



## Frequently Asked Questions re: Special Education & Foster Children

### Definitions

- 1. What is FAPE?**  
FAPE stands for Free Appropriate Public Education and guarantees that children with a disability receive an educational program designed to meet their needs.
- 2. What is an IEP?**  
An IEP is an Individual Education Program tailored to a student's specific needs.
- 3. What is LRE?**  
LRE stands for Least Restrictive Environment and deals with the placement of disabled children in school. Disabled children have a right to participate with general education students for as much of the school day as possible.
- 4. What is an ERH, and how do I become one?**  
ERH stands for Education Rights Holder and refers to the person with the legal authority to make educational decisions regarding a child. The ERH is typically the biological parent, but the rights can be transferred to legal guardians, adoptive parents, or a foster parent or court appointed special advocate (CASA) with a court order.

### Eligibility

- 5. I think my daughter has a learning disability. Is she old enough to get an IEP?**  
Children are eligible for an IEP starting at age three. If she is younger than that, you should contact a Regional Center to receive special education through an Individual Family Service Plan (IFSP).
- 6. Can I get a free advocate or attorney to ensure that my child in foster care with a disability is eligible for and/or has an appropriate IEP?**  
Contact the child's minor's attorney in dependency court and ask that they complete a referral to the 317E panel.
- 7. If my child has ADHD, could he be eligible for special education?**  
Yes, if his ADHD (Attention Deficit Hyperactive Disorder) is causing him to do poorly academically or behaviorally in school, he can be eligible under OHI (Other Health Impaired).



8. **My child's biological parents still hold educational rights, but they do not attend the IEP meetings. How do I become an ERH?**  
Speak to your social worker, the child's minor's attorney in dependency court, and/or ask your child's judge for a court order giving you educational rights for that child.
9. **If my child is passing all of her classes, does this mean that she cannot receive special education?**  
No, passing classes does not in and of itself disqualify your child from receiving special education. For example, if she is having emotional or behavioral problems at school, this could also qualify her for special education.

### **Assessments**

10. **Can I make a request for special education assessments over the phone or in person?**  
The request should be in writing, and dated, and you should keep a copy of your request for your own records.
11. **Once I request an assessment, what happens next?**  
The school must respond in writing within 15 days. That response must be an assessment plan or a written refusal to assess.
12. **The school wants to hold an SST meeting to determine whether to assess my child for special education. Should I attend this meeting?**  
A Student Study Team meeting (SST) will not give your child any services, but you can go to the meeting to convince the school that an IEP is necessary and that they should complete the assessment you've requested. An SST is not a suitable response to your request for assessment—the school must always respond to such requests in writing, even if an SST occurs.
14. **The school is not responding to my request for special education assessment. What can I do?**  
The school has 15 days to respond in writing to your request. If there is no response, you may file a compliance complaint with the California Department of Education.
15. **What can I do if I disagree with the finding of a school assessment?**  
You can request an Independent Educational Evaluation (IEE). The school district has only two options in this situation: they either pay for the IEE or they must bring a due process hearing against you to prove that their assessment is correct.



## **Getting an IEP**

16. **If I have requested special education testing, when does the IEP meeting occur?**  
An IEP meeting must occur within 60 calendar days after the ERH consents to the assessment by signing the assessment plan.
17. **What if I can't make the time/date the school scheduled for my child's IEP?**  
The school is obligated to notify you well enough in advance of the meeting so that you can attend (and at a convenient location). If you cannot make the meeting, you can ask the school to reschedule it, and they must reschedule it so that you can attend.
18. **Who can I bring to an IEP meeting?**  
You may bring "individuals with knowledge or special expertise about the child." This includes friends and family, therapists, counselors, social workers, tutors, attorneys, and advocates.
19. **Who has the right to excuse members from an IEP meeting?**  
The district and the ERH must both agree in writing before anyone obligated to be there can be excused. This includes the general education teacher.
20. **How many annual goals should my child's IEP contain?**  
There is no limit; there should be at least one goal in each area of academic and behavioral need. All goals must be measurable and reflect the student's current abilities.
21. **Can I disagree with portions of an IEP and agree with other parts of it?**  
Yes. For example, you may agree on the goals and placement, but disagree with the services as outlined. In this situation, you may give your limited consent, identifying directly on the IEP what you agree and disagree with. By writing out your consent, you permit the school to implement the portions you agree with while you wait to resolve the issues you disagree with.
22. **When can my child get transportation as part of her IEP?**  
When her IEP requires that she attend a school other than her home school, there are safety concerns, or she has a physical disability.
23. **If my child already has an IEP and it's not working, how do I request a new meeting?**  
Request one in writing. The school administration must respond within ten days.



**24. How often can I request an IEP once my child is eligible?**

Your child's IEP must be reviewed annually. In addition, you can request one at any time.

**Placement**

**25. What are the possible special education placements?**

There are four: General Education, Resource Specialist Program (RSP), Special Day Class (SDC), and nonpublic school.

**26. Can a school change my child's placement without my permission?**

No. Again, the school must hold an IEP meeting, and any changes require your consent.

**27. Is a nonpublic school the same thing as a private school?**

No. A private school is typically a religious institution and usually requires the parents to pay tuition. A nonpublic school focuses on special education and is certified by the state; the student's school district pays the tuition, not the parents.

**28. My child went to a group home and the school placed him in the nearby nonpublic school. Can I get him transferred?**

According to the LRE, your child should only be placed in a nonpublic school if he cannot function adequately in a public school. Even if he has an IEP, and especially if he does not, your child may still be entitled to an education at a public school under the LRE.

**Questions after IEP is in Place**

**29. What happens when a student has an IEP and transfers to another school district?**

The new school district has to honor the existing one and convene a meeting within 30 days to develop their own IEP.

**30. If my child is not receiving the services provided in her IEP, what can I do to make the school provide those services?**

You may file a compliance complaint with the California Department of Education for failure to implement portions of the IEP. You do not need a lawyer for this. You may also sue the school district. While you do not need a lawyer for this, it is advised that you seek the advice of an attorney or advocate before filing suit.



31. **How long can my child receive special education services?**  
Until the age of 22 or he receives a high school diploma, whichever comes first. The student must pass the California High School Exit Exam in order to get his diploma—a high school certificate of completion is not enough.
32. **Can a school discontinue my child's services without telling me?**  
No, the school must hold an IEP meeting. If you reject the proposed changes to your child's services, the school cannot change them. You must agree to the changes for them to take place.

### **Discipline**

33. **The school keeps suspending my child for the same type of offense. What can I do?**  
If you believe the offense is related to your child's disability, request an IEP to review and possibly change your child's program to better meet his needs. If the total number of days your child has been suspended exceeds ten days in a school year, then an IEP meeting is necessary.
34. **The school keeps asking me to pick up my child from school because his behavior is out of control and the personnel cannot handle him. What am I supposed to do?**  
During school hours, it is the school's responsibility to educate your child. You do not need to pick up your child before the school day is over and may inform the school that you will not pick him up. That being said, you should request an IEP meeting to review and possibly change your child's services.
35. **Can the school expel my child if the incident was due to her disability?**  
If the incident was due to her disability, no, the school may not expel your child. The student's IEP team must meet to determine if the student's conduct was connected to her disability and/or due to a failure to implement her IEP properly.

### **Due Process**

36. **What is due process?**  
Due process allows you to resolve differences through the courts if other methods have not worked (mediation, compliance complaints, etc.). It is advised that you speak with an attorney if considering due process as the school will always be represented by an attorney in such proceedings.