR?

As previously laid out in the Special Education Advocacy section, if you disagree with the outcome of the MDR, you can file for due process using the procedure above. Again, students are entitled to remain in their current school placement per the “stay put” requirement while due process proceedings are underway.

Do students with disabilities continue to receive services during school removals that amount to changes in placement?

Students must continue to receive a FAPE during any change of placement or interim placement and regardless of whether the student’s behavior was determined to be a manifestation of their disability. Therefore, unlike general education students, students with special education needs must continue to receive educational services during an expulsion or any suspension longer than 10 days, even if those services are provided in an alternative setting.¹³⁸

¹³⁸ 20 U.S.C. § 1415(k)(1)(D)

—SPECIAL PROTECTIONS FOR STUDENTS WITH UNIDENTIFIED SPECIAL EDUCATION NEEDS—

Students with unidentified special education needs can receive protections under IDEA if it is shown that a school district “had knowledge” of the student’s disability prior to the behavior leading to the discipline referral.

Are there protections for students with unidentified special education needs with discipline issues?

Yes. Even if there has been no formal determination that a student has a disability or is eligible for special education services, IDEA’s disciplinary protections will apply if the school had knowledge or was on notice of the student’s potential disability or need for services.¹³⁹

When does a school district “have knowledge” of the student’s special education needs?

A school district is deemed to have knowledge of a disability if, before the behavior occurred:

1. You expressed concern in writing to a school administrator or teacher that the student might need special education services;
2. You requested that the student be evaluated for special education services, but no assessments were completed; or
3. A teacher or other school personnel expressed specific concerns to the school’s special education director or other supervisory personnel about the student’s pattern of behavior.¹⁴⁰

What happens if a school is found to have “had knowledge” of a student’s need for services?

If the school district is found to have had prior knowledge of the child’s disability, all protections discussed above apply.

If you believe that the school had prior knowledge, you should communicate the basis for that assertion to the school and request an MDR and compliance with IDEA’s stay put requirements. If the school refuses to apply these protections, you should file for due process.

¹³⁹ 20 U.S.C. § 1415(k)(5)(A)

¹⁴⁰ 20 U.S.C. § 1415(k)(5)(B)

When does a school district not “have knowledge” of a student’s need for services?

A school will not be deemed as having knowledge if:

1. You did not allow the student to be evaluated for special education;
2. You refused special education services when the student was eligible; or
3. The student was evaluated, and the school district determined that the child did not qualify for services under IDEA.¹⁴¹

What happens if a school district is not found to have “had knowledge” of a student’s need for services?

If the school district is found to have no prior knowledge of the student’s disability, the school may discipline the student in the same manner that it disciplines non-disabled students.¹⁴²

However, you can request that the student be assessed for special education services, even after disciplinary proceedings have started. You can also request that this assessment be “expedited.” The law does not provide a specific timeline for expedited assessments; however, you can argue that the timeline must be meaningfully shorter than the standard assessment timeframe (laid out above). While the assessment is being conducted, the student may remain in the placement in which they were placed by school authorities; in other words, there is no stay put protection in these circumstances.

¹⁴¹ 20 U.S.C. § 1415(k)(5)(C)

¹⁴² 20 U.S.C. § 1415(k)(5)(D)

—SPECIAL PROTECTIONS FOR STUDENTS WITH 504 PLANS—

Section 504 of the Rehabilitation Act provides protections for students with 504 plans, although it provides fewer protections than IDEA.

What disciplinary protections are available for students with 504 plans?

Section 504 protects a broader group of students than IDEA but provides fewer protections to students in discipline proceedings.

Under Section 504, if the disciplinary action constitutes a “significant change in placement,” the school must follow certain procedures. The U.S. Department of Education’s Office of Civil Rights has indicated that the following disciplinary actions may count as a significant change in placement:

- Removal of a student for longer than 10 days;
- Removal of student for an indefinite period of time;
- Expulsion; and
- A series of shorter suspensions that create a pattern of exclusion from school.¹⁴³

Before subjecting a student with a 504 plan to a significant change in placement, the school must reevaluate the student’s needs and placement. As part of this reevaluation, the district must convene a team meeting that functions the same as an MDR in the special education context.

Can a 504 team’s decision be challenged?

You can challenge a 504 team’s placement decision and determination following the “MDR” meeting by seeking a hearing with the school district by way of a Section 504 hearing. This can be accomplished through the UCP process outlined above.

Note that unlike IDEA, Section 504 has no stay put requirement nor does it require that educational services continue to be provided during disciplinary proceedings.

¹⁴³ Office of Civil Rights, Letter re: Akron City School Dist., 19 IDELR 542 (Nov. 18, 1992); see also <https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf>.

—INVOLUNTARY TRANSFERS—

What is an involuntary transfer?

An involuntary transfer is when a school district transfers a student to an alternative school against your wishes or when your consent is coerced.

Involuntary transfers are different from voluntary transfers. Voluntary transfers take place when you agree to the transfer for safety, academic, or other reasons. Students who voluntarily transfer to another school have different rights regarding re-enrolling in comprehensive district schools.

What are alternative schools?

Alternative schools include county community schools, community day schools, and continuation schools. These schools may be helpful for some students, but they do not always provide the same educational or extra-curricular opportunities as comprehensive schools.¹⁴⁴

What is a continuation school?

A continuation school is an alternative school program offering flexibility for students to get the credits needed to complete high school. Anyone can enroll in continuation school programs, but they are specifically meant to help students with truancy problems or those behind in academic credits. Continuation schools generally focus on work-study, career counseling, and job placement services.¹⁴⁵

What are a student's rights if they are being involuntarily transferred to an alternative school?

If your student is being involuntarily transferred to an alternative school, you have a right to:

- Receive written notice of the transfer;
- Review all transfer documents;
- Request a meeting with the district superintendent or their representative to tell the student's side of the story;

¹⁴⁴ See Cal. Dept. of Educ., <https://www.cde.ca.gov/sp/eo/>.

¹⁴⁵ Cal. Educ. Code § 48432.

- Appeal the transfer to the superintendent;
- Call witnesses at and bring an attorney to the appeal; and
- Have a yearly review to make sure the transfer is still necessary.

No one from the school requesting the transfer can be involved in the final transfer decision. If a transfer is made, students should be allowed to return to a traditional high school the following year with the superintendent's permission.¹⁴⁶

For what reasons can a district involuntarily transfer a student to an alternative school?

A district may only involuntarily transfer a student to an alternative school for specific offenses listed in the Education Code or if the student has been repeatedly absent or truant.

