



DESERT / MOUNTAIN  
CHARTER SELPA

## Chapter 2: Assessment and Evaluation

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## Introduction

Prior to any action taken with respect to the initial placement of a child with a disability, an individual assessment of the child's educational needs must be conducted by qualified staff in accordance with requirements specified by the Education Code. No assessment will be conducted without a signed completed Assessment Plan (D/M 66) unless the Charter Local Education Agency (LEA) has prevailed in a due process hearing regarding the assessment or the child is required to have an assessment as part of an expulsion process.

This section contains the requirements for evaluation and assessment of children who are not progressing in the general education program, even though modifications and accommodations have been provided. Staff or parents may request a child be assessed in all areas of suspected disability. Following a signed Assessment Plan (D/M 66) giving consent, the evaluation process begins. The initial evaluation and reevaluation are broad terms that apply to all individual testing, which may include observation and other data-gathering activities that result in decisions about a child's educational needs. Generally, evaluation may be defined as the process through which the child's eligibility, educational needs, and present levels of performance are determined. It provides information that can be used by teachers and other specialists to determine how to develop a program for a child with a disability so that he/she derives educational benefits.

Each Charter LEA shall conduct, on at least an annual basis, a review of all Individualized Education Programs (IEPs). Procedures shall provide for the review of the child's progress and the appropriateness of placement and services, allowing for any necessary revisions. Assessments shall be conducted annually, as necessary, to provide the IEP team sufficient information to review the child's progress and the appropriateness of placement and services. Formal assessments shall require written parental consent.

## Section A – Areas of Suspected Disability

*California Education Code § 56320(f). The pupil is assessed in all areas related to the suspected disability including, if appropriate, health and development, vision, including low vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social emotional status. A developmental history shall be obtained when appropriate. For pupils with residual vision, a low vision assessment shall be provided in accordance with guidelines established pursuant to Section 56136. In assessing each pupil under this article, the assessment shall be conducted in accordance with Sections 300.304 and 300.305 of Title 34 of the Code of Federal Regulations.*

*California Education Code § 56322. The assessment shall be conducted by persons competent to perform the assessment, as determined by the local educational agency.*

**California Education Code § 56327.** *The personnel who assess the pupil shall prepare a written report, or reports, as appropriate, of the results of each assessment. The report shall include, but not be limited to, all the following:*

- (a) Whether the pupil may need special education and related services.*
- (b) The basis for making the determination.*
- (c) The relevant behavior noted during the observation of the pupil in an appropriate setting.*
- (d) The relationship of that behavior to the pupil's academic and social functioning.*
- (e) The educationally relevant health and development, and medical findings, if any.*
- (f) For pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services.*
- (g) A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate.*
- (h) The need for specialized services, materials, and equipment for pupils with low incidence disabilities, consistent with guidelines established pursuant to Section 56136.*

## **Section B – Timelines**

Upon receipt of a signed assessment plan, the assessment team has 60 calendar days, not counting days between the child's regular school sessions, terms, or days of school vacation in excess of five school days, in which to conduct an appropriate evaluation and hold an IEP meeting to discuss assessment results and develop an IEP.

1. The 60-day timeline begins the day the signed assessment plan is received by the Charter LEA staff.
2. If an assessment plan is signed within 20 days of the end of the traditional school year, the IEP meeting may be held up to 30 days after the start of the following school year.
3. Within 15 days of the receipt of the referral for assessment, the appropriate IEP assessment team members shall prepare and mail or personally deliver to the parent the following:
  - The completed Assessment Plan (D/M 66); and
  - A copy of the Special Education Procedural Safeguards/Parents' Rights (D/M 77).

*NOTE: The 15 days does not include days between the child's regular school sessions or days of school vacation in excess of five school days. The assessment plan shall be developed within 10 days after the beginning of the regular school year for whom a referral has been made 10 days or less prior to the end of the regular school year. In the case of school vacations, the 15-day timeline will recommence on the date the child's regular school days reconvene. The parent may agree, in writing, to an extension.*

4. The parent shall have at least 15 days from the receipt of the assessment plan to arrive at a decision. Assessment may begin immediately upon the Charter LEA's receipt of the parent's written consent.

The case manager is responsible for distributing copies of the assessment plan to all persons named as assessors on the plan. This should be done as soon as possible to allow all assessors ample time to evaluate the child.

## **Section C – Development of the Assessment Plan**

As part of an initial assessment or reassessment, the Charter LEA shall review existing assessments and information, and on the basis of that review, and with input from the parent, complete the Triennial Assessment Determination Form (D/M 119), identify what assessments, if any, are needed to determine eligibility, present levels of performance, the child's need for special education and related services, and any modifications needed to enable the child to meet the goals and to participate in the general curriculum.

The assessment plan document must:

- Be in the primary language of the parent (or other mode of communication used by the parent) unless to do so is clearly not feasible;
- Include the child's primary language and level of English proficiency; and
- Include a description of any recent assessments conducted, including any available independent assessments and any assessment information the parent requests to be considered, and information indicating