

**THE GREEN BOOK<sup>®</sup>  
... OF SPECIAL EDUCATION  
LAWS AND REGULATIONS**

**(2018 Supplement)**

**This supplement contains information only and is not legal advice. We recommend that you consult with legal counsel to determine how any statute or regulation provided herein may apply to your specific facts and circumstances.**

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## INTRODUCTION

The purpose of **The Green Book . . . ® of Special Education Laws and Regulations**, first published in 2015 with a second edition published in 2017, is to offer a single reference tool that contains the current law on both the federal and state level. Specifically, Part I of the book—the federal law—provides the full text of selected provisions of the IDEA, its regulations (and appendices), along with Section 504 and its regulations. Part II contains selected provisions of California statutes directing the provision of special education to students within the state, as well as the regulations issued by the California Department of Education implementing those statutes. We have also included certain provisions of the California Education Code and Code of Regulations applicable to all pupils. Finally, the book also contains an Index to assist in locating and cross-referencing specific provisions of federal and state law.

The 2018 supplement contains updates to the 2017 book, taking into account revisions to both the federal and state statutes and regulations (including the 2017 California legislative session) that were enacted, issued or amended since the date of publication. For those statutes and regulations that were amended, the changed provisions appear in bold and are underlined for ease of reference. All changes that appear in this supplement will be incorporated into the next edition of the book, scheduled for release in 2019.

It is our sincere hope that the book and supplement help contribute to a better understanding of the laws that govern the provision of education to students with disabilities.

Fagen Friedman & Fulfrost LLP

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CODE OF FEDERAL REGULATIONS IMPLEMENTING THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (34 C.F.R. PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES).....

CODE OF FEDERAL REGULATIONS IMPLEMENTING SECTION 504 OF THE REHABILITATION ACT .....

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**CODE OF FEDERAL REGULATIONS  
IMPLEMENTING  
THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

**TITLE 34 – EDUCATION  
CHAPTER III – OFFICE OF SPECIAL EDUCATION AND  
REHABILITATIVE SERVICES, DEPARTMENT OF EDUCATION  
PART 300 – ASSISTANCE TO STATES FOR THE  
EDUCATION OF CHILDREN WITH DISABILITIES**

**SUBPART A – General**

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**DEFINITIONS USED IN THIS PART**

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**34 C.F.R. § 300.7 Charter school.**

*Charter school* has the meaning given the term in **section 4310(2)** of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 *et seq.* (ESEA).

(Authority: 20 U.S.C. 7221i(1))

**34 C.F.R. § 300.8 Child with a disability.**

**(a) General.**

(1) *Child with a disability* means a child evaluated in accordance with §§ 300.304 through 300.311 as having **an intellectual disability**, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

**(2)**

(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with § 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

**(b) Children aged three through nine experiencing developmental delays.** Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in § 300.111(b), include a child—

(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

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

(1)

(i) *Autism* means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

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

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

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

(4)

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

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

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

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

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

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

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

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

(6) ***Intellectual disability*** means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. **The term "intellectual disability was formerly termed "mental retardation."**

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

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

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

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

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

(10) *Specific learning disability*—

(i) General. *Specific learning disability* means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

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

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

(12) *Traumatic brain injury* means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

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

[71 FR 46753, Aug. 14, 2006, as amended at 72 FR 61306, Oct. 30, 2007, as amended at 82 FR 31912, July 11, 2017]

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### 34 C.F.R. § 300.10 Core academic subjects. [REMOVED AND RESERVED]

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### 34 C.F.R. § 300.16 Excess costs.

*Excess costs* means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting—

(a) Amounts received—

- (1) Under Part B of the Act;
- (2) Under Part A of title I of the ESEA; and
- (3) Under **Part A** of title III of the ESEA and;

(b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (See appendix A to part 300 for an example of how excess costs must be calculated.)

(Authority: 20 U.S.C. 1401(8))

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**34 C.F.R. § 300.18 Highly qualified special education teachers. [REMOVED AND RESERVED]**

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**34 C.F.R. § 300.27 Limited English proficient.**

*Limited English proficient* has the meaning given the term **“English learner” in section 8101 of the ESEA.**

(Authority: 20 U.S.C. 1401(18))

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**34 C.F.R. § 300.35 Scientifically based research. [REMOVED AND RESERVED]**

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**SUBPART B - State Eligibility**

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**FAPE REQUIREMENTS**

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**C.F.R. § 300.102 Limitation—exception to FAPE for certain ages.**

(a) **General.** The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

- (1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.

(2)

- (i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with



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disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility—

- (A) Were not actually identified as being a child with a disability under § 300.8; and
- (B) Did not have an IEP under Part B of the Act.

(ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who—

- (A) Had been identified as a child with a disability under § 300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or
- (B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under § 300.8.

(3)

(i) Children with disabilities who have graduated from high school with a regular high school diploma.

(ii) The exception in paragraph (a)(3)(i) of this section does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.

(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with § 300.503.

**(iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) of this section, the term *regular high school diploma* means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.**

(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.

**(b) Documents relating to exceptions.** The State must assure that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by § 300.700 (for purposes of making grants to States under this part), is current and accurate.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(1)(B)-(C))

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## OTHER FAPE REQUIREMENTS

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### 34 C.F.R. § 300.105 Assistive technology.

(a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§ 300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's—

- (1) Special education under **§ 300.39**;
- (2) Related services under § 300.34; or

(3) Supplementary aids and services under §§ 300.42 and 300.114(a)(2)(ii).

(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(B)(i))

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## LEAST RESTRICTIVE ENVIRONMENT

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### 34 C.F.R. § 300.115 Continuum of alternative placements.

(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must—

(1) Include the alternative placements listed in the definition of special education under § 300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(5))

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## CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS

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### 34 C.F.R. § 300.138 Equitable services provided.

(a) **General.**

(1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the special education teacher qualification requirements in § 300.156(c).

(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(b) **Services provided in accordance with a services plan.**

(1) Each parentally-placed private school child with a disability who has been designated to receive services under § 300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§ 300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.

(2) The services plan must, to the extent appropriate—

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(i) Meet the requirements of § 300.320, or for a child ages three through five, meet the requirements of § 300.323(b) with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with §§ 300.321 through 300.324.

### (c) Provision of equitable services.

(1) The provision of services pursuant to this section and §§ 300.139 through 300.143 must be provided:

(i) By employees of a public agency; or

(ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.

(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(A)(vi))

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## CHILDREN WITH DISABILITIES IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES

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### 34 C.F.R. § 300.146 Responsibility of SEA.

Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency—

(a) Is provided special education and related services—

(1) In conformance with an IEP that meets the requirements of §§ 300.320 through 300.325; and

(2) At no cost to the parents;

(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, **except for § 300.156(c)**; and

(c) Has all of the rights of a child with a disability who is served by a public agency.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(10)(B))

## METHODS OF ENSURING SERVICES

### 34 C.F.R. § 300.154 Methods of ensuring services.

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### (b) Obligation of noneducational public agencies.

(1)

(i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related

services (such as, but not limited to, services described in § 300.5 relating to assistive technology devices, § 300.6 relating to assistive technology services, § 300.34 relating to related services, **§ 300.42** relating to supplementary aids and services, and **§ 300.43** relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section.

(ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(2) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph (b)(1) of this section, the LEA (or State agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) of this section.

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## ADDITIONAL ELIGIBILITY REQUIREMENTS

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### 34 C.F.R. § 300.156 Personnel qualifications.

(a) **General.** The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) **Related services personnel and paraprofessionals.** The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that—

(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

(2) Ensure that related services personnel who deliver services in their discipline or profession—

(i) Meet the requirements of paragraph (b)(1) of this section; and

(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

(c) **Qualifications for special education teachers.**

(1) **The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school—**

(i) **Has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in 34 CFR 200.56 (a)(2)(ii)**

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as such section was in effect on November 28, 2008), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the teacher must meet the certification or licensing requirements, if any, set forth in the State's public charter school law;

(ii) Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) Holds at least a bachelor's degree.

(2) A teacher will be considered to meet the standard in paragraph (c)(1)(i) of this section if that teacher is participating in an alternate route to special education certification program under which—

(i) The teacher: (A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching; (B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program; (C) Assumes functions as a teacher only for a specified period of time not to exceed three years; (D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (c)(2)(i) of this section are met.

(d) **Policy.** In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain personnel who meet the applicable requirements described in paragraph (c) of this section to provide special education and related services under this part to children with disabilities.