The district may not involuntarily transfer a student to an alternative school unless it has tried other ways to change a student's behavior, or it can prove the student is a danger to others or a serious disruption to the school environment.

If a district decides to involuntarily transfer a student to an alternative school, when will the transfer take place?

If the district decides to involuntarily transfer a student to an alternative school, it may only do so in the semester in which the act occurred or in the semester immediately after.¹⁴⁷

What is a county community school?

A county community school is a program run by the county office of education for students who are expelled, who have behavior problems, or who are referred by the School Attendance Review Board ("SARB").

What is the School Attendance Review Board?

The School Attendance Review Board, or "SARB," accepts referrals for students who are frequently absent or late to class or who are disobedient and disorderly during school.¹⁴⁸

¹⁴⁶ Cal. Educ. Code § 48432.5

¹⁴⁷ *Id.*

¹⁴⁸ Cal. Educ. Code § 48263

When SARB gets a referral, it holds a hearing. The hearing helps identify any problems that are keeping a referred student from attending classes and discusses possible solutions. Topics frequently considered include:

- Does the student need transportation or other support services?
- Does the student have a disability?
- Does the student have medical conditions impacting attendance?
- Is the student homeless or in the foster care system?
- Is the student from a migrant family?

SARB can also make recommendations, including parent agreements, transfers to county community schools, or even referrals to juvenile courts.

How often can a student be late to class before being referred to SARB?

A truancy notice is issued when a student has been absent three or more times without a good excuse. Parents receive three truancy notices before the student is classified as “habitually truant” and referred to SARB.

Does a student’s ERH have to get notice of a SARB referral?

Yes. Notice of a SARB hearing must be in writing and include:

- The reasons for the referral;
- An explanation of the SARB process;
- A list of the people who are members of the SARB; and
- An invitation to participate in a scheduled conference.

What are a student’s rights if a district or SARB recommends a transfer to a county community school?

A student **may not** be transferred to a county community school:

- Just because they are homeless or in foster care;
- If the community school cannot meet their educational needs;
- If there are safety concerns for the student at the community school;
- If the community school does not have enough space; or
- If the community school is hard to get to.

If a student is transferred because of a SARB referral, they must be allowed to return to a traditional school when the transfer period ends.

What is a community day school?

A community day school is a program focused on “at risk” youth who are more likely to drop out of school. The program lets teachers work with fewer students so they can give them personalized instruction.

When can a student be transferred to a community day school?

A student can be transferred to a community day school if they are:

- Expelled,
- Referred by probation;
- Referred through SARB; or
- Referred through a district-level process.¹⁴⁹

Can you appeal a transfer to a community day school?

No. A student cannot appeal a transfer to a community day school. However, they may appeal the referral that caused the student to be transferred to the program (i.e., they can appeal the expulsion).

¹⁴⁹ Cal Educ. Code § 48263

—ADVOCACY FOR FOSTER YOUTH—

—DEFINITION OF FOSTER YOUTH—

How does the law define “foster youth”?

California’s Education Code defines “foster youth” as any of the following:

- A child or youth who is the subject of a petition filed under the Welfare and Institutions Code (“WIC”) Section 300.¹⁵⁰

This means that a court has taken jurisdiction over a child and declared the child to be a dependent of the court due to the presence or risk of abuse or neglect;¹⁵¹

- A child or youth who has been declared a ward of the court under WIC Section 602 due to the child’s violation of certain criminal laws and who has been ordered to be removed from home and placed in foster care pursuant to WIC Section 727; or
- A youth between ages 18 and 21 who is enrolled in high school, is a non-minor dependent of child welfare, probation, or a tribal organization, and is participating in a transitional living case plan.

Does California law provide extra protection to youth in foster care?

Yes. California law provides additional protections to youth in foster care to make sure they have access to the same academic resources, services, and enrichment activities available to all students.

These additional rights and protections will be further explained below.

¹⁵⁰ Cal. Educ. Code § 48853.5

¹⁵¹ See Cal. Foster Youth Educ. L. Fact Sheet at http://www.cfyetf.org/publications_27_1555989899.pdf.

—RIGHT TO ENROLL AT THE SCHOOL OF ORIGIN—

California permits foster youth to remain at or enroll in their school of origin while under the court’s jurisdiction, unless the student’s IEP or education rights holder makes a different placement determination.

What is a foster youth’s “school of origin”?

Students in foster care have the right to stay in the same school after they move to a new foster care placement or to return to a school they previously attended in the last 15 months. This school is known as the student’s “school of origin.”¹⁵²

How do you determine a student’s school of origin?

A student in foster care’s school of origin can be the school the student attended when first entering foster care, the school the student most recently attended, or any school the student attended in the last 15 months.¹⁵³

How do you determine the school of origin when a student transitions from elementary to middle or middle to high school?

If a foster youth is transitioning from elementary to middle or middle to high school, the student has the right to transition to the same school as their classmates in the same district attendance area.¹⁵⁴

Can a student be prevented from enrolling at a school of origin?

Yes. A student in foster care may not be allowed to remain at or enroll in their school of origin in either of the following two situations:

- The student has an individualized education program (“IEP”) requiring placement in a nonpublic, nonsectarian school or agency, or in another local educational agency;¹⁵⁵ or
- The student’s education rights holder determines that it is in the best interest of the student to be placed at another school.¹⁵⁶

¹⁵² Cal. Educ. Code § 48853(f); 48853(a)(1)

¹⁵³ See Foster Youth Educ. Rights, Cal. Dept. of Educ. at <https://www.cde.ca.gov/ls/pf/fy/fosteryouthedrights.asp>.

¹⁵⁴ Cal. Educ. Code § 48853.5(f)(4)

¹⁵⁵ Cal. Educ. Code § 48853(a)(2)

¹⁵⁶ Cal. Educ. Code § 48853(a)(3). Note that in this case, the ERH should provide a written statement that he/she has made the determination to enroll the student in another education program outside the student’s school of origin.

What if there is a dispute with the school over the student's school of origin?

If there is a disagreement between the student and the district or school, the student has the right to stay in their school of origin until the dispute is resolved.

What if a foster youth's residence changes while in foster care?

If a foster youth's residence changes while under court jurisdiction, they have the right to remain in their current school of origin.¹⁵⁷ The youth is regarded as satisfying the residency requirements for attendance in that school district.¹⁵⁸

Does a student have to leave their school of origin after exiting foster care?

If a student exits foster care, they may have to transfer to their school of residence—or the school they are zoned for based on their permanent address—if they no longer meet the residency requirements for their school of origin. If the youth is in grades 1 through 8 when the court's jurisdiction ends, the right to remain in the school of origin lasts through the end of the school year. If they are in high school when court jurisdiction ends, the right lasts through graduation.¹⁵⁹

Does the district have to provide foster youth with transportation to their school of origin?

