

SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

Chapter 2

Information on Evaluation/Assessments

From a 13-Chapter Manual

Available by Chapter and in Manual Form

Written by:

Community Alliance for Special Education (CASE)

and

Protection and Advocacy, Inc. (PAI)

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Federal special education law was significantly amended by Congress in 1997 and further clarified by regulations from the U.S. Department of Education in March 1999. The California Education Code has been amended to reflect some of the federal law changes but not all. In October 1999, Governor Davis vetoed a significant piece of state legislation which would have further amended California law to be consistent with federal law. Therefore, in certain circumstances where it provides greater protections or entitlements, California law will continue to control special education pupils' rights unless it is amended to completely conform to federal law.

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Chapter 2

Information on Evaluations/Assessments

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SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

Chapter 2

Information on Evaluations/Assessments

1. How can I get the school district to evaluate or assess my child?

Contact your local school administrator (for example, the principal or special education program consultant). Outline your areas of concern about your child's suspected disability and request an evaluation. Follow up with a **written**, dated request in order to document timelines. Once the school district receives your written request for assessment, the assessment process **must** begin. [California Education Code (Cal. Ed. Code) Secs. 56029, 56301, 56302, and 56321(a); 5 California Code of Regulations (C.C.R.) Sec. 3021.] C.C.R. Sec. 3021 requires that all written referrals for assessment shall initiate the assessment process, and Cal. Ed. Code Sec 56029 defines referral as any written request for assessment by a parent. School district personnel must help you put your request in writing. See *Sample Letter* at the end of this chapter.

If the district refuses to assess your child following your written request for assessment, you have the right to challenge that refusal by filing a compliance complaint with the California Department of Education's Complaint Management and Mediation Unit. If the school district does perform an assessment, but you disagree with the results, you can request a Due Process Hearing. See Chapter 6, *Information on Due Process Hearings/Compliance Complaints*.

2. How long will it take for the district to complete my child's assessment?

By state law, your school district must give you an assessment plan within **15 days** of their receipt of your **written** referral for special education services. If a referral for assessment is made 10 days or less prior to the end of the regular year, the assessment plan must be developed within 10 days after school commences the following school year. [Cal. Ed. Code Sec. 56321(a).] The assessment plan shall:

- (1) Be in language easily understood by the general public;

- (2) Be provided in the primary language of the parent or other mode of communication used by the parent, unless to do so is clearly not feasible;
- (3) Explain the types of assessments to be conducted;
- (4) State that no individualized education program will result from the assessment without the consent of the parent [Cal. Ed. Code Sec. 56321(b)];
- (5) Include a description of any recent assessments conducted (including independent assessments and assessment information the parent requests to be considered);
- (6) Include information stating the student's primary language and proficiency in that language;

[5 C.C.R. Sec. 3022.]

Additionally, if the assessment plan follows a child's initial referral for special education assessment, the plan shall include the following:

- (1) A copy of the notice of parent rights, which includes an explanation of all procedural safeguards under state and federal special education law; and
- (2) A description of any optional dispute resolution mechanisms available under state law.

[20 U.S.C. Sec. 1415(d)(1)(A).]

You have at least **15 days** to respond to or approve the assessment plan. [Cal. Ed. Code Sec. 56321.] See Question 3 below. Once the district has received the signed assessment plan, it has **50 60 days** (excluding days of school vacation in excess of five and days that school is not in session) to complete the assessment and develop an Individualized Education Program (IEP), assuming it finds the child to be eligible. [Cal. Ed. Code Sec. 56344.] No determination of ineligibility for special education services can be made without assessment. [20 U.S.C. Sec. 1414(c)(5); 34 Code of Federal Regulations (C.F.R.) Sec. 300.534(c)(1).]

3. My child's school is on a year-round schedule, but I was told that they didn't have to test my child in July or August. Is that true?

No. Nothing in state law says that testing does not have to be provided in July or August. The law does say that IEP meetings need not be held in the months of July or August. [See Cal. Ed. Code Sec. 56343.5.] With regard to testing, the law says that an IEP must be developed by the school within **50 60** days of receiving the parent's consent to testing, not counting days between regular school sessions,

terms, or days of school vacation in excess of five schooldays. [Cal. Ed. Code Sec. 56344.] In other words, once a parent gives a school written permission to test the child, the school must complete that testing and hold an IEP meeting to discuss the results and develop an IEP within ~~50~~ 60 days, not counting certain days mentioned above. Section 56344 also says, however, that if a child is referred to special education 20 or less days before the end of a school year, an IEP must be developed within 30 days after the beginning of the next school year. This means that the school must present the parent with an assessment plan, obtain the parent's consent to the testing, do the testing, and hold the IEP meeting within whatever days remain in the previous school year plus 30 days in the new school year. Because of this tight time line, testing may have to be conducted in July or August and should be conducted in August if the next school year actually begins in that month. For year-round-school students, if a school year ends in June, for example, and begins again in July, testing may have to begin in July so the process will be completed within 30 days of the start of that new school year.

4. My child is on a traditional school year calendar (September through June) and also attends an extended school year program during the summer. Does the district have to do assessments during the summer?

Schools do not have to do assessments between “regular school sessions.” [Cal. Ed. Code Sec. 56344.] The law does not define the term “regular school sessions.” One could argue that an extended school year session should count as a regular school session. Schools will likely argue that the term “regular school sessions” means those that take place during the traditional school year and do not include the extended year. If regular school sessions did include the extended-year summer session, then schools might not be able to refuse to do testing during the extended-year session because it would not be occurring in between sessions.

5. Does my child have to be referred to the student study team before assessment for special education?

No. A written request for assessment will initiate the assessment process and timelines regardless of the student study team process. There is no requirement or authority in law or regulation for the requirement that a pupil go through a study student team before a referral of the student for special education may be processed. However, before referring the student for special education instruction and services, the school district must consider and utilize, where appropriate, the resources of the regular education program. One way the district can ensure that it

has considered regular education modifications and support is by having the student study team review your child's case. If you have requested a special education assessment, your child's study team referral cannot delay the assessment and IEP timelines without your consent. [Cal. Ed. Code Sec. 56303 and 56321(a).]

6. My child has been referred for special education, and I received an assessment plan with a long list of tests that might be administered. Shouldn't the district be more specific?

Prior to conducting any assessment, the district must provide you with an assessment plan. The assessment plan must include the type of assessments to be conducted. Frequently, several tests will be listed in each area to be assessed because the evaluator may have to determine which tests are most appropriate during the actual assessment as the evaluator gets to know your child better. If you do not understand the type of assessments that are being used, you should ask for clarification. If you believe that certain test instruments are not appropriate for your child, you can request that those instruments not be used and not sign the consent for assessment until you and the district reach agreement on the assessments to be used. [34 C.F.R. Sec. 300.500; Cal. Ed. Code Sec. 56321(c).]

7. How can I contribute to the assessment process?

As a parent, you know your child best. You can contribute by observing your child at home, noting the areas of educational concern to you, writing them down, and pointing out those areas to school personnel. See *Patterns to Look For*, later in this chapter. After you receive the assessment plan, you should review it carefully to determine whether you want additional information about the proposed assessments and/or want to request additional areas that need assessment. No assessment may be done without your written approval unless the district seeks and wins a due process hearing to compel assessment. [Cal. Ed. Code Secs. 56321(c) and 56506(e).]

8. What questions should I ask when my child is scheduled for an assessment?

You may ask about any areas of the assessment that concern you. Specifically, you may want to know who or how many people will be working with your child during the assessment. How long will the assessment last? How many times will your child be seen? Can you be present during the assessment? In addition, you should ask the school district to explain the assessments to be given to your child if

you do not understand why the assessments will be administered. The school district should explain any tests that are to be given to your child.

9. What should an assessment cover?

The student is to be assessed in all areas related to the suspected disability including, where appropriate, health and development, vision (including low vision), hearing, motor abilities, language function, general ability, academic performance, self-help, orientation and mobility skills, career and vocational abilities and interest, and social and emotional status. A developmental history is obtained, when appropriate. [Cal. Ed. Code Sec. 56320(f); 34 C.F.R. Sec. 300.532(g).]

Federal regulations make it clear that the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked” to the disability category of the child. The school district must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical, and developmental factors have on the functioning of the child. In general, the school district must use “assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.”

[34 C.F.R. Sec. 300.532(b), (g), (h), (i), and (j).]

10. Can I ask for very specific kinds of assessments – such as a neurological examination or a non-oral assessment? What if the district does not have appropriate trained personnel to do the testing?

