NLSLA EDUCATION RIGHTS PRACTICE

EDUCATION ADVOCACY MANUAL

FEBRUARY 2025

NLSLA

Neighborhood Legal Services
of Los Angeles County

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How do you request a student's education records?

One of the most important steps in advocating for a student in school is requesting and reviewing a student's education records. Reviewing education records is a critical part of effectively advocating on behalf of your student, as they will help you better understand your 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.

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 recordings.[1]

State and federal regulations[2] 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). **Here is how to request student records:**

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

Under the Family Educational Rights and Privacy Act ("FERPA"), only a parent, legal guardian, or education rights holder can inspect and review a student's education records.

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[1] The definition of an education record can be helpful to have handy in case you need a particular record that the school refuses to provide. The California Education Code provides parents of students with the "absolute right to access any and all pupil records related to their children that are maintained by school districts or private schools." Cal. Educ. Code Section 49069.7(a). The Education Code defines a pupil record as "any item of information directly related to an identifiable pupil, other than directory information, that is maintained by a school district." Cal. Educ. Code Section 49061(b). This mirrors the definition of an education record in the Family Educational Rights and Privacy Act. *See* 20 U.S.C. Section 1232g(a)(4)(A) ("the term 'education records' means … those records, files, documents, and other materials which – (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution").

[2] 34 C.F.R. §§ 99.10, 300.613; 20 U.S.C. § 1232(g); Cal. Educ. Code § 49069.7, 56504.

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 were limited or terminated by a court;
- Adoptive parents with an **adoption order**;
- Legal guardians with **letters of guardianship** from a court;
- 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); or
- Responsible adults you appoint through a **Caregiver's Authorization Affidavit** (more information on these can be found below).

If you are the ERH but you are not 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, the minute order, the letter of guardianship, or the Caregiver's Authorization Affidavit). You may need to attach this to your records request.

2. ***Write a letter to the district using the sample letter included in Appendix C.***

If your primary language is not English, and you need your student records to be translated, be sure to indicate this in the form.

3. ***Fax or email the records request, authorization from the ERH (if applicable), and the ERH's proof of education rights (if applicable) to every district the student has attended.***

This may mean you are sending several records requests. It is very important that you fax or email the records request and keep the fax confirmation or email for your files in case there is a dispute with the district over whether it received the records request. You may also send record requests 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 or email 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, districts have 5 business days to provide records when they get a request.***

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

If no records are provided within the 5-day window or you have received incomplete records, you can do one of the following:

(1) If your student is in special education, send a compliance complaint threat letter, found at Appendix D. 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 Federal Student Privacy Policy Office, which enforces FERPA. Information on how to submit a complaint alleging violations of FERPA can be found here: https://studentprivacy.ed.gov/file-a-complaint. The complaint form can also be found in Appendix P.

5. *Organize and review the records.*

Once you receive the records, organize them chronologically and by school year,[3] and read through them to make sure you received everything you requested. You should make sure you received:

- Report cards for every semester and school year
- Attendance records for every semester and school year
- Transcripts for every school year
- State testing results for every school year state tests occurred
- Behavior logs and discipline notices for every school year and disciplinary incident
- Enrollment and health documents

If your student is in special education, you should also receive:

- Individualized Education Programs ("IEP") and/or Section 504 Plans
- Assessments and protocols
- Service logs and progress monitoring documents

Note: If your student is in special education, pay attention to the IEP dates to make sure the district held an IEP every year and reassessed your student every three years. More information on IEPs is provided below. If records are missing, contact the district and request the missing documents.

Can your attorney request records for you?

You can authorize advocates, including attorneys, to inspect your student records on your behalf. 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 B. A copy of this authorization should be attached to every records request the attorney sends to a district, as it shows the custodian of records that they have your permission as the ERH to request and receive the student's records. Remember that if the ERH is someone other than a biological parent, you may need to include proof of the ERH's education rights (i.e., adoption order, JV 535, etc.).

[3] Typically, school years go from August of one year to July of the next.

Special Education Advocacy

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Neighborhood Legal Services of Los Angeles County

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What laws protect students with disabilities?

The right to special education and related 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"); and
- 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."[4] 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 disabilities a "free, appropriate, public education" ("FAPE") in the least restrictive environment ("LRE"). What that means for each student is defined by the student's IEP.

What is a Free Appropriate Public Education or "FAPE"?

The IDEA and Section 504 guarantee students with disabilities the right to a "free appropriate public education," or a "FAPE." Schools are responsible for ensuring that all students receive a FAPE, regardless of whether they are in general or special education. 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. That means you should not have to pay for your student to receive the services and supports they need to access the school curriculum.

[4] 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.

- **APPROPRIATE** – "Appropriate" means that IEPs must be "appropriately ambitious in light of [a child's] circumstances."[5] How this standard works is interpreted on a case-by-case basis, but essentially, it means that 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 students are denied a FAPE will be discussed below.

What is the least restrictive environment?

Students with disabilities 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.[6]

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.

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[5] See *Endrew F v. Douglas Cty Sch. Dist RE-1*, 137 S. CT. 988 (2017). Information about *Endrew F.* can be found here: https://sites.ed.gov/idea/questions-and-answers-qa-on-u-s-supreme-court-case-decision-endrew-f-v-douglas-county-school-district-re-1/.

[6] 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 and related services under the IDEA.

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:[7]

- 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?

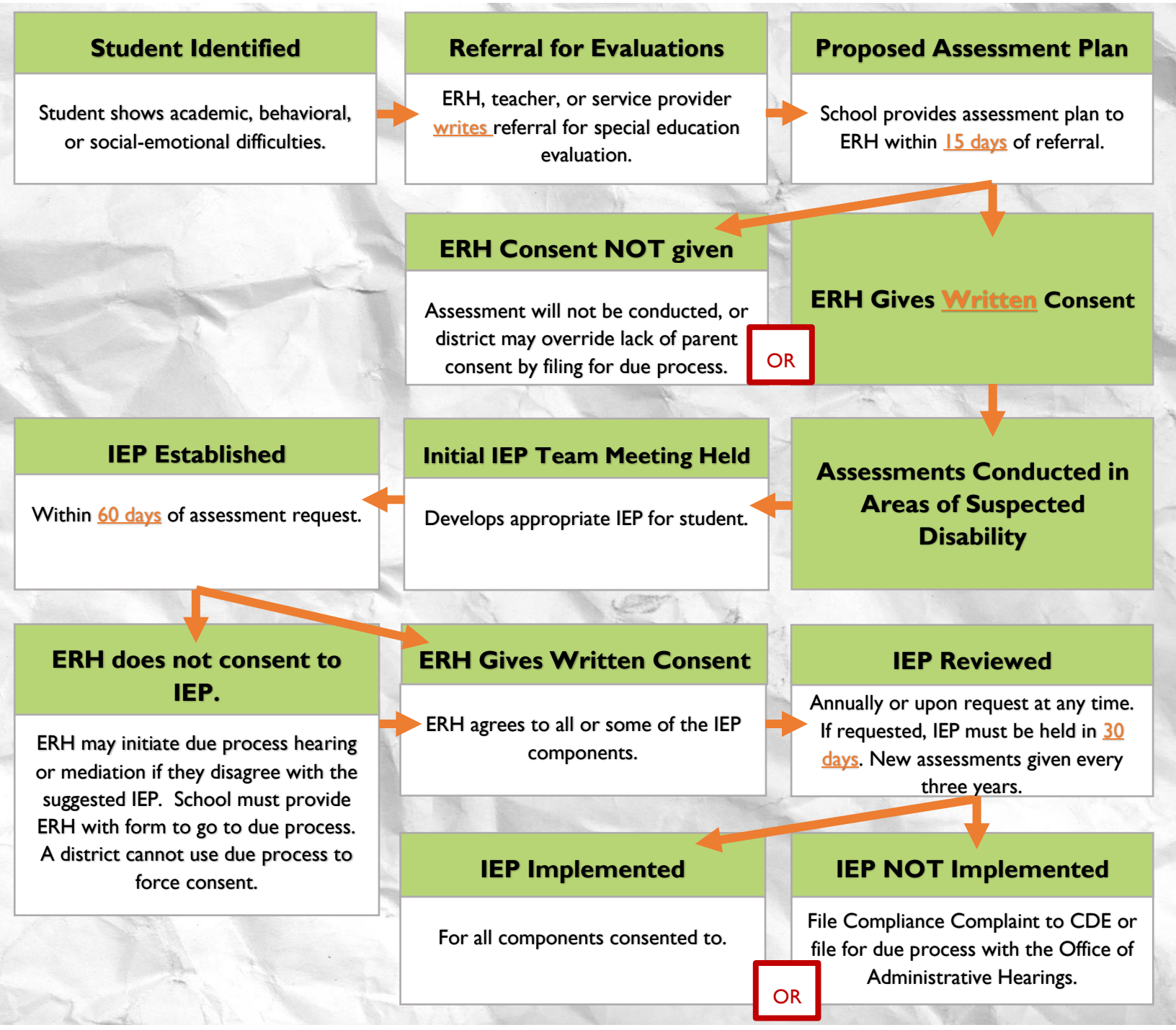
The law requires that schools follow specific steps and timelines when it comes to identifying students who need special education, responding to assessment requests, scheduling IEPs, and assessing students.

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.

[7] 20 U.S.C. § 1401(3); 34 C.F.R. § 300.8.

Special Education Eligibility Timeline[8]



[8] 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.

Note: 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.

Do schools have an obligation to identify students with possible disabilities?

The IDEA legally requires 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.[9] 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.[10]

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.

STEP 2 – How is a student referred for an evaluation?

Before a student can start receiving special education services, they must be evaluated to see if they are eligible under the IDEA. 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 suspects[11] a student of having a disability, the school must refer them for evaluation within a reasonable time.[12] Whether or not a student has a suspected disability is a low threshold—if a student

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[9] 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111; Cal. Educ. Code § 56300.
[10] 20 U.S.C. 1412(a)(3).
[11] 20 U.S.C. § 1414(a).
[12] *W.B. v. Matula*, 67 F.3d 484 (3rd Cir. 1995).

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 and can lead to an award of compensatory ("make-up") services.[13] 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 that point to the need for special education evaluations.

2. Submit the letter or form to your student's principal or special education coordinator. It's best to email it to keep a record in case there are disputes later.

3. 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.[14] 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 an SST meeting to receive a special education evaluation. **If the school insists, file a compliance complaint, explained below.**

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.

4. Review the assessment plan. If you agree, sign and return it within **15 calendar days**.[15] Before you sign, make sure the assessment plan:
   - Is written so you can understand it;
   - Is in your native language or other mode of communication you use (unless the school proves it is not feasible to do this for you);

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[13] 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.
[14] Cal. Educ. Code § 56043(a). You can agree in writing to an extension of this timeline pursuant to Cal. Educ. Code § 56321(a).
[15] Cal. Educ. Code § 56043(b).

- Explains the assessments it will conduct; and
- States that no IEP will result from the assessments without your consent.[16]

5. Request a copy of the assessment report(s) in writing. You can do this by including a note in your student's assessment plan, requesting that the district provide you with a copy of your student's assessments *before* the IEP meeting. This will allow you to read the report before the meeting and help you better participate in the meeting.

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 the assessment plan, the school has **60 calendar days** to complete all of the assessments on the plan and schedule an IEP meeting.[17]

What kinds of assessments should the school do?

Below are some of the assessments that the district should do and that you can request:

☐ **Psycho-educational and/or neuropsychological assessments** – These are the most comprehensive type of special education evaluation. They test intellectual level,[18] academic abilities, language skills, nonverbal or visual skills, memory, attention, organization, judgment, academic skills, and emotional status. These are completed by a psychologist or a neuropsychologist;

☐ **Speech and language evaluations** – These assess the student's written and verbal language skills and their understanding and expression of language. These are completed by a speech pathologist;

☐ **Occupational therapy evaluations** – These assess fine and gross motor skills along with executive functioning skills. These are completed by an occupational therapist;.