Maybe. If transportation is needed to get a foster youth to and from their school of origin, the school district is **not** required to provide transportation services, unless the district is otherwise required by federal law (for example, through Every Student Succeeds Act or the Individuals with Disabilities Education Act).¹⁶⁰ A school district can, at its discretion, provide transportation services.¹⁶¹

However, Every Student Succeeds Act requires that local education agencies and child welfare collaborate to develop clear written procedures for providing foster youth with prompt and cost-effective transportation to their schools of origin.¹⁶² If a caregiver is able to provide transportation, child welfare is often able to reimburse them for reasonable costs with federal funds.¹⁶³

¹⁵⁷ Cal. Educ. Code § 48853.5(f)

¹⁵⁸ Cal. Educ. Code § 48204(a)(2).

¹⁵⁹ Cal. Educ. Code § 48853.5(e)(1)-(4).

¹⁶⁰ Cal. Educ. Code § 48853.5(f)(3)(B)

¹⁶¹ Cal. Educ. Code § 48853.5(f)(5)

¹⁶² 42 U.S.C. 675(4)(A); 20 U.S.C. 6312(c)

¹⁶³ 42 U.S.C. 675(4)(A); see also Cal. Dept. of Soc. Services' All County Letter No. 11-51 for an explanation of how to calculate the reimbursement.

—RIGHT TO IMMEDIATE ENROLLMENT—

Students in foster care have a right to be immediately enrolled in a new school or reenrolled in a school of origin, even if the student does not have the required paperwork or records or they have outstanding fees.

What does the right to immediate enrollment mean?

Students in foster care have the right to immediately enroll in their schools of origin or a new school in the attendance area of their current placements.

Do students in foster care need to have all their enrollment paperwork before beginning classes?

No. Students cannot be prevented from enrolling because they do not have required paperwork (such as a birth certificate, transcript, or IEP). They also must be allowed to enroll even if they did not check out from their previous school, they have outstanding fees, fines, textbooks, or other items due to the last school, or they cannot produce clothing or records needed for enrollment.¹⁶⁴

How do you help a student in foster care enroll in a new school or a school of origin?

1. **Gather information** – Request the student's IEP (if eligible) and current transcript (if in high school). Speak to the youth and ERH to confirm whether they have previously tried to enroll and whether they were denied.
2. **Identify school options** – Prepare a list of schools to discuss with the student and their ERH, including (1) the local comprehensive high school based on the youth's current geographic residency, (2) any schools of origin, and (3) any alternative school choices such as charter schools, continuation schools, or independent study programs.
3. **Research** school options and their enrollment processes.
4. **Contact** the school to enroll the student – Explain that foster youth are entitled under the law to immediate enrollment. If the school is resistant or denies enrollment, you may need to file a UCP complaint.
5. **Course Scheduling** – Follow up after enrollment to make sure the youth is enrolled in appropriate classes and obtain a copy of their course schedule. This is usually available for distribution within 24 hours of enrollment.

¹⁶⁴ Cal. Educ. Code § 48853.5(f)(8)(B)

—HIGH SCHOOL GRADUATION FOR FOSTER YOUTH—

AB 167/216 allows foster youth who transfer high schools after their second year to graduate from any district school after completing minimum state graduation requirements.

What is AB 167/216?

AB 167/216 allows foster youth who transfer high schools after their second year to graduate from any district school after completing minimum state graduation requirements if they cannot reasonably complete the additional local school district graduation requirements in their four years of high school.

What AB 167/216 graduation requirements look like compared to district requirements will be discussed below.

Who qualifies for AB 167/216 graduation?

AB 167/216 applies to any youth in foster care or on probation who is either removed from their home under WIC Section 309 or subject to a petition under WIC Section 300 or 602.

How do you determine if a youth is eligible under AB 167/216?

A student must satisfy each of the following eligibility requirements to graduate under the AB 167/216 exemption:

1. They must be in foster care or a former student of a juvenile court school;
2. They must have transferred schools after their second year of high school.

To determine whether a student has completed their second year of high school you can use either (1) the length of their enrollment in school or (2) the number of credits the student has earned.¹⁶⁵

3. The youth must complete all California graduation requirements. See chart below for AB 167/216 graduation requirements.¹⁶⁶
4. The district must find that the student cannot reasonably complete the additional local graduation requirements within four years of high school.¹⁶⁷

¹⁶⁵ Cal. Educ. Code § 51225.1(c)

¹⁶⁶ Cal. Educ. Code § 51225.3(a)

¹⁶⁷ Cal. Educ. Code § 51225.1

Does a foster youth's new school have an affirmative duty to check whether the student is eligible under AB 167/216?

Yes. A new school district accepting a transferring foster youth must determine whether a foster youth is eligible to graduate under AB 167/216 within 30 days of the transfer. Schools approving a student's eligibility must provide them with an AB 167/216 Certification Letter.

Can a foster youth lose their AB 167/216 eligibility?

No. Once a student is found eligible, they stay eligible, even if they transfer schools again, return to the care of their biological parents, or their court case closes.

What are the options available to students who are found eligible?

Eligible students can (1) accept the exemption and graduate using minimum state requirements, (2) reject the exemption and graduate using school district requirements, (3) stay in high school for a fifth year to complete school district requirements, even if they turn 19 years old, or (4) defer their decision.

Regardless of which option a student in foster care selects, they will graduate with a normal high school diploma, as AB 167/216 does not affect the status or type of diploma they receive.

Are there any potential consequences of graduating under AB 167/216?

Graduating under AB 167/216 could impact a student's ability to be admitted to postsecondary educational institutions (i.e., a college or university).¹⁶⁸ The school district must notify the student and their ERH of this risk. Schools should inform students that this potential negative externality of AB 167/216 can be mitigated by transferring to a 4-year school by way of a California Community College.

Can a student request reconsideration if they are found ineligible?

Yes. Students previously found ineligible for graduation under AB 167/216 can request that the school reconsider the decision at any time.

How should you advocate for a student who is wrongfully denied an AB 167/216 exemption?

If an eligible student is denied AB 167/216 exemption, you may file a written complaint with the school district or charter school using the Uniform Complaint

¹⁶⁸ Cal. Educ. Code § 51225.1(f)

Procedures (“UCP”). The complaint should include details and facts about why the student in question is eligible for AB 167/216 and why you believe they were improperly denied.