Yes, you can ask for specific assessments. The district has the responsibility for assessment in all areas related to the suspected disability. If there is no district person competent to carry out certain kinds of evaluation, the district may contract out for the service or may use the results of any available independent assessment. See *Sample Letter* at the end of this chapter. The medical treatment services of a physician are not required of special education, but the medical diagnostic services of a physician are required if necessary to determine a child’s medically related disability that results in the child’s need for special education and related services. [34 C.F.R. Sec. 300.24(b)(4).]

11. How can I ensure that the assessment covers emotional and behavioral areas?

The law specifies that your child must be assessed in all areas related to his suspected disability. If you or your child's teachers have observed that he has behaviors which adversely affect school performance (for example, has poor impulse control, has problems making friends, or is withdrawn), you should request assessment of your child's social and emotional status as part of any assessment plan you sign. [Cal. Ed. Code Sec. 56320(f).] You may ask for an assessment in this area even if the district has not identified it as an area for assessment on the assessment plan. The district is required to use technically sound test instruments to assess the relative contribution of cognitive and behavioral factors and physical and developmental factors to the child's disability and need for services. [34 C.F.R. Sec. 300.532(i).]

In addition, California laws on positive behavior intervention services require that every special education student who demonstrates a serious behavior problem be given a functional behavioral analysis assessment. The assessment is then used to develop a positive behavior intervention plan. See Chapter 5, *Information on Related Services*. [Cal. Ed. Code Sec. 56520, 5 C.C.R. Sec. 3052.]

12. SEE ALSO CHAPTER 1, QUESTION & ANSWER 2(A). I believe that my child has a learning disability. Does the school have to do anything different when assessing for a specific learning disability?

Federal law contains special procedures for assessing students suspected of having a learning disability. The interdisciplinary team that evaluates the child must include her teacher or a regular classroom teacher qualified to teach someone your child's age. A team member, other than your child's teacher, must make a classroom observation. The law also requires that the team's assessment report indicate if there is a severe discrepancy between ability and achievement in one or more specified areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, or math calculation or reasoning. The team must also determine whether or not the discrepancy is primarily the result of physical handicap, mental retardation, emotional disturbance, or environmental, cultural or economic disadvantage. At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom, and if the child is preschool age, the observation should take place in an environment appropriate for that age. The team's written assessment report must

include the basis for its determination of whether or not there is a specific learning disability and its relationship to the child's academic functioning and observed behavior. [34 C.F.R. Secs. 300.540 – 300.543.]

Finally, the eligibility determination, should be made by a team of qualified professionals and the child's parents, including at least one regular teacher and at least one person qualified to conduct individual diagnostic evaluations of children such as a school psychologist or remedial reading teacher. The child is to be assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. [20 U.S.C. Sec. 1414(b)(4)(A); 34 C.F.R. Secs. 300.532(g), 300.534, and 300.540.] See Chapter 3, *Information on Eligibility Criteria*.

13. Are there documents that I may have that would help in the assessment process?

Yes. Various professional reports that you may have received on your child from other sources — such as a regional center or doctors — would help the assessment process. For example, speech and language, occupational and physical therapy, neurological or ophthalmological reports; current teachers' observations (from preschool or a different district); respite, recreational or camp personnel observations; and special medical reports are often useful. School districts generally ask you to share the other professional reports with them to assist in determining your child's needs. In fact, any independent evaluation provided to the school district by the parent must be considered in any decision related to the student's programming and services. [34 C.F.R. Sec. 300.502(c); Cal. Ed. Code Sec. 56329(b).]

14. How can I explain to my child why she is being assessed?

You may want to explain that you and your child's teachers believe that she is not learning as much as she can. Then, you could individualize the explanation by giving a simple example of her difficulty. You could point out that each child is unique and that everyone learns in a different way. Some learn by hearing; some learn by seeing; and some learn through their sense of touch. Explain to her that assessments will show how she learns best, so her teacher can help her learn more.

15. How can I prepare my child for assessment?

Keep your explanation short and simple. You may say something like this: “You will be working with someone like a teacher who will have you look at pictures, play some games, do a little reading and math, and draw some designs and pictures.” That will give your child a general idea of what to expect.

16. What are the procedures and standards for assessment tests and tools?

Tests and other evaluation materials must be selected and administered so as not to be racially, culturally, or sexually discriminatory; must be administered in the student’s primary language or other mode of communication; and must be validated for the specific purpose for which it is used. In addition, testing must assess specific areas of educational need and not merely produce a single general intelligence quotient. No single procedure can be used as the sole criterion for determining an appropriate educational program for the student. Finally, when a student with impaired sensory, manual, or speaking skills is being tested, the testing must ensure that the results accurately reflect the student’s aptitude or achievement level, and not the student’s impaired skills, unless those skills are to be measured by the testing. [20 U.S.C. Sec. 1412(a)(6) and 1414(b); 34 C.F.R. Sec. 300.530 and following; Cal. Ed. Code Sec. 56320.]

Federal regulations state that the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked” to the disability category of the child. The school district must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical, and developmental factors have on the functioning of the child. In general, the school district must use “assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.”

In addition, the school district must use a variety of assessment tools and strategies to gather both relevant **functional** and **developmental** information about the child, **including information provided by the parent**. The evaluation must also gather information **related to enabling the child to be involved and progress in the general curriculum or for a preschool child to participate in appropriate activities**. For a child with limited English proficiency, materials and procedures must be selected and administered to measure the extent of a child’s disability rather than measuring the child’s English language skills. [34 C.F.R. Sec. 300.532(a), (b), (g), (h), (i), and (j).]

17. Who conducts the assessment?

Trained personnel must administer each test in the assessment in conformance with the test producer's instructions. The law requires that persons knowledgeable about the disability being assessed and competent to perform the assessment conduct it. Further, these persons must be competent in both the oral and written skills of the student's primary language or mode of communication, and must have knowledge and understanding of the student's cultural and ethnic background. California regulations require the use of an interpreter when necessary.

A credentialed school psychologist, trained and prepared to assess cultural and ethnic factors appropriate to the student being assessed, must conduct a psychological assessment. A health assessment must be conducted by a credentialed school nurse or physician with similar training. A psychometrician or credentialed school psychologist must conduct individually administered tests of intellectual or emotional functioning where available.

If the assessment by the school district is not conducted under standard conditions, the evaluation report must include a description of the extent to which the assessment varied from standard conditions. For example, if the method in which the test was administered differed from standard procedures or if the qualifications of the person administering the assessment differ from the requirements of the test instructions, a statement in the report would be required. [34 C.F.R. Secs. 300.530 and following; Cal. Ed. Code Secs. 56320, 56322, and 56324; 5 C.C.R. Sec. 3023.]

18. Does the assessment have to be provided in my child's primary language?

Yes. This is a requirement of both federal and state law, unless it is not feasible and is so stated in the assessment plan. If the assessor is not bilingual, the district should provide an interpreter. In addition, state law requires that testing and assessment material be selected so as not to be racially, culturally, and sexually discriminatory. [20 U.S.C. Sec. 1412(a)(6) and 1414(b); 34 C.F.R. Secs. 300.530 and 300.532(a)(1); Cal. Ed. Code Secs. 56320(a) and (b).]

19. SEE ALSO CHAPTER 1, QUESTION AND ANSWER 2(A). What are the most common tests used in the assessment of a child with suspected learning disabilities?

The law requires that the student be given an individually administered test of ability or intelligence and tests of achievement in areas such as reading, math, and

writing. The most commonly used test of intelligence is *the Wechsler Intelligence Scale for Children-III* (WISC-III). Sometimes *the Wechsler Pre-School and Primary Scale of Intelligence-Revised* (WPPSI-R) or *the Stanford-Binet Intelligence Test: Fourth Edition* (S-B IV) are used.

The most commonly used achievement tests are the *Wide Range Achievement Test -Revision 3* (WRAT 3), the *Peabody Individual Achievement Test* (PIAT), and the *Woodcock-Johnson Psycho Educational Battery-Revised* (WJPEB-R). All of these are short tests designed to tell you the grade level at which the student is performing in reading, writing, spelling and math. In order for a student to be eligible for special education based on a learning disability, there must be a severe discrepancy between ability and achievement. See Chapter 3, *Information on Eligibility Criteria*.

Since *Larry P. v. Riles* prohibits districts from using intelligence tests to assess African American students, more and more districts are moving away from the use of IQ tests and are relying instead on measures of adaptive behavior. Districts may administer standardized instruments such as: *Adaptive Behavior Inventory for Children* (ABIC); *Adaptive Behavior Scales* (ABS); *Scales of Independent Behavior-Revised* (SIB-R-Woodcock, Johnson Battery, Part IV); or *Vineland Adaptive Behavior Scales*. The districts will also use clinical observations and informal interviews to gather data about daily living skills and functioning in the home and community. See Question 39.