☐ **Functional behavior assessments** – These assess a student's behavior in the classroom and the degree to which it affects their learning. They are usually used to help make a Behavior Intervention Plan. These are completed by a Board-Certified Behavior Analyst or sometimes by a school psychologist; and

☐ **Counseling assessments** – These assess a student's need for mental health and social-emotional supports. These are done by a counselor, therapist, or social worker.

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[16] Cal. Educ. Code § 56521(b).
[17] 20 U.S.C. § 1414(a)(1)(C)(i)(I).
[18] California 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).

This is not a complete list of all assessments a school can do. Your student may need more specialized assessments if they have trouble with mobility (a physical therapy assessment), vision (a functional vision assessment), hearing (an audiological assessment), or have more serious mental health needs (educationally related intensive counseling services, "ERICS," or educationally related mental health services, "ERMHS.")

Can you request the district complete assessment in another language?

The IDEA requires districts assess students in their primary language unless it is not feasible to do so. If an assessor is not bilingual, the district should provide an interpreter.[19]

Further, federal and state law states that an assessment may not be racially or culturally discriminatory and must be administered in the language and form most likely to yield accurate data. Even if your student can speak English, you should request that the district complete bilingual assessments if their primary language is not English and they have not yet tested out of their English Language program. A bilingual assessment can ensure that any deficits in your student's language development do not impact the accurate measurement of their special education needs.

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

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

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.

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

(1) It can approve your request for 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 IEE.

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.

[19] 20 U.S.C. Sec. 1414(b); 34 C.F.R. Sec. 300.304(c)(1)(i); Cal. Ed. Code Sec. 56320(a), (b)

At the initial IEP meeting, the team will discuss the assessment results and reach an agreement about whether the student is eligible for special education and related services, and if so, under which eligibility category. More information about eligibility categories is provided above 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 the IDEA or California law), see below on filing compliance complaints or requesting 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.[20] 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;
- Someone qualified to explain the student's assessments;
- A language or ASL interpreter, if needed; and
- If the student is an English Learner: a professional with training and/or expertise in second language acquisition and an understanding on how to differentiate between limited English proficiency and disability. [21]

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 addresses a student's unique needs.[22]

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[20] 20 U.S.C. § 1414(d)(1)(B); Cal. Educ. Code § 56341(b).
[21] 34 C.F.R. § 300.324(b)(2), *See also* *Dear Colleague Letter, U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office of Civil Rights, January 7, 2015 (Section F)*

[22] 20 U.S.C. § 1414(d)(3)(A); Cal. Educ. Code § 56342(a).

Every meeting must discuss:

- The student's current levels of academic performance, often called "present levels of performance" or "PLOPS";[23]
- Annual goals and objectives, which must be objective, measurable, and responsive to all noted areas of weakness;[24]
- Accommodations or modifications to the curriculum or classroom expectations;[25]
- Special education and related services available to the student based on their disability;[26]
- When, where, and how often the student will receive services;[27]
- What the student's placement, or "least restrictive environment" is;[28]
- Whether the student will be assessed on state standardized tests and whether they will get any kind of support for these tests;[29] and
- Whether the student will be given assistive technology to help with classwork.[30]

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.[31] See Appendix H for a form you can use to request an FBA.

Tips for Drafting an Appropriate IEP

- Make sure statements describing present levels of performance ("PLOPs") are accurate and specific, 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.
- Make sure the structured notes record your contributions, concerns, and requests accurately.

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[23] 20 U.S.C. § 1414(d)(1)(A)(i)(I).
[24] 20 U.S.C. § 1414(d)(1)(A)(i)(II), Cal. Educ. Code § 56345(a)(2)
[25] 20 U.S.C. § 1414(c)(1)(B)(iv), Cal. Educ. Code § 56345(a)(4).
[26] 20 U.S.C. § 1414(d)(1)(A)(i)(IV), Cal. Educ. Code § 56345(a)(4).
[27] 20 U.S.C. § 1414(d)(1)(A)(i)(IV), (VII), Cal. Educ. Code § 56345(a)(4), (7).
[28] 20 U.S.C. § 1412(a)(5); 20 U.S.C. § 1414(d)(1)(A)(i)(V), Cal. Educ. Code § 56345(a)(5).
[29] 20 U.S.C. § 1414(d)(1)(A)(i)(VI)(aa).
[30] 20 U.S.C. § 1414(d)(3)(B)(v).
[31] 20 U.S.C. § 1414(d)(3)(B)(i).

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 should create an individualized transition plan ("ITP"), which may include goals and services during and after the transition.[32]

Can you record the IEP meeting?

You have the right to tape record an IEP meeting with 24 hours' notice.[33] Just let the principal or special education coordinator know by email.

What are other types of IEP meetings?

Initial IEP – The initial IEP is the first meeting where the IEP team reviews the results of the initial assessments, determines whether the student is eligible for services, and sets 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 at an annual IEP.

Triennial IEP – The school is required to give a student a new set of assessments every three years to see if the student is still eligible, has made progress or needs additional supports, although the student may be reevaluated more often if you or the school request it. This IEP is called a Triennial.

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 code of conduct violations for more than **10 cumulative days** or is being recommended for expulsion. This meeting determines whether there is a relationship between a student's disability and the disciplined behavior or if the behavior is caused by the school not implementing the IEP. 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.

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[32] 20 U.S.C. § 1414(d)(1)(A)(i)(VIII).
[33] Cal. Educ. Code § 56341.1(g).

What kinds of services can a student get with an IEP?

Under the IDEA, students are entitled to special education and "related services." Related services mean "transportation and such developmental, corrective, or other supportive services that are required to assist a child with a disability to benefit from special education"[34] The law specifically says that these include:

Speech-Language Pathology	Audiology Services
Assists students with speech or communication needs with fluency, making sounds, pragmatics, and expressing and understanding language.	Assists with evaluating hearing, learning and retaining language, auditory training, lip reading, hearing aids, and preventing more hearing loss.
Interpreting Services	**Counseling and Psychological Services**
Oral and cued language transliteration services (e.g., braille), sign language interpretation, and transcription services for students who are deaf and hard of hearing.	Supports students academically and personally. Can be provided by social workers, psychologists, guidance counselors, or other qualified providers. Includes academic counseling, mental health counseling, and ERICS/ERMHS counseling.
Physical Therapy	**Occupational Therapy**
Provides hands-on care and exercises to treat injuries, physical disabilities, and other conditions that affect a child's ability use large muscles.	Works with students on fine and gross motor skills, functional skills, executive functioning, and sensory processing.
Orientation and Mobility Services	**Recreational Therapy**
Helps students who are blind or have low vision learn to safely navigate their school, home, and community using their senses, canes, or service animals.	Helps students participate independently in leisure and social settings by helping with gross motor skills, cognitive functioning, behavior, and interpersonal skills.
Health Services	**Social Work Services**
Services provided by a nurse or other qualified provider to administer medication, prevent injury, manage chronic diseases, and provide special feeding or cleaning.	Provides group and individual counseling with the student and family, connects to community resources, and helps with issues in the home environment that may impact a child's ability to learn in school.

[34] 34 C.F.R. § 300.34.

Diagnostic Services	Parent Counseling and Training
Services, typically provided on an interim basis, to assist with evaluations.	Helps families understand their students' disability-related needs and learn skills to help them support their IEP goals.
Transportation	**Vocational and Transition Services**
Assists students who need specialized or adapted equipment to travel to and from school and in and around school buildings (i.e., bussing, ramps, lifts).	Helps students prepare for life after high school by providing job counseling, work- based learning, workplace trainings, and self-advocacy.

This list of IDEA related services is not all the services you can get for your child. Some other common services are:

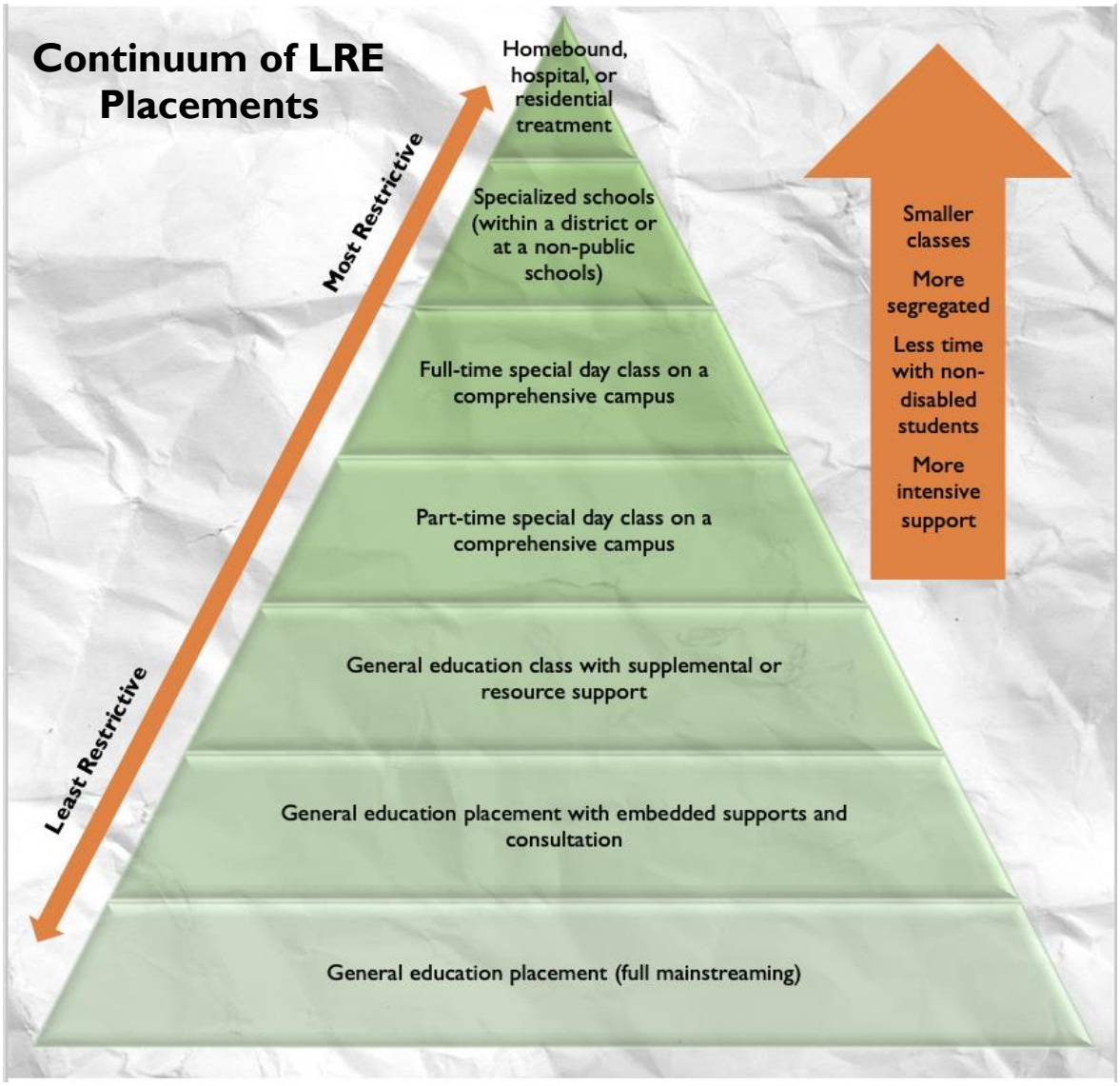
Adaptive Physical Education	Assistive Technology
Accommodations and modifications during PE to help with gross motor skills like walking, strength training, throwing, and catching.	Provides equipment, programs, or technology to help increase a student's ability to access the curriculum in school settings.
Vision Therapy	**Inclusion Support**
Treatment that is provided to help improve vision through the use of special lenses, patches, filters, or digital tools to train the eye-brain connection.	Provides a range of materials and activities to help students with disabilities learn in general education and other less restrictive settings.
Behavior Intervention Services	**Specialized Academic Instruction**
Provides targeted behavioral support and instruction to help students with externalizing and internalizing disability-related behaviors.	Instructional services provided by a special education teacher to address learning challenges and barriers as well as behavioral and social-emotional needs.
Instructional Aide Services	**Bilingual Services**
Provides an aide or paraprofessional to ensure a student's academic and behavioral needs are met so the student can benefit from their IEP.	If your student qualifies for any of the services listed above, and they are categorized as an English Learner, you can request bilingual services, or services provided in your student's primary language.