When a complaint is filed, the district must investigate and provide a written response, including a proposed resolution, within 60 days.¹⁶⁹

If you are not satisfied with the district’s response, you may file a complaint with the California Department of Education (“CDE”). The CDE will then have 60 days to investigate and provide a written response.¹⁷⁰

A school district or superintendent who finds merit in a complaint or appeal must provide a remedy to the affected student.¹⁷¹

What are AB 167/216’s graduation requirements?

California school districts give students 5 credits per class per semester, or 10 credits per class per year. As you can see in the chart below, the sample California district requires a total of 230 credits to graduate. AB 167/216’s graduation requirements¹⁷² reduce the total number of credits needed to graduate to 130. The chart below shows what this looks like:

AB 167/216 State Graduation Requirements	Sample Local School District Graduation Requirements
English (30 credits)	English (40 Credits) <ul style="list-style-type: none">• English 9 (10 credits)• English 10 (10 credits)• American Literature (10 credits)• Contemporary Composition (10 credits)
Math (20 credits) <ul style="list-style-type: none">• Algebra 1/Math 1 (10 credits)• Other math (10 credits)	Math (30 credits) <ul style="list-style-type: none">• Algebra 1 (10 credits)• Geometry (10 credits)• Algebra 2 (10 credits)
Science (20 credits) <ul style="list-style-type: none">• Biological science (10 credits)• Physical science (10 credits)	Science (30 credits) <ul style="list-style-type: none">• Biological science (10 credits)• Physical science (10 credits)• Lab science (10 credits)

¹⁶⁹ Cal. Educ. Code § 51225.1(m)(1)

¹⁷⁰ Cal. Educ. Code § 51225.1(m)(2)

¹⁷¹ Cal. Educ. Code § 51225.1(m)(3)

¹⁷² See High School Graduation for Foster Youth: AB 167/216 at [www.sjcoe.org/fosterandhomelesssservices/pdf/AB167-216%20FAQ%27s\[1\].pdf](http://www.sjcoe.org/fosterandhomelesssservices/pdf/AB167-216%20FAQ%27s[1].pdf).

Social Studies (30 credits) <ul style="list-style-type: none"> • World History (10 credits) • US History (10 credits) • American government/civics (5 credits) • Economics (5 credits) 	Social Studies (30 credits) <ul style="list-style-type: none"> • World History (10 credits) • US History (10 credits) • Principles of American Democracy (5 credits) • Economics (5 credits)
Visual or Performing Arts, Foreign Language, or Career Technical Education (10 credits)	Foreign Language (20 credits) Visual and Performing Arts (10 credits)
Physical Education (20 credits)	Physical Education (20 credits)
Electives (0 credits)	Electives (50 credits)
TOTAL: 130 credits	TOTAL: 230 credits

How do you do a credit check and graduation plan for a foster youth?

Part of advocating for a foster youth can include conducting a credit check and coming up with a graduation plan to ensure that the school allows the student to enroll in and complete the courses needed for them to graduate. Here are steps:

1. Request records from each high school the student attended (see section above on how to request records and [Appendices A and B](#) for sample record request forms and authorizations). Make a list of all grades/check-out grades and credits earned for all courses attempted and completed.
2. Follow-up with the youth to see if there are any gaps in enrollment. Students in foster care may be eligible for partial credits for classes that were not completed (see below for information on partial credit advocacy).
3. Look up the graduation requirements for the youth's current school district. Use the chart for AB 167/216 graduation requirements. Refer to the sample credit check template to begin determining which graduation requirements the youth has satisfied and which are still needed.
4. Meet with the school to go over classes that still need to be taken and work together to make a sample class schedule that will allow the student to receive their diploma. Remember, foster youth are entitled to a 5th year in high school to complete their graduation requirements.
5. Follow up with the school every semester to make sure the youth is enrolled in classes that align with their graduation plan.

Sample AB 167/216 Credit Check Template

Subject Area	District Requirements			Subject Area	AB 167/216 Requirements		
	Credit Required	Completed	Needed		Credit Required	Completed	Needed
Modern World History	10	10	0	Modern World History	10	10	0
U.S. History	10	5	5	U.S. History	10	5	5
English	40	25	15	English	30	25	5
Mathematics (Two Years Algebra, One Year Geometry)	30	15	15	Mathematics	20	20	0
Lab Science (One Year Biology, One Year Physical Science)	20	15	5	Biological Science	10	10	0
Language Other than English	20	0	20	Physical Science	10	5	5
Visual + Performing Arts	10	10	0	VPA/PL/CTE	10	10	0
College Preparatory Elective	10	10	0	Physical Education	20	20	0
Principles of American Democracy	5	5	0	American Government	5	5	0
Economics	5	0	5	Economics	5	0	5
Physical Education	20	20	0				
Health	5	5	0				
Extra Courses/Electives	25	25	0				
Totals	210	145	65		130	110	20
NEEDS: Classes	Semesters Needed -- District		Semesters Needed -- AB 167				
US History	1		1				
English	3		1				
Math (Geometry)	1		0				
Math (Algebra)	2		0				
Physical Science	1		1				
Language other than English	4		0				
Economics	1		1				

—RIGHT TO PARTIAL CREDITS—

High school students in foster care who change schools during the school year have a right to partial credits in all classes they are passing when they leave their old school, even if they do not complete the entire class.

Why do students in foster care get partial credits?

Because students in foster care are more likely to transfer schools frequently throughout the semester, schools and other LEAs receiving transferring foster youths must accept coursework satisfactorily completed at another public school, juvenile court school, or nonpublic school. This is true even if the student did not complete the entire course.

Can a school lower a foster youth's grades due to absences or gaps in enrollment caused by changing schools?

No. A foster youth's grades cannot be lowered due to absences or gaps in enrollment caused by changes in school or home placements, attendance at court hearings, or participating in any court-related activity.

Does a school have to calculate partial credits for a foster youth?

Yes. When the sending school receives notice that a student in foster care is transferring, they must issue check-out grades and calculate and send credits earned on an official transcript to the receiving school within 2 business days.¹⁷³

The receiving school must accept all credits from the sending school and apply them to the same or substantially similar courses. Foster youth must be enrolled in the same or equivalent classes to the ones they were previously enrolled in.

How do you calculate partial credits?

First, check with the district to see if it has its own partial credit policy. If the district does not have one, use the California Child Welfare Council's partial credit model policy, adopted by many California school districts.

The model policy assigns the following credits to class periods attended. **Note that most California districts award 5 credits for each course per semester; however, some districts award 1 credit per course per semester.** Conversion between these districts is accounted for in the chart below.

¹⁷³ Assembly Bill 490, Senate Bill 578.