20. Are there public education facilities outside of the local education agency that can assess my child?

Yes. Students may be referred as appropriate for further assessments and recommendations to the California Schools for the Deaf or Blind or the Diagnostic Schools for Neurologically Handicapped Children. [Cal. Ed. Code Sec. 56326; 5 C.C.R. Sec. 3025.]

Under state law, other state agencies also have responsibilities for providing assessments. County Departments of Mental Health are responsible for conducting certain mental health assessments; California Children Services (CCS) has responsibility for conducting assessments regarding occupational and physical therapy. See Chapter 9, *Information on Inter-Agency Responsibility for Related Services* (AB 3632/882).

21. How much detail should be included in my child's written assessment?

The written assessment should give you a clear picture of your child's functioning in all the areas tested. California Education Code Section 56327 requires that the report shall include, but it is not limited to, all of the following:

- (1) Whether the student may need special education and related services;
- (2) The basis for making the determination;
- (3) The relevant behavior noted during the observation of the student in an appropriate setting;
- (4) The relationship of that behavior to the student's academic and social functioning;
- (5) The educationally relevant health and development and medical findings, if any;
- (6) For students with learning disabilities, whether there is such a discrepancy between achievement and ability that cannot be corrected without special education and related services;
- (7) A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and
- (8) The need for specialized services, materials, and equipment for students with low incidence disabilities.

In addition, specific details should be included on areas of deficit (weakness or delay) and areas of strength that can be used to assist the child in remedying those deficits. As a parent, you should be able to understand how your child's learning style and learning deficits and strengths affect his ability to learn. If this is not clear to you, ask school personnel to explain it to you. **Do not be afraid to ask them to explain technical terms in language you can understand. Assessments must now determine not only eligibility, but also proposed content of your child's IEP and information related to enabling him to be involved and progress in the general curriculum, or for preschoolers, appropriate activities.** [20 U.S.C. Sec. 1414(b)(2); 34 C.F.R. Sec. 300.532 (b), (i), and (j).]

22. Can I get copies of written assessment reports before the IEP?

Yes. School districts are required by federal and state law to provide copies of assessments and other educational records before an IEP meeting. [20 U.S.C. Sec. 1414(b)(4); 34 C.F.R. Sec. 300.562.] You should request in writing that all records

be sent to you within a reasonable time before the IEP meeting. There are no specific timelines in federal or state law to tell school districts how many days before the IEP meeting they must provide copies of assessments and other educational records to parents.

Federal regulations require school districts to comply with a parent's request to inspect and review educational records without unnecessary delay and in no case more than 45 days after the request has been made. **However, state law gives parents the right to examine all school records within 5 calendar days from the date of either an oral or written request.** [Cal. Ed. Code Sec. 56504.]

23. Are formal standardized tests the only kinds of assessment data the IEP team can use?

No. Parents, teachers, and other adults who know your child are also good sources of observational data that the IEP team can use to describe your child's current levels of functioning and to develop educational goals and objectives. [Cal. Ed. Code Sec. 56341(f).]

As part of an initial evaluation or re-evaluation, federal regulations require that existing data on the child be reviewed. This data includes evaluations and information provided by the parent; current classroom-based assessments and observations; and teacher and related services providers' observations. [34 C.F.R. Sec. 300.533.]

24. What if I disagree with an evaluation performed by the school? Can I get an independent evaluation from someone who is qualified but is not employed by the school?

Yes. You can seek an independent evaluation at public expense if:

- (1) You feel that your child has been wrongly classified or inappropriately placed or
- (2) You believe the IEP is not a quality plan because the school district has made its decision based on an inaccurate or incomplete evaluation of your child.

This independent evaluation can then be used to obtain appropriate educational services for your child.

While there is nothing that indicates that parents must formally notify the school district of their intent to obtain an independent evaluation at district expense, it is strongly recommended that they do so. See *Sample Letter* at the end of this chapter.

The district has but two options once they have been notified, and that is to pay the bill for the evaluation or to go to a hearing to prove that the district's evaluation is appropriate. If the district elects to go to a hearing, and the hearing officer determines that the evaluation is appropriate, you have a right to the independent evaluation, but not at public expense. [34 C.F.R. Sec. 300.502; Cal. Ed. Code Sec. 56329(b).]

Regardless of who pays, and even if the district has not assessed your child in that particular area, the local agency must consider the results of an independent evaluation in any decision regarding the provision of a free appropriate public education to your child. The results may also be presented as evidence at a due process hearing. [34 C.F.R. Sec. 300.502(c)(2); Cal. Ed. Code Sec. 56329(b).]

An independent evaluation should include visitations to any proposed schools and/or classrooms; also the evaluation report language should be based on the "appropriateness" of the placement and services needed.

25. Is there any other way to obtain an independent evaluation if the district refuses to provide one and I am unable to pay for one?

During the mediation process, parents and school districts will often agree to an independent assessment. A hearing officer at a due process hearing may also order an independent evaluation as part of the hearing. In this case, the independent evaluation is at public expense. [Cal. Ed. Code Sec. 56505.1(e).] You should contact local hospitals, medical centers, parent resource-training centers, parent support groups, regional centers or other community-based agencies to explore the availability of low cost evaluations.

26. I am willing to pay (or the school has agreed to pay) for an independent assessment by an independent evaluator, but the school district is refusing to let the consultant visit the school site to observe my child in his current placement (or to observe the placement the school district is proposing for my child), what can I do?

Effective 1/1/04, the California Education Code has been amended to specify that if an independent assessment is being conducted at either public or private expense, if the school district observed the child in conducting its assessments, or if the school's assessment procedures make in-class observation permissible, an equivalent opportunity must apply to an independent evaluator to observe the child

in his current placement or to observe an educational placement or setting which is being proposed by the school district. This right exists whether a due process hearing has been requested yet or not. [Cal. Ed. Code Sec. 56329(b)(c).] The results of a privately financed independent assessment, including of the observation, must be considered by the IEP and may be submitted as evidence in a due process proceeding.

Parents should first inform the school district, in writing, that they are exercising their right to obtain an independent assessment because they disagree with the results of the assessment conducted by the district. In the same letter, parents should request that the school district make the necessary arrangements for the independent evaluator to visit the campus and observe the relevant placements and settings.

Even if a due process hearing request is already on file, parents are not required by law or procedure to involve and should not involve the Special Education Hearing Office (SEHO) in the letter informing the district of the parents' pursuit of an independent assessment and requesting the district to facilitate the observation. Parents do not have to make a motion to SEHO for permission to get an independent assessment or for an independent evaluator to conduct an observation. Parents should simply exercise their rights to independent assessment and observation under section 56329(b) or (c).

This is recommended because parents' requests to the SEHO for orders directing school districts to permit these observations have been interpreted by the SEHO as "discovery requests" and have been denied by the SEHO. Special education law does not contain "discovery" mechanisms. "Discovery" is the legal term for pretrial depositions, written questions to a party which it must answer, or onsite inspections or observations by expert consultants. These procedures do not exist in special education due process proceedings. A parent's right to have an independent evaluator observe a child at school or observe a proposed new school placement exists only in the context of obtaining an independent assessment under Section 56329. It does not exist in the context of bringing a due process hearing under Section 56501.

If a school district denied a parent's written request to facilitate an independent evaluator's observation or refused to permit an independent evaluator to visit a campus as part of an independent assessment, a parent could file a compliance complaint with the Department of Education, if time allowed, to enforce this right. See Chapter Six, Information On Due Process Hearings/Complaints. As an alternative, a parent could file a motion with SEHO to enforce this procedural right and the SEHO should enforce it just as it enforces other procedural rights, such as

the right to “stay-put” orders pursuant to Section 56505(d) or for orders to receive copies of records pursuant to Section 56504.

The right to observation of proposed educational settings also applies to school districts. If a parent is proposing that a school pay, or reimburse the parent, for the costs of a private school placement, the school district is entitled to observe that proposed private school and/or to observe the student in the proposed private school if the parent has already placed the child there.

27. How often must evaluations be conducted for a student with a disability?

In addition to an initial evaluation conducted prior to a student being considered for special education and related services, a re-evaluation **must be conducted at least every three years** for individuals with exceptional needs. In addition, a re-evaluation must be conducted whenever the student’s parents or teacher request or if conditions warrant (i.e. when a re-evaluation appears to be needed for program planning). [20 U.S.C. Sec. 1414(a)(2); 34 C.F.R 300.536.]