What placement options are available to students with IEPs?

As stated above, the law requires that schools provide students with a FAPE in the LRE, meaning students with disabilities should be educated with their non-disabled peers for as much of the day as is appropriate for the student's needs.

During an IEP meeting, when the team is discussing the most appropriate placement for your student, there should be a discussion of a "continuum" of placements available so that you can consider which could be the most appropriate and least restrictive. Below is a graph showing common placements available through the IEP process, noting which are most and least restrictive.

It's important to keep in mind that the goal of an IEP placement is to educate a student in the least restrictive setting possible, and if they are in a more restrictive setting, to provide services necessary to move them to a less restrictive setting as quickly as possible.



Eligibility Under Section 504

For a student to be eligible for special education under the IDEA, they must have a disability that would benefit from special education and related services. If they have a disability but are not eligible for an IEP, they may be eligible for 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 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 still 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 necessary.[35]

[35] OCR Memorandum, Letter to Vier, 19 IDELR 876 (April 29, 1993).

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 can include:

- Extra time on tests;
- Short breaks from class;
- Speech and 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.

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 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 you agreed to during a dispute and until the dispute is resolved.[36]
- IDEA requires that a school give you prior written notice of any proposed change in a student's placement.[37]

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.

[36] 20 U.S.C. § 1415(j); 34 C.F.R. § 300.516(a).
[37] 20 U.S.C. § 1415(b)(3).

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.[38] 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 the IDEA and Section 504?

If the student qualifies for both special education and 504 services, it is better for the student to be placed in special education, as the IDEA gives students more protections.

[38] 20 U.S.C. § 1414(b)(3); Cal. Educ. Code § 56320(f); 34 C.F.R. § 300.304(c)(4).

Determining How a District 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 services in a student's IEP;[39]
- A student's IEP did not include language therapy or access to a one-on-one aide;[40]
- A school failed to implement a student's behavior management plan and did not provide math instruction required by the IEP;[41]
- A school district placed a student in an isolated special education class when general education would have been appropriate.[42]

Below are examples of *procedural* violations of FAPE:

- A student's IEP did not include measurable goals or descriptions of services;[43]
- A school district committed three serious procedural violations demonstrating a *pattern* of violations – (1) failure to review evaluation data when developing the IEPs, (2) failure to conduct an FBA, and (3) failed to provide adequate speech instruction;[44]
- A school district failed to identify a student's disability after the student had repeated behavioral issues and was referred for behavioral support services;[45]
- 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;[46] and
- A school held a meeting and drafted the IEP without the student's parent present.[47]

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[39] *D.S. v. Bayonne Board of Education*, 602 F.3d 553 (3d Cir. 2010).
[40] *L.R. v. Manheim Township School District*, 540 F.Supp.2d 603 (E.D. Pa. 2008).
[41] *Van Duyn ex. Rel. v. Baker School District*, 502 F.3d 811 (9th Cir. 2007).
[42] *Daniel R.R. v. State Board of Education*, 874 F.2d 1036 (5th Cir. 1989).
[43] *Rodrigues v. Fort Lee Board of Education*, 458 Fed. Appx. 124 (3d Cir. 2011).
[44] *R.E. v. N.Y.C. Dep't of Educ.*, 694 F.3d 167 (2d Cir. 2012).
[45] *School Board of City of Norfolk v. Brown*, 769 F.Supp 2d 928 (E.D. Va. 2010).
[46] *Fuhrmann on Behalf of Furhmann v. E. Hanover Board of Education*, 993 F.2d 1031 (3d Cir. 1993).
[47] *L.G. ex. Rel. E.G. v. Fair Lawn Board of Education*, 486 Fed.Appx. 967 (3d Cir. 2012).

What happens if the district violates FAPE?

When a 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 order the district to make up the services they should have provided but did not. These could be a district having to make up those services themselves or having to pay a private company to provide the services. Compensatory services might also include private evaluations.
- **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.[48]

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").[49]

A compliance complaint must be filed within 1 year of the alleged violation.[50] If this deadline is missed, it is likely CDE will reject the complaint.

How 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 documents, emails, pictures, or other pieces of evidence. Propose a possible resolution. See Appendix K for a sample letter.

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[48] *R.E. v. N.Y.C. Dep't of Educ.*, 694 F.3d 167 (2d Cir. 2012).
[49] Cal. Educ. Code § 56500.2; 34 C.F.R. § 300.151-152.
[50] 34 C.F.R. § 300.153(c), Cal. Educ. Code §§ 56043(x), 56500.2(b)

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

You can also email your complaint to: You may email your complaint request to speceducation@cde.ca.gov or fax it to 916-327-3704. If you do not hear from CDE within 10 days, call 800-926-0648 to follow up.

What happens after you file a complaint?

Once you have filed your complaint, an investigator from 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 your complaint?

Federal and state law require 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:

- 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,[51] but it will also suspend the investigation until after mediation occurs.[52]

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.

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[51] 34 C.F.R. 300.152(a)(3)(ii).
[52] 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/cmplntproc.asp.

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.[53] 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.[54] All districts have a 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.[55]

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.[56] 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.

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[53] 5 C.C.R. § 3204.
[54] 5 C.C.R. § 4630(b).
[55] 5 C.C.R. § 4631(a).
[56] 5 C.C.R. § 4631(f)-(g).

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.[57] Due process cases are heard by the State Hearing Agency, which is the Office of Administrative Hearings ("OAH") in California. 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. Hearings are presided over by a state hearing officer, and both you and the district have a right to be represented by attorneys.

What happens to a student during the dispute/hearing?

During a hearing, the student is protected by "stay put," which means that the last IEP and placement you agreed to cannot be changed until the judge makes a decision.[58]

Can the ERH get a written copy of the district's decision on a disputed 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.[59] If the district fails to provide this notice, they will have committed both a procedural and substantive rights violation.[60]

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:

- Changes a student's eligibility category or determine that the student is no longer eligible for special education;
- Initiates or changes an evaluation;
- Changes a student's educational placement; or
- Changes a component of a student's IEP.

What if the prior written notice is not in your primary language?

This notice must be translated into your native language[61] and have:

- A full explanation of all procedural rights available to the student, including the right to file for due process;

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[57] 34 C.F.R. § 300.507(a); Cal Educ. Code § 56501(a).
[58] 20 U.S.C. § 1415(j); Cal. Educ. Code § 56505(d).
[59] 34 C.F.R. § 300.503(a).
[60] *Union School District v. B. Smith*, 15 F.3d 1519 (9th Cir. 1994).
[61] 34 C.F.R. § 300.503 (notice must be translated unless translation is "clearly unfeasible").

- 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.

How do you file for a due process?

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 on their own unless they are emancipated or wards of the court.[62] NLSLA recommends speaking to an attorney before you file for due process.

Due process usually involves the following steps:

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

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.

[62] Cal. Educ. Code § 56501(a).

Requesting the Due Process Hearing

The first step is to draft your due process complaint. Your complaint can include:

1. **Identifying information**: This includes: the student's name, date of birth, age, and grade level; the ERH's name, contact information, and address; and the student's school and district;
2. **Who is involved in the case**: Confirm for the judge that the student was attending the school/district when the issues happened, that the school/district identified in the complaint is the one who caused your student harm, that your student has disabilities, and that the student lives within the district's boundaries.
3. **The case is about special education**: OAH only can decide cases that address disputes under the IDEA. Tell the judge that your issues concern the delivery of FAPE in the LRE and that your complaint is filed under the IDEA.
4. **Facts**: Tell the judge what happened.
5. **Legal issues**: Tell the judge what laws you think were violated.
6. **Remedies**: What do you want the judge to order the district to do if you win?

You can also use the form in Appendix L to request a hearing. Once you have written your complaint, file it with OAH. Mail your complaint to:

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

You can also upload your complaint electronically by creating an account on OAH's Secure e-File Transfer System, linked on their website and available at the link below: https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/File-or-Upload-OAH-Case-Documents.

Resolution Session

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 who can make decisions in your case. If you come to the meeting with an attorney, the district can also bring its attorney.

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.

Most due process cases settle. If you reach a settlement, at resolution or mediation, all settlement discussions are confidential. It is often in your best interest to try to settle your case with the district, since families often get more from a settlement than from a judge. It is a good idea to speak to an attorney before signing a settlement agreement. If you and the district agree to settle, you can dismiss your case with OAH.

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, bring experts, 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.

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 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 or with the California Department of Education through its Uniform Complaint Process ("UCP").[63]

Common special education issues that are raised in OCR and UCP 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 or service in an IEP or 504 plan;
- Disciplining a student with disabilities more frequently or more harshly than non-disabled peers; or
- Excluding a student with disabilities from programs available to all students.

A student does not have to qualify for special education or Section 504 services to file an OCR or UCP complaint. You can file a complaint on behalf of a student with *suspected* disabilities. For example, a student might be experiencing behavioral problems and is being 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 or UCP discrimination complaint?

To file an OCR complaint:[64]

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.

[63] 34 C.F.R. § 104.4(a), Cal. Educ. Code § 33315.

[64] January 2025 Update: While the Office for Civil Rights is still active, and parents still have the right to file these complaints, the current presidential administration has called into question whether complaints for race, national origin, or gender discrimination will be investigated and remedied. Further, given the present political climate, we have unfortunately been advising parents and community members (particularly those experiencing discrimination on the basis of immigration status) not to file complaints with OCR for the time being.

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.

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.

To file a UCP complaint:

1. Fill out the form attached in Appendix N. You must file the complaint within **6 months**[65] of when the discrimination happened, unless CDE extends the deadline.

2. CDE has **60 days** to investigate your complaint and issue a letter of findings either (1) supporting your allegations, (2) not supporting your allegations, or (3) sending your complaint back to the district to investigate first. CDE can extend their 60-day investigation timeline by other 60 days if they provide you written notice.

3. Once you get CDE's letter of findings, you have 30 days to request that CDE reconsider your complaint, which is called a Request for Reconsideration.[66] CDE will provide you with information on how to do this.

[65] 5 C.C.R. §§ 4600-4687, however, CDE's UCP guidance does state that families must file their complaint within 1 year, apparently extending the 6-month timeline in the regulations. See guidance here: https://www.cde.ca.gov/re/cp/uc/documents/ucppamphlet2425.docx.
[66] 5 C.C.R. § 4631(a).

School Discipline Advocacy

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

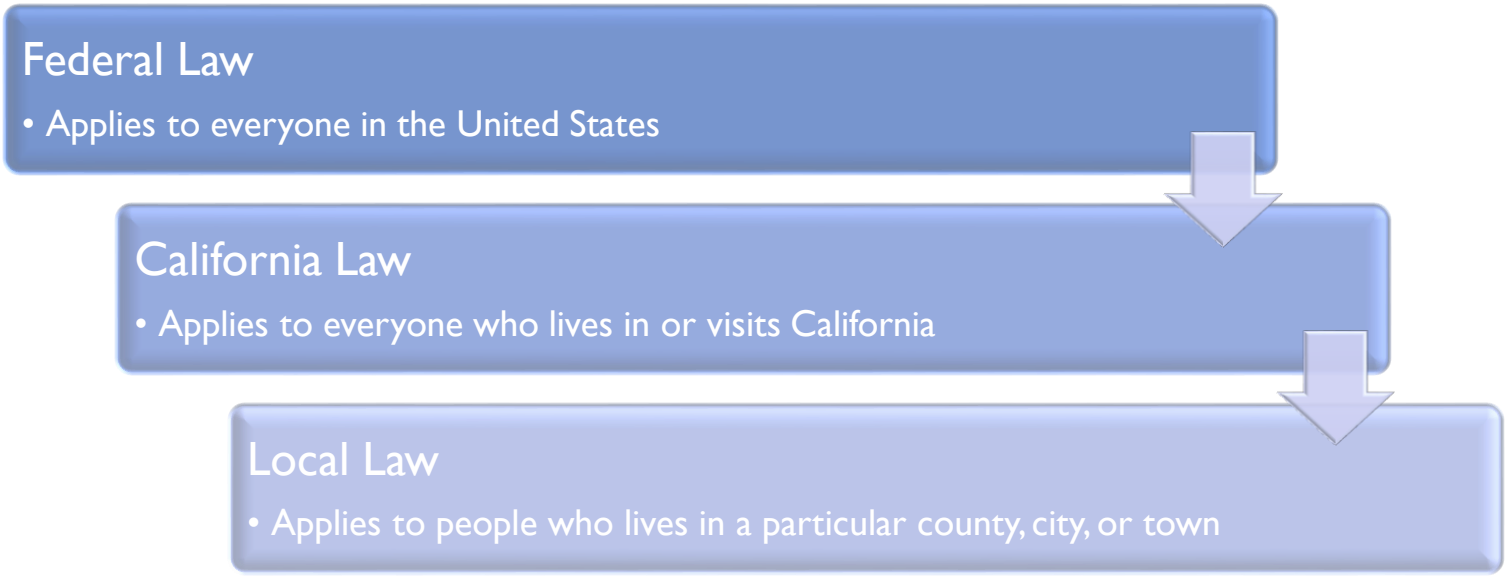
Yes. Students in California have a right to due process before they can be removed from class or excluded from school for disciplinary reasons.

