



# SPECIAL EDUCATION

# What is Special Education?



- Under the Individuals with Disabilities Education Act (IDEA), a child with a disability has a right to special education and related services. The disability must prevent the child from benefiting from their education. *20 U.S.C. §1400, et seq., Cal Educ. Code § 56026.*
- Special education must be individualized to meet a child's unique needs. A child's program described in his or her Individualized Education Program ("IEP"). *Cal. Educ. Code § 56031.*
- A child has a right to a free, *appropriate* public education ("FAPE"). *Cal. Educ. Code § 56026.*
- Eligibility can start as young as 3-years old, and last through either receiving a high school diploma, or the semester after a child turns 22-years old. *Cal. Educ. Code § 56026.*

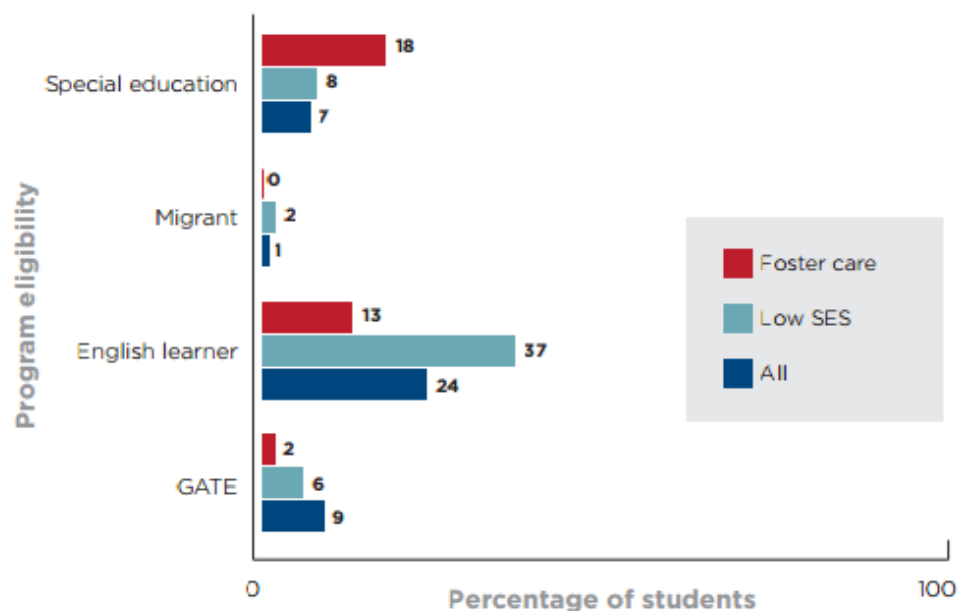
# FOSTER YOUTH AND SPECIAL EDUCATION

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# Foster Youth and Special Education

Nearly 1 in 5 students in foster care are classified with a disability, twice the rate of the statewide population.

Figure 3. Percentage of students by program eligibility, for students in foster care, low-socioeconomic-status students, and all students in California public schools, 2009/10



Source: Barrat, V. X., & Berliner, B. (2013). *The Invisible Achievement Gap, Part 1: Education Outcomes of Students in Foster Care in California's Public Schools*. San Francisco: WestEd.

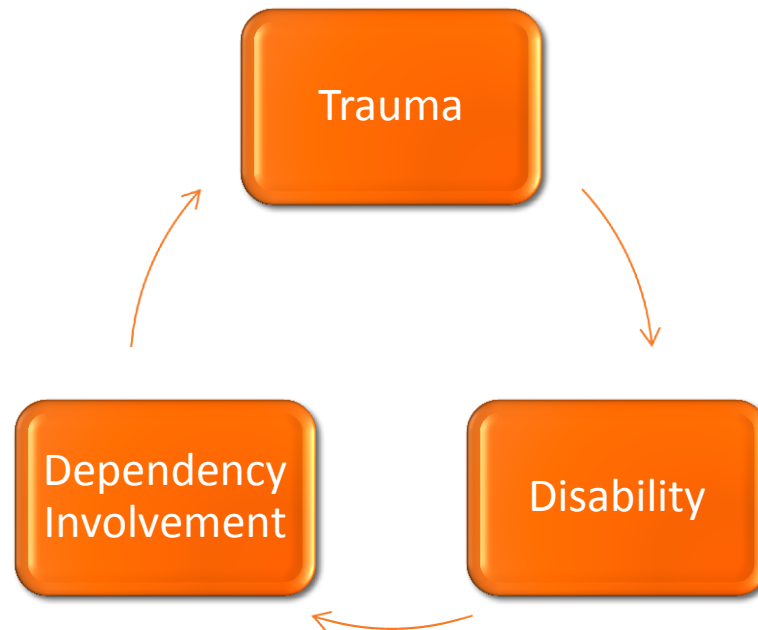
# ***Foster Youth and Special Education***