28. Must a school district conduct additional testing for every student with a disability as part of a re-evaluation?

No. As part of any re-evaluation, a group that includes the required IEP members (**including parents**) and other qualified professionals, as appropriate, must review existing data on the student to identify what additional data, **if any**, are needed to determine:

- (1) Whether the student continues to have an eligible disability;
- (2) The education needs of the student;
- (3) Whether the student continues to need special education and related services; and
- (4) Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the student’s IEP and to participate in the general curriculum.

The group must review evaluations and information provided by the parent; current classroom-based assessments and observations; and teacher and related services providers’ observations. The group may conduct this review without a meeting. **The district is not required to obtain parental consent to conduct this portion**

of the re-evaluation. [20 U.S.C. Sec. 1414(c)(1); 34 C.F.R. Secs. 300.533 and 300.505(a)(3)(i); Cal. Ed. Code Sec. 56381.]

If the IEP team decides that additional data/testing is needed, the district must obtain parental consent and conduct the evaluations. [34 C.F.R. Sec. 300.505(a)(1)(i); Cal. Ed. Code Sec. 56381(f).]

If the IEP team decides that no additional data/testing is needed to determine whether the student continues to have an eligible disability, the school district is not required to conduct that assessment *unless requested to by the parent.* If the group takes this action, the school district must notify you of that determination and the reasons for it; and they must inform you of your right to request an assessment to determine whether your child continues to have an eligible disability. [20 U.S.C. Sec. 1414(c)(4); 34 C.F.R. Sec. 300.533(d); Cal. Ed. Code Sec. 56381(d).]

29. Is a school district required to do an evaluation if they are indicating that my child no longer qualifies for special education and related services?

Yes. Before determining that a child with a disability is no longer eligible for special education and related services, the school district must conduct a thorough and comprehensive evaluation of the child. If you disagree with the school district's recommendation on eligibility, you may ask for a fair hearing to resolve the issue. [20 U.S.C. Sec. 1414(c)(5); 34 C.F.R. Secs. 300.532, 300.533, and 300.534(c)(1).]

However, if the school district is terminating eligibility because the student graduated with a regular high school diploma or exceeded the age eligibility for special education and related services, no evaluation is required. [34 C.F.R. Sec. 300.534(c)(2).]

30. Is parental consent needed for re-evaluation of my child?

Yes and no. A reassessment may not be conducted without written parental consent. However, a reassessment of a child may be conducted by a school district without parental consent if the school district can show that it took reasonable steps to obtain consent and the parent failed to respond. [Cal. Ed. Code Sec. 56381(f), 56506(e); 34 C.F.R. Sec. 300.505(c).] Reasonable steps to obtain consent can be demonstrated if the school district can show detailed records of telephone calls made or attempted to the parent and the results, copies of correspondence sent to the parents and any responses received, or detailed records of visits made to the

parent's home or place of employment and the results. [Cal. Ed. Code Sec. 56381(f); 34 C.F.R. Sec. 300.505(c), 300.345(d).] In order for a parent's consent to be informed consent, prior to obtaining a parent's consent, the district must fully inform the parent of all information relevant to the proposed reassessment. [34 C.F.R. Sec. 300.500(b)(1).]

31. What recourse do I have if I believe that a psychological assessment is done superficially just to meet the legal mandate that it be done every three years?

All assessments, including the three-year re-evaluation, must be conducted in accordance with state and federal law. The school district's assessment plan should give you enough information to determine the appropriateness of the evaluation. If the plan is not comprehensive enough, you may suggest that additional tests be administered and/or may ask to postpone the IEP meeting until a comprehensive re-evaluation can be done. The thoroughness of the re-evaluation can also be the subject of a due process hearing. [34 C.F.R. Sec. 300.536; Cal. Ed. Code Sec. 56320.]

32. My child is temporarily placed in a psychiatric hospital that is located in another county. Who is responsible for conducting a special education assessment or re-evaluation?

Individuals with exceptional needs who are placed in a public hospital, state licensed children's hospital, psychiatric hospital, proprietary hospital or a health facility for medical purposes are the educational responsibility of the district, special education local plan area, or county office of education in which the hospital or facility is located. [Cal. Ed. Code Sec. 56167 and 56168(b).] Therefore, the school district responsible for the area in which the facility is located is responsible for special education assessment or re-evaluation.

33. Is a doctor the only professional who can provide an ADD/ADHD diagnosis as part of the special education assessment process?

No, unless the school district believes that a medical doctor is required to make the diagnosis. In that case, the school district must ensure that a medical doctor performs the evaluation at no cost to the parent. If the school district believes that a health care professional other than a medical doctor can provide the evaluation, then the district may use another such provider as long as all of the protections of

the evaluation requirements in federal and state law are met. [OSEP Clarification Letter, February 18, 1992, 18 IDELR 963; 34 C.F.R. Secs. 300.530-300.534; Cal. Ed. Code Sec. 56320(b)(3).] The school or other staff selected to conduct an ADD evaluation must be trained to do so.

34. If the school district requires a doctor’s diagnosis of ADD/ADHD as a condition of special education eligibility, who pays for the doctor’s diagnosis?

A federal Office of Special Education and Rehabilitative Services clarification letter makes it clear that:

If a public agency (school district) believes that a medical evaluation by a licensed physician is needed as part of the evaluation to determine whether a child...suspected of having ADD meets the eligibility criteria of the Other Health Impaired category, the school district must ensure that this evaluation is conducted and is at no cost to parents.

Therefore, if a school district requires a doctor’s diagnosis, the school district must pay the cost of the doctor’s diagnosis if the parent does not already have such a diagnosis. [34 C.F.R. Sec. 300.532(g); OSEP Clarification Letter, February 18, 1992, 18 IDELR 963.]

35. What is the assessment process for Section 504? Is it the same as the special education assessment process?

No specific assessment process is outlined in Section 504. However, 504 regulations require that school districts “conduct an evaluation...of any person who, because of disability, needs or is believed to need special education or related services...” The school district must establish standards and procedures for 504 evaluation and ensure that:

- (1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
- (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
- (3) Tests are selected and administered so as best to ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills,

the test results accurately reflect her aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting her impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

[34 C.F.R. Sec. 104.35.]

Section 504 evaluation standards and procedures may be different for each school district. The district may choose to use the special education assessment process or develop a separate process for Section 504 evaluation. Parents should write their district Section 504 Coordinator and obtain a copy of the district's 504 Policies and Procedures. [34 C.F.R. Sec. 104.35.]

36. If I request an assessment for Section 504 eligibility, does the school district have to assess my child to determine his eligibility for accommodations and/or service?

No. If you request a Section 504 assessment, and the school district agrees that there is reason to believe your child needs special education or related services, the school district must evaluate him to see if he qualifies for accommodations and/or services under Section 504. However, if the school district does not agree that your child may need special education and related services, the school district may refuse to evaluate him. You would therefore have to utilize the Section 504 fair hearing process to require the district to evaluate your child for Section 504 eligibility. [OCR Memorandum April 29, 1993; 19 IDELR 876.]

37. Should my child be included in the school's regular performance assessments?

Yes. Federal law requires the participation of students with disabilities in state and district-wide assessments of student achievement with appropriate modifications where necessary. Participation in these assessments and any necessary modifications of the administration of the assessments must be documented on the student's IEP. [34 C.F.R. Sec. 300.138(a) and 300.347(a)(5)(i); Cal. Ed. Code Sec. 56345(a)(5).]

In addition, the IEP team may exempt students from these assessments. If the IEP team determines that your child will not participate in state or district-wide assessments (or part of an assessment), a statement of why the assessment is not appropriate for your child and how she will be assessed must be included in the IEP. [20 U.S.C. Sec. 1412(a)(17) and 1414(d)(1)(A)(v)(II); 34 C.F.R. Sec. 300.138(b) and 300.347(a)(5)(ii); Cal. Ed. Code Sec. 56345(a)(5).] Also, the state

must develop guidelines for determining when alternative assessments have to be used and must also develop alternative assessments and begin conducting those assessments no later than July 1, 2000.

38. What are the federal requirements that ensure appropriate and accurate special education assessment for multicultural students?

Federal law requires:

- (1) Tests must be selected and administered so as not to be racially, culturally, or sexually discriminatory;
- (2) Tests must be administered in the student's primary language or other mode of communication;
- (3) Tests must be validated for the specific purpose for which they are used;
- (4) Testing must assess specific areas of educational need and not merely produce a single general intelligence quotient (no single procedure can be used as the sole criterion for determining an appropriate educational program for a student);
- (5) When a student with impaired sensory, manual, or speaking skills is being tested, the testing must ensure that the results accurately reflect the student's aptitude or achievement level, and not the student's impaired skills, unless those skills are to be measured by the testing;
- (6) A student must be assessed in all areas related to a suspected disability, including, where appropriate, health and development, vision (including low vision), hearing, motor abilities, general ability, academic performance, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status; and
- (7) For a child with limited English proficiency, materials and procedures must be selected and administered to measure the extent of a child's disability rather than measuring the child's English language skills.