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.[67]



[67] 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 or visit https://nlsla.org/services/education-rights/ to request a copy of a process guide on defending students with disabilities in school discipline, including filing for expedited due process.

Offenses That Can Lead to Suspensions, Expulsions, or Involuntary Transfers

What is a suspension?

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.[68]

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.[69] In most cases, the student may still attend an alternative school in the district.

What is an involuntary transfer?

An involuntary transfer is when a school district transfers a student to an alternative school, usually as a form of discipline. This type of transfer occurs against your wishes or when your consent is coerced. Involuntary transfers will be discussed in detail below.

Can a school suspend, expel, or involuntarily transfer a student for any reason?

No. The Education Code limits the behaviors for which students can be suspended expelled, or involuntarily transferred. 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;

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[68] Cal. Educ. Code §§ 48900, 48911.1.
[69] Cal. Educ. Code § 48915.

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

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

No. For a student's actions to warrant under the Education Code, the conduct in question must be "related to school activity or school attendance occurring within a school."[70] 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.[71]

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

Yes. Certain offenses cannot lead to exclusionary discipline 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 banned suspensions and expulsions for "willful defiance" in all grades.[72]

Absences or Lateness

Students cannot be suspended or expelled for absences or lateness.[73] Alternative district processes must be available to address truancy issues. However, students can be referred to School Attendance Review Boards or involuntarily transferred to alternative schools with credit recovery programs for attendance and truancy issues.

"Aiding and Abetting"

A student who "aids or abets" another student with inflicting or attempt to inflict physical injury may be *suspended* but not expelled.[74] The only exception is when an aiding or

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[70] Cal. Educ. Code § 48900(s).

[71] But see Cal. Educ. Code § 48900(r)(2)(A), noting that cyberbullying may be grounds for discipline, although the posts or messages may be 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). For media activity that takes place off campus, there is an additional requirement that the activity cause a substantial disruption to school activities. *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969).

[72] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB274; Cal. Educ. Code § 48900(k).

[73] Cal. Educ. Code § 48900(w).

[74] Cal. Educ. Code § 48900(t).

abetting student is adjudicated in juvenile court for the offense or the offense caused serious bodily injury.

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.[75]

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

No. Unless a student has committed a zero-tolerance offense, schools have significant discretion in deciding whether to suspend a student or recommend them for expulsion.[76] 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 Code[77] 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.

Discretionary Offenses[78]

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."[79]

These "fully discretionary" offenses[80] include:

- Stealing;
- Damaging property;
- Possessing tobacco;
- Bullying;

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[75] Cal. Educ. Code §§ 48900.2-48900.4.
[76] Cal. Educ. Code § 48900(v).
[77] Cal. Educ. Code § 48915.
[78] Cal. Educ. Code §§ 48915(e), 48900(v).
[79] Cal. Educ. Code § 48900(v).
[80] Cal. Educ. Code §§ 48915(e), 48900(f)-(m).

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

Medium-Discretionary Offenses[81]

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."[82] 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.[83]

Mandatory Expulsion ("Zero Tolerance") Offenses[84]

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.

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.

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[81] Cal. Educ. Code § 48915(a).
[82] Cal. Educ. Code § 48915(a)(2).
[83] Cal. Educ. Code S 48915(a), (c).
[84] Cal. Educ. Code § 48915(c).

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

Generally, for a first offense, schools must show that they have tried an alternative to suspension or expulsion, such as warnings, parent conferences, or detention.[85]

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.[86]

In any other case, the school can only suspend or expel a student "when other means of correction fail to bring about proper conduct."[87] 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 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.

[85] Cal. Educ. Code § 48900.5.
[86] Cal. Educ. Code §§ 48900.5(a); 48915(c).
[87] Cal. Educ. Code § 48900.5(a).

The Suspension Process

Can a teacher suspend a student from their class?

Yes. Any teacher may suspend a student from their class (and only their 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, but they can still attend their other classes.[88]

Does the teacher have to inform the ERH 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 give a student an in-school suspension or an out-of-school suspension?

Only the superintendent, the school principal, or the principal's designee has the authority to suspend a student from school.[89]

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.[90]

- **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.[91] Second, the school must notify the student's caregiver *in writing* once the student's suspension becomes official.[92]

- **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.[93]

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[88] Cal. Educ. Code § 48910.
[89] Cal. Educ. Code S 48911(a)
[90] *Goss v. Lopez*, 419 U.S. 565 (1975); *Charles S. v. San Francisco Unified School District*, 20 Cal. App. 3d 83 (1971).
[91] Cal. Educ. Code § 48911(d).
[92] Cal. Educ. Code § 48911(d).
[93] Cal. Educ. Code § 48911(b).

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.[94]

Does a 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 staff.[95]

What does "clear and present danger" mean?

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.[96]

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.[97]

How long can a suspension last?

Generally, suspensions may last for **no more than 5 consecutive school days**, unless the school extends the student's suspension pending an expulsion hearing (see below).[98] 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.[99]

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.[100] However, if a student is transferred to another regular school, opportunity

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[94] Cal. Educ. Code § 48911(f).
[95] Cal. Educ. Code § 48911(c).
[96] *Thompson v. Sacramento City Unified School District*, 107 Ca. App. 4th 1352 (2003).
[97] Cal. Educ. Code § 48911(c).
[98] Cal. Educ. Code 48911(a).
[99] Cal. Educ. Code § 48910(a).
[100] 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.

school,[101] or continuation school, the maximum number of schooldays for which a student can be suspended increases to 30.

What should you do if a student is suspended for too many 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 schoolwork during a suspension?

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.[102] If that schoolwork is not graded, even though it is turned in by the deadline or when the student returns, it can't count against the student's final grade.[103]

If the student has an IEP or Section 504 plan, the school must provide them with their education program if they are suspended beyond **10 days**.[104]

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 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."[105]

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

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[101] Opportunity schools are established to provide additional support for students who are habitually truant, insubordinate, disorderly while at school, or struggling academically.
[102] Cal. Educ. Code. § 48913.5.
[103] Cal. Educ. Code. § 48913.5(b).
[104] 34 CFR 300.530.
[105] Cal. Educ. Code. § 48911(g).

decision to extend the suspension must again be preceded by notice and a meeting.[106]

Can you request that inaccurate or misleading information be removed 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 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.[107]

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 or look up the board policies on their website.

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.

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[106] *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.

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

The Expulsion Process

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),[108] 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 Expulsion Timeline

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 expellable offense.

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.[109]

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 an attorney or a non-attorney advocate,[110] inspect and obtain copies of all documents[111] the school will use at the hearing, question all witnesses appearing at the hearing, and present evidence on the student's behalf.[112]

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[108] Note that for a zero-tolerance offense, the governing board does not have to expel a student.
[109] Cal. Educ. Code § 48918(b). Note that this requirement does not entitle a student to *receive* notice 10 days before the hearing.
[110] Cal Educ. Code § 48918(b). Students and families must provide for their own representation.
[111] 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 interpreter for the hearing, although the Education Code does not explicitly provide for one.
[112] Cal. Educ. Code § 48918(b).

Protections for Non-English Speakers

If your primary language is not English, the district must provide you notice of the expulsion hearing in your primary language. Additionally, you should request that the district provide you with translated records and request a qualified interpreter for the hearing. For more information about your language access rights, see below.

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**[113] of the initial suspension, unless the student requests a postponement[114] or the superintendent extends this deadline for "good cause."[115] 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.[116]

The governing board may conduct the expulsion hearing itself or it may appoint a hearing officer or panel to oversee it.[117] If a hearing officer or panel conducts the hearing, it must submit findings to the governing board within three days of the hearing.[118]

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.[119]

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

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[113] Cal. Educ. Code § 48925 defines "schoolday" as a day in which schools are in session or weekdays during the summer break.
[114] 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 v. Los Angeles County Board of Education*, 123 Cal. App. 3d (Cal. Ct. App. 1981).
[115] 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.
[116] See *Garcia v. Los Angeles County Board of Education*, 123 Cal. App. 3d (Cal. Ct. App. 1981).
[117] Cal. Educ. Code § 48918(d).
[118] Cal. Educ. Code § 48918(e).
[119] Cal. Educ. Code § 48918(a).

of expulsion, and your obligation to let any new district know that your student was expelled from the previous district.[120]

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.[121]

[120] Cal. Educ. Code § 48918(j).
[121] Cal. Educ. Code § 48915(b), (e).

Possible Outcomes in Expulsion Proceeding

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.[122]

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.[123] 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.[124] Expelled students can be placed in county-run schools or, depending on the offense, a district-run alternative school.[125]

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[122] Cal. Educ. Code § 48918(e).
[123] Cal. Educ. Code §§ 48918(e), 48432.5.
[124] Cal. Educ. Code § 48915.2.
[125] If the student committed a mandatory or medium-discretionary offense, the student may be barred from attending any district-run school.

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."[126]

If, during this probationary period, the student commits any expellable offenses or violates any of the district's rules regarding student conduct, the governing board can revoke the suspended expulsion and immediately expel the student without a hearing.[127]

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.[128]

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.[129] 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.

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[126] Cal. Educ. Code § 48917(a), (c).
[127] Cal. Educ. Code § 48917(d). Note that a student with disabilities would still be entitled to a Manifestation Determination Review and other protections under the IDEA and/or Section 504.
[128] Cal. Educ. Code § 48917(a).
[129] Cal. Educ. Code § 48917(e).

Advocacy Strategies During Expulsion Proceedings

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 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 during an extended suspension.

- **Have you received written notice of the hearing in your primary language?**
  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 for it. 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 waive all due process rights, including a hearing. 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 cancelled. As a general rule, you should not sign a stipulated expulsion agreement without talking to an attorney first.

- **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 cancelled.

- **Does your student have known or unidentified special education needs?**
  See below for more information on special education school discipline considerations.

- **Are translation services required?**
  If you speak a primary language that 15% or more of the school population speaks, the district must provide translation services and an interpreter.[130]

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 or support a transfer to another school district 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 or students, 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 above.

[130] Cal. Educ. Code § 48985.

Appealing an Expulsion or Suspended 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.[131]

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.[132]

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

The county board has **10 schooldays** to make a recommendation.[133]

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.

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[131] Cal. Educ. Code § 48919.
[132] Cal. Educ. Code § 48919.
[133] Cal. Educ. Code § 48919.5.

On what grounds can an expulsion appeal be filed?

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

1. **LACK OF JURISDICTION**[134]
   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 hearing may be raised on appeal.[135]

3. **ABUSE OF DISCRETION**[136]
   "Abuse of discretion" includes the following circumstances: (1) failure to meet Education Code procedural requirements; (2) failure to make required findings; 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 for reconsideration or it may hold a new hearing after providing "reasonable notice."[137]

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.[138]

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[134] Cal. Educ. Code § 48922(a), (b).
[135] 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").
[136] Cal. Educ. Code § 48922(c).
[137] Cal. Educ. Code § 48923(a).
[138] 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.