- Students in foster care are about five times more likely to be classified with an emotional disturbance than other students in the statewide population.
- Students in foster care for longer periods of time are more likely to have reported disabilities.
- Students in group homes are more likely to have disabilities than students in other types of placements.

Source: Barrat, V. X., & Berliner, B. (2013). *The Invisible Achievement Gap, Part 1: Education Outcomes of Students in Foster Care in California's Public Schools*. San Francisco: WestEd.

# ***Foster Youth and Special Education***

***Involvement with the dependency system is both the cause of and the result of children's disabilities.***



# EDUCATION RIGHTS HOLDERS

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# ***Education Rights Holders (ERH)***

- An ERH is the person with legal authority to make decisions affecting the child's education, including:
  - Requesting records,
  - Requesting and consenting to special education assessments,
  - Participating in IEP meetings, and
  - Consenting to special education services and placements in the IEP.
- A biological parent holds education rights until the court limits or revokes these rights.
- A court may limit the education rights of a biological parent if the parent is unwilling or unavailable to make education decisions, or to otherwise protect the child.

*Cal. Welf. Inst. Code § § 319, 361, 726, 358.1(e); Cal Gov't. Code § 7579.5; Cal Educ. Code § 56055; 34 CFR § 300.30; Cal. R. Ct. 5.650.*

# ***Who Can and Can't be the ERH?***

- If the biological parents cannot serve as ERHs, the court can appoint any of the following people:
  - Foster parent
  - Relative caregiver
  - Court Appointed Special Advocate (CASA)
  - Community member with a relationship to the youth
- The following persons can **NEVER** serve as an ERH:
  - Group home staff
  - Case-carrying social workers
  - Probation officers
  - Other professionals involved with the youth (e.g., education attorneys)

*Cal. Welf. Inst. Code §§ 319, 361, 726, 358.1(e); Cal Gov't. Code § 7579.5;  
Cal Educ. Code § 56055; 34 CFR § 300.30; Cal. R. Ct. 5.650.*

# ***Education Rights Holders***

- Children need an education rights holder from birth until their 18<sup>th</sup> birthday, when they hold their own education rights.
- Co-ERHs
  - What if a biological parent wants to retain education rights but is not currently available to make decisions or attend meetings?
  - The court may appoint a second person to hold education rights together with the biological parent.

*Cal. Welf. Inst. Code § § 319, 361, 726, 358.1(e); Cal Gov't. Code § 7579.5; Cal Educ. Code § 56055; 34 CFR § 300.30; Cal. R. Ct. 5.650.*

# What Can You Do?

- Know who holds education rights.
- Ensure that the ERH is appropriate. Appropriate ERHs should:
  - Be able and available to make education decisions and participate in meetings;
  - Be willing to make decisions regarding the child's education; and
  - Have the child's best interests in mind.
- Potentially Inappropriate ERHs:
  - Biological parents whose whereabouts are unknown;
  - Biological parents who are unreachable (e.g., they have not provided you with a valid phone number or address for the past three months);
  - Biological parents are deceased or incarcerated;
  - Current ERH is a previous foster parent who no longer wishes to be involved in the youth's life/education.

*Cal. Welf. Inst. Code §§ 319, 361, 726, 358.1(e); Cal Gov't. Code § 7579.5; Cal Educ. Code § 56055; 34 CFR § 300.30; Cal. R. Ct. 5.650.*

# What Can You Do?

- Consider whether the child's ERH is appropriate:
  - When the child first enters your caseload;
  - Any time the circumstances of the current ERH change (e.g., biological parent becomes incarcerated, CASA moves out of the state);
  - Before every court hearing; and
  - Every time a child's placement is changed.
- If the child's education rights holder is *inappropriate*:
  - Identify an appropriate ERH, an adult in the child's life who is willing to make education decisions and attend meetings;
  - Complete a JV-535 and attach it to your court report, asking that the court appointed the new adult.
- Share the name, contact info and a copy of the JV-535 with the school.