[34 C.F.R. Sec. 300.532.]

In addition, federal law requires that parents give **informed** consent for student evaluation procedures and student placement. Informed consent means that you, as a parent, have been fully informed of all information relevant to the activity for which consent is sought, **in your native language** or other mode of

communication. [20 U.S.C. Secs. 1412(a)(6) and 1412(b)(4); 34 C.F.R. Sec. 300.500(a), Secs. 300.530 and following.]

39. Does state special education law have such requirements?

Yes. State law requires the same protections that are included in federal law. In addition, state law requires that:

- (1) The assessment plan be provided in the primary language of the parent unless to do so is clearly not feasible;
- (2) Any psychological assessment of students be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the student being assessed; and
- (3) For students whose primary language is other than English, linguistically appropriate goals, objectives, programs and services be included in a student's Individualized Education Program (IEP).

[Cal. Ed. Code Secs. 56320 and following and Secs. 56321(b)(2), 56324(a), and 56345(b)(4).]

40. What is the *Larry P. v. Riles* case? How did it originate?

The *Larry P. v. Riles* (*Larry P.*) case began when in 1971 five African-American children who had been placed in special education classes for the educable mentally retarded (EMR) in the San Francisco Unified School District (SFUSD) filed suit in the Federal District Court of Northern California. The students claimed that they had been wrongly placed in the EMR classes based on their performance on intelligence tests that were racially biased and discriminatory. The suit also claimed that a disproportionate number of African-American students were placed in EMR classes compared to the number of African-American students in the school system. At the time, 28.5% of all SFUSD students were African-American, while 66% of the students in the EMR classes were African-American. The case also involved the policies and procedures of the California Department of Education (CDE) since about 10% of all California school students were African-American, while 25% of the students in the EMR classes were African-American.

The Court decided in favor of the students in 1979. SFUSD was prohibited from using IQ tests to identify or place African-American students in EMR-type classes. The decision was upheld on appeal in 1984. The Court expanded its ruling in the case by banning the use of IQ testing for all African-American students who have been referred for special education services.

NOTE: The federal case of *Crawford v. Honig* is causing a reexamination of the rights of multicultural children in special education. This case has challenged the *Larry P.* ruling banning the use of IQ tests for African-American children and has, preliminarily, resulted in three African-American children being allowed to take IQ tests because their parents wish to have them do so. Specifically, in the 1979 *Larry P.* decision, the court ruled that standardized IQ tests could not be used in identifying African-American students for placement in EMR classrooms **or their “substantial” equivalent.** Between 1979 and 1986, the term “EMR class” had been eliminated. In 1986, the same court expanded the ban on the use of standardized IQ tests for placement of African-American students in **any special education program.** In the 1992 *Crawford* case, the same court vacated its 1986 expansion of the ban, reaffirmed its 1979 ban on using IQ tests for placing African-American students in EMR classes or their substantial equivalent. The court further indicated that it would hold further hearings on the issue of what is a class that is “substantially equivalent” to the former EMR designation. *Crawford* was appealed to the Ninth Circuit Court by both CDE and the original plaintiffs in *Larry P.* The Ninth Circuit Court affirmed the decision of the lower court in an opinion rendered on September 30, 1994.

To date, the court has not provided any further definition of the term “substantially equivalent to EMR.” On September 10, 1992, after the *Crawford* opinion was published by the Federal District Court and while the appeal to the Ninth Circuit Court was pending, CDE issued a Legal Advisory which discouraged the use of IQ tests to African-American children, regardless of the suspected disability. Nevertheless, several school districts, relying on *Crawford*, gave IQ tests to African-American children, upon the request of their parents.

At least one district took a more proactive approach and actively sought the “informed consent” of African-American parents to IQ testing for their children. This practice resulted in the filing of a Compliance Complaint and the issuance of a Compliance Report by CDE on January 28, 1993. This report produced a definitive ruling by CDE that the IQ testing of African-American children is discriminatory and in violation of *Larry P.*, IDEA, and Section 504 — as well as the Civil Rights Act of 1964 and both the U.S. and California Constitutions. This Compliance Report was widely distributed by CDE and appears to have resulted in the complete cessation of IQ testing of African-American children in our public schools.

After the Ninth Circuit Court affirmed *Crawford*, CDE issued a new Legal Advisory on October 11, 1994. The Legal Advisory stated that, regardless of whether the Ninth Circuit Court’s opinion is construed as partially lifting the

District Court's prohibition on IQ testing of African-American children, CDE is exercising its statutory authority to continue to ban such testing. The authors of this manual will continue to monitor the litigation and any subsequent CDE action.

41. Does the *Larry P.* case affect all children who may need special education assessments?

No. The ruling applies only to African-American students who may need special education services. However, some local districts have, on their own, expanded the ruling to include all children.

42. Has the CDE taken specific action to implement *Larry P.*?

On December 3, 1986, the CDE issued a statewide directive to all state special educators to clarify the use of IQ tests in the assessment of African-American students for special education services. The key components of the directive are:

- (1) School districts are not to use intelligence tests in the assessment of African-American students who have been referred for special education services;
- (2) In lieu of IQ tests, districts should use alternative means of assessment to determine identification and placement;
- (3) An IQ test may not be given to an African-American student even with parental consent;
- (4) When a school district receives records containing test protocols from other agencies...or independent assessors, these records shall be forwarded to the parent. IQ scores contained in the records shall not become a part of the student's current school records;
- (5) There are no special education related purposes for which IQ tests shall be administered to African-American students;
- (6) IQ tests shall not be used to determine whether an African-American student is learning disabled, because it is possible that the resulting score could subsequently result in the student's being identified as mentally retarded;
- (7) The prohibition on IQ testing applies even though students are no longer placed in special day classes designated EMR;
- (8) This directive supersedes all previous notices as to the meaning and effect of the Court's decision in *Larry P. v. Riles*. [CDE, *Larry P.* Directive, 1986.]

43. What was the *Diana v. State Board of Education* Case? What impact does the *Diana* case have on Spanish-speaking students?

The *Diana v. State Board of Education* (*Diana*) case originated when a group of Spanish-speaking students were inappropriately assigned to EMR classes based on an assessment by an unqualified assessor. The case, filed in 1969, was settled out of court in 1970. The stipulated settlement agreement required that the CDE: (1) monitor schools for racial imbalance, (2) correct any imbalance, (3) collect data annually, and (4) use representatives of the Hispanic community when audits are performed in school districts. At the time of the order, California had not passed the Master Plan for Special Education and did not have bilingual education legislation. Consequently, many Spanish-speaking children in need of educational assistance were placed into special education classes because other programs did not exist. Hispanics were over-represented in EMR classes, constituting 26% of the total statewide EMR population but only 14% of the statewide school-age population in 1967.

Today, the CDE must still comply with the 1971 court order to monitor the representation of special education to ensure proportionate representation for Spanish-speaking students. Because of *Diana*, state law now contains provisions for testing in the child's native language so that no child will be placed into special education only because of a limited ability to speak English. [CDE Survey, 1967.]

44. What is the effect of *Diana* and *Larry P.* on special education assessments for Asian-American students?

Although neither *Diana* nor *Larry P.* was initiated specifically on behalf of Asian-American students, both cases have direct impact on the education of Asian-American students. As in *Diana*, no Asian-American student being assessed for special education eligibility and services should be discriminated against or assigned to special education classes based on his limited ability to speak English. As in *Larry P.*, the tests administered to an Asian-American student must be non-biased and culturally valid. Therefore, the rulings in *Diana* and *Larry P.*, coupled with federal and state assessment protections, reinforce the obligation of school districts to meet the linguistic and cultural needs of Asian-American students in the assessment process, as well as in the provision of special education services.

45. Has *Larry P.* resulted in a review of how intelligence is defined and assessed? Is there a difference between intelligence and ability?

Yes. *Larry P.* has resulted in a statewide review of special education assessment procedures by state agencies, local education agencies, and psychological associations. They are examining dependency on and validity of IQ scores. *Larry P.* has fostered an emphasis on learning processes rather than “intelligence.” This emphasis provides more specific educational information that can be used to remediate a student’s learning problems.