CLASS PERIODS ATTENDED	CREDITS AWARDED (5 credits/grading period)	CREDITS AWARDED (1 credit/grading period)
7-13 class periods	0.5 credits per subject	0.1 credits per subject
14-20 class periods	1 credit per subject	0.2 credits per subject
21-27 class periods	1.5 credits per subject	0.3 credits per subject
28-34 class periods	2 credits per subject	0.4 credits per subject
35-41 class periods	2.5 credits per subject	0.5 credits per subject
42-48 class periods	3 credits per subject	0.6 credits per subject
49-55 class periods	3.5 credits per subject	0.7 credits per subject
56-62 class periods	4 credits per subject	0.8 credits per subject
63-69 class periods	4.5 credits per subject	0.9 credits per subject
70+ class periods	5 credits per subject	1 credit per subject

What should you do when the school awards incorrect partial credits?

Start with the district/school:

1. If a transferring school refuses to calculate or a receiving school refuses to count partial credits completed by a student in foster care, start by drafting a UCP complaint letter (see above for how to draft a UCP letter).
2. Send the letter to the school or district by fax or email. Address the letter to (1) the principal, vice principal, or counselor, (2) the Foster Youth Counselor or liaison, and (3) the district's UCP Compliance Officer. Include the number of credits you are requesting pursuant to the district's policy.
3. If the district does not have a policy, attach California's Partial Credit Model Policy, available on GAMUT at AR 6173.1(h).
4. Follow up with a call to the school or UCP compliance officer within 2 business days to ensure the letter was received and is being addressed.
5. When the issue is resolved, request a current transcript that reflects the student's correct credit amount.

Additional Calculation Guidelines

Length of Class Period

- Class periods lasting 89 minutes or less = 1 class period.
- Class periods lasting 90 minutes or more = 2 class periods.

Appeal to the CDE:

If partial credits are not issued within 60 calendar days of sending your letter to the district/school, consider filing your complaint with the CDE. Guidelines for this process are laid out above.

APPENDIX

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—APPENDIX A—

AUTHORIZATION TO RELEASE INFORMATION/RECORDS

Student's Name	
Student's D.O.B.	
ERH's Name	
Address:	
Telephone Number:	

AUTHORIZATION TO RELEASE INFORMATION/RECORDS

I authorize any person, governmental agency, corporation or other agency to release to _____ any and all information pertaining to (student) _____'s developmental, educational, social service, and/or mental health needs. Such information shall include medical, psychological, social, vocational, rehabilitative, educational, and law enforcement records, reports, assessments, and evaluations. The authorization includes the release of all records or documents deemed confidential and extends to all documents otherwise considered confidential under any Federal or State privacy laws.

This authorization shall include, but is not limited to, the right to inspect, copy, or otherwise utilize said records as may be deemed fit to obtain whatever clarification or opinion on said records the requesting party shall deem necessary to the proper disposition of my case.

I understand that this authorization, with the exception of action already taken, is subject to revocation by me at any time. I also understand that a photocopy or facsimile copy of this authorization has the same effect as the original.

Please forward all records regarding the minor named above within five (5) days of receipt of this form to:

Name of Requesting Party:	
Address:	
Telephone Number:	
Fax Number:	

Name of Person Authorizing Release of Records:
Relationship to Student:

Signature: _____

Date: _____

—APPENDIX B—

REQUEST FOR STUDENT RECORDS (ERH)

Date: _____

District:	
Attn: Custodian of Records	
Address:	
Fax Number:	

Student's Name:	
Student's D.O.B.:	
Current School:	
ERH's Address:	
ERH's Email:	
ERH's Telephone Number:	

Re: Records Request

To Whom It May Concern:

On behalf of student _____, a student who currently attends the school named above, I am writing to request a copy of all of the above student's education records retained by the District, including but not limited to the CUMULATIVE FILE (or a record of where the file was forwarded upon checkout) and ALL:

- Individualized Education Programs ("IEPs");
- Grades/Progress Reports/Transcripts;
- Disciplinary records, including, but not limited to, suspension and expulsion notices and referrals to a counselor or other school official;
- Attendance records;
- Class schedules;
- Reports;
- Standardized test scores;
- Assessments/evaluations and protocols; and
- Notes by teachers and other staff members.

I am the above student's Education Rights Holder. As you are aware, the law requires that you provide these records no later than five days following the date of the request. See Cal. Educ. Code Section 49069.7; see also FERPA, 20 U.S.C. Section 1232(g) and 34 C.F.R. Section 99.10 (discussing right to access records generally). Due to financial hardship, I am requesting that the fees for this request be waived.

You may email or mail the records requested, to my attention. Thank you in advance for your prompt attention to this request. If you have any questions, please feel free to contact me at the phone number or email given above.

Sincerely,

REQUEST FOR STUDENT RECORDS (ADVOCATE)

Date: _____

District:	
Attn: Custodian of Records	
Address:	
Fax Number:	

Student's Name:	
Student's D.O.B.:	
Current School:	
Advocate's Address:	
Advocate's Email:	
Advocate's Telephone Number:	

To Whom It May Concern:

On behalf of student _____, a student who currently attends the school named above, I am writing to request a copy of all of the above student's education records retained by the District, including but not limited to the CUMULATIVE FILE (or a record of where the file was forwarded upon checkout) and ALL:

- Individualized Education Programs ("IEPs");
- Grades/Progress Reports/Transcripts;
- Disciplinary records, including, but not limited to, suspension and expulsion notices and referrals to a counselor or other school official;
- Attendance records;
- Class schedules;
- Reports;
- Standardized test scores;
- Assessments/evaluations and protocols; and
- Notes by teachers and other staff members.

I am enclosing an authorization to release information/records signed by _____, who is the student's education rights holder. As you are aware, the law requires that you provide these records no later than five days following the date of the request. See Cal. Educ. Code Section 49069.7; see also FERPA, 20 U.S.C. Section 1232(g) and 34 C.F.R. Section 99.10 (discussing right to access records generally).

The student qualifies for free legal services from my organization, as they are a low-income individual. Thus, we are requesting that the fees for this request be waived. You may fax, mail, or email the records to my attention. Thank you in advance for your prompt attention to this request. If you have any questions, please feel free to contact me at phone number or email given above.

Sincerely,

—APPENDIX C—

SAMPLE COMPLIANCE COMPLAINT THREAT LETTER

Date: _____

District:	
Attn: Custodian of Records	
Address:	
Fax Number:	

Student's Name:	
Student's D.O.B.:	
Current School:	
ERH's Address:	
ERH's Email:	
ERH's Telephone Number:	

To Whom It May Concern:

I am the above student's Education Rights Holder. My student currently attends the above school and has the following disability: _____.