# ***Foster Children and Initial Assessments***

- In general, an IDEA parent (which can include a surrogate parent) must give informed parental consent before a local educational agency can conduct an initial evaluation of a child.
- A school district is excused from obtaining informed parental consent for an initial evaluation if the child is: not living with an IDEA parent, is in the custody of a child welfare agency, does not have a foster parent who is permitted by state law to serve as an IDEA parent, and
  - (i) despite reasonable efforts, the school district cannot discover the whereabouts of the parents, or
  - (ii) parental rights have been terminated, or
  - (iii) a judge has subrogated the parent's right to make education decisions and appointed a person (which could be a caseworker) to consent to the initial evaluation of the child.
- Following the initial evaluation, a surrogate parent must be appointed to make other special education decisions, including whether special education services can begin. 34 C.F.R. §300.300(a)(2).

# ***Education Rights Holders***

Even if a child does not need special education, it is important to have an appropriate education rights holder. The ERH is also necessary to make key decisions about general education issues like:

- School enrollment
- Graduation under AB 167/216
- School of origin decisions

DOES A CHILD NEED SPECIAL  
EDUCATION?

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## ***What can you do?***

- Look for signs of disability
- Collect and review records
- Request a special education assessment
- Ask the minor's attorney to refer the child to the 317(e) panel or refer caregiver to outside agencies.

# *Signs of Disability*

- Poor grades or attendance
- Poor standardized test scores
- Problems with memory or attention
- Difficulty with classroom activities such as writing, reading or doing math
- Behavior problems, such as acting out when frustrated or being defiant
- Social or emotional problems
- Speech and language problems, such as poor vocabulary, sentence structure, or problems pronouncing words/sounds

# REQUESTING RECORDS

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# ***Request Records***

- Every time you receive a new child in your caseload, it is important to know whether that student is currently eligible for special education and whether she *should* be eligible.
- It is best practice to request education records, particularly from the student's current school, to identify if the student is eligible or should be eligible, and will help you flag other general education issues.
- See Records Request Handout.

# ***Records Requests***

- Schools must share education records with social workers.

*Cal. Educ. Code § 49076*

- Once an education record is requested, schools must respond within five (5) days by providing the records or stating that they do not have any records. *Cal. Educ. Code § 56043(n)*

- If you have not received any records by the 5<sup>th</sup> business day, call the school to follow up and remind them of their obligation.

# REQUESTING ASSESSMENTS

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# *Requesting An Assessment*

- What is the standard for assessing a child for special education? A suspected area of disability. This is a very low standard, requiring only a suspicion that a disability may be preventing the child from accessing his or her education. *Cal. Educ. Code § § 56301, 56320*
- Who can refer a child for a special education assessment? Anyone. *Cal Educ. Code § 56029,*

# ***What Can You Do? Request an Assessment***

- How do you make the request?
  - Submit the request in writing.
  - See Handout: Assessment Request
- What should the assessment request include?
  - Identify the suspected disability (i.e. areas of educational concern)
  - Identify assessments needed
  - ERH contact information

# ***Assessment Requests Can Be Simple***

1/31/14

ABC School

123 Cherry Lane

Re: Ja'ron, DOB 1/1/1

Principal Lopez,

I am Ja'ron's social worker and I am requesting a comprehensive psycho-educational assessment and an educationally related mental health services assessment to see if he is eligible for special education. He is failing several classes and his report card says he's reading far below grade level. He shows signs of depression like sleeping through school and may be self-medicating with drugs. He changed homes twice this year, and is struggling to adjust. Because of his academics and his emotional trouble, I suspect he may have a learning disability, an attention disability, or an emotional disturbance.

Please send an assessment plan to his education rights holder, Johnny James, at 567 Apple Ave., LA, CA within 15 days. Attached is a JV-535 showing that Johnny James is Jimmy's education rights holder. Please also send a copy to me.