In psychology, practitioners and theoreticians alike often use a number of different words and phrases to refer to similar concepts. Therefore, intelligence, ability, learning potential, cognitive skills, etc., are all terms that might refer to the same thing. However, the concept called “intelligence” has never been clearly defined, nor is it used in a consistent manner.

For many, it is the sum total of a number of processes that have been mastered by an individual both as a result of his experience (environment) and from his natural growth and development (innate potential). Researchers indicate that intelligence as measured on tests is clearly related to achievement, since most intelligence tests were developed to predict school success. It is also highly correlated with linguistic ability and perceptual skills. It has been suggested that there are three different meanings associated with intelligence:

- (1) The individual’s innate capacity (which cannot be measured directly);
- (2) The individual’s ability to learn, think, and problem solve (resulting from the interaction between potential and environment); and
- (3) The individual’s performance on a test that samples a variety of specialized abilities.

Others have viewed intelligence more broadly — to include learning styles, specialized talents and child development.

If there is a distinction to be made between ability and intelligence, this distinction must be based upon clear definitions for the two terms. For example, the term “intelligence” could be defined as the end result of performance on a test that samples a **variety** of special abilities; and the term “ability” could be defined as **any one** of those special abilities seen separately. In this case, “intelligence” is seen as a single product that combines results from performance on several different tasks and “ability” is seen as one of those indicators. Then, a list of single abilities or a cluster of closely related abilities could be designated for

consideration (for example, linguistic abilities, memory, perceptual abilities, attention, problem solving abilities, number skills, etc.). In this manner, a more varied and interesting view of an individual's competencies might be examined.

What is critical to consider, in any case, is the experience and background of the individual in the ability area being examined. Lacking the **opportunity to learn** specific skills, performance in those skill areas will usually be depressed, whether we call it ability or intelligence. [*Salvia and Ysseldyke, 1985; Settler, 1982; Sternberg, 1979; Gardner, 1983; Piaget, 1952.*]

46. What is the effect of *Larry P.* on the special education eligibility criteria?

Federal law, state mandate and regulation establish the criteria for special education eligibility. These in turn are influenced (sometimes differently) by court rulings. Federal eligibility criteria under Public Law 105-17 have not been affected by the *Larry P.* court ruling and have remained the same. Likewise, state eligibility criteria have not changed.

However, *Larry P.* has affected which testing instruments school districts can use to assess a student to determine if the eligibility criteria have been met. The latest court ruling in *Larry P.* was to extend the prohibition of IQ tests to ALL categories of special education for African-American children. Previously, the IQ testing prohibition applied only to African-American students in EMR programs. This extension has meant that the single eligibility area affected most by the *Larry P.* decision is the **specific learning disability**.

The state eligibility criteria for a student with learning disabilities require that there be a severe discrepancy between **intellectual ability** and **achievement** in academic areas. This implied requirement for a measure of intellectual ability was previously interpreted generally as being results from an IQ test. Now, the court prohibits the use of such a general measure of intelligence for African-American children. Therefore, according to state regulations, "when standardized tests are considered invalid for a specific student, the discrepancy shall be measured by alternative means as specified on the assessment plan."

State guidelines explain:

If it is determined that the use of standardized tests would be or is an invalid assessment tool, the assessment personnel staff will have to use professional judgment, based on such data as the results of informal or criterion-referenced assessments, analysis of student work samples, classroom performance and observations to

determine the evidence of a severe discrepancy. The need for professional judgment will apply to the areas of written expression and listening comprehension since there are few, if any, standardized tests which measure these skill areas. Special attention should be given in the assessment of students whose primary language is other than English, or whose cultural background might mitigate against the use of a certain standardized test.

The latest court decision has had greatest impact on district policies in urban areas. In several districts, the prohibition of IQ tests has been extended to ALL students in the district rather than to only African-American students as called for by the *Larry P.* court order. This means that even those students who most closely resemble the normed samples of IQ test takers cannot be given an IQ test. As a result, “alternative means” are utilized for **all students** within those particular districts.

Traditionally, intelligence was a prominent feature in most definitions of mental retardation. With the prohibition of IQ testing, adaptive behavior scales have become important assessment tools for African-American students who may be mentally retarded.

47. What tests can districts use to assess the intellectual abilities of African-American students referred for special education services?

The CDE has stated:

In lieu of IQ tests, districts should use alternative means of assessment to determine identification and placement. Such techniques should include, and would not be limited to, assessment of the student’s personal history and development, adaptive behavior, classroom performance, academic achievement, and evaluative instruments designed to point out specific information relative to a student’s abilities and inabilities in specific skill areas. [CDE, *Larry P.* Directive, 1986.]

48. What are some commonly used tests for Spanish-speaking students who may need special education services?

What is most important in identifying Spanish-speaking students is the ASSESSOR, not the test. This is what makes *Diana* different from *Larry P. Diana*

occurred because a monolingual psychologist tested Spanish speakers in English and used this data to place students. The tests themselves were found to be discriminatory in *Larry P.* Any parent or community person who works with Spanish-speaking students should examine carefully the bilingual training, assessment training, and cultural sensitivity of the person doing special education testing. Test translation should be avoided at all cost, as translation invalidates the results.

Listed below are general areas of assessment and tests that are commonly used with Spanish speakers. The tests are not valid for every student in all situations. Remember — each assessment plan should be tailored to meet each student’s individual educational assessment needs.

- Reading:** Cornejo’s Word List in Spanish
Brigance Diagnostic Assessment
Criterion referenced tests tied to curriculum
CTBS Español
- Written** Brigance Diagnostic Assessment
- Language:** Woodcock Johnson Psycho Educational Battery
- Language** Language Assessment Scales
- Proficiency:** Bilingual Syntax Measure
Idea Oral Language Proficiency Test
- Intellectual** Kaufman Assessment Battery for Children
- Development:** Wechsler Intelligence Scale for Children —
Revised Español
Leiter International Performance Scale — Revised
Learning Potential Assessment Device
System of Multicultural Pluralistic Assessment
Wechsler Preschool and Primary Scale of
Intelligence — Non-Verbal Cognition
- General** InterAmerican Series
- Achievement:** Orange Brigance

For more comprehensive resources on bilingual assessments, contact Resources in Special Education, (916) 492-9990.

49. Are there assessment tools specially designed to assess Asian-American students who may need special education services?

Currently, there are no specially designed special education assessments for Asian-American students. Special education assessment is usually conducted with the common tests that most students are administered. However, for the limited-English-speaking Asian-American student, it is essential that the assessor be proficient in the student's native or primary language.

50. How can I ensure that my child has an appropriate assessment?

The language used by assessment staff who administers assessments to their child too often intimidates parents of children with special education needs. Tests are not as complex as they may first appear. A competent psychologist, speech clinician, learning specialist, or other assessment staff in the public schools can easily explain the tests to you. You have the right to ask about tests, how they are put together, and what the results of a test battery mean in clear and plain language. Never hesitate to exercise this right; your child's future may be decided on the results of such assessments. Here are some questions you can ask, especially if you are or your child is a member of a multicultural population:

- (1) How reliable and valid is the test? That is, if given again, is it likely that the results will be about the same (reliability)? Does this test measure adequately the ability it is supposed to measure (validity)?
- (2) Are the norms for this test based on a representative sample of the population of which the child is a part? That is, if the child is Asian-American, are Asian-Americans included in the normative sample?
- (3) Is the response format of the test appropriate to the child? That is, if the child is non-verbal, can he respond without giving a verbal response? If your child is visually impaired, can the test be given without visual material? If your child speaks only Spanish...is physically handicapped...is hearing impaired...etc., can he take the test without interference from physical or linguistic limitations?
- (4) Is the examiner skilled in administering the test, knowledgeable about normal and abnormal patterns of development, capable of observing qualitative features of test performance, and proficient in interpreting results? Your child has the right to receive assessment services from a competent, qualified examiner.

- (5) Has the examiner provided a setting and developed a procedure that will assure the student's maximum performance so that results will not be skewed by extraneous circumstances? Such circumstances might include, for example, illness, anxiety, hunger, trauma, motivation, confidence, temperature, lighting, etc. A good assessment must acknowledge the influence of such variables and estimate their impact on assessment results.

Overall, first and foremost, tests must be selected on the basis of the referral problem and according to the specific needs of the individual child. You should always question the practice of assessing all children on the same test (or same test battery) since each student is a special and unique individual. [Oakland, 1981; 34 C.F.R. Sec. 300.500; Cal. Ed. Code Sec. 56321.]

51. Must the district assess my child before he becomes ineligible for special education because of age or graduation with a regular diploma?