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.

Special Protections for Students with Disabilities in Discipline Proceedings

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 a basis of 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.[139]

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").[140]

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 under the IDEA.[141] Section 504 does not have a required timeframe for holding the MDR, but the United States Department of Education has interpreted it as being 10

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[139] 20 U.S.C. § 1415(k); see also https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/504-discipline-guidance.pdf for guidance on protections for students receiving services under Section 504.

[140] The Federal guidance linked in the footnote above states that "the IDEA's regulations use the term "manifestation determination" in connection with determining whether the conduct for which certain discipline is proposed is a manifestation of a student's disability. See 34 C.F.R. § 300.530(e). Section 504's regulations do not use the term "manifestation determination" but require an "evaluation" prior to a significant change in placement. See 34 C.F.R. §104.35(a). For purposes of this document, this type of evaluation is referred to as a "manifestation determination." Although a manifestation determination under IDEA and Section 504 have the same purpose, different regulatory requirements apply."

[141] 20 U.S.C. § 1415(k)(1); 34 C.F.R. § 300.536.

days. A "change in placement" is defined as a student's removal or pattern of removals from school totaling more than 10 school days.[142]

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.[143]

Who must attend the MDR?

The MDR must include you, the school district, and any relevant members of the student's IEP or 504 team.[144]

What happens at the MDR?

At an MDR under the IDEA, 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. At an MDR pursuant to Section 504, the team evaluates the same two questions, however, the questions themselves are not enumerated in statute as they are under the IDEA.[145]

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, under the IDEA, 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.[146]

If the answer to both questions is "no," the school can take disciplinary action.[147]

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

In cases in which a student with an IEP has committed a zero-tolerance offense, the IDEA empowers a school is entitled to remove that student with an IEP from school and place

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[142] 34 C.F.R. § 300.536(a)(2), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/504-discipline-guidance.pdf.
[143] 20 U.S.C. § 1415(d), (k)(1)(H); 34 C.F.R. § 300.504(a)(3), 300.530(h); *Goss v. Lopez*, 419 U.S. 565 (1975); https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/504-discipline-guidance.pdf.
[144] 20 U.S.C. § 1415(k)(1)(E); https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/504-discipline-guidance.pdf. 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.
[145] https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/504-discipline-guidance.pdf.
[146] 20 U.S.C. § 1415(k)(1)(F).
[147] 20 U.S.C. § 1415(k)(1)(C).

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.[148]

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.[149] Note that these zero tolerance offenses are defined by IDEA and do not align with the offenses listed in the Education Code.

Schools are also able to remove students with IEPs and Section 504 plans for behaviors that are manifestations of their disability by using an extraordinary measure known as a *Honig* injunction.[150] This is a type of court filing that a district can file against a student to get a judge rule that it can remove a student for disability-related behavior if that behavior is substantially likely to cause serious bodily injury.

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.[151]

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[148] 20 U.S.C. § 1415(k)(1)(G).
[149] 20 U.S.C. § 1415(k)(1)(G).
[150] *Crawford v. Honig*, 37 F.3d 485 (9th Cir. 1994).
[151] 20 U.S.C. § 1415(k)(1)(D).

Special Protections for Students with Unidentified Special Education Needs

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

Yes. Even if there has not been a formal determination that a student has a disability or is eligible for special education, IDEA's disciplinary protections will apply if the school had knowledge or was on notice of the student's possible disability or need for services.[152]

When does a school district "have knowledge" of the student's special education needs?

A school district has 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. This can be shown through student records.[153]

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, file for due process.

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.[154]

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[152] 20 U.S.C. § 1415(k)(5)(A).
[153] 20 U.S.C. § 1415(k)(5)(B).
[154] 20 U.S.C. § 1415(k)(5)(C).

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 way it disciplines non-disabled students.[155]

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.

[155] 20 U.S.C. § 1415(k)(5)(D).

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.[156]

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

[156] Office of Civil Rights, Letter re: Akron City School Dist., 19 IDELR 542 (Nov. 18, 1992); see also https://www.ed.gov/sites/ed/files/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. They are usually in response to code of conduct violations, attendance issues, or credit recovery needs. 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 on re-enrolling in comprehensive schools.

What are alternative schools?

Alternative schools include county community schools, community day schools, and continuation schools. These schools may help some students, but they do not provide the same educational or extra-curricular opportunities as comprehensive schools.[157]

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.[158]

What are a student's rights in involuntary transfers?

If your student is involuntarily transferred to an alternative school, you have a right[159] to:

- Receive written notice of the transfer;
- Review all transfer documents;
- Request a meeting with the superintendent to tell the student's side of the story;
- 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.[160]

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[157] See Cal. Dept. of Educ., https://www.cde.ca.gov/sp/eo/.
[158] Cal. Educ. Code § 48432.
[159] Cal. Educ. Code § 48432.5.
[160] Cal. Educ. Code § 48432.5.

For what reasons can a district involuntarily transfer a student?

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 the semester immediately after.[161]

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.[162]

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 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.

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[161] Cal. Educ. Code § 48432.5.
[162] Cal. Educ. Code § 48263.

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 ideally 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.[163]

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).

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[163] Cal Educ. Code § 48263

Bullying

Advocacy for Students Who Are Bullying and Being Bullied

What is bullying?

Bullying is defined in the California Education Code,[164] and it occurs when a student or group of students make another student:

- Experience fear of harm to themselves or their personal property;
- Experience a substantial impact on their physical or mental health;
- Experience a substantial interference with their academic performance; or
- Experience a substantial interference with their ability to participate in or benefit from services, activities, or privileges that the school provides.

Does bullying have to be in-person?

No. Bullying can be physical, verbal, in writing, or through technology (which is called "cyberbullying").[165]

What does "cyberbullying" mean?

Cyberbullying happens over a technological device, like a cell phone, computer, social media, or the internet. It can be a text message, an email, a sound, a video, an image, and a social media post. It can also include pretending to be someone else or creating a fake profile to trick a student.[166]

Cyberbullying also includes "cyber sexual bullying," which happens when a student uses an electronic device to send, share, or post an image, video, or recording of a person under the age of 18 that is sexually explicit or depicts nudity.

Does bullying have to happen more than once to count?

No. The Education Code says that bullying can be **severe** or **pervasive**. Pervasive means that it is happening frequently (e.g. multiple times per day or per week), but severe bullying only needs to happen once. Severe bullying does have to be intense and serious to meet this definition.

How do you know if bullying is "severe"?

When bullying happens is determined by what is known as a "reasonable pupil" standard. The Education Code says that a "reasonable pupil" means an average student or student with disabilities that acts and thinks the way that an average student or student with

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[164] Cal. Educ. Code § 48900(r).
[165] Cal. Educ. Code § 48900(r).
[166] Cal. Educ. Code § 48900(r).

disabilities at that age would. This means that bullying will be found to have occurred if a "reasonable pupil" would feel bullied by the conduct in question.

It's important to remember this because it is not necessarily enough just for your student to believe or feel that they were bullied—the school would have to decide if a reasonable pupil would feel bullied if they experienced what your student did.

Is bullying the same thing as hazing?

No. The Education Code defines hazing[167] differently and responds to it under a different Education Code.

Does bullying have to take place on campus?

Schools can discipline bullying that takes place off campus in some cases. In most cases, schools can only discipline students for behavior that occurs on campus, during school hours or a school activity, or going to and coming from school or a school activity. However, schools can discipline bullying that happens off campus. California anti-bullying laws cover off-campus bullying speech if it causes a "material and substantial disruption" to school activities or the rights of others.[168]

What does a school have to do to respond to bullying?

California school districts are required to adopt a policy that prohibits bullying and lays out a process to prevent and respond to bullying. This policy must include:

- Statements prohibiting harassment, intimidation, and bullying;
- Procedures for reporting bullying;
- Procedures for investigating bullying, including timelines for investigating and reporting complaints;
- Publications of anti-discrimination, anti-harassment, anti-intimidation, and anti-bullying laws;
- Where to find resources for LGBTQ+ and other at-risk students;
- Protections for complainants from retaliation; and
- Identification of someone at the district who makes sure bullying laws are followed.

How can you support a student who is being bullied?

Every child is going to experience bullying differently. It is important to communicate to your student that the bullying they are experiencing is not their fault and reflects an insecurity on the part of the bully rather than something wrong with them.

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[167] Cal. Educ. Code § 48900(q).
[168] *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969).

It is also a good idea to help the student block the bullies from contacting them online or accessing their profiles or posts.

You should also take the following steps with the school district:

1. Request that the district formally investigate the bullying. You should make this request in writing and send it by email, so you have a record of sending it.

2. Request that the district draft and implement a Student Safety Plan and hold a meeting to discuss it. Student Safety Plans are discussed further below, and a sample Student Safety Plan form is available in Appendix O.

3. Request a "No-Contact Order[169]" between the bully and your student so they do not continue to communicate with them inappropriately.

4. Request that the district provide your student access to the school counselor or psychologist to help them process the bullying and come up with strategies to address it in the future.

5. Request that the district facilitate Restorative Justice or Positive Behavior and Intervention Supports programming to help the students resolve the conflict collaboratively and give your student a chance to share how the bullying is impacting them.

How can you report bullying to the district so they investigate?

Anyone can file a complaint with the district to report harassment or bullying. To file a complaint using the district's local complaint process, write a few paragraphs documenting as many facts as you can about the bullying, like your student's name and date of birth, the school they attend, the student or students' names who are doing the bullying, the dates of the bullying, what happened because of the bullying, who you told about the bullying, and what (if anything) was done.

If your student is being bullied because of their identity (race, disability, gender, sexual orientation, language, national origin, etc.), you can file an OCR or UCP complaint using the process outlined above.

[169] This is a contract between the two students that they will stay away from each other moving forward, and there are consequences for a student who violates it. A no-contact order is violated through physical contact, verbal communication, electronic communication, communicating through others, and even unkind looks.

What is a Student Safety Plan, and how do you help your student get one?

A Student Safety Plan is a document that describes the bullying that has occurred, whether the bullying happened once or several times, the settings where the bullying takes place, who the bullying has been reported to, what has been tried and whether interventions have helped, and what everyone agrees to do to help the bullied student moving forward. A sample Student Safety Plan can be found in Appendix O.

To get a Student Safety Plan for your student, contact the school to request a conference. You can bring in the document found in Appendix O as a basis for the plan or use the school's pre-existing template.

How can you support a student who is being a bully?

Students engage in bullying for a variety of reasons – insecurity, trauma, peer pressure, social anxiety, immaturity, or disability – but none of these reasons mean that a student is a bad kid or unworthy of support.

If your student or a student you know is engaging in bullying, know that the most effective way of getting them to stop is not punishment, disciplinary exclusion from school, or shame. The best way to get a student to stop bullying and take responsibility for the harm they cause to others is allowing them to access mental health supports, like therapy, counseling, Restorative Justice, Positive Behavior Intervention and Supports, and mentorship. You should make a request to the school for these interventions to support a student who is bullying.

You should also remind the student not to speak with school police or security if they are referred to these officers in response to bullying. They should speak to a parent or attorney first.

Language Equity

Can a district discriminate against your student because they speak a language other than English?

No. Federal and state law state that schools cannot discriminate against students and families on the basis of national origin, which includes the language they speak.[170] Schools are required to eliminate language barriers and open educational programs to all students, regardless of language.[171]

Does a school have to provide language assistance services to students learning English?

Yes. While the law does not mandate a specific language acquisition program for schools to use, all programs must be based on sound educational principles and help students overcome language barriers in a reasonable time. This means that schools must have staffing, resources, and services to support English learners as well as a process to identify English learners and their needs. The school must also meaningfully communicate with parents who do not speak or speak limited English.

Can a school segregate students based on their English learner status or national origin?

No. A school can offer targeted instruction in a small setting to English learners for part of the day, but they must educate English learners in the most inclusive possible manner.

How is progress monitored in English learner programs?