Best,

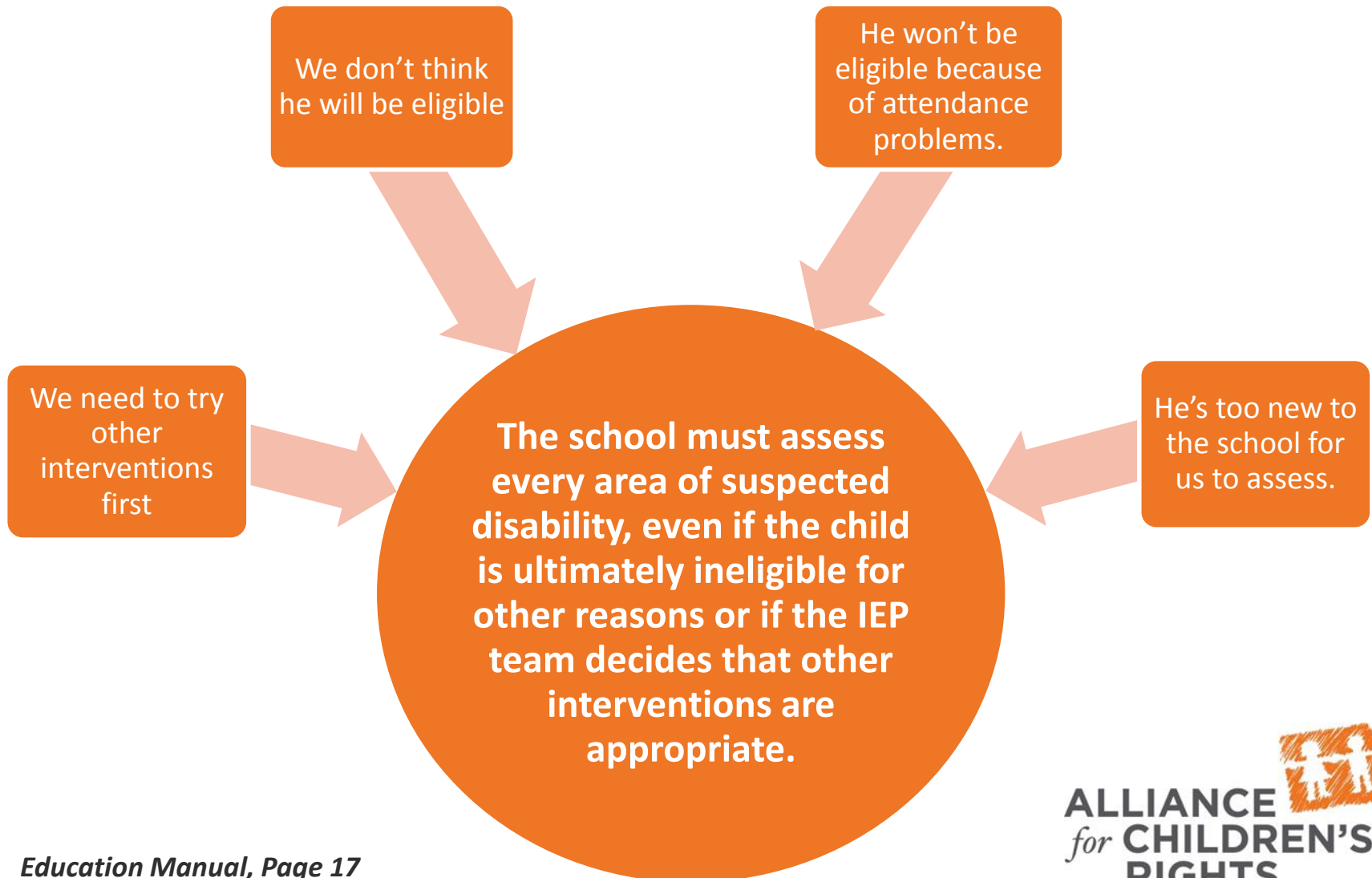
# *Types of assessments:*

- Psycho-Educational, including:
  - Cognitive/IQ
  - Academic
  - Psychological processing including visual, auditory, sensory motor and attention processing
  - Social, emotional, behavioral
  - Health and physical development including hearing and vision
- Speech and language by a speech and language pathologist
- Fine motor and/or sensory processing by an occupational therapist
- Functional Behavior Assessment
- Educationally Related Mental Health Services (ERMHS) or Educationally Related Intensive Counseling Services (ERICs) Assessment.