I attempted to contact you on ____/____/____ to discuss the following issues with my student's school/district:

- ☐ I requested my student's education records on ____/____/____ and have not received requested documents within the 5-business day timeline required by Section 49069.7 of the California Education Code.
- ☐ I never consented to special education evaluations done by the district on ____/____/____. (Failure to get written parental consent for assessment, Cal. Educ. Code § 56321).
- ☐ When I asked the district for a copy of special education evaluations, they refused to give me a copy. (Failure to provide parent with requested records, Cal. Ed. Code Sec. 56504; 34 C.F.R. Sec. 300.502.)
- ☐ My student's IEP states that _____, but the district has not provided these opportunities/services. (Failure to implement the IEP, Cal. Ed. Code Sec. 56345; failure to provide least restrictive environment, Cal. Ed. Code Sec. 56364; 34 C.F.R. Sec. 300.550-553.)
- ☐ Other: _____

I would prefer to resolve the issues outlined above without filing a compliance complaint with the California Department of Education. To this end, please remedy the above issues immediately by:

- ☐ Providing me with immediate access to and copies of my student's records;
- ☐ Getting my consent prior to any future assessments or changes to the IEP;
- ☐ Immediately implementing my student's IEP as written;
- ☐ Modifying the IEP as follows: _____
- ☐ Other: _____

I ask that you immediately comply with the above requests to avoid my filing a compliance complaint with the California Department of Education.

Sincerely,

—APPENDIX D—

SPECIAL EDUCATION GLOSSARY OF COMMON ACRONYMS

Special education law uses a lot of acronyms. Below is a glossary to help you understand education-related documents or meetings.

#			
504	Section 504 of the Rehabilitation Act		
A			
ADA	Americans with Disabilities Act	APE	Adaptive Physical Education
ADD/ADHD	Attention Deficit/ Attention Deficit Hyperactivity Disorder	AS	Asperger's Syndrome
ADR	Alternative Dispute Resolution	ASD	Autism Spectrum Disorder
B			
BD	Behavioral Disorder	BIP	Behavioral Intervention Plan
C			
CDE	California Department of Education	CF	Cystic Fibrosis
D			
DIS	Designated Instructional Services	DS	Down Syndrome
DSS	Department of Social Services		
E			
EC	Education Code	ERMHS	Educationally Related Mental Health Services
EI	Early Intervention	ESSA	Every Student Succeeds Act
EIP	Early Intervention Program	ERICs	Educationally Related Intensive Counseling Services
F			
FAA	Functional Analysis Assessment	FERPA	Family Education Rights and Privacy Act
FAPE	Free Appropriate Public Education	FHR	Fair Hearing Request
FBA	Functional Behavior Assessment		
G			
GE	General Education		
H			
HH	Hard of Hearing		

I			
IA	Instructional Assistant	IEP	Individualized Education Plan (or Program)
I/DD	Intellectual and Developmental Disabilities	ITP	Individualized Transition Plan
IDEA	Individuals with Disabilities Education Act		
L			
LEA	Local Educational Agency	LRE	Least Restrictive Environment
LEP	Limited English Proficiency		
M			
MDR	Manifestation Determination Review		
N			
NCLB	No Child Left Behind Act	NPA	Non-Public Agency
NOA	Notice of Action	NPS	Non-Public School
O			
OAH	Office of Administrative Hearings	OSEP	U.S. Office of Special Education Programs
OCR	U.S. Office for Civil Rights	OT/PT	Occupational Therapy/Physical Therapy
OEO	CDE Office of Equal Opportunity		
P			
PBIS	Positive Behavior Intervention and Supports	PS	Program Specialist
PBS	Positive Behavior Supports	PDS/NOS	Pervasive Developmental Disorder/Not Otherwise Specified
POS	Purchase of Service	PWS	Prader-Willi Syndrome
R			
RSP	Resource Specialist Program	RTI	Response to Intervention
S			
SC	Service Coordinator	SLD	Specific Learning Disability
SDC	Special Day Class	SLP	Speech and Language Pathologist
SELPA	Special Education Local Plan Area	SPED	Special Education
SES	Supplementary Education Services	SST	Student Study Team
T			
TA	Teacher's Aide/Assistant	TBI	Traumatic Brain Injury

—APPENDIX E—

SPECIAL EDUCATION ASSESSMENT REQUEST FORM

Date: _____

District: Attn: Director of Special Education	
Address:	
Fax Number:	

Student's Name:	
Student's D.O.B.:	
Current School:	
ERH's Address:	
ERH's Email:	
ERH's Telephone Number:	

To Whom It May Concern:

I am the Education Rights Holder for the student named above. I am writing to request that my student be evaluated to determine if they are eligible for special education services and supports. I request that the District conduct the following evaluations of my student:

<input type="checkbox"/>	Academic Achievement	<input type="checkbox"/>	Assistive Technology
<input type="checkbox"/>	Psychological/Psycho-educational	<input type="checkbox"/>	Alternative/Augmentative Communication
<input type="checkbox"/>	Speech/Language/Communication	<input type="checkbox"/>	ERICS/ERMHS
<input type="checkbox"/>	Physical Therapy	<input type="checkbox"/>	Counseling
<input type="checkbox"/>	Occupational Therapy	<input type="checkbox"/>	Vision
<input type="checkbox"/>	Health	<input type="checkbox"/>	Hearing
<input type="checkbox"/>	Functional Behavioral Assessment	<input type="checkbox"/>	Transition
<input type="checkbox"/>	Adaptive Physical Education	<input type="checkbox"/>	Other:

I also request that my student be evaluated under Section 504 of the Rehabilitation Act for the presence of any educational service need which may require any accommodation or program modification not available under special education or if my student is not found eligible for special education.

I look forward to receiving an assessment plan in 15 days. Please ensure that I get copy of the assessment reports one week before the IEP meeting.

Sincerely,

—APPENDIX F—

REQUEST FOR AN INDEPENDENT EDUCATION EVALUATION

Date: _____

District:	
Attn: Director of Special Education	
Address:	
Fax Number:	

Student's Name:	
Student's D.O.B.:	
Current School:	
ERH's Address:	
ERH's Email:	
ERH's Telephone Number:	

To Whom It May Concern:

I am the Education Rights Holder for the student named above. I am writing to request an Independent Education Evaluation ("IEE") at public expense for my student.