All school districts must monitor an English learner's English-language proficiency in four areas: reading, writing, comprehension, and speaking. In California, this is measured by an assessment known as the English Language Proficiency Assessments for California ("ELPAC"). It is administered annually to determine initial identification of English Learners and measure annual progress in learning English.

What are your options if you want your student to be reclassified out of their English learner program?

If you believe your student should not be classified as an English learner, you can:

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[170] Title VI of the Civil Rights Act of 1964; Equal Education Opportunities Act of 1974; Section 220 *et seq.* of the California Education Code; Dymally-Allatorre Bilingual Services Act.
[171] *Lau v. Nichols*, 414 U.S. 563 (1074).

- *Opt Out:* You can opt out of English learner programs and services, even if your student qualifies. If you choose to opt out, the school still must continue to monitor the English language proficiency of your student.

- *Special Education Evaluations:* If your student has taken the ELPAC for several years, and you have observed that they can communicate, interact with others, and consume content (i.e., read books, watch TV, and videos) in English, your student may have special education needs that impact their ability to test out on the ELPAC.

  For example, a student with dyslexia may struggle in the reading and writing portion of the ELPAC, even if they can understand the language, while a student with a speech and language impairment may struggle in the speaking or listening portion. In these instances, you may want to request special education assessments. Be sure to request the district conduct bilingual psychoeducational assessments and speech and language evaluations to accurately measure your student's needs.

- *Review IEP/504 accommodations:* If your student has an IEP or a 504 plan, review your student's testing accommodations to ensure these address their special education needs. At the meeting, make sure the district identifies the team member with expertise in language acquisition.

- *Request reclassification*: California requires every district to establish a reclassification process for English Learners. The reclassification process should include reclassification steps for students whose disability prevents the student from passing one or more sections of the ELPAC.

Does a school have to communicate with you about your student in a language you can understand if you speak a language other than English?

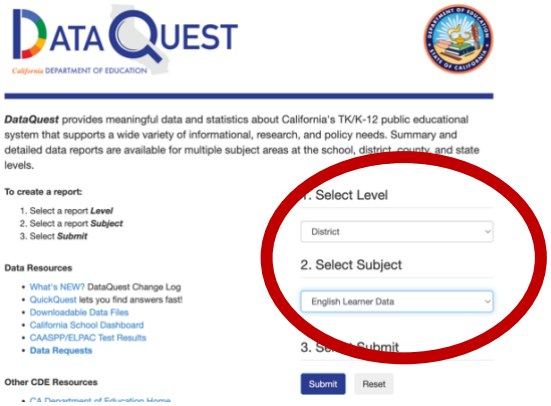
Yes. Parents with limited English proficiency must receive meaningful communication in a language they can understand, free of charge.[172] Schools must take reasonable steps to ensure that parents who speak other languages can participate in their children's education. This includes providing notices in multiple languages, translating important student records, and providing interpreters for meetings with school and district staff.

When is a school required to translate notices into languages other than English?

California Education Code Section 48985 requires that schools translate "all notices, reports, statements, or records" that are sent to parents into all languages that 15% or more of enrolled students speak.

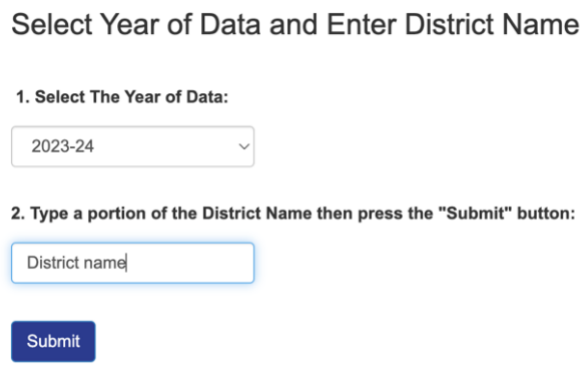
Also, schools must allow parents to respond to those notices in their primary language, even if the response is not in English. To find out if your language meets the 15% or more threshold, visit: https://dq.cde.ca.gov/dataquest/ and take the following steps:

1. Make the following selections on the DataQuest homepage, and press "Submit."

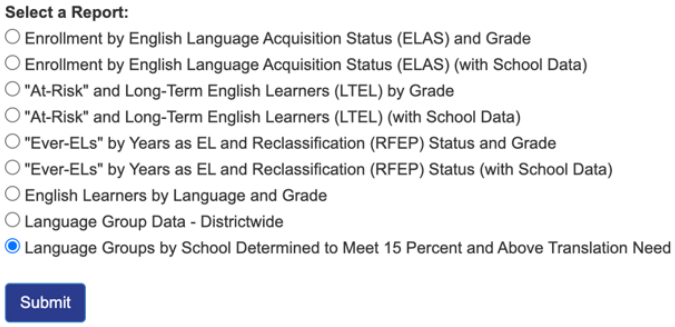


2. Type in the name of the school district you are checking and select the most recent year data is available.

[172] 28 C.F.R. § 42.405(d)(1).



3. Select "Language Groups by School Determined to Meet 15 Percent and Above Translation Need" and press submit.



If my school is not required to provide notices in multiple languages, how can I ensure communication with the district?

Under Federal and state law, all schools receiving federal and state funding are required to provide meaningful access for individuals with Limited English Proficiency.[173] This includes providing both translated materials and interpreters to ensure students and parents are able to access school services.

When does a district need to provide translated program materials and student records?

A district must provide translated materials to parents when that information is necessary to them accessing a school and its programs.[174] Such documents include:

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[173] 42 U.S.C. § 2000d; Cal. Code Regs. tit. 2, § 14101.

[174] Cal. Code Regs. tit. 2, § 14101

- Registration and enrollment in schools and educational programs;
- Language assistance programs;
- Report cards;
- Behavior logs,
- Student discipline reports and policies;
- Special education policies and procedures;
- Special education and related services;
- Grievance procedures and notices of nondiscrimination;
- Parent handbooks;
- Gifted and talented programs; and
- Requests for parent permission for student participation in school activities.

To request translated documents, submit a request in writing to your school principal or to the district's custodian of records. We recommend you submit your request via email or fax to document the date of your request. See Appendix Q for a Language Access Request Template.

How can you request an interpreter?

If you have limited English proficiency, you can request an interpreter to assist in your interactions with school and district staff in meetings, including disciplinary conferences and hearings, special education meetings, and parent-teacher conferences.

To request an interpreter, submit a request in writing to the meeting organizer. See Appendix Q for a Language Access Request Template.

What can you do if a district violates my language access rights?

You can file a UCP or OCR complaint for language access violations. Some examples of when your language access rights could be violated include:

- A district failing to provide you with translated notices and records, despite having over 15% of students in the district speak that language
- A district failing to provide you with meaningful access to your student records by not translating vital documents
- A district not providing you an interpreter at no cost to you at meetings such as IEP meetings, disciplinary meetings, or 504 meetings.

See above for information on how to file a UCP and OCR complaint. For a language discrimination UCP complaint template, see Appendix R.

Language Equity Protections for Students with Disabilities

In addition to the language access rights described above, which apply to all students and families who speak a language other than English, the IDEA provides additional protections. These protections apply to English learners and bilingual students, and they impact the special education evaluation process, IEP meetings, and the delivery of services.

How should culturally and linguistically diverse students be assessed for special education?

If your student is being evaluated for special education services, make sure the district provides you and your student with the following:

- ✓ An assessment plan in your primary language
- ✓ Evaluation materials that are not racially and culturally discriminatory[175]
- ✓ Evaluation materials in your student's native language or other mode of communication, unless it is clearly feasible to do so.

If your student is an English learner being assessed for special education, you should request the district provide your student with bilingual assessments, especially speech and language and psychoeducational evaluations.

- ✓ A translator for parent interview portions of assessments to capture your input.
- ✓ A translated assessment report before your IEP meeting so you can review results and formulate questions ahead of time.

For more information about the IEP assessment process, see above. Also, Appendix S provides a form you can use to request special education evaluations and services for students with limited English proficiency.

If the district's assessment does not provide you with the protections outlined above, you can disagree with the assessment and request an independent evaluation completed by an independent evaluator. To learn more about the independent evaluation process, see Appendix T.

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[175] Special education evaluations include the evaluator-administered standardized tests. These tests measure the performance of your student against the performance of students across the country and help identify if your student is underperforming in certain areas. To ensure that a student whose primary language is not English does not underperform in these assessments due to their language differences, the evaluation itself must consider students like them as part of the standard. For this reason, when you attend your student's IEP, you should ask if the standardized tests the district administered were designed to be administered to English learners or bilingual students. If the district does not respond, you can ask them to provide you with the norms and protocols of the assessment.

How should the IEP development process take your input into account as a speaker of a language other than English?

Once your student has been evaluated, you will be invited to participate in a meeting to discuss your student's assessments and determine if they qualify for an IEP.

If English is not your native language, make sure the district provides you and your student with the following during and after the meeting:

- ✓ An interpreter to help you communicate during the meeting;
- ✓ A copy of your procedural rights in your native language. Procedural rights are important because they notify you of your rights if you disagree with the IEP team and outline what next steps you have;
- ✓ A translated copy of the IEP after the meeting. We encourage you to wait until you receive the translated IEP before you sign your consent. This will allow you to review that the plan reflects the team's agreement; and
- ✓ A prior written notice in your language. If you make a request to the IEP team, and the team refuses, they must provide you with prior written notice explaining the reasoning for their denial. This notice must be in your language. You can learn more about prior written notices and what they entail here.

If your student is an English learner, make sure the IEP team provides them with:

- ✓ A team member with experience in language acquisition to ensure that your students' language needs are properly considered during the IEP meeting;
- ✓ Goals to address language development needs;
- ✓ Accommodations for their ELPAC; and
- ✓ Services that consider language development needs, which can include a bilingual service providers or interpreters for their services.

For general information about the IEP process, see above.

What options do you have if the IEP team fails to provide you with the protections outlined above?

If the IEP team either does not provide you with or denies your request for the protections listed above, you can file a complaint with the California Department of Education for a denial of FAPE. You can find a template complaint in Appendix U.

Advocacy for Undocumented Students

Do undocumented students have a right to public education?

Yes. All children in the United States have a right to a few and appropriate public education, regardless of immigration or citizenship status.[176] The California Department of Education has repeatedly reaffirmed this obligation in guidance to its schools.[177] The California Attorney General's Office has also issued guidance to schools on how to comply with the law in creating a safe and secure learning environment for all students, including undocumented students, which is available online in English[178] and Spanish.[179]

How do you enroll your student in school without revealing that you are undocumented?

Information about immigration or citizenship status is never needed for school enrollment, nor is a Social Security number. Schools must allow parents to demonstrate proof of residency and the student's age with a variety of documents; schools do not need to keep a copy of any documents shown.

Examples of documents that can serve as proof of residency (i.e. that you live close enough to attend a school) include a lease, utility statements, or pay stubs. If you do not have any of these documents, the school must accept a "Declaration of Residency," which is a letter you write attesting that you live at a particular place.

Examples of documents that can serve as age verification (i.e. proof that your student is the right age to enroll in a school or grade) include a birth certificate, passport, or baptism certificate. If none, the school must accept an affidavit or other appropriate means of proving age.

Can immigration officers access your student's information and records?

Federal and state laws protect student education records along with personal information. In general, a school has to get written permission from you to release student information, unless the information is already public or in response to a subpoena or court order.

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[176] *Plyler v. Doe*, 457b U.S. 202 (1982); Cal. Educ. Code § 220, 234 *et seq.*
[177] https://www.cde.ca.gov/eo/in/yr25cdoletter0121.asp#:~:text=Many%20school%20districts%20throughout%20California,regardless%20of%20their%20immigration%20status.
[178] https://oag.ca.gov/system/files/attachments/press-docs/Immigration-Enforcement%20Actions%20at%20California%20Schools.pdf.
[179] https://oag.ca.gov/system/files/attachments/press-docs/Immigration-Enforcement%20Actions%20at%20California%20Schools-es.pdf.

Some school districts collect and publicize basic student "directory information," but before they include your information, they have to give you written notice and allow you to opt out.

"Directory information" includes names, addresses, phone numbers, grade levels, dates of attendance, honors/awards, and participation in school activities. Directory information does not include citizenship/immigration status.