# Assessment Timeline

- From the date the school receives the written assessment request, it has 15 calendar days respond in writing. *Cal. Educ. Code §§ 56043(a), 56321.*
- Assessment Plan:
  - The Assessment Plan must include all assessments requested. *Cal. Educ. Code § 56321*
  - Only the ERH can consent to the special education assessments.
  - The ERH has 15 calendar days to review, sign and return the Assessment Plan to the school. *Cal. Educ. Code § 56043(b).*
  - The school has 60 calendar days from the date the signed assessment plan was received to complete the assessments and hold an IEP meeting. *Cal. Educ. Code § 56043(c).*
- Written Refusal Letter:
  - If the school refuses to asses, it must identify in writing:
    - Which assessment(s) are being denied
    - Why the assessment(s) are being denied
    - What interventions will be used in lieu of conducting the assessments

# Common Assessment Refusals & Rebuttal



## ***Refer for Additional Help***

- 317(e) Panel
- Outside Agencies
  - Alliance for Children's Rights
  - Public Counsel
  - Learning Rights Law Center
  - Disability Rights Legal Center

# THE IEP MEETING

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# 6 kinds of IEPs

1. **Initial**—Determines eligibility for special education.
2. **Annual**—An IEP must be held at least once a year.
3. **Triennial**—Every 3 years, schools must conduct new assessments to determine a student's progress, and discuss those assessments at an IEP meeting.
4. **Amendment/Addendum**—The ERH or school can request a meeting at any time to modify an existing IEP. After written ERH request, the IEP must be held within 30 calendar days.
5. **30-Day/Transfer**—An IEP must be held within 30 calendar days of transfer to a new school district to discuss placement options and services within the new district. District must implement the old IEP and provide 'comparable' services for the first 30 days.
6. **Manifestation Determination IEP**—If a child with an IEP is suspended for 10+ days in a school year or is recommended for expulsion, a manifestation determination IEP meeting must be held. If the behavior was closely related to the disability, no further discipline can happen and the school must conduct a behavior assessment. Schools must notify you of a manifestation IEP.

*Cal. Educ. Code §§ 48915.5, 56043, 56302.1, 56341.1*

# ***Who should attend IEP meetings?***



## **Required Members**

- Education Right Holder
- General Education Teacher
- Special Education Teacher
- Administrative Designee
- Any person who has assessed the child or who provides services, if those services are being discussed

*Cal. Educ. Code § 56341*

## **Optional Members**

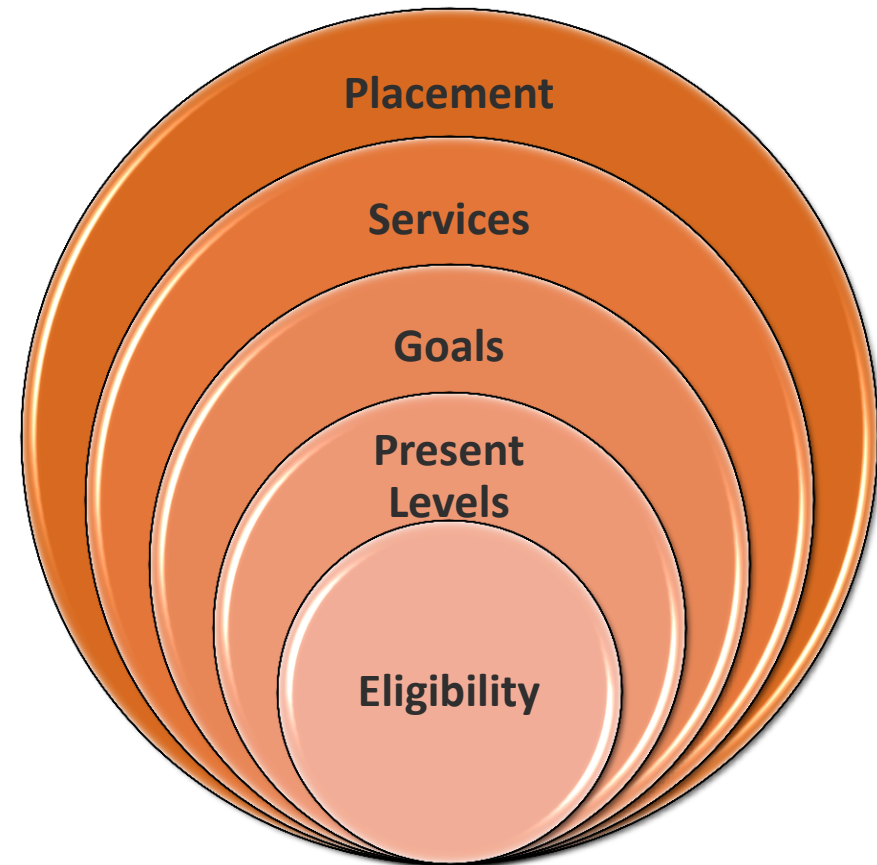
- Parent or current caregiver (if not ERH)
- School Psychologist
- Social Worker
- WRAP team member or outside therapist
- Student (depending on age)
- Other school personnel who provide services (e.g. occupational therapist)