Below, I have checked the evaluations/assessments that the District completed with which I disagree and for which I request an IEE. It is my belief that the evaluations were not sufficiently comprehensive or appropriate to determine the unique needs of my student. Therefore, I request the following IEEs at public expense:

<input type="checkbox"/>	Academic Achievement	<input type="checkbox"/>	Assistive Technology
<input type="checkbox"/>	Psychological/Psycho-educational	<input type="checkbox"/>	Alternative/Augmentative Communication
<input type="checkbox"/>	Speech/Language/Communication	<input type="checkbox"/>	ERICS/ERMHS
<input type="checkbox"/>	Physical Therapy	<input type="checkbox"/>	Counseling
<input type="checkbox"/>	Occupational Therapy	<input type="checkbox"/>	Vision
<input type="checkbox"/>	Health	<input type="checkbox"/>	Hearing
<input type="checkbox"/>	Functional Behavioral Assessment	<input type="checkbox"/>	Transition
<input type="checkbox"/>	Adaptive Physical Education	<input type="checkbox"/>	Other:

- ☐ I have selected the following qualified evaluator(s) to complete the above requested IEEs and request that the District provide contract(s) to authorize payment for IEE examinations without delay.

- ☐ I would like the District to provide me with a list of qualified independent evaluators for the requested assessments and the District IEE criteria.

I request that the IEE be provided at district expense. This includes, but is not limited to, payment for any expenses and fees associated with completing the IEE, such as testing, interviews, observations, interpretation, and translation for non-English speakers and/or other alternative means of communication necessary to complete the evaluation, report writing, and attendance of the evaluator at any IEP meeting where the IEE results will be discussed.

I look forward to the district providing a response to my IEE request without unnecessary delay. I understand that refusal or approval of a request for an IEE requires Prior Written Notice per the Individuals with Disabilities Education Act. Further, a refusal by the district to grant an IEE request requires the District to file for a Due Process Hearing without unnecessary or unreasonable delay.

I look forward to reviewing the results of the IEE at our next scheduled IEP meeting so that my student can get the services and supports they need to succeed.

Sincerely,

—APPENDIX G—

SPECIAL EDUCATION ELIGIBILITY CATEGORIES

DEFINITIONS OF 13 DISABILITY CATEGORIES UNDER IDEA

(c) **Definitions of disability terms.** The terms used in this definition are defined as follows:

(1) **Autism**

(i) **Autism** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are 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 apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (b)(4) of this section.

(ii) A child who manifests the characteristics of "autism" after age 3 could be diagnosed as having "autism" if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) **Deaf-blindness** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) **Deafness** means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

(4) **Emotional disturbance** is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

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

(B) An inability to build or maintain satisfactory interpersonal relationships.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(5) **Hearing impairment** means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(6) **Mental retardation** means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

(7) **Multiple disabilities** means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

(8) **Orthopedic impairment** means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) **Other health impairment** means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that-

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and

(ii) Adversely affects a child's educational performance.

(10) **Specific learning disability** is defined as follows:

(i) **General.** The term means 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 an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) **Disorders not included.** The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) **Speech or language impairment** means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(12) **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 to brain injuries induced by birth trauma.

(13) **Visual impairment including blindness** means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(3)(A) and (B); 1401(26))

—APPENDIX H—

REQUEST FOR FUNCTIONAL BEHAVIORAL ASSESSMENT

Date: _____

District: Attn: Director of Special Education	
Address:	
Fax Number:	

Student's Name:	
Student's D.O.B.:	
Current School:	
ERH's Address:	
ERH's Email:	
ERH's Telephone Number:	

To Whom It May Concern:

I am the Education Rights Holder for the above student. I am writing to request a Functional Behavioral Assessment for my student to determine the need for additional special education services and supports. My student currently has an IEP and has been experiencing ongoing challenges in the area of behavior.

I request that the District select a qualified behavioralist to perform the Functional Behavioral Assessment (FBA) so that an effective Behavioral Intervention Plan (BIP) can be developed, and my student can benefit from their public education in the least restrictive environment (LRE).

I look forward to receiving an Assessment Plan within the next 15 days for my review and consent. I look forward to our IEP team meeting within 60 calendar days of consent to the Assessment Plan to discuss the findings so that we may develop an appropriate and individualized plan to meet my student's unique educational needs. Please contact me to schedule the IEP team meeting with adequate advance written notice so that the meeting may be held at a mutually agreed upon time and place.

Please provide all assessment reports to me at least 5 business days in advance of any IEP meeting so that I have adequate time to prepare for the IEP meeting and can fully participate as a member of the IEP team.

I understand that if this evaluation is refused, I must receive Prior Written Notice that meets the requirements of IDEA. Thank you in advance for your prompt action regarding this request. If you have any questions or concerns, please feel free to contact me.

Sincerely,

—APPENDIX I—
REQUEST FOR IEP MEETING

Date: _____

District: Attn: Director of Special Education	
Address:	
Fax Number:	

Student's Name:	
Student's D.O.B.:	
Current School:	
ERH's Address:	
ERH's Email:	
ERH's Telephone Number:	

To Whom It May Concern:

I am the Education Rights Holder for the above student with disabilities. I am requesting that an IEP meeting be held for my student as soon as possible and in no more than 30 days, as is required by law. Cal. Educ. Code § 56343.5. I would like to discuss the following at the meeting:

With this in mind, please ensure that my student's general education teacher, special education teacher, service providers, counselor, and a District representative who can approve services are in attendance.

At least 5 days prior to the meeting, please provide me with all of my student's most recent assessment reports and protocols.

An IEP meeting at the following date and time would be convenient for me: _____

If you have any questions or need to discuss this letter further, please contact me at the number or email above.

Thank you in advance for your prompt action regarding this request.

Sincerely,

—APPENDIX J—

REQUEST FOR SUPPORT SERVICES UNDER SECTION 504

Date: _____

District: Attn: Director of Special Education	
Address:	
Fax Number:	

Student's Name:	
Student's D.O.B.:	
Current School:	
ERH's Address:	
ERH's Email:	
ERH's Telephone Number:	

To Whom It May Concern:

I am the Education Rights Holder for the above student. My student has a disability and needs supportive services provided through Section 504 of the Rehabilitation Act to succeed in school. I request to have my student evaluated for services under Section 504.

I am concerned about the following areas related to my student's academics and behavior:

Please contact me within 10 days to meet and discuss the accommodations and modifications a Section 504 plan could provide and what assessments must be completed to establish eligibility for services.

Thank you for your attention and cooperation regarding this matter. If you have any questions, do not hesitate to contact me.