(e) **Rule of construction.** Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to meet the applicable requirements described in paragraph (c) of this section, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(14))

### 34 C.F.R. § 300.157 Performance goals and indicators.

The State must—

(a) Have in effect established goals for the performance of children with disabilities in the State that—

(1) Promote the purposes of this part, as stated in § 300.1;

(2) Are the same as the State's long-term goals and measurements of interim progress for children with disabilities, under section 1111(c)(4)(A)(i) of the ESEA;

(3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and

(4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State;

(b) Have in effect established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurements of interim progress for children with disabilities under section 1111(c)(4)(A)(i) of the ESEA; and

(c) Annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required under section 1111(h) of the ESEA.

(Approved by the Office of Management and Budget under control number 1820-0030)  
(Authority: 20 U.S.C. 1412(a)(15))

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### **34 C.F.R. § 300.160 Participation in assessments.**

**(a) General.** A State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

**(b) Accommodation guidelines.**

(1) A State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.

(2) The State's (or, in the case of a district-wide assessment, the LEA's) guidelines must—

(i) Identify only those accommodations for each assessment that do not invalidate the score; and

(ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.

**(c) Alternate assessments aligned with alternate achievement standards for students with the most significant cognitive disabilities.**

(1) If a State has adopted alternate academic achievement standards for children with disabilities who are students with the most significant cognitive disabilities as permitted in section 1111(b)(1)(E) of the ESEA, the State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation in alternate assessments of those children with disabilities who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.

(2) For assessing the academic progress of children with disabilities who are students with the most significant cognitive disabilities under title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must—

(i) Be aligned with the challenging State academic content standards under section 1111(b)(1) of the ESEA and alternate academic achievement standards under section 1111(b)(1)(E) of the ESEA; and

(ii) Measure the achievement of children with disabilities who are students with the most significant cognitive disabilities against those standards.

(3) Consistent with section 1111(b)(1)(E)(ii) of the ESEA and 34 CFR 200.6(c)(6), a State may not adopt modified academic achievement standards or any other alternate academic achievement standards that do not meet the requirements in section 1111(b)(1)(E) of the ESEA for any children with disabilities under section 602(3) of the IDEA.

**(d) Explanation to IEP Teams.** A State (or in the case of a district-wide assessment, an LEA) must—

(1) Provide to IEP teams a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of State and local policies on a student's education resulting from taking an alternate assessment aligned with alternate academic achievement standards, such as how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma; and

(2) Not preclude a student with the most significant cognitive disabilities who takes an alternate assessment aligned with alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma.

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(e) Inform parents. A State (or in the case of a district-wide assessment, an LEA) must ensure that parents of students selected to be assessed using an alternate assessment aligned with alternate academic achievement standards under the State's guidelines in paragraph (c)(1) of this section are informed, consistent with 34 CFR 200.2 (e), that their child's achievement will be measured based on alternate academic achievement standards, and of how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma.

(f) Reports. An SEA (or, in the case of a district-wide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.

(2) The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards in school years prior to 2017-2018.

(3) The number of children with disabilities, if any, participating in alternate assessments aligned with modified academic achievement standards in school years prior to 2016-2017.

(4) The number of children with disabilities who are students with the most significant cognitive disabilities participating in alternate assessments aligned with alternate academic achievement standards.

(5) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards (prior to 2017-2018), alternate assessments based on modified academic achievement standards (prior to 2016-2017), and alternate assessments aligned with alternate academic achievement standards if—

(i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and

(ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

(g) **Universal design.** An SEA (or, in the case of a district-wide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.

(Authority: 20 U.S.C. 1412(a)(16))

[72 FR 17781, Apr. 9, 2007; 80 FR 50785, Aug. 21, 2015; **82 FR 29760, June 30, 2017.**]

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### SUBPART C - Local Educational Agency Eligibility

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#### 34 C.F.R. § 300.207 Personnel development.

The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of § 300.156 (related to personnel qualifications) and **section 2102(b)** of the ESEA.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(a)(3))

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## SUBPART D – Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

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### EVALUATIONS AND REEVALUATIONS

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#### 34 C.F.R. § 300.306 Determination of eligibility.

(a) **General.** Upon completion of the administration of assessments and other evaluation measures—

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 300.8, in accordance with paragraph (c) of this section and the educational needs of the child; and

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) **Special rule for eligibility determination.** A child must not be determined to be a child with a disability under this part—

(1) If the determinant factor for that determination is—

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA, **as such section was in effect on the day before the date of enactment of the Every Student Succeeds Act (December 9, 2015)**);

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under § 300.8(a).

(c) **Procedures for determining eligibility and educational need.**

(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 300.8, and the educational needs of the child, each public agency must—

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 300.320 through 300.324.

(Authority: 20 U.S.C. 1414(b)(4) and (5))

[71 FR 46753, Aug. 14, 2006, as amended at 72 FR 61307, Oct. 30, 2007, **as amended at 82 FR 29761, June 30, 2017**]

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# FEDERAL REGULATIONS IMPLEMENTING THE IDEA

## ADDITIONAL PROCEDURES FOR IDENTIFYING CHILDREN WITH SPECIFIC LEARNING DISABILITIES

...

### 34 C.F.R. § 300.309 Determining the existence of a specific learning disability.

(a) The group described in § 300.306 may determine that a child has a specific learning disability, as defined in § 300.8(c)(10), if—

(1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

- (i) Oral expression.
- (ii) Listening comprehension.
- (iii) Written expression.
- (iv) Basic reading skill.
- (v) Reading fluency skills.
- (vi) Reading comprehension.
- (vii) Mathematics calculation.
- (viii) Mathematics problem solving.

(2)

- (i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or
- (ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§ 300.304 and 300.305; and

(3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of—

- (i) A visual, hearing, or motor disability;
- (ii) **Intellectual disability**;
- (iii) Emotional disturbance;
- (iv) Cultural factors;
- (v) Environmental or economic disadvantage; or
- (vi) Limited English proficiency.

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§ 300.304 through 300.306—

- (1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§ 300.301 and

300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in § 300.306(a)(1)—

- (1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and
- (2) Whenever a child is referred for an evaluation.

...

**34 C.F.R. § 300.311 Specific documentation for the eligibility determination.**

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in § 300.306(a)(2), must contain a statement of—

- (1) Whether the child has a specific learning disability;
- (2) The basis for making the determination, including an assurance that the determination has been made in accordance with § 300.306(c)(1);
- (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
- (4) The educationally relevant medical findings, if any;
- (5) Whether—
  - (i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with § 300.309(a)(1); and
  - (ii)
    - (A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with § 300.309(a)(2)(i); or
    - (B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with § 300.309(a)(2)(ii);
- (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; **intellectual disability**; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
- (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention—
  - (i) The instructional strategies used and the student-centered data collected; and
  - (ii) The documentation that the child's parents were notified about—
    - (A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
    - (B) Strategies for increasing the child's rate of learning; and
    - (C) The parents' right to request an evaluation.

(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

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## DEVELOPMENT OF IEP

### 34 C.F.R. § 300.324 Development, review, and revision of IEP

...

#### (d) Children with disabilities in adult prisons—

**(1) Requirements that do not apply.** The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in section 612(a)(16) of the Act and § 300.320(a)(6) (relating to participation of children with disabilities in general assessments).

(ii) The requirements in § 300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

#### (2) Modifications of IEP or placement.

(i) Subject to paragraph (d)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) The requirements of §§ 300.320 (relating to IEPs), and **300.114** (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(A)(i), 1414(d)(3), (4)(B), and (7); and 1414(e))

## SUBPART G – Authorization, Allotment, Use of Funds, and Authorization of Appropriations

### ALLOTMENTS, GRANTS, AND USE OF FUNDS

...

### 34 C.F.R. § 300.704 State-level activities.

#### (a) State administration.

**(1)** For the purpose of administering Part B of the Act, including paragraph (c) of this section, section 619 of the Act, and the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities—

(i) Each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004 or \$800,000 (adjusted in accordance with paragraph (a)(2) of this section), whichever is greater; and

(ii) Each outlying area may reserve for each fiscal year not more than five percent of the amount the outlying area receives under § 300.701(a) for the fiscal year or \$35,000, whichever is greater.

**(2)** For each fiscal year, beginning with fiscal year 2005, the Secretary cumulatively adjusts—

(i) The maximum amount the State was eligible to reserve for State administration under section 611 of the Act for fiscal year 2004; and

(ii) \$800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(3) Prior to expenditure of funds under paragraph (a) of this section, the State must certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) of the Act are current.

(4) Funds reserved under paragraph (a)(1) of this section may be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that Part.

**(b) Other State-level activities.**

(1) States may reserve a portion of their allocations for other State-level activities. The maximum amount that a State may reserve for other State-level activities is as follows:

(i) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than \$850,000 and the State opts to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, 10 percent of the State's allocation under § 300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10 percent of the State's allocation for fiscal year 2006 under § 300.703 adjusted cumulatively for inflation.