# ***What happens at the IEP meeting?***

The Written IEP includes

5 main components:

1. Statement of Eligibility
2. Present Levels of Performance
3. Annual Goals and Objectives
4. Statement of Services
5. Statement of Placement



# Eligibility

## Categories

- Other Health Impairment (OHI)
- Emotional Disturbance (ED)
- Specific Learning Disability (SLD)
- Speech & Language Impairment (SLI)
- Autism (AUT)
- Intellectual Disability (ID)
- Deaf/Hard of Hearing (DHH)
- Visual Impairment (VI)
- Traumatic Brain Injury (TBI)
- Orthopedic Impairment (OI)
- Multiple Disabilities (MD)

*Cal. Educ. Code § § 56026, 56333, 56337, 56447.5; 5 CCR § § 3030, 3031*

*Education Manual, Page 18*

## Basics

- Only one category needs to be present in order to be found eligible for special education services
- The eligibility category does not limit the student to any specific placement, service or therapy

# ***Present Levels of Performance & Annual Goals and Objectives***

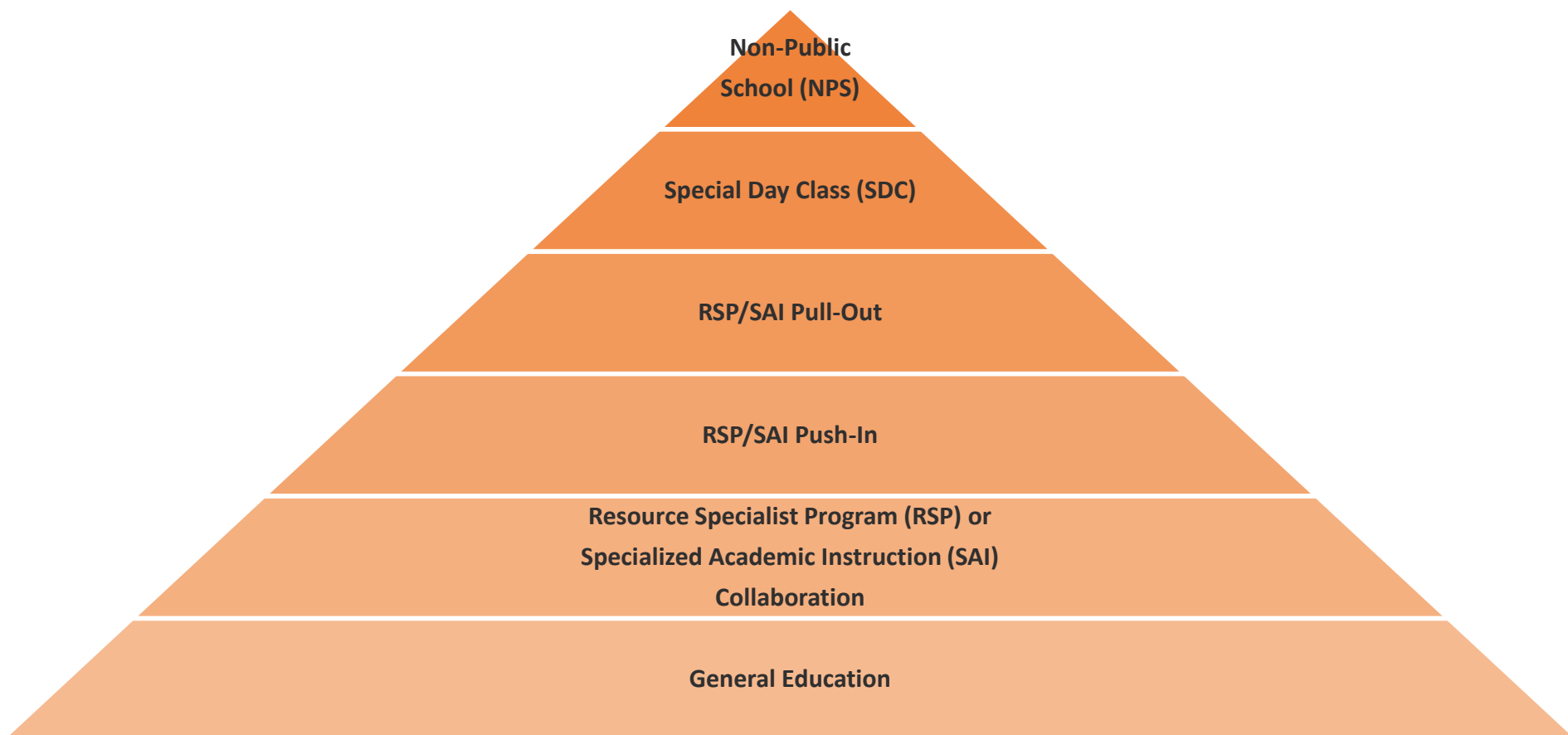
- PLOP: Indicates how the child is currently doing in all areas of deficits.
- G&O: Indicates what the IEP team will work on for the next year to help the child perform better in school.
- PLOPs and G&Os should be Understandable, Measurable, Specific and Comprehensive
- Example:
  - Billy is having trouble communicating. **vs.** Billy has limited expressive vocabulary & is not able to express his feelings with words.
  - Billy will use more words to express himself. **vs.** Billy will use 2 to 3 word phrases to communicate his needs and feelings 80% of the time.