Sincerely,

—APPENDIX K—

SAMPLE COMPLIANCE COMPLAINT

Date: _____

Complaint Management and Mediation Unit
Special Education Division
California State Department of Education
1430 N Street
Sacramento, CA 96814

Sent via US mail

Re: Compliance Complaint

Student's Name:	
Student's D.O.B.:	
Current School:	
Current District:	
ERH's Address:	
ERH's Email:	
ERH's Telephone Number:	

To Whom It May Concern:

This is a special education compliance complaint. [5 C.C.R. Secs. 4600 and following.] I feel that the above school district is out of compliance with federal and state special education laws.

I am the Education Rights Holder for the above student. My student has a disability that impacts their ability to access the curriculum in the following ways:

My student has an:

- ☐ IEP
- ☐ Section 504 Plan
- ☐ Unidentified/unserved disability

I have attempted to resolve the following issues with the above district, but the district is in violation of the law in the following ways:

- ☐ I requested my student's education records on ____/____/____ and have not received requested documents within the 5-business day timeline required by Section 49069.7 of the California Education Code.
- ☐ I never consented to special education evaluations done by the district on ____/____/____. (Failure to get written parental consent for assessment, Cal. Educ. Code § 56321).
- ☐ When I asked the district for a copy of special education evaluations, they refused to give me a copy. (Failure to provide parent with requested records, Cal. Ed. Code Sec. 56504; 34 C.F.R. Sec. 300.502.)
- ☐ My student's IEP states that _____, but the district has not provided these opportunities/services. (Failure to implement the IEP, Cal. Ed. Code Sec. 56345; failure to provide least restrictive environment, Cal. Ed. Code Sec. 56364; 34 C.F.R. Sec. 300.550-553.)
- ☐ Other: _____

In order to resolve this complaint, I am asking for the following remedies:

- ☐ Providing me with immediate access to and copies of my student's records;
- ☐ Getting my consent prior to any future assessments or changes to the IEP;
- ☐ Immediately implementing my student's IEP as written;
- ☐ Modifying the IEP as follows: _____
- ☐ Other: _____

I have enclosed a copy of my student's IEP and a compliance complaint letter to the district asking for the above requests.

Because my complaint involves a matter which calls for direct State Department of Education intervention pursuant to Title 5 of the California Code of Regulations Section, I have not filed with the local district. Rather, I request direct state intervention in this matter.

I ask for immediate investigation and resolution, as my student cannot afford to wait for these services.

Thank you for your assistance.

Sincerely,

—APPENDIX L—

REQUEST FOR OAH MEDIATION OR HEARING

Date: _____

Student's Name:	
Student's D.O.B.:	
Current School:	
Current District:	
ERH's Address:	
ERH's Email:	
ERH's Telephone Number:	

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

To Whom It May Concern:

I am the Education Rights Holder for the above student. This letter is to request a:

- ☐ Pre-hearing mediation conference
- ☐ Due process hearing
- ☐ Due process hearing and mediation

1. Other than the district named above, is there any other school district or public agency that is responsible for providing services for the student and should be party to the hearing?

(Circle one) YES or NO

If YES, provide the name of the party: _____

2. Explain why the hearing is being requested:

3. Explain a resolution you believe would solve the problem:

Thank you for your attention and cooperation regarding this matter. If you have any questions, do not hesitate to contact me at the number listed above.

Sincerely,

—APPENDIX M—

OCR COMPLAINT FORM

United States Department of Education Office for Civil Rights

DISCRIMINATION COMPLAINT FORM

You do not have to use this form to file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR). You may send OCR a letter or e-mail instead of this form, but the letter or e-mail must include the information in items one through nine and item twelve of this form. If you decide to use this form, please type or print all information, using additional pages if more space is needed. An on-line version of this form, which can be submitted electronically, can be found at: <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>.

Before completing this form, please read all information contained in the enclosed packet including: Information About OCR's Complaint Resolution Procedures, Notice of Uses of Personal Information, and the Consent Form.

1. Name of person filing this complaint:

Last Name: _____ First Name: _____ Middle Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Home Telephone: _____ Work Telephone: _____

E-mail Address: _____

2. Name of person discriminated against (if **other** than person filing). If the person discriminated against is age 18 or older, we will need that person's signature on this complaint form and the consent/release form before we can proceed with this complaint. If the person is a minor, and you do not have the legal authority to file a complaint on the student's behalf, the signature of the child's parent or legal guardian is required.

Last Name: _____ First Name: _____ Middle Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Home Telephone: _____ Work Telephone: _____

E-mail Address: _____

3. OCR investigates discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education and against public educational entities and libraries that are subject to the provisions of Title II of the Americans with Disabilities Act. Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

Name of Institution: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____ E-mail Address: _____

Department/School: _____

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, age or retaliation. Please indicate the basis of your complaint:

☐ Discrimination **based on race (specify)**

☐ Discrimination **based on color (specify)**

☐ Discrimination **based on national origin (specify)**

☐ Discrimination **based on sex (specify)**

☐ Discrimination **based on disability (specify)**

☐ Discrimination **based on age (specify)**

☐ **Retaliation because you filed a complaint or asserted your rights (specify)**

☐ **Violation of the Boy Scouts of America Equal Access Act (specify)**

5. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved and, why you believe the discrimination was because of race, disability, age, sex, etc. Also please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

6. What is the most **recent date** you were discriminated against? **Date:** _____

7. If this date is **more than 180 days ago**, you may request a waiver of the filing requirement.

☐ I am requesting a waiver of the 180-day time frame for filing this complaint. Please explain why you waited until now to file your complaint.

8. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing? ☐ **YES** ☐ **NO**

If you answered **yes**, please describe the allegations in your grievance or hearing, identify the date you filed it, and tell us the status. If possible, please provide us with a copy of your grievance or appeal or due process request and, if completed, the decision in the matter.

9. If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the other agency or court.

Agency or Court: _____

Date Filed: _____ **Case Number or Reference:** _____

Results of Investigation/Findings by Agency or Court:

10. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information **is not required**, but it will be helpful to us.

Last Name: _____ **First Name:** _____ **Middle Name:** _____

Home Telephone: _____ **Work Telephone:** _____

11. What would you like the institution to do as a result of your complaint — what remedy are you seeking?

12. We cannot accept your complaint if it has not been signed. Please sign and date your complaint below.

(Date) (Signature)

(Date) (Signature of person in Item 2)

Please mail the completed and signed Discrimination Complaint Form, your signed consent form and copies of any written material or other documents you believe will help OCR understand your complaint to the OCR Enforcement Office responsible for the state where the institution or entity about which you are complaining is located. You can locate the mailing information for the correct enforcement office on OCR's website at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>.