(ii) If the amount that the State sets aside for State administration under paragraph (a) of this section is greater than \$850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section—

(A) For fiscal years 2005 and 2006, nine percent of the State's allocation under § 300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine percent of the State's allocation for fiscal year 2006 adjusted cumulatively for inflation.

(iii) If the amount that the State sets aside for State administration under paragraph (a) of this section is less than or equal to \$850,000 and the State opts to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, 10.5 percent of the State's allocation under § 300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to 10.5 percent of the State's allocation for fiscal year 2006 under § 300.703 adjusted cumulatively for inflation.

(iv) If the amount that the State sets aside for State administration under paragraph (a) of this section is equal to or less than \$850,000 and the State opts not to finance a high cost fund under paragraph (c) of this section:

(A) For fiscal years 2005 and 2006, nine and one-half percent of the State's allocation under § 300.703.

(B) For fiscal year 2007 and subsequent fiscal years, an amount equal to nine and one-half percent of the State's allocation for fiscal year 2006 under § 300.703 adjusted cumulatively for inflation.

(2) The adjustment for inflation is the rate of inflation as measured by the percentage of increase, if any, from the preceding fiscal year in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(3) Some portion of the funds reserved under paragraph (b)(1) of this section must be used to carry out the following activities:

(i) For monitoring, enforcement, and complaint investigation; and

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- (ii) To establish and implement the mediation process required by section 615(e) of the Act, including providing for the costs of mediators and support personnel;
- (4) Funds reserved under paragraph (b)(1) of this section also may be used to carry out the following activities:
- (i) For support and direct services, including technical assistance, personnel preparation, and professional development and training;
  - (ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process;
  - (iii) To assist LEAs in providing positive behavioral interventions and supports and mental health services for children with disabilities;
  - (iv) To improve the use of technology in the classroom by children with disabilities to enhance learning;
  - (v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities;
  - (vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities;
  - (vii) To assist LEAs in meeting personnel shortages;
  - (viii) To support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities;
  - (ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools;
  - (x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with **section 1201 of the ESEA**; and
  - (xi) **To provide technical assistance to schools and LEAs, and direct services, including direct student services described in section 1003A(c)(3) of the ESEA, to children with disabilities, in schools or LEAs implementing comprehensive support and improvement activities or targeted support and improvement activities under section 1111(d) of the ESEA on the basis of consistent underperformance of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement based on the challenging academic standards described in section 1111(b)(1) of the ESEA.**

### (c) Local educational agency high cost fund.

#### (1) In general—

- (i) For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of LEAs) in addressing the needs of high need children with disabilities, each State has the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for other State-level activities under paragraph (b)(1) of this section—
- (A) To finance and make disbursements from the high cost fund to LEAs in accordance with paragraph (c) of this section during the first and succeeding fiscal years of the high cost fund; and

**(B)** To support innovative and effective ways of cost sharing by the State, by an LEA, or among a consortium of LEAs, as determined by the State in coordination with representatives from LEAs, subject to paragraph (c)(2)(ii) of this section.

**(ii)** For purposes of paragraph (c) of this section, *local educational agency* includes a charter school that is an LEA, or a consortium of LEAs.

**(2)**

**(i)** A State must not use any of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section, which are solely for disbursement to LEAs, for costs associated with establishing, supporting, and otherwise administering the fund. The State may use funds the State reserves under paragraph (a) of this section for those administrative costs.

**(ii)** A State must not use more than 5 percent of the funds the State reserves pursuant to paragraph (c)(1)(i) of this section for each fiscal year to support innovative and effective ways of cost sharing among consortia of LEAs.

**(3)**

**(i)** The SEA must develop, not later than 90 days after the State reserves funds under paragraph (c)(1)(i) of this section, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan must—

**(A)** Establish, in consultation and coordination with representatives from LEAs, a definition of a high need child with a disability that, at a minimum—

**(1)** Addresses the financial impact a high need child with a disability has on the budget of the child's LEA; and

**(2)** Ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in **section 8101 of the ESEA**) in that State;

**(B)** Establish eligibility criteria for the participation of an LEA that, at a minimum, take into account the number and percentage of high need children with disabilities served by an LEA;

**(C)** Establish criteria to ensure that placements supported by the fund are consistent with the requirements of §§ 300.114 through 300.118;

**(D)** Develop a funding mechanism that provides distributions each fiscal year to LEAs that meet the criteria developed by the State under paragraph (c)(3)(i)(B) of this section;

**(E)** Establish an annual schedule by which the SEA must make its distributions from the high cost fund each fiscal year; and

**(F)** If the State elects to reserve funds for supporting innovative and effective ways of cost sharing under paragraph (c)(1)(i)(B) of this section, describe how these funds will be used.

**(ii)** The State must make its final State plan available to the public not less than 30 days before the beginning of the school year, including dissemination of such information on the State Web site.

**(4)**

**(i)** Each SEA must make all annual disbursements from the high cost fund established under paragraph (c)(1)(i) of this section in accordance with the State plan published pursuant to paragraph (c)(3) of this section.

**(ii)** The costs associated with educating a high need child with a disability, as defined under paragraph (c)(3)(i)(A) of this section, are only those costs associated with providing direct special education and related services to the child that are identified in that child's IEP, including the cost of room and board for a residential placement determined necessary, consistent with § 300.114, to implement a child's IEP.

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- (iii) The funds in the high cost fund remain under the control of the State until disbursed to an LEA to support a specific child who qualifies under the State plan for the high cost funds or distributed to LEAs, consistent with paragraph (c)(9) of this section.
- (5) The disbursements under paragraph (c)(4) of this section must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure FAPE for such child.
- (6) Nothing in paragraph (c) of this section—
- (i) Limits or conditions the right of a child with a disability who is assisted under Part B of the Act to receive FAPE pursuant to section 612(a)(1) of the Act in the least restrictive environment pursuant to section 612(a)(5) of the Act; or
  - (ii) Authorizes an SEA or LEA to establish a limit on what may be spent on the education of a child with a disability.
- (7) Notwithstanding the provisions of paragraphs (c)(1) through (6) of this section, a State may use funds reserved pursuant to paragraph (c)(1)(i) of this section for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to LEAs that provides services to high need children based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in paragraph (c)(3)(i)(A) of this section.
- (8) Disbursements provided under paragraph (c) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State Medicaid program under Title XIX of the Social Security Act.
- (9) Funds reserved under paragraph (c)(1)(i) of this section from the appropriation for any fiscal year, but not expended pursuant to paragraph (c)(4) of this section before the beginning of their last year of availability for obligation, must be allocated to LEAs in the same manner as other funds from the appropriation for that fiscal year are allocated to LEAs under § 300.705 during their final year of availability.
- (d) Inapplicability of certain prohibitions.** A State may use funds the State reserves under paragraphs (a) and (b) of this section without regard to—
- (1) The prohibition on commingling of funds in § 300.162(b).
  - (2) The prohibition on supplanting other funds in § 300.162(c).
- (e) Special rule for increasing funds.** A State may use funds the State reserves under paragraph (a)(1) of this section as a result of inflationary increases under paragraph (a)(2) of this section to carry out activities authorized under paragraph (b)(4)(i), (iii), (vii), or (viii) of this section.
- (f) Flexibility in using funds for Part C.** Any State eligible to receive a grant under section 619 of the Act may use funds made available under paragraph (a)(1) of this section, § 300.705(c), or § 300.814(e) to develop and implement a State policy jointly with the lead agency under Part C of the Act and the SEA to provide early intervention services (which must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C of the Act to children with disabilities who are eligible for services under section 619 of the Act and who previously received services under Part C of the Act until the children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1411(e))

[71 FR 46753, Aug. 14, 2006, as amended at 72 FR 61307, Oct. 30, 2007, **as amended at 82 FR 29671, June 30, 2017**]

**Appendix E To Part 300—Local Educational Agency Maintenance of Effort Calculation Examples**

The following tables provide examples of calculating LEA MOE. Figures are in \$10,000s. All references to a “fiscal year” in these tables refer to the fiscal year covering that school year, unless otherwise noted.

Tables 1 through 4 provide examples of how an LEA complies with the Subsequent Years rule. In Table 1, for example, an LEA spent \$1 million in Fiscal Year (FY) 2012-2013 on the education of children with disabilities. In the following year, the LEA was required to spend at least \$1 million but spent only \$900,000. In FY 2014-2015, therefore, the LEA was required to spend \$1 million, the amount it was required to spend in FY 2013-2014, not the \$900,000 it actually spent.

Table 1—Example of Level of Effort Required To Meet MOE Compliance Standard in Year Following a Year in Which LEA Failed To Meet MOE Compliance Standard

Fiscal year	Actual level of effort	Required level of effort	Notes
2012-2013	\$100	\$100	LEA met MOE.
2013-2014	90	100	LEA did not meet MOE.
2014-2015		100	Required level of effort is \$100 despite LEA’s failure in 2013-2014.