When you enroll, you should ask for the school's written policies on student information and review it. After you read the school's policy for "directory information," you can consider whether to opt out of releasing that information.

Can your student still qualify for Free and Reduced-Price Meals if you don't have a Social Security Number?

Yes, if your family meets the income eligible requirements of the program. Check "No SSN" on the form where applicable, and ensure the applications are otherwise completed.

Also, if you or any member of your household already participates in CalFresh, CalWORKS, or FDPIR, no SSN number is required for the student to receive free and reduced-price meals.

What can you do if your student's rights are violated?

If you or your student experience discrimination, intimidation, bullying, or harassment due to your perceived immigration status or national origin, you can file a complaint using the processes outlined above.

If a school shares your student's records without your permission, you can file a complaint with the office that enforces the Federal Education Rights and Privacy Act using the process outlined here: https://studentprivacy.ed.gov/file-a-complaint and the form found in Appendix P.

If ICE officers go onto your student's school campus, you should also report the incident to the California Bureau for Children's Justice using the complaint process outlined here: https://oag.ca.gov/bcj/complaint.

Know Your Rights: Contact with ICE at School

Can Immigration Officers ("ICE") come to your student's school?

As of January 2025, federal and state laws do not ban ICE from entering schools or other places where children might be (playgrounds, community centers, childcare programs, bus stops), but state and local guidance limits ICE presence in schools.

For example, some California schools have designated themselves as "safe havens," which means that they promise to resist ICE's attempts to enter schools or use any school information for immigration purposes.

However, even if your school is not a safe haven, it must still have a plan for ensuring the school is safe for all students, regardless of their immigration status. The California Department of Education states that schools must have policies for responding to ICE's requests to enter school campuses, notifying the district superintendent of ICE's attempts to access a school, and responding to any requests by ICE to access any student or family information.[180]

What should your student do if ICE approaches them at school?

If ICE approaches you or your student at school, stay calm and not run away. Notify school staff immediately. You should also loudly and firmly state the rights listed below:

1 5th Amendment – I have a right to stay silent & speak with an attorney.

- You can **refuse to speak** with an ICE officer until you speak with an **attorney** when ICE approaches you anywhere, including while you are walking, using public transportation, on the playground, or hanging out with friends.
- **Do not answer any questions,** especially about your birthplace, immigration status, or how you entered the United States.
- **Do not sign anything** without first speaking with an attorney.

2 4th Amendment – I have a right not to be unlawfully searched and have my belongings illegally taken away.

- ICE **cannot search** you or your belongings **unless**:
  - You give the officer **permission** to search;
  - The officer has **probable cause** (suspicion supported by evidence, that you have committed a crime); or
  - The officer has a **warrant**. A warrant looks like a letter from a court, signed by a judge.

[180] https://www.cde.ca.gov/eo/in/yr25cdoletter0121.asp#:~:text=Many%20school%20districts%20throughout%20California,regardless%20of%20their%20immigration%20status.

How can you prepare for a situation where you are detained or deported so your student's education is not interrupted?

With times being as uncertain as they are, it is a good idea to plan ahead for your student's education. Immigration experts recommend developing a "Family Preparedness Plan" and keeping it in a safe place.

The plan should designate a trusted adult to care for your child if you cannot. Include emergency numbers, important contact information, a Caregiver's Authorization Affidavit (conferring the right to make education and medical decisions to the temporary caregiver), and a file with important documents (passports, birth certificates, identification cards, social security cards, medical information, etc.). More information about what should be included in this plan can be found here on Immigrant Legal Resources Center's website: https://www.ilrc.org/sites/default/files/resources/family_preparedness_plan.pdf.

Advocacy for Unhoused Students and Students in Foster Care

Definitions

How does the law define "foster youth"?

California's Education Code[181] defines "foster youth" as any of the following:

- A child who has been removed from their home pursuant to WIC Section 309. This means that a child has been taken into custody upon a finding that the child has no guardian willing to provide care, there is an urgent safety need, the child has left a court-ordered placement, or the guardian surrendered the child;[182]
- A child or youth who has been declared a ward of the court under WIC Sections 300 or 602, regardless of whether the child has been removed from their home; or
- A dependent child of the court of an Indian tribe or organization who is subject to a petition filed in tribal court; or
- A child who is subject to a voluntary placement agreement under WIC Section 11400.

How does the law define "homeless youth"?

Homeless youth, as defined by the federal McKinney-Vento Act and the California Department of Education,[183] are children and youth who lack a fixed, regular, and adequate nighttime residence. This could refer to youth who are migrant or living in the houses of other persons, in cars, parks, public spaces, abandoned buildings, hotels, substandard housing, bus or train stations, camping grounds, emergency or transitional shelters, abandoned in hospitals, or similar settings.

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

Yes. California law provides additional protections to unhoused students and students 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.

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[181] Cal. Educ. Code § 48853.5.
[182] Welf. & Inst. Code § 309.
[183] 42 U.S.C. §§ 11431-11435; https://www.cde.ca.gov/ds/sg/homelessyouth.asp#:~:text=Homeless%20youth%20is%20defined%20as,regular%2C%20and%20adequate%20nighttime%20residence..

Right to Enroll at the School of Origin

What is a foster youth or unhoused 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."[184]

Unhoused students have the same right, and it lasts for the duration of the time a student is homeless when a student becomes unhoused during or between academic years. And, if a student becomes permanently housed during the school year, this right permits them to finish the school year at their school of origin if their new housing is within the residential boundaries for a different school or district.[185] If the student is in high school, this right permits them to stay at their school of origin through their graduation.[186]

However, if an unhoused student prefers to enroll in a school closer to where they are temporarily staying, they are able to attend without proving permanent residency.[187]

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.[188]

McKinney-Vento defines school of origin as "the school a child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including a preschool."[189]

The California Education Code adds that if there is another school that the student attended within the immediately preceding 15 months and with which the student is connected, this school also may be considered the school of origin.[190]

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[184] Cal. Educ. Code § 48853.5(g); 48853(a)(1), (f); see also California Local Educational Agency Primer: The Education Rights of Students Experiencing Homelessness at https://www.hetac.org/hetac-resources/ed-rights#dkt.
[185] 42 U.S.C. § 11432(g)(3)(A)(i); Cal. Educ. Code § 48852.7.
[186] Cal. Educ. Code § 48852.7(b).
[187] 42 U.S.C. § 11432(g)(3)(A)(ii).
[188] See Foster Youth Educ. Rights, Cal. Dept. of Educ. at https://www.cde.ca.gov/ls/pf/fy/fyedrights.asp.
[189] 42 U.S.C. § 11432(g)(3)(I)(i).
[190] Cal. Educ. Code § 48852.7(f)(2).

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.[191]

The McKinney-Vento Act also states that "[w]hen the child or youth completes the final grade level served by the school of origin, the term school of origin shall include the designated receiving school at the next grade level for all feeder schools."[192]

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

Yes. A student 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;[193] or
- The student's education rights holder determines that it is in the best interest of the student to be placed at another school.[194]

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.[195]

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

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[191] Cal. Educ. Code § 48853.5(f)(4).
[192] 42 U.S.C. § 11432(g)(3)(I)(i).
[193] Cal. Educ. Code § 48853(a)(2); 42 U.S.C. § 11432(g)(3)(B)(i).
[194] Cal. Educ. Code § 48853(a)(3); 42 U.S.C. § 11432(g)(3)(B)(i). 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.
[195] 42 U.S.C. § 11432(g)(3)(E); Cal. Educ. Code § 48852.7(e)(1).

through the end of the school year. If they are in high school when court jurisdiction ends, the right lasts through graduation.[196]

Does the district have to provide students 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).[197] A school district can, at its discretion, provide transportation services.[198]

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.[199] If a caregiver is able to provide transportation, child welfare is often able to reimburse them for reasonable costs with federal funds.[200]

What does the right to immediate enrollment mean?

Students in foster care and students experiencing homelessness have the right to immediately enroll in their schools of origin or a new school in the attendance area of their current placements, even if they are unable to produce previous academic records, records of immunization, health records, proof of residency, birth certificates, or other documentation. 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.[201]

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[196] Cal. Educ. Code § 48853.5(e)(1)-(4).
[197] Cal. Educ. Code § 48853.5(f)(3)(B).
[198] Cal. Educ. Code § 48853.5(f)(5).
[199] 42 U.S.C. § 675(4)(A); 20 U.S.C. § 6312(c).
[200] 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.
[201] 42 U.S.C. § 11432(g)(3)(C)(i)(I); Cal. Educ. Code §§ 48850(a)(3)(A), 48852.7(c)(3), 48853.5(f)(8)(B).
[202] Cal. Educ. Code § 48852.7(e)(3).

What expanded graduation options are available to foster and unhoused youth?

For foster youth, AB 167/216 allows students 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.

Similarly, unhoused students who have transferred schools any time after the end of their second year of high school can also graduate in 4 years by meeting minimum state graduation requirements. They are also afforded an additional year to meet statewide and additional district graduation requirements if they choose.[203]

Students who graduate under this option still receive a high school diploma, but there may be an impact on college course enrollment, discussed further below.

What minimum state graduation requirements look like compared to district requirements will be discussed below.

Can a student lose their eligibility for extended graduation options?

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

Are there any potential consequences of graduating with minimum state graduation requirements?

Graduating with minimum state graduation requirements could impact a student's ability to be admitted to postsecondary educational institutions (i.e., a college or university).[204] The school district must notify the student and their ERH of this risk. Schools should inform students that this potential consequence can be mitigated by transferring to a 4-year school by way of a California Community College.

[203] Cal. Educ. Code § 51225.1.
[204] Cal. Educ. Code § 51225.1(f).

What are the state's minimum 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. California's minimum graduation requirements[205] reduce the total number of credits needed to graduate to 130.

However, starting with students graduating in 2029-2030, California will require an Ethnic Studies course.[206] Starting in 2030-2031, a Personal Finance course will also be required.

The chart below shows what this looks like:

California Minimum Graduation Requirements	Sample Local School District Graduation Requirements
English (30 credits)	**English** (40 Credits) • English 9 (10 credits) • English 10 (10 credits) • American Literature (10 credits) • Contemporary Composition (10 credits)
Math (20 credits) • Algebra 1/Math 1 (10 credits) • Other math (10 credits)	**Math** (30 credits) • Algebra 1 (10 credits) • Geometry (10 credits) • Algebra 2 (10 credits)
Science (20 credits) • Biological science (10 credits) • Physical science (10 credits)	**Science** (30 credits) • Biological science (10 credits) • Physical science (10 credits) • Lab science (10 credits)
Social Studies (30 credits) • World History (10 credits) • US History (10 credits) • American government/civics (5 credits) • Economics (5 credits)	**Social Studies** (30 credits) • World History (10 credits) • US History (10 credits) • Principles of American Democracy (5 credits) • Economics (5 credits)

[205] See https://www.cde.ca.gov/ci/gs/hs/hsgrmin.asp.
[206] Cal. Educ. Code § 51226.7.

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 or unhoused youth?

Part of advocating for an unhoused or 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 Appendix B and Appendix C 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 above to help you document graduation requirements for your district.
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 and unhoused 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.

Right to Partial Credits

Why do unhoused students and students in foster care get partial credits?

Because unhoused students and students in foster care are more likely to transfer schools frequently throughout the semester, schools and other districts receiving transferring students 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 an unhoused or foster youth's grades due to absences or gaps in enrollment caused by changing schools?

No. 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 or unhoused youth?

Yes. When the sending school receives notice that an unhoused student or 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. This must happen within **2 business days** for foster youth.[207]

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

[207] Assembly Bill 490, Senate Bill 578; https://courts.ca.gov/sites/default/files/courts/default/2024-12/btb_23_5o_11.pdf.

Advocacy for LGBTQIA+ Youth

Special thanks to Ania Korpanty for their work on this chapter.

Key Terms and Phrases

LBGTQIA+

Stands for **L**esbian, **G**ay, **B**isexual, **T**rans, **Q**ueer/**Q**uestioning, **I**ntersex, **A**sexual, and more. The **+** at the end means that there is a diverse array of identities that can fall into this group, with a variety of sexual preferences and gender identities. The term refers to people who are gender non-conforming, non-heterosexual, and/or both.