# PLACEMENT & SERVICES

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# ***Placement Options***

Children with disabilities should be placed in the Least Restrictive Environment (“LRE”). *Cal. Educ. Code § 56040.1*



# Services

- **Speech and language therapy:** Helps children develop expressive and receptive language skills and improve their pronunciation of sounds/words.
- **Occupational therapy:** Helps improve fine motor and visual motor skills necessary for writing, drawing, copying and cutting.
- **Adapted physical education:** Helps children who have difficulty with motor skills to be able to participate in PE.
- **Physical therapy:** Helps children with physical limitations access their school environment.
- **Psychological (DIS) counseling, ERMHS/ERICS therapy, or behavioral support services:** Help children develop social and emotional coping skills and improve behavior through school-based (and school provided) supports.
- **Transportation:** For kids whose placement puts them in a school other than their home school or if a student's disability limits ability to get to school.
- **Extended School Year Services:** Special education summer school.

# IEP CONSENT

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# IEP Consent

- The IEP is a contract.
- The ERH can agree with none, all, or certain portions of the document.
- If the ERH does not sign an IEP, the prior IEP remains in place.
- Make sure any disagreement is noted in writing on the IEP document.



# ***What Can You Do?***

- Request IEP meetings, particularly when a child moves
- Coordinate attendance of important people
- Attend and participate: ask for specific services
- Help the school get the necessary consent
- Make the school follow-through

# INFORMATION SHARING

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# *Information Sharing*

- The lack of communication between schools and other adults involved in the lives of foster youth creates huge educational barriers.
- *Examples:*
  - The school would like to assess Juan but doesn't know who the ERH is to get consent.
  - The school believes that Sarah, who refuses to complete work, is simply acting out. In reality, she is suffering from PTSD after being kidnapped and taken to Mexico, where she missed a year of school and fell behind.
  - The school sends report cards and IEP progress reports to biological parent, who has no involvement in the child's life.

# ***Information Sharing-What Can You Do?***

- Share appropriate information with the school. Help facilitate communication between the school and the child's caregiver or education rights holder.
- Seek counsel when you think it might be helpful to share sensitive information with the school, such as information relating to the child's placement and delinquency history.
- You are uniquely positioned to facilitate the communication and understanding necessary to help foster youth with disabilities to succeed in school.