Table 2 shows how to calculate the required amount of effort when there are consecutive fiscal years in which an LEA does not meet MOE.

Table 2—Example of Level of Effort Required To Meet MOE Compliance Standard in Year Following Consecutive Years in Which LEA Failed To Meet MOE Compliance Standard

Fiscal year	Actual level of effort	Required level of effort	Notes
2012-2013	\$100	\$100	LEA met MOE.
2013-2014	90	100	LEA did not meet MOE.
2014-2015	90	100	LEA did not meet MOE. Required level of effort is \$100 despite LEA’s failure in 2013-2014.
2015-2016		100	Required level of effort is \$100 despite LEA’s failure in 2013-2014 and 2014-2015.

Table 3 shows how to calculate the required level of effort in a fiscal year after the year in which an LEA spent more than the required amount on the education of children with disabilities. This LEA spent \$1.1 million in FY 2015-2016 though only \$1 million was required. The required level of effort in FY 2016-2017, therefore, is \$1.1 million.

Table 3—Example of Level of Effort Required To Meet MOE Compliance Standard in Year Following Year in Which LEA Met MOE Compliance Standard

Fiscal year	Actual level of effort	Required level of effort	Notes
2012-2013	\$100	\$100	LEA met MOE.



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2013-2014	90	100	LEA did not meet MOE.
2014-2015	90	100	LEA did not meet MOE. Required level of effort is \$100 despite LEA's failure in 2013-2014.
2015-2016	110	100	LEA met MOE.
2016-2017		110	Required level of effort is \$110 because LEA expended \$110, and met MOE, in 2015-2016.

Table 4 shows the same calculation when, in an intervening fiscal year, 2016-2017, the LEA did not maintain effort.

Table 4—Example of Level of Effort Required To Meet MOE Compliance Standard in Year Following Year in Which LEA Did Not Meet MOE Compliance Standard

<b>Fiscal year</b>	<b>Actual level of effort</b>	<b>Required level of effort</b>	<b>Notes</b>
2012-2013	\$100	\$100	LEA met MOE.
2013-2014	90	100	LEA did not meet MOE.
2014-2015	90	100	LEA did not meet MOE. Required level of effort is \$100 despite LEA's failure in 2013-2014.
2015-2016	110	100	LEA met MOE.
2016-2017	100	110	LEA did not meet MOE. Required level of effort is \$110 because LEA expended \$110, and met MOE, in 2015-2016.
2017-2018		110	Required level of effort is \$110, despite LEA's failure in 2016-2017.

Table 5 provides an example of how an LEA may meet the compliance standard using alternate methods from year to year without using the exceptions or adjustment in §§300.204 and 300.205, and provides information on the following scenario. In FY 2015-2016, the LEA meets the compliance standard using all four methods. As a result, in order to demonstrate that it met the compliance standard using any one of the four methods in FY 2016-2017, the LEA must expend at least as much as it did in FY 2015-2016 using that same method. Because the LEA spent the same amount in FY 2016-2017 as it did in FY 2015-2016, calculated using a combination of State and local funds and a combination of State and local funds on a per capita basis, the LEA met the compliance standard using both of those methods in FY 2016-2017. However, the LEA did not meet the compliance standard in FY 2016-2017 using the other two methods—local funds only or local funds only on a per capita basis—because it did not spend at least the same amount in FY 2016-2017 as it did in FY 2015-2016 using the same methods.

Table 5—Example of How an LEA May Meet the Compliance Standard Using Alternate Methods From Year to Year

<b>Fiscal year</b>	<b>Local funds only</b>	<b>Combination of State and local funds</b>	<b>Local funds only on a per capita basis</b>	<b>Combination of State and local funds on a per capita basis</b>	<b>Child count</b>
2015-2016	*\$500	*\$950	*\$50	*\$95	10

2016-2017	400	*950	40	*95	10
2017-2018	*500	900	*50	90	10

\*LEA met compliance standard using this method.

Table 6 provides an example of how an LEA may meet the compliance standard using alternate methods from year to year in years in which the LEA used the exceptions or adjustment in §§300.204 and 300.205, including using the per capita methods.

Table 6—Example of How an LEA May Meet the Compliance Standard Using Alternate Methods From Year to Year and Using Exceptions or Adjustment Under §§300.204 and 300.205

<b>Fiscal year</b>	<b>Local funds only</b>	<b>Combination of State and local funds</b>	<b>Local funds only on a per capita basis</b>	<b>Combination of State and local funds on a per capita basis</b>	<b>Child count</b>
2015-2016	\$500*	\$950*	\$50*	\$95*	10
2016-2017	400	950*	40	95*	10
2017-2018	450*	1,000*	45*	100*	10
	<p>In 2017-2018, the LEA was required to spend at least the same amount in local funds only that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§300.204 and 300.205, the LEA was required to spend at least \$500 in local funds only</p> <p>In 2017-2018, the LEA properly reduced its expenditures, per an exception in §300.204, by \$50, and therefore, was required to spend at least \$450 in local funds only (\$500) from 2015-2016 per Subsequent Years rule – \$50 allowable reduction per an exception under §300.204)</p>		<p>In 2017-2018, the LEA was required to spend at least the same amount in local funds only on a per capita basis that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§300.204 and 300.205, the LEA was required to spend at least \$50 in local funds only on a per capita basis</p> <p>In 2017-2018, the LEA properly reduced its aggregate expenditures, per an exception in §300.204, by \$50</p> <p>\$50/10 children with disabilities in the comparison year (2015-2016) = \$5 per capita allowable reduction per an exception under §300.204</p> <p>\$50 local funds only on a per capita basis (from 2015-2016 per Subsequent Years rule) – \$5 allowable reduction per an exception under §300.204 = \$45 local funds only on a per capita</p>		

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			basis to meet MOE		
2018-2019	405	1,000*	45*	111.11*	9
	<p>In 2018-2019, the LEA was required to spend at least the same amount in local funds only that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§300.204 and 300.205, the LEA was required to spend at least \$450 in local funds only</p> <p>In 2018-2019, the LEA properly reduced its expenditures, per an exception in §300.204 by \$10 and the adjustment in §300.205 by \$10</p> <p>Therefore, the LEA was required to spend at least \$430 in local funds only. (\$450 from 2017-2018 – \$20 allowable reduction per an exception and the adjustment under §§300.204 and 300.205)</p>	<p>Because the LEA did not reduce its expenditures from the comparison year (2017-2018) using a combination of State and local funds, the LEA met MOE</p>	<p>In 2018-2019, the LEA was required to spend at least the same amount in local funds only on a per capita basis that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§300.204 and 300.205, the LEA was required to spend at least \$45 in local funds only on a per capita basis</p> <p>In 2018-2019, the LEA properly reduced its aggregate expenditures, per an exception in §300.204 by \$10 and the adjustment in §300.205 by \$10</p> <p>\$20/10 children with disabilities in the comparison year (2017-2018) = \$2 per capita allowable reduction per an exception and the adjustment under §§300.204 and 300.205</p> <p>\$45 local funds only on a per capita basis (from 2017-2018) – \$2 allowable reduction per an exception and the adjustment under §§300.204 and 300.205 = \$43 local funds only on a per capita basis required to meet MOE. Actual level of effort is \$405/9 (the current year child count)</p>	<p>Because the LEA did not reduce its expenditures from the comparison year (2017-2018) using a combination of State and local funds on a per capita basis (\$1,000/9 = \$111.11 and \$111.11 &gt; \$100), the LEA met MOE</p>	

\*LEA met MOE using this method.

**Note:** When calculating any exception(s) and/or adjustment on a per capita basis for the purpose of determining the required level of effort, the LEA must use the child count from the comparison year, and not the child count of the year in which the LEA took the exception(s) and/or adjustment. When determining the actual level of effort on a per capita basis, the LEA must use the child count for the current year. For example, in 2018-2019, the LEA uses a child count of 9, not the child count of 10 in the comparison year, to determine the actual level of effort.

Tables 7 and 8 demonstrate how an LEA could meet the eligibility standard over a period of years using different methods from year to year. These tables assume that the LEA did not take any of the exceptions or

adjustment in §§300.204 and 300.205. Numbers are in \$10,000s budgeted and spent for the education of children with disabilities.