The district must reassess a student before it can determine that he no longer has a qualifying disability, but a district does not have to reassess a student if he will lose his special education eligibility only as a result of exceeding the age-eligibility limitations or because of graduating with a regular high school diploma. [Cal. Ed. Code Sec. 56381(e); 34 C.F.R. Sec. 300.534.]

52. My child is in a private school. Must the district evaluate her for special education eligibility even if I have no intention of taking her out of her private school?

Yes, as long as it has your consent, a district must locate, identify, and assess all private school children with disabilities, including religiously affiliated school-age children, who have disabilities. [Cal. Ed. Code Sec. 56171 and 56301.]

Sample Letter – Request for Assessment

Ms. Bev Blue
Address
City, State, Zip Code
Telephone Number
Date

Mr. Gary Green
Director of Special Education
Local Unified School District
Address
City, CA Zip Code

Re: John Blue

Dear Mr. Green:

I am writing to refer my son, John, for assessment to determine if he is eligible for special education services and support. He is not progressing in school. He is seven (7) years old and attends White School (child's school of attendance).

(If you know which areas you think need assessed or know specific tests, you might add:)

I request that the Local Unified School District (your District) conduct the following evaluations of my son, John:

- (1) A psychological evaluation to determine his learning potential, using instruments designed for non-oral children such as the Leiter International Performance Scale-Revised or the Hiskey Nebraska Test of Learning Aptitude;
- (2) An evaluation by a non-oral communications specialist. To my knowledge, the district does not have on staff any experts in this field. I have been recommended to Barbara Brown, Ph.D. in non-oral communication, and unless the district has a comparable expert, I am requesting that you contract with Dr. Brown to do the non-oral communication evaluation of my son.
- (3) An occupational therapy assessment.

***Note:** In every request for initial assessment, you should include a paragraph requesting that your child also be evaluated under the provisions of Section 504 for any “disabling condition” which would require service accommodations and/or services that will allow the child to benefit from public education to the extent that students without disabilities do. (However, do not agree to substitute a 504 assessment for a special education assessment.) Such a paragraph might read as follows:*

I also request that my son be evaluated under Section 504 of the Rehabilitation Act of 1973 for the presence of any educational service need which may require any accommodation or program modification not available under special education or if my child is not found eligible for special education. I also request that the Section 504 Coordinator for Local Unified School District be present at the initial IEP meeting to discuss the results and recommendations of the Section 504 Evaluation.

I look forward to receiving an assessment plan in 15 days. I hope that these evaluations can be completed promptly. Thereafter, we can have an IEP meeting to discuss the results of these evaluations and plan for John’s continued education. Please ensure that I get copies of the assessment reports one week before the IEP meeting.

Sincerely yours,

Bev Blue

Sample Letter - Independent Evaluation Notification

Bev Blue
Address
City, CA Zip Code
Telephone Number
Date

Mr. Gary Green
Director of Special Education
Local Unified School District
Address
City, CA Zip Code

Re: John Blue

Dear Mr. Green:

We have just received the psychological and occupational therapy evaluations of our son, John, which were completed by district personnel. Since we believe that both evaluations are inadequate and do not show an accurate picture of our son's intellectual or fine motor functioning, we plan to obtain independent assessments at public expense.

After the independent assessments are completed, we will submit bills for the assessors' services to you. Further, we would like to postpone the upcoming IEP meeting for three weeks so that the independent assessments are available for the team's review.

Sincerely yours,

Bev Blue

If you believe an independent evaluation of your child is needed, give a brief description of current functioning and suspected disability when you write your request. Then state the rationale for having an outside evaluation at public expense.

Some of the reasons why an independent evaluation is necessary may be:

- (1) There is no one on the district staff who is qualified to perform the evaluation.
- (2) You believe the district relied on insufficient testing when it made recommendations at the IEP meeting.
- (3) The school district results are at odds with other testing done on your child, so clarification is needed.

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Patterns to Look For

All children exhibit some of the following behaviors at times. It is important to separate occasional from persistent behavior, and not to worry about an isolated incident which could be totally insignificant for the child as a whole.

IN INFANCY

Trouble with nursing or sucking or digesting	Absence of creeping or crawling
Resistance to cuddling and body contact	Delay in sitting, standing or walking
Lack of response to sounds; excessive response to sounds	Delay in learning to talk
Trouble following movements with his eyes	

IN PRE-SCHOOL YEARS:

Inability to follow directions	Unusual quietness and inactivity
Impulsive and uncontrolled behavior	Excessive craving for sweets
Excessive crying and undisturbed sleep	Poor eating habits
Poor sense of rhythm; uneven walk	Constant interrupting and persistent chatter
Fear of swings and slides	Excessive repetition in speaking, questioning, or playing. Tendency to become more upset with people around than when alone
Frequent falls and tendency to bump into things	Language problems as evidenced by delayed talking and garbled speaking
Purposeless hyperactivity	Tendency to be fearless, climbing counters and roofs with no concern

IN SCHOOL YEARS:

<p>Very poor handwriting</p> <p>Difficulty cutting with scissors and coloring inside lines</p> <p>Inability to tie shoelaces, button clothes, or use hands well</p> <p>Trouble in matching shapes and sizes: squares, circles, triangles</p> <p>Confusion in discriminating between letters, words and numbers: “b” and “d”, “was” and “saw”, 6 and 9</p> <p>No understanding of the difference between up and down, in and out, left and right, front and back</p> <p>Good verbal ability, but trouble in reading</p> <p>Mechanical reading without comprehension</p> <p>Difficulty in expressing ideas</p> <p>Erratic school work</p>	<p>Excessive activity which seems purposeless, restless and undirected</p> <p>Unusual inactivity characterized by daydreaming and inner distraction</p> <p>Clumsiness and awkwardness in throwing and catching balls</p> <p>Difficulty in skipping, hopping and jumping</p> <p>Trouble with game playing and following group rules</p> <p>Confused sense of time or distance</p> <p>Emotional instability; explosions for no apparent reason</p> <p>Tendency to be extremely literal or humorless</p> <p>Excessive gullibility</p> <p>Extremely uneven performance in testing with some potential high, and some way below normal</p>
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Learning Processes: A Diagnostic Framework

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Process	Definition	Tests Which Give Information
Cognition/ Intelligence	Ability to reason, to think abstractly, and to solve problems.	Wechsler Tests: WISC-III, WAIS-III, WPPSI-R Stanford-Binet: Fourth Edition Differential Ability Scales (DAS) Bayley Scales of Infant Development-Second Edition
Verbal Intelligence	Ability to use cognitive processes which rely primarily on verbal language.	Wechsler: Verbal Scales Stanford-Binet: FE-Verbal Comprehension Factor DAS: Verbal Ability
Nonverbal Intelligence	Ability to use cognitive processes which do not rely primarily on verbal language.	Wechsler: Performance Scales Stanford-Binet: FE - Nonverbal Reasoning/Visualization Factor DAS: Nonverbal Ability Kaufman Assessment Battery for Children (K-ABC): Nonverbal Scale Leiter International Performance Scale-Revised Raven's Progressive Matrices Matrix Analogies Test-Expanded Form

Language		
Process	Definition	Tests Which Give Information
Receptive Verbal Language	Ability to understand incoming spoken language.	Wechsler: Verbal Scales Test of Language Development-Third Edition (TOLD-3): Listening Composite Test of Auditory Comprehension of Language-Revised Clinical Evaluation of Language Fundamentals (CELF-3): Receptive Subtests Peabody Picture Vocabulary Test-Third Edition Oral and Written Language Scales (OWLS): Listening Comprehension
Expressive Verbal Language	Ability to convey ideas and relate information through oral language.	Wechsler: Verbal Scales TOLD-3: Speaking Composite CELF-3: Expressive Subtests Woodcock-Johnson, Revised-Tests of Cognitive Ability (WJ-R COG): Oral Language Cluster Expressive Vocabulary Test (EVT) OWLS: Oral Expression Speech Exam and Language Sample
Receptive Nonverbal Language	Ability to derive meaning from pictures, gestures, and facial expressions, and to interpret social situations without verbal clues.	Wechsler: Picture Completion, Picture Arrangement, Object Assembly Stanford-Binet: FE - Absurdities K-ABC: Gestalt Closure, Photo Series, Face Recognition Observations of behavior
Expressive Nonverbal Language	Ability to convey meaning through gestures, facial expressions, and drawings.	Goodenough-Harris Drawing Test Kinetic Family Drawing ITPA: Manual Expression Observations of behavior

