

# I THINK I NEED SPECIAL EDUCATION SERVICES. WHAT DO I DO?

## AM I ELIGIBLE FOR SPECIAL EDUCATION?

In order to qualify for special education (SPED) services, you must be found to be an individual with exceptional needs or a child with a disability (Cal. Educ. Code §56026, 20 U.S.C. §1401(3), 29 U.S.C. §794, 34 C.F.R. §104.3(j)).

If you having any of the following and it causes you to need support services, then you qualify for SPED services under the Individuals with Disabilities Education Act (IDEA):

- mental retardation
- hearing, speech/language, visual impairment
- emotional disturbance
- orthopedic impairment
- autism
- traumatic brain injury
- other health impairment
- specific learning disabilities

(20 U.S.C. §1401(3)).

If you have a physical or mental impairment that substantially impacts a major life activity, like learning, then you qualify for SPED services under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794, 34 C.F.R. §104.3(j)&(l)). Impairments include things like asthma, diabetes, or attention deficiency disorder if they substantially impact your ability to learn.<sup>i</sup>

As you can see, these criteria are very general, so if you think you need SPED services, get assessed to see if you qualify.

## WHO CAN REQUEST THAT I BE ASSESSED TO DETERMINE IF I AM ELIGIBLE?<sup>ii</sup>

In order to receive SPED services, you must be assessed to make sure you qualify and also to determine what types of services will help you succeed in school. Your parent/guardian, including a foster parent, a teacher or anyone providing services to you like a mental health counselor or probation officer can request, in writing, that you be assessed to determine whether you are eligible (Cal. Educ. Code §56029, 20 U.S.C. §1414(a)(1)(B)). If you think you need SPED services, you can ask one of the above adults to make a written request for you.

## HOW LONG DOES IT TAKE TO RECEIVE SERVICES ONCE SOMEONE REQUESTS THAT I BE ASSESSED?

As soon as a written request for assessment is made, your local educational agency (LEA) (usually your school district) has 15 days to give your parent/guardian<sup>iii</sup> an assessment plan that explains their plan to determine if you are eligible to receive SPED services (Cal. Educ. Code §§56321(a)&(b)).

Your parent/guardian has at least 15 days to consent to the assessment plan or express concerns (§56321(c), 20 U.S.C. §1414(a)(1)(D)). Once your parent/guardian consents, your LEA has 60 days to implement the plan to determine whether you qualify for SPED services and if you qualify, to hold an individualized education program (IEP) meeting (Cal. Educ. Code §§56302.1, 56344(a), 20 U.S.C. §1414(a)(1)(C)).

Your LEA cannot decide that you are ineligible to receive SPED services until it has done an assessment (20 U.S.C. §1414(c)(5), 30 C.F.R. § 300.305(e)).

## WHAT IF MY PARENT/GUARDIAN DOESN'T WANT TO BE INVOLVED?

If your parent/guardian doesn't consent to the assessment plan and does not work with your LEA to come up with a modified plan, your LEA may, but does not have to, pursue the initial assessment if it prevails in a due process hearing (Cal. Educ. Code §§56321(c)(2), 56506(e), 56501(a)(3), 20 U.S.C. §1415, §34 C.F.R. 300.300(a)(2)).

Furthermore, if you are a ward of the State and not living with your parent/guardian, your LEA does not need to obtain your parent/guardian's consent for the initial evaluation if it cannot locate your parent/guardian, if your parent/guardian's rights have been terminated, or if you have an education representative who consents to the evaluation (20 U.S.C. §1414(a)(1)(D), §34 C.F.R. 300.300(a)(2)).

## WHAT HAPPENS IF I AM SUSPENDED OR RECOMMENDED FOR EXPULSION?

If you qualify for SPED services or think that you might, see our fact sheet "Know Your Rights: Suspension/Expulsion for Students with Exceptional Needs or a Disability."

<sup>i</sup> All students who qualify under IDEA also qualify under Section 504, but some students only qualify under Section 504. So, students can have both an IEP and a 504 Plan.

<sup>ii</sup> The following pertains to qualification for SPED services under IDEA. The processes to qualify under Section 504 vary by district, but are often the same or similar to the ones for IDEA.

<sup>iii</sup> If your parent/guardian does not hold your education rights, then references in this section to parent/guardian are to whoever holds your education rights.



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