Table 7—Example of How an LEA May Meet the Eligibility Standard in 2016-2017 Using Different Methods

<b>Fiscal year</b>	<b>Local funds only</b>	<b>Combination of State and local funds</b>	<b>Local funds only on a per capita basis</b>	<b>Combination of State and local funds on a per capita basis</b>	<b>Child count</b>	<b>Notes</b>
2014-2015	*\$500	*\$1,000	*\$50	*\$100	10	The LEA met the compliance standard using all 4 methods.*
2015-2016						Final information not available at time of budgeting for 2016-2017.
How much must the LEA budget for 2016-2017 to meet the eligibility standard in 2016-2017?	500	1,000	50	100		When the LEA submits a budget for 2016-2017, the most recent fiscal year for which the LEA has information is 2014-2015. It is not necessary for the LEA to consider information on expenditures for a fiscal year prior to 2014-2015 because the LEA maintained effort in 2014-2015. Therefore, the Subsequent Years rule in §300.203(c) is not applicable.

\*The LEA met the compliance standard using all 4 methods.

Table 8—Example of How an LEA May Meet the Eligibility Standard in 2017-2018 Using Different Methods and the Application of the Subsequent Years Rule

<b>Fiscal year</b>	<b>Local funds only</b>	<b>Combination of State and local funds</b>	<b>Local funds only on a per capita basis</b>	<b>Combination of State and local funds on a per capita basis</b>	<b>Child count</b>	<b>Notes</b>
2014-2015	*\$500	*\$1,000	*\$50	*\$100	10	
2015-2016	450	*1,000	45	*100	10	
2016-2017						Final information not available at time of budgeting for 2017-2018.
How much must the LEA budget for 2017-2018 to meet the eligibility standard in 2017-2018?	500	1,000	50	100		If the LEA seeks to use a combination of State and local funds, or a combination of State and local funds on a per capita basis, to meet the eligibility standard, the LEA does not consider information on expenditures for a fiscal year prior to 2015-2016 because the LEA maintained effort in 2015-2016 using those methods.
						However, if the LEA seeks to use local funds only, or local funds only on a per capita basis, to meet the eligibility standard, the LEA must use information on

**FEDERAL REGULATIONS IMPLEMENTING THE IDEA**

						expenditures for a fiscal year prior to 2015-2016 because the LEA did not maintain effort in 2015-2016 using either of those methods, per the Subsequent Years rule. That is, the LEA must determine what it should have spent in 2015-2016 using either of those methods, and that is the amount that the LEA must budget in 2017-2018.
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\*LEA met MOE using this method.

Table 9 provides an example of how an LEA may consider the exceptions and adjustment in §§300.204 and 300.205 when budgeting for the expenditures for the education of children with disabilities.

Table 9—Example of How an LEA May Meet the Eligibility Standard Using Exceptions and Adjustment in §§300.204 and 300.205, 2016-2017

<b>Fiscal year</b>	<b>Local funds only</b>	<b>Combination of State and local funds</b>	<b>Local funds only on a per capita basis</b>	<b>Combination of State and local funds on a per capita basis</b>	<b>Child count</b>	<b>Notes</b>
Actual 2014-2015 expenditures	*\$500	*\$1,000	*\$50	*\$100	10	The LEA met the compliance standard using all 4 methods.*
Exceptions and adjustment taken in 2015-2016	-50	-50	-5	-5		LEA uses the child count number from the comparison year (2014-2015).
Exceptions and adjustment the LEA reasonably expects to take in 2016-2017	-25	-25	-2.50	-2.50		LEA uses the child count number from the comparison year (2014-2015).
How much must the LEA budget to meet the eligibility standard in 2016-2017?	425	925	42.50	92.50		When the LEA submits a budget for 2016-2017, the most recent fiscal year for which the LEA has information is 2014-2015. However, if the LEA has information on exceptions and adjustment taken in 2015-2016, the LEA may use that information when budgeting for 2016-2017. The LEA may also use information that it has on any exceptions and adjustment it reasonably expects to take in 2016-2017 when budgeting for that year.

Table 10 provides examples both of how to calculate the amount by which an LEA failed to maintain its level of expenditures and of the amount of non-Federal funds that an SEA must return to the Department on account of that failure.

Table 10—Example of How To Calculate the Amount of an LEA’s Failure to Meet the Compliance Standard in 2016-2017 and the Amount That an SEA Must Return to the Department

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count	Amount of IDEA Part B subgrant
2015-2016	*\$500	*\$950	\$50*	\$95*		Not relevant.
2016-2017	400	750	40	75	10	\$50
Amount by which an LEA failed to maintain its level of expenditures in 2016-2017	100	200	100 (the amount of the failure equals the amount of the per capita shortfall (\$10) times the number of children with disabilities in 2016-2017 (10))	200 (the amount of the failure equals the amount of the per capita shortfall (\$20) times the number of children with disabilities in 2016-2017 (10))		

The SEA determines that the amount of the LEA’s failure is \$100 using the calculation method that results in the lowest amount of a failure. The SEA’s liability is the lesser of the four calculated shortfalls and the amount of the LEA’s Part B subgrant in the fiscal year in which the LEA failed to meet the compliance standard. In this case, the SEA must return \$50 to the Department because the LEA’s IDEA Part B subgrant was \$50, and that is the lower amount.

\*LEA met MOE using this method.

[80 FR 23667, Apr. 28, 2015]

...

**Appendix F to Part 300—Index for IDEA—Part B Regulations (34 CFR Part 300)**

**(Delete all references to “Mental Retardation” and replace with “Intellectual Disability”)**

...

DEFINITIONS (I)	
• IEP Team	300.23.
• Illegal drug	300.530(i)(2).
• Include	300.20.
• Independent educational evaluation	300.502(a)(3)(i).
• Indian	300.21(a).
• Indian tribe	300.21(b).
• Individualized education program (IEP)	300.22.
• Individualized family service plan	300.24.
• Infant or toddler with a disability	300.25.
• Institution of higher education	300.26.
• <b>Intellectual disability</b>	<b>300.8(a)(6).</b>

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• Interpreting services 300.34(c)(4).

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**INTELLECTUAL DISABILITY (Definition) 300.8(a)(6).**

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# CODE OF FEDERAL REGULATIONS IMPLEMENTING SECTION 504 OF THE REHABILITATION ACT

## TITLE 34 – EDUCATION SUBTITLE B - REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION

### CHAPTER I - OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION PART 104 – NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

#### SUBPART A – General Provisions

...

#### 34 C.F.R. § 104.3 Definitions.

As used in this part, the term:

- (a) *The Act* means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.
- (b) *Section 504* means section 504 of the Act.
- (c) *Education of the Handicapped Act* means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 *et seq.*
- (d) *Department* means the Department of Education.
- (e) *Assistant Secretary* means the Assistant Secretary for Civil Rights of the Department of Education.
- (f) *Recipient* means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.
- (g) *Applicant for assistance* means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.
- (h) *Federal financial assistance* means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:
  - (1) Funds;
  - (2) Services of Federal personnel; or
  - (3) Real and personal property or any interest in or use of such property, including:
    - (i) Transfers or leases of such property for less than fair market value or for reduced consideration; and
    - (ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.
- (i) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.
- (j) *Handicapped person*—



**(1) *Handicapped persons*** means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

**(2)** As used in paragraph (j)(1) of this section, the phrase:

**(i) *Physical or mental impairment*** means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as **intellectual disability**, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

**(ii) *Major life activities*** means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

**(iii) *Has a record of such an impairment*** means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

**(iv) *Is regarded as having an impairment*** means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

**(k) *Program or activity*** means all of the operations of—

**(1)**

**(i)** A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

**(ii)** The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

**(2)**

**(i)** A college, university, or other postsecondary institution, or a public system of higher education; or

**(ii)** A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

**(3)**

**(i)** An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

**(A)** If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

**(B)** Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

**(ii)** The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 29 U.S.C. 794(b))

(l) *Qualified handicapped person* means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(m) *Handicap* means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000, **as amended at 81 FR 31912, July 11, 2017.**]

**[Editor's note: Appendix A to the Section 504 regulations has also been amended to replace the words "mental retardation" with "intellectual disability"; "mentally retarded" with "having an intellectual disability"; "severely retarded persons" with "persons with severe intellectual disabilities"; and "mentally retarded persons" with "persons with intellectual disabilities."]**

# CALIFORNIA EDUCATION CODE

## PART 30 - SPECIAL EDUCATION PROGRAMS

### CHAPTER 1. GENERAL PROVISIONS

...

#### ARTICLE 3.7. Foster Parents

...

##### Ed. Code § 56055.

(a)

(1) Except as provided in subdivisions (b), (c), and (d), a foster parent may exercise, to the extent permitted by federal law, including, but not limited to, Section 300.30 of Title 34 of the Code of Federal Regulations, the rights related to his or her foster child's education that a parent has under Title 20 (commencing with Section 1400) of the United States Code and pursuant to Part 300 (commencing with Section 300.1) of Title 34 of the Code of Federal Regulations. The foster parent may represent the foster child for the duration of the foster parent-foster child relationship in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising an individualized education program, if necessary, and in all other matters relating to the provision of a free appropriate public education of the child. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program, including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to this chapter. The foster parent may sign any consent relating to individualized education program purposes.