Queer

Used similarly to LGBTQIA+. Queer was once a derogatory term used to denigrate people in the LGBTQIA+ community, but its members have reclaimed the word in the last decade. Not all LGBTQIA+ people identify as queer, but many do.

Trans

Term describing people whose gender identity differs from the sex they were assigned at birth. It can also refer to people whose gender expression does not match society's norm for their assigned sex.

Nonbinary

Term describing people whose gender identity is not exclusively male or female. Nonbinary individuals can identify as both male and female, neither male nor female, or have a gender that is fluid or changes over time.

Intersex

Refers to individuals who are born with variations in their sexual development that do not fit the typical binary definitions of male or female. This identity does not require a medical diagnosis. It simply means having different sex traits or reproductive anatomy that show up at birth or later in life.

Dead name

Refers to the name a person was given at birth but is not a person's chosen name. Many trans or nonbinary people go by a different name that reflects what they prefer to be called or more closely represents their identities. It is typically considered disrespectful to use someone's dead name.

Gender dysphoria

Refers to a medical condition in the DSM-V describing significant stress experienced by a person who cannot live their life consistent with their gender identity. This can cause stress, loneliness, discomfort, and depression. While many trans people experience gender dysphoria, not all do; and not all who experience gender dysphoria are trans.

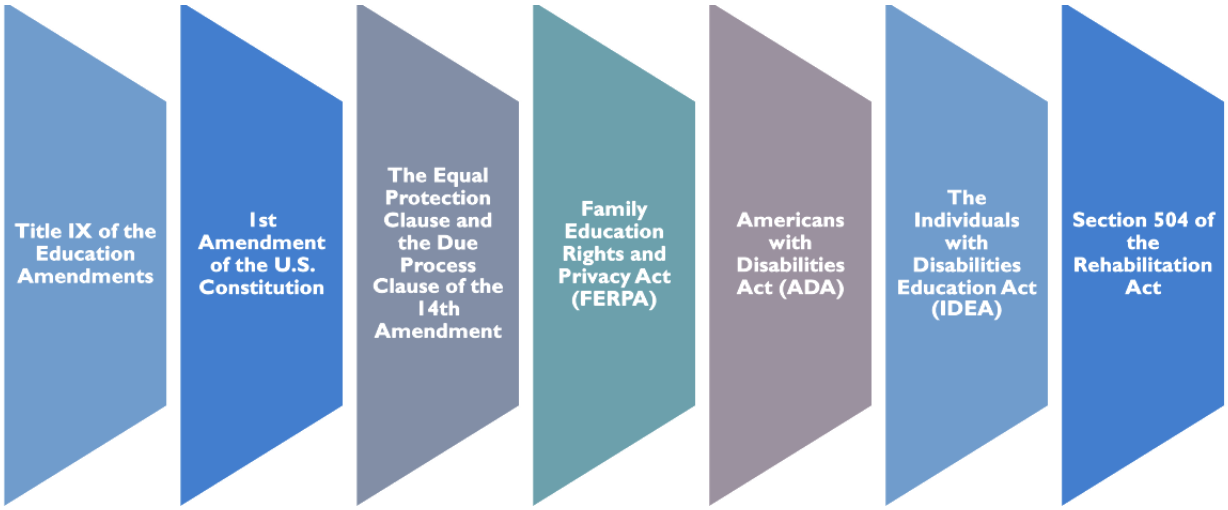
Cisgender

Refers to people who identify with the sex or gender they were assigned at birth.

Laws Protecting LGBTQIA+ Students

What laws protect LGBTQIA+ students?

There are a number of federal and state laws that protect queer students depending on the circumstances.



Title IX of the Education Amendments

Title IX bans sex discrimination in schools, including discrimination on the basis of sexual orientation and gender identity. It ensures that queer students have equal access to education and activities in any school that receives federal funding

1st Amendment of the United States Constitution

The 1st Amendment protects freedom of speech. This means that schools cannot explicitly censor information related to support and inclusion of queer students.

The Equal Protection Clause of the Constitution's 14th Amendment

The 14th Amendment prevents schools from discriminating against students on the basis of gender or sexual orientation unless the action they want to take is substantially related to an important government interest. In other words, they cannot discriminate unless they have a really strong reason for doing so and there is not another way to accomplish the important interest except through an action that discriminates.

Family Education Rights and Privacy Act (FERPA)

FERPA protects student's personal and private information. Education Rights Holders can request that education records be amended to uphold a student's identity, like by changing their name or pronouns.

Are there additional protections for queer students with disabilities?

Yes. The following three laws provide additional protections for queer students with disabilities.

Further, while queerness is in no way a disability, queer students can experience trauma or mental health issues due to frequent identity-based harassment or discrimination that can manifest as social-emotional or behavioral challenges. These challenges may entitle a queer student to disability-based protections.

Americans with Disabilities Act (ADA)

The Americans with Disabilities Act is a federal law that requires schools to provide equal access to students with disabilities, which is any condition that interferes with a major life activity. Learning is a major life activity, bringing the ADA into the school setting.

The ADA can be used to protect queer students. For example, a student may develop anxiety from being constantly misgendered or harassed at school due to their queer identity, with their academics and mental health suffering as a result. This would qualify as a disability under the ADA, permitting that student to get services and protections.

Also, gender dysphoria is a recognized disability under the ADA. If a student has this diagnosis, they can get ADA accommodations as well.

The Individuals with Disabilities Education Act (IDEA)

The IDEA is specific to the education context and requires all children with disabilities to receive a free, appropriate public education through special education and related services, such as counseling or occupational therapy. This could be particularly useful for LGBTQIA+ students who have individual education plans, or IEPs. For example, let's say there is a transgender girl who has a learning disability and trouble communicating and socializing. These challenges may be exacerbated because her peers and teachers use her dead name and incorrect pronouns. The school can then put in her IEP that all educational materials and instructions use her correct pronouns and chosen name to create an inclusive environment that helps foster learning and communication.

Section 504 of the Rehabilitation Act

Similarly, Section 504 of the Rehabilitation Act can provide support for LGBTQIA+ students. Section 504 has a broader scope because it focuses on equal access and preventing discrimination while IDEA provides specialized education services. There may be overlap between these two laws. So, for example, if there is a transgender boy who wants to use the men's restroom and whose mental or physical health would suffer if forced to use the women's restroom, but his teacher does not allow him to, he may get an accommodation in his 504 plan that states he is permitted to use the men's restroom.

What state laws protect queer students?

California has several laws and policies that protect queer students in schools. This is not an exhaustive list, but these are some applicable protections for youth in schools.

California Education Code Section 220

Section 220 of the California Education Code prohibits discrimination on the basis of gender identity, gender expression, sexual orientation, or other protected characteristics.

The California Healthy Youth Act

The California Healthy Youth Act requires all sex education classes in California to include materials about LGBTQIA+ sexual orientations and gender identities.

The School Success and Opportunity Act

The School Success and Opportunity Act allows students to participate in sex-segregated school programs and activities and use facilities that align with their gender identity regardless of the sex they were assigned at birth.

The SAFETY Act

The Support Academic Futures and Educators for Today's Youth, or SAFETY Act, prohibits school districts from outing LGBTQ+ students to their families and others without their consent. It also protects teachers and school staff from retaliation if they refuse to reveal information to parents or others related to a student's gender or identity.

The Save and Supportive Schools Act

This law, effective the 2025-2026 school year, implements cultural competency training programs for teachers to have the tools and trainings necessary to support LGBTQIA+ students, including how to intervene in and respond to incidents of bullying and harassment.

The Transgender Youth Privacy Act

The Transgender Youth Privacy Act requires courts to seal any petition for a change of gender or sex identifier filed by a minor to protect their privacy to help prevent online discovery of documents leading to outing and harassment.

SB 857: LGBTQ Advisory Task Force in Schools

This law requires the California Superintendent of Public Instruction to form an advisory task force to identify the statewide needs of LGBTQIA+ students and make recommendations as to policies to support their well-being. The task force is required to report their findings on or before January 1, 2026.

SB 407: Support for LBGTQIA+ Youth in Foster Care

This policy requires that foster families demonstrate an ability and willingness to meet the needs of an LGBTQIA+ youth. Foster families, before being approved as a caregiver and once a year after, need to complete a training on knowledge and skills for supporting LGBTQIA+ youth.

What issues might a queer student face in school?

Queer students can experience multiple affronts to their identities and personal safety in schools. It is important to understand what discrimination against queer students can look like, so you know how to support them and help them assert their rights. [208]

Queer students often report that they frequently experience harassment on the basis of their identities in school. This could be bullying, deadnaming, misgendering, or being called a slur but other students or even staff.

Many schools still have restrooms, locker rooms, and sports teams that are segregated on the basis of a male-female binary. This can exclude and isolate queer students, deny them opportunities to participate in extracurriculars, and subject them to potentially unsafe environments.

It is also common for schools to censor books, materials, and resources that embrace or educate about queer identities, issues, and history.

Queer students of color or students with disabilities will also experience the discrimination and harassment endemic to those populations with the additional intersectionality of gender/sexuality.

If a queer student experiences discrimination, harassment, or a hostile learning environment, can they file a complaint?

Yes. There are a number of complaints available to assert the rights of queer students:

- Any instances of gender or sex discrimination violate state and federal law. You can file a UCP or OCR complaint using the processes outlined above.
- You can file a records correction with the school district if there are any instances of student information and records being inaccurate or misleading using the form found in Appendix P.
- Any instances of schools or districts sharing unlawful personal information about a student's identity or sexuality can be challenged with a FERPA complaint (outlined above) or an OCR or UCP complaint.

[208] The ACLU has a toolkit for asserting the rights of LGBTQIA+ students, available here: https://www.aclusocal.org/en/know-your-rights/lgbtq-student-rights-k-12-california-public-schools.

What sorts of supports can I ask a school to provide a struggling queer student?

School-Based Supports Available to All Students

California school districts have mental health supports available to all students upon request. It is a good idea to work with your student's school to identify a trusted adult (teacher, administrator, counselor, etc.) for your student to go to if they need support. You can also ask for school-based mental health services for your student with a counselor, social worker, or school therapist provided as needed or at regular intervals.

Supportive Measures through Title IX

Title IX provides for "supportive measures" for students impacted by gender or sex discrimination. These are free services and supports to ensure equitable access to education. This can include access to counseling, changes in class schedules, mutual no-contact orders, academic accommodations, escort services between classes, assistance with reporting procedures, accountability on name and pronoun usage, access the gender-inclusive facilities, training for staff, support for student organization development, and safe space designation.

Supports and Services through Section 504 or the IDEA

As stated above, identifying as LGBTQIA+ is not a disability, but disability law can provide additional layers of protection for students who have qualifying conditions.

Appendix

Table of Contents

Appendix A

NLSLA Education Resources Flyer

NLSLA
Neighborhood Legal Services of Los Angeles County

NLSLAEducationTeam@nlsla.org ♦ (888) 907-0444 ♦ nlsla.org/services/education-rights/

Appendix B

Authorization to Release Information/ Records

Appendix C

Request for Student Records

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Appendix D

Sample Compliance Complaint Threat Letter

Appendix E

Special Education Assessment Request Form

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Appendix F

Request for Independent Education Evaluation

Appendix G

Special Education Eligibility Categories

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Request for Functional Behavioral Assessment

Appendix I

Request for IEP Meeting

Appendix J

Request for Support Services under Section 504

Appendix K

Sample Compliance Complaint

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Appendix L

Request for OAH Mediation or Hearing

Appendix M

OCR Complaint Form

Appendix N

UCP Complaint Form

Appendix O

Sample Student Safety Plan Form

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Appendix P

FERPA Complaint Form

Appendix Q

Language Access Request Template

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Appendix R

Language Discrimination UCP Complaint Template

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Appendix S

Request for Special Education Evaluations and Services (LEP)

Appendix T

Information on Requesting an Independent Educational Evaluation

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Appendix U

Compliance Complaint (LEP)