Auditory Skills		
Process	Definition	Tests Which Give Information
Auditory Discrimination	Ability to detect subtle likenesses and differences between speech sounds.	Wepman Auditory Discrimination Test-2nd Edition Test of Auditory Perceptual Skills-Revised (TAPS-R): Auditory Word Discrimination Goldman-Fristoe-Woodcock Test of Auditory Discrimination
Auditory Analysis	Ability to break words into syllables and/or discrete sound components.	WJ-R, Cognitive: Incomplete Words Slingerland: Test 7, Echolalia Auditory Analysis Task (plant = p-l-a-n-t)
Auditory Synthesis	Ability to combine supplied sounds or syllables into words (sound blending).	WJ-R, Cognitive: Sound Blending Mann-Suiter Sound Blending
Auditory Immediate Memory	Ability to retain information just heard for a short period of time (no storage involved).	Wechsler: Digit Span Stanford-Binet: FE-Memory for Sentences, Memory for Digits K-ABC: Number Recall, Word Order WJ-R, Cognitive: Memory for Sentences, Memory for Words Detroit Tests of Learning Aptitude-Third Edition (DTLA-3): Sentence Imitation, Word Sequences, Story Sequences Wide Range Assessment of Memory and Learning (WRAML): Verbal Scale
Auditory Recent Memory	Ability to store and recall recently heard auditory material.	Slingerland: Tests 6, 8 Rey Auditory-Verbal Learning Test WRAML: Verbal Learning, Verbal Learning Recall, Story Memory Recall

Auditory Skills		
Process	Definition	Tests Which Give Information
Auditory Remote Memory	Ability to store and recall auditory material heard several months or years earlier.	Wechsler: Information, Similarities, Vocabulary, Comprehension Stanford-Binet: FE - Vocabulary, Comprehension, Verbal Relations WJ-R, Achievement: Knowledge Cluster Peabody Individual Achievement Test-Revised: General Information (1997 Norms)
Visual Skills		
Visual Discrimination	Ability to detect subtle likenesses and differences in visual stimuli such as symbols, pictures, and designs.	Wechsler: Performance Scale WJ-R, Cognitive: Visual Matching, Cross Out Motor Free Visual Perception Test-Revised Slingerland: Test 4 Test of Visual Perceptual Skills-Revised (TVPS-R): Visual Discrimination
Visual Analysis	Ability to identify the parts of a visual stimulus and to differentiate figure from ground.	Wechsler: Performance Scale K-ABC: Gestalt Closure, Triangles, Matrix Analogies, Photo Series Slingerland: Tests 1, 2, 3, 8 Motor Free Visual Perception Test-Revised Jordan Left-Right Reversal Test-Revised Edition Observations of word list and paragraph reading

Visual Skills		
Process	Definition	Tests Which Give Information
Visual Analysis/Synthesis	Ability to identify the parts of a visual stimulus and to combine visual elements into a whole.	Wechsler: Picture Arrangement, Block Design, Object Assembly K-ABC: Triangles, Photo Series Raven's Progressive Matrices Stanford-Binet: FE-Pattern Analysis
Visual Immediate Memory	Ability to retain information just seen for a short period of time (no storage involved).	Wechsler: Coding Stanford-Binet: FE-Bead Memory, Memory for Objects K-ABC: Hand Movements, Spatial Memory WJ-R, Cognitive: Picture Recognition WRAML: Visual Scale
Visual Recent Memory	Ability to store and recall recently seen visual information.	Slingerland: Tests 3, 5 Ray-Osterrieth Complex Figure Drawing (ROCF) Weekly spelling tests WRAML: Visual Learning, Visual Learning Recall
Visual Remote Memory	Ability to store and recall visual information seen several months or years earlier.	Wechsler: Picture Completion, Object Assembly Achievement tests: word recognition, oral reading, spelling

Visual Skills		
Process	Definition	Tests Which Give Information
Visual-Spatial Orientation	Ability to perceive spatial relationships involving one's own body and the environment. Ability to organize and interpret spatial relationships on a two-dimensional level as in copying, writing or reading.	Slingerland Tests: 1, 2 Bender Visual-Motor Gestalt Test Jordan Left-Right Reversal Test-Revised Wechsler: Block Design Stanford-Binet: FE-Pattern Analysis Observations of written work, reading, and behavior
Visual Scanning	Ability to investigate visual material in a systematic, organized way.	Slingerland: Tests 3, 4, 8 Motor Free Visual Perception Test-Revised Jordan Left-Right Reversal Test-Revised Observations of paragraph reading

Motor Skills		
Fine Motor Coordination	Ability to control fine muscle movements, as in writing, drawing and cutting.	Wechsler: Coding, Mazes Stanford-Binet: FE - Copying Bender-Gestalt Developmental Test of Visual-Motor Integration (VMI)-Fourth Edition Slingerland: Tests 1, 2, 5, 6 Observations of writing, drawing, cutting, and coloring
Fine Motor Coordination - Speech	Ability to coordinate articulatory movement patterns for speech.	Speech Exam Slingerland: Echolalia
Tactile-Kinesthetic Discrimination	Ability to identify and interpret information gained through touch and movement.	Task: Examiner moves child's fingers to form letters or numbers with eyes closed; child identifies
Kinesthetic Memory	Ability to remember information gained through movement.	Task: Examiner teaches a new word through repeated writing; child reproduces later Observation of motor patterns in writing
Gross Motor Coordination	Ability to coordinate large muscle movements as in running, walking, skipping and throwing.	Bruininks-Oseretsky Test of Motor Proficiency Observation of gross motor activities

Motor Skills		
Process	Definition	Tests Which Give Information
Modality Integration	Ability to transfer information from one sensory modality to another. Ability to coordinate two or three modalities in the production of outgoing responses.	Slingerland Halstead-Reitan and Reitan-Indiana Neuropsychological Test Batteries WJ-R, Cognitive: Visual-Auditory Learning WRAML: Sound Symbol Comparisons of performance on academic tasks such as reading, copying, and dictated spelling
Social and Emotional Adjustment		
Process	Tests Which Give Information	
Self-Concept and Relationships with Others	Projective Drawing Tests Apperception Tests (CAT, TAT, Roberts) Piers-Harris Children's Self-Concept Scale (updated norms) Sentence Completion Tests Rorschach Psychodiagnostic Test Millon Adolescent Personality Inventory	
Social Maturity and Appropriateness of Behavior	Woodcock-Johnson Scales of Independent Behavior-Revised (SIB-R) Vineland Adaptive Behavior Scale Developmental Profile II Achenbach Child Behavior Checklist (CBCL/4-18) Achenbach 1991 Teacher's Report Form Conners Parent & Teacher Rating Scales-Revised Behavior Evaluation Scale-2	

Academic Skills and Achievement		
Process	Definition	Tests Which Give Information
Reading and Phonics Skills	Ability to decode unfamiliar words, to recognize familiar words, and to understand written material.	Wechsler Individual Achievement Test (WIAT): Reading Composite Woodcock-Johnson, Revised-Tests of Achievement (WJ-R ACH): Reading Subtests Kaufman Test of Educational Achievement (K-TEA): Reading Composite (1997 Norms) Ekwall Reading Test Informal survey of phonics skills
Spelling Skills	Ability to encode words in written form. Use of spelling rules, visual recall, and auditory analysis skills in encoding words.	WIAT: Spelling K-TEA: Spelling (1997 Norms) Wide Range Achievement Test-3 (WRAT-3): Spelling Test of Written Spelling-3 Dictated Spelling Tasks
Handwriting Skills	Neatness, spatial organization, and knowledge of manuscript and/or cursive alphabets.	WIAT: Written Expression Test of Written Language-Third Edition (TOWL-3) Slingerland, Tests 1, 2, 5, 6 Alphabet Writing Task Classroom Writing Samples
Written Language Skills	Ability to organize and relate ideas in written form. Knowledge of written language mechanics skills.	WIAT: Writing Composite Test of Written Language-Third Edition Test of Early Written Language-Second Edition (TEWL-2) WJ-R, Achievement: Written Language Subtests OWLS: Written Expression Scale

Academic Skills and Achievement		
Process	Definition	Tests Which Give Information
Mathematics Skills	Ability to perform arithmetic computations and to solve problems involving mathematical concepts and reasoning.	WIAT: Mathematics Composite Key Math-Revised (1997 Norms) WJ-R, Achievement: Mathematics Subtests K-TEA: Mathematics Composite (1997 Norms) WRAT-3: Arithmetic
Hearing	Pure Tone Audiometric Screening Tympanometry	
Keeness of vision	Snellen Vision Screening Titmus Test	
Physical Health and Development	Goldstein Childhood History Form (Revised) Health & Developmental Interview Neurodevelopmental Exam	