(2) A foster parent exercising rights relative to a foster child under this section may consult with the parent or guardian of the child to ensure continuity of health, mental health, or other services.

(b) A foster parent who had been excluded by court order from making educational decisions on behalf of a pupil does not have the rights relative to the pupil set forth in subdivision (a).

(c) This section only applies if the juvenile court has limited the right of the parent or guardian to make educational decisions on behalf of the child, and the child has been placed in a planned permanent living arrangement pursuant to paragraph (3) of subdivision (g) of Section 366.21, Section 366.22, Section 366.26, or paragraph (5) or (6) of subdivision (b) of Section 727.3 of the Welfare and Institutions Code.

(d) **For purposes of this section, a foster parent includes an approved relative, approved nonrelative extended family member as defined in Section 362.7 of the Welfare and Institutions Code, a licensed or certified foster parent, as defined in Section 1517 of the Health and Safety Code and Section 16519.5 of the Welfare and Institutions Code, or a person who has been designated by the court as a specified placement.**

(Amended by Stats. 2017, Ch. 732. Effective January 1, 2018.)

## CHAPTER 4. IDENTIFICATION AND REFERRAL, ASSESSMENT, INSTRUCTIONAL PLANNING, IMPLEMENTATION, AND REVIEW

### ARTICLE 1. Identification

...

Ed. Code § 56305.

**(a) On or before January 1, 2019, the department shall develop a manual providing guidance to local educational agencies on identifying English learners as individuals with exceptional needs, classifying individuals with exceptional needs as English learners, supporting pupils who are both English learners and individuals with exceptional needs, and determining when such dually identified pupils should be removed from classification as English learners or exited from special education.**

(b) The goal of the manual shall be to provide guidance, for voluntary use by local educational agencies, charter schools, and the state special schools, on evidence-based and promising practices for the identification, assessment, support, and reclassification of these pupils and to promote a collaborative approach among general education teachers, special education teachers, school administrators, paraprofessionals, other involved personnel, and parents in determining the most appropriate academic placements and services for these pupils.

(c) In developing the manual, the department shall do both of the following:

(1) Review manuals and other resources produced on this topic by local educational agencies, special education administrators, other organizations, other states, and the federal government.

(2) Establish and consult with a stakeholder group comprised of experts and practitioners. These individuals shall have expertise or experience in either special education, English learner education, or in both.

(d) The manual shall include all of the following topics:

(1) **Guidance for accurately identifying English learners suspected of being individuals with exceptional needs and accurately classifying individuals with exceptional needs as English learners**, including guidance on avoiding overidentification and underidentification of these pupils for special education services and in different disability categories and in different grade spans.

(2) Information on second language acquisition and progress, including guidance on distinguishing between language acquisition and disabilities.

(3) Examples of prereferral strategies, early interventions, and early intervening strategies specifically addressing the needs of English learners, including examples of early interventions for pupils in preschool and the primary grades who are acquiring foundational language and literacy skills.

(4) Guidance on referral processes.

(5) Guidance on the use of assessments, including the use of multiple measures as well as assessment accommodations for both language and disability, including assessment accommodations in primary languages.

(6) Guidance on the consideration of extrinsic factors, such as vision, hearing, and health, in the identification of pupils.

(7) Guidance on the development of individualized education programs for English learners, including the composition of individualized education program teams.

(8) Guidance on how to support the language and content learning needs of English learners who may **are individuals with exceptional needs**, including how to do so in the least restrictive environment, as described in Section 56040.1, and in a manner that enables access to the core curriculum.

(9) Guidance regarding placement or continued placement in bilingual programs and on providing services and instruction in primary languages.

(10) Guidance on special education exit and English learner reclassification processes for English learners **who are individuals with exceptional needs.**

(11) Information on the role of culture and acculturation, to the extent it is related to the process of identifying English learners for special education services.

(12) Guidance for working with families, including guidance on meeting the needs of nonnative English speaking parents, guardians, and educational rights holders in special education proceedings.

(13) Examples of any plans or processes used by local educational agencies for continuous evaluation and systemic review and guidance on sharing information between special education and English learner programs within local educational agencies for the purpose of tracking effectiveness, to the extent permitted under state and federal law regarding the privacy of pupil information.

(14) State and federal law, regulations, and guidance related to the rights of English learners and **individuals with exceptional needs.**

(e) All guidance in the manual shall be consistent with state and federal law, regulations, and guidance regarding English learners and special education.

(f) The manual shall be written for ease of use by educators. The department is encouraged to incorporate features such as flowcharts, checklists, sample forms, and case examples.

(g) The department shall post the manual on its Internet Web site and on its professional development Internet Web site.

(h) For purposes of this section, the following terms have the following meanings:

(1) "English learners" **has the same definition as in subdivision (a) of Section 435.**

(2) **"Individuals with exceptional needs" has the same definition as in Section 56026.**

(3) **"Reclassification" with respect to English learners means the procedures described in Section 11303 of Title 5 of the California Code of Regulations.**

(i)(1)(A) In implementing this section, the department, with input from the stakeholder group, shall develop a plan for the dissemination of the manual and the means of providing professional development on the content of the manual. The plan shall address how the state and local educational agencies can collaborate in meeting both of these objectives in a cost-effective manner. (B) Implementation of the plan developed pursuant to subparagraph (A) shall be contingent upon an appropriation for that purpose in the annual Budget Act or another enacted statute.

(2) The plan shall be submitted to the state board, the Department of Finance, the Legislative Analyst's Office, the California Collaborative for Educational Excellence, the Advisory Commission on Special Education, and the appropriate policy and fiscal committees of the Legislature on or before July 1, 2018.

(j) It is the intent of the Legislature that this section be funded with federal funds, to the extent permissible.

**(Amended by Stats. 2017, Ch. 15, Section 59, Effective June 27, 2017.)**

...

## CHAPTER 6. EVALUATION, AUDITS AND INFORMATION

...

### Ed. Code § 56601.

(a) Each special education local plan area shall submit to the Superintendent at least annually information, in a form and manner prescribed by the Superintendent and developed in consultation with the special education local plan areas, in order for the Superintendent to carry out the evaluation responsibilities pursuant to Section 56602. This information shall include other statistical data, program information, and fiscal information that

the Superintendent may require. The Superintendent shall use this information to answer questions from the Legislature and other state and federal agencies on program, policy, and fiscal issues of statewide interest.

(b) In order to assist the state in evaluating the effectiveness of special education programs, including transition and work experience programs, the Superintendent shall, commencing with the 2017-18 fiscal year and phased in over a two-year period, assign a pupil identification number to individuals with exceptional needs for purposes of evaluating special education programs and related services. The Superintendent shall not disclose personally identifiable, individual pupil records to any person, institution, agency, or organization except as authorized by Section 1232g of Title 20 of the United States Code and Part 99 of Title 34 of the Code of Federal Regulations.

**(Amended by Stats. 2017, Ch. 561, Sec. 42. Effective January 1, 2018.)**

## CHAPTER 7.2. SPECIAL EDUCATION FUNDING

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### ARTICLE 3. Licensed Children's Institutions

...

**Ed. Code § 56836.165.**

...

(d)

(1) For each fiscal year, the department shall calculate an out-of-home care funding amount for each special education local plan area as the sum of amounts computed pursuant to paragraphs (2), (3), and (4). The State Department of Social Services and the State Department of Developmental Services shall provide the State Department of Education with the residential counts identified in paragraphs (2), (3), and (4).

(2) The number of children and youth residing on April 1 in foster family homes, small family homes, and foster family agencies located in each special education local plan area times the appropriate bed allowance.

(3) The capacity on April 1 of each group home licensed by the State Department of Social Services located in each special education local plan area times the appropriate bed allowance.

(4) The number on April 1 of children and youth (A) ages 3 through 21 referred by the State Department of Developmental Services who are residing in skilled nursing facilities and intermediate care facilities licensed by the State Department of Health Services located in each special education local plan area times the appropriate bed allowance, and (B) ages 3 to 21 years, inclusive, referred by the State Department of Developmental Services who are residing in community care facilities licensed by the State Department of Social Services located in each special education local plan area times the appropriate bed allowance.

**(5) Notwithstanding subdivision (b) and paragraphs (2) and (3), for purposes of the 2017–18 fiscal year out-of-home care funding amount for group homes, foster family homes, small family homes, and foster family agencies, the Superintendent shall use the data received from the State Department of Social Services that was used for the funding for the 2016–17 fiscal year.**

...

**(Amended by Stats. 2016, Ch. 15, Section 60. Effective June 27, 2017.)**

...

**ARTICLE 6. Program Specialists and Administration of Regionalized Operations  
and Services**

...

**Ed. Code § 56836.29.**

**If special education local plan areas reorganize, including by merger or division, the department shall adjust rates for payments to and from the resulting special education local plan areas so that overall funding neither increases nor decreases from what it would have been before the reorganization.**

**(Added by Stats. 2017, Ch. 15, Section 61. Effective June 27, 2017.)**

# ADDITIONAL SELECTED RELEVANT PROVISIONS OF CALIFORNIA EDUCATION CODE

## PART 27 - PUPILS

### CHAPTER 6. PUPIL RIGHTS AND RESPONSIBILITIES

#### ARTICLE 1. Suspension or Expulsion

...

##### Ed. Code § 48911.

(a) The principal of the school, the principal's designee, or the district superintendent of schools may suspend a pupil from the school for any of the reasons enumerated in Section 48900, and pursuant to Section 48900.5, for no more than five consecutive schooldays.

(b) Suspension by the principal, the principal's designee, or the district superintendent of schools shall be preceded by an informal conference conducted by the principal, the principal's designee, or the district superintendent of schools between the pupil and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the district superintendent of schools. At the conference, the pupil shall be informed of the reason for the disciplinary action, **including the other means of corrective action that were attempted before the suspension as required under Section 48900.5**, and the evidence against him or her, and shall be given the opportunity to present his or her version and evidence in his or her defense.

(c) A principal, the principal's designee, or the district superintendent of schools may suspend a pupil without affording the pupil an opportunity for a conference only if the principal, the principal's designee, or the district superintendent of schools determines that an emergency situation exists. *Emergency situation*, as used in this article, means a situation determined by the principal, the principal's designee, or the district superintendent of schools to constitute a clear and present danger to the life, safety, or health of pupils or school personnel. If a pupil is suspended without a conference before suspension, both the parent and the pupil shall be notified of the pupil's right to a conference and the pupil's right to return to school for the purpose of a conference. The conference shall be held within two schooldays, unless the pupil waives this right or is physically unable to attend for any reason, including, but not limited to, incarceration or hospitalization. The conference shall then be held as soon as the pupil is physically able to return to school for the conference.

(d) At the time of suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. If a pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension.

(e) A school employee shall report the suspension of the pupil, including the cause for the suspension, to the governing board of the school district or to the district superintendent of schools in accordance with the regulations of the governing board of the school district.

(f) **(1)** The parent or guardian of a pupil shall respond without delay to a request from school officials to attend a conference regarding his or her child's behavior.

**(2)** No penalties shall be imposed on a pupil for failure of the pupil's parent or guardian to attend a conference with school officials. Reinstatement of the suspended pupil shall not be contingent upon attendance by the pupil's parent or guardian at the conference.

(g) In a case where expulsion from a school or suspension for the balance of the semester from continuation school is being processed by the governing board of the school district, the district superintendent of schools or other person designated by the district superintendent of schools in writing may extend the suspension until the governing board of the school district has rendered a decision in the action. However, an extension may be granted only if the district superintendent of schools or the district superintendent's designee has determined,



following a meeting in which the pupil and the pupil's parent or guardian are invited to participate, that the presence of the pupil at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process. If the pupil is a foster child, as defined in Section 48853.5, the district superintendent of schools or the district superintendent's designee, including, but not limited to, the educational liaison for the school district, shall also invite the pupil's attorney and an appropriate representative of the county child welfare agency to participate in the meeting. If the pupil or the pupil's parent or guardian has requested a meeting to challenge the original suspension pursuant to Section 48914, the purpose of the meeting shall be to decide upon the extension of the suspension order under this section and may be held in conjunction with the initial meeting on the merits of the suspension.

**(h) (1)** For purposes of this section, a *principal's designee* is one or more administrators at the schoolsite specifically designated by the principal, in writing, to assist with disciplinary procedures.

**(2)** In the event that there is not an administrator in addition to the principal at the schoolsite, a certificated person at the schoolsite may be specifically designated by the principal, in writing, as a principal's designee, to assist with disciplinary procedures. The principal may designate only one person at a time as the principal's primary designee for the school year.

**(3)** An additional person meeting the requirements of this subdivision may be designated by the principal, in writing, to act for purposes of this article when both the principal and the principal's primary designee are absent from the schoolsite. The name of the person, and the names of any person or persons designated as principal's designee, shall be on file in the principal's office.

**(i)** This section is not an exception to, nor does it place any limitation on, Section 48903.

**(Amended by Stats. 2017, Ch. 445, Sec. 1. Effective January 1, 2018.)**

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## CHAPTER 6.5. PUPIL RECORDS

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### ARTICLE 4. Rights of Parents

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#### Ed. Code § 49069.3.

**(a) A foster family agency with jurisdiction over a currently enrolled or former pupil, a short-term residential treatment program staff responsible for the education or case management of a pupil, and a caregiver who has direct responsibility for the care of the pupil, including a certified or licensed foster parent, an approved relative or nonrelated extended family member, or a resource family, as defined in Section 1517 of the Health and Safety Code and Section 16519.5 of the Welfare and Institutions Code, may access the current or most recent records of grades, transcripts, attendance, discipline, and online communication on platforms established by schools for pupils and parents, and any individualized education programs (IEP) that may have been developed pursuant to Chapter 4 (commencing with Section 56300) of Part 30 or any plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)) maintained by school districts, county offices of education, charter schools, nonpublic schools, as defined in Section 60010, or private schools of that pupil. A caregiver, pursuant to this section, may access the information specified in this section regardless of whether the caregiver has been appointed as the pupil's educational rights holder pursuant to Section 319, 361, or 726 of the Welfare and Institutions Code.**

**(b) A foster family agency, short-term residential treatment program, or caregiver may review and receive pupil records pursuant to subdivision (a) for purposes of monitoring the pupil's educational progress, updating and maintaining the pupil's education records as required by Section 16010 of the Welfare and Institutions Code, and ensuring the pupil has access to educational services, supports, and activities. These purposes include, but are not limited to, enrolling the pupil in school, assisting the pupil with homework, class assignments, and college and scholarship applications, and enrolling the pupil in extracurricular activities, tutoring, and other afterschool and summer enrichment programs.**

**(c)**

**(1) If direct communication between a caregiver and an educational rights holder is appropriate, a caregiver who is not the pupil's educational rights holder shall notify the pupil's educational rights holder of any educational needs of the pupil that require the educational rights holder's consent or participation, including, but not limited to, school placement decisions, decisions on whether to invoke or waive school of origin rights, consent for special education assessments and individualized education programs, meetings or hearings regarding attendance or discipline, and decisions regarding graduation. In instances involving significant discipline or that potentially impact a pupil's continued enrollment and progress in school, the caregiver shall also provide the same information to the pupil's social worker as is provided to the educational rights holder.**

**(2) If direct communication between a caregiver and an educational rights holder is inappropriate, the pupil's social worker shall direct the caregiver to communicate the information specified in paragraph (1) with the pupil's social worker or attorney instead of the educational rights holder.**

**(3) Nothing in this subdivision affects the responsibilities of a placement agency with regard to the education of a pupil.**

**(4) This subdivision shall not be construed to alter or increase a social worker's or attorney's decisionmaking rights and responsibilities regarding a pupil.**

**(d) Nothing in this section affects the duties of a local educational agency related to informing and involving educational rights holders in educational decisions affecting the child.**

**(Amended by Stats. 2017, Ch. 829, Sec. 2. Effective January 1, 2018.)**

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## **ARTICLE 5. Privacy of Pupil Records**

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### **Ed. Code § 49076.**

**(a)** A school district shall not permit access to pupil records to a person without written parental consent or under judicial order except as set forth in this section and as permitted by Part 99 (commencing with Section 99.1) of Title 34 of the Code of Federal Regulations.

**(1)** Access to those particular records relevant to the legitimate educational interests of the requester shall be permitted to the following:

**(A)** School officials and employees of the school district, members of a school attendance review board appointed pursuant to Section 48321 who are authorized representatives of the school district, and any volunteer aide, 18 years of age or older, who has been investigated, selected, and trained by a school attendance review board for the purpose of providing

followup services to pupils referred to the school attendance review board, provided that the person has a legitimate educational interest to inspect a record.

**(B)** Officials and employees of other public schools or school systems, including local, county, or state correctional facilities where educational programs leading to high school graduation are provided or where the pupil intends to or is directed to enroll, subject to the rights of parents as provided in Section 49068.

**(C)** Authorized representatives of the Comptroller General of the United States, the **United States** Secretary of Education, and state and local educational authorities, or the United States Department of Education's Office for Civil Rights, if the information is necessary to audit or evaluate a state or federally supported educational program, or in connection with the enforcement of, or compliance with, the federal legal requirements that relate to such a program. Records released pursuant to this subparagraph shall comply with the requirements of Section 99.35 of Title 34 of the Code of Federal Regulations.

**(D)** Other state and local officials to the extent that information is specifically required to be reported pursuant to state law adopted before November 19, 1974.

**(E)** Parents of a pupil 18 years of age or older who is a dependent as defined in Section 152 of Title 26 of the United States Code.

**(F)** A pupil 16 years of age or older or having completed the 10th grade.

**(G)** A district attorney who is participating in or conducting a truancy mediation program pursuant to Section 48263.5, or Section 601.3 of the Welfare and Institutions Code, or participating in the presentation of evidence in a truancy petition pursuant to Section 681 of the Welfare and Institutions Code.

**(H)** A district attorney's office for consideration against a parent or guardian for failure to comply with the Compulsory Education Law (Chapter 2 (commencing with Section 48200)) or with Compulsory Continuation Education (Chapter 3 (commencing with Section 48400)).

**(I)**

**(i)** A probation officer, district attorney, or counsel of record for a minor for purposes of conducting a criminal investigation or an investigation in regards to declaring a person a ward of the court or involving a violation of a condition of probation.

**(ii)** For purposes of this subparagraph, a probation officer, district attorney, and counsel of record for a minor shall be deemed to be local officials for purposes of Section 99.31(a)(5)(i) of Title 34 of the Code of Federal Regulations.

**(iii)** Pupil records obtained pursuant to this subparagraph shall be subject to the evidentiary rules described in Section 701 of the Welfare and Institutions Code.

**(J)** A judge or probation officer for the purpose of conducting a truancy mediation program for a pupil, or for purposes of presenting evidence in a truancy petition pursuant to Section 681 of the Welfare and Institutions Code. The judge or probation officer shall certify in writing to the school district that the information will be used only for truancy purposes. A school district releasing pupil information to a judge or probation officer pursuant to this subparagraph shall inform, or provide written notification to, the parent or guardian of the pupil within 24 hours of the release of the information.

**(K)** A county placing agency when acting as an authorized representative of a state or local educational agency pursuant to subparagraph (C). School districts, county offices of education, and county placing agencies may develop cooperative agreements to facilitate confidential access to and exchange of the pupil information by email, facsimile, electronic format, or other secure means, if the agreement complies with the requirements set forth in Section 99.35 of Title 34 of the Code of Federal Regulations.

**(L)** A pupil 14 years of age or older who meets both of the following criteria:

(i) The pupil is a homeless child or youth, as defined in paragraph (2) of Section 725 of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)).

(ii) The pupil is an unaccompanied youth, as defined in paragraph (6) of Section 725 of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(6)).

(M) An individual who completes items 1 to 4, inclusive, of the Caregiver's Authorization Affidavit, as provided in Section 6552 of the Family Code, and signs the affidavit for the purpose of enrolling a minor in school.

(N) An agency caseworker or other representative of a state or local child welfare agency, or tribal organization, as defined in Section 450b of Title 25 of the United States Code, that has legal responsibility, in accordance with state or tribal law, for the care and protection of the pupil.

(i) The agency or organization specified in clause (i) may disclose pupil records, or the personally identifiable information contained in those records, to an individual or entity engaged in addressing the pupil's educational needs, if the individual or entity is authorized by the agency or organization to receive the disclosure and the information requested is directly related to the assistance provided by that individual or entity. The records, or the personally identifiable information contained in those records, shall not otherwise be disclosed by that agency or organization, except as provided under the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g), state law, including paragraph (3), and tribal law.

**(O) A foster family agency with jurisdiction over a currently enrolled or former pupil, a short-term residential treatment program staff responsible for the education or case management of a pupil, and a caregiver who has direct responsibility for the care of the pupil, including a certified or licensed foster parent, an approved relative or nonrelated extended family member, or a resource family, as defined in Section 1517 of the Health and Safety Code and Section 16519.5 of the Welfare and Institutions Code, pursuant to Section 49069.3 of this code.**

(2) School districts may release information from pupil records to the following:

(A) Appropriate persons in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of a pupil or other persons. Schools or school districts releasing information pursuant to this subparagraph shall comply with the requirements set forth in Section 99.32(a)(5) of Title 34 of the Code of Federal Regulations.

(B) Agencies or organizations in connection with the application of a pupil for, or receipt of, financial aid. However, information permitting the personal identification of a pupil or his or her parents may be disclosed only as may be necessary for purposes as to determine the eligibility of the pupil for financial aid, to determine the amount of the financial aid, to determine the conditions that will be imposed regarding the financial aid, or to enforce the terms or conditions of the financial aid.

(C) Pursuant to Section 99.37 of Title 34 of the Code of Federal Regulations, a county elections official, for the purpose of identifying pupils eligible to register to vote, or for conducting programs to offer pupils an opportunity to register to vote. The information shall not be used for any other purpose or given or transferred to any other person or agency.

(D) Accrediting associations in order to carry out their accrediting functions.

(E) Organizations conducting studies for, or on behalf of, educational agencies or institutions for purposes of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if the studies are conducted in a manner that will not permit the personal identification of pupils or their parents by persons other than

representatives of the organizations, the information will be destroyed when no longer needed for the purpose for which it is obtained, and the organization enters into a written agreement with the educational agency or institution that complies with Section 99.31(a)(6) of Title 34 of the Code of Federal Regulations.

**(F)** Officials and employees of private schools or school systems where the pupil is enrolled or intends to enroll, subject to the rights of parents as provided in Section 49068 and in compliance with the requirements in Section 99.34 of Title 34 of the Code of Federal Regulations. This information shall be in addition to the pupil's permanent record transferred pursuant to Section 49068.

**(G)**

**(i)** A contractor or consultant with a legitimate educational interest who has a formal written agreement or contract with the school district regarding the provision of outsourced institutional services or functions by the contractor or consultant.

**(ii)** Notwithstanding the authorization in Section 99.31(a)(1)(i)(B) of Title 34 of the Code of Federal Regulations, a disclosure pursuant to this subparagraph shall not be permitted to a volunteer or other party.

**(3)** A person, persons, agency, or organization permitted access to pupil records pursuant to this section shall not permit access to any information obtained from those records by another person, persons, agency, or organization, except for allowable exceptions contained within the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and state law, including this section, and implementing regulations, without the written consent of the pupil's parent. This paragraph shall not require prior parental consent when information obtained pursuant to this section is shared with other persons within the educational institution, agency, or organization obtaining access, so long as those persons have a legitimate educational interest in the information pursuant to Section 99.31(a)(1) of Title 34 of the Code of Federal Regulations.

**(4)** Notwithstanding any other law, a school district, including a county office of education or county superintendent of schools, may participate in an interagency data information system that permits access to a computerized database system within and between governmental agencies or school districts as to information or records that are nonprivileged, and where release is authorized as to the requesting agency under state or federal law or regulation, if each of the following requirements is met:

**(A)** Each agency and school district shall develop security procedures or devices by which unauthorized personnel cannot access data contained in the system.

**(B)** Each agency and school district shall develop procedures or devices to secure privileged or confidential data from unauthorized disclosure.

**(C)** Each school district shall comply with the access log requirements of Section 49064.

**(D)** The right of access granted shall not include the right to add, delete, or alter data without the written permission of the agency holding the data.

**(E)** An agency or school district shall not make public or otherwise release information on an individual contained in the database if the information is protected from disclosure or release as to the requesting agency by state or federal law or regulation.

**(b)** The officials and authorities to whom pupil records are disclosed pursuant to subdivision (e) of Section 48902 and subparagraph (I) of paragraph (1) of subdivision (a) shall certify in writing to the disclosing school district that the information shall not be disclosed to another party, except as provided under the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and state law, without the prior written consent of the parent of the pupil or the person identified as the holder of the pupil's educational rights.

**(c)**

(1) A person or party who is not permitted access to pupil records pursuant to subdivision (a) or (b) may request access to pupil records as provided for in paragraph (2).

(2) A local educational agency or other person or party who has received pupil records, or information from pupil records, may release the records or information to a person or party identified in paragraph (1) without the consent of the pupil's parent or guardian pursuant to Section 99.31(b) of Title 34 of the Code of Federal Regulations, if the records or information are deidentified, which requires the removal of all personally identifiable information, if the disclosing local educational agency or other person or party has made a reasonable determination that a pupil's identity is not personally identifiable, whether through single or multiple releases, and has taken into account other pertinent reasonably available information.

**(Amended by Stats. 2017, Ch. 829, Sec. 3. Effective January 1, 2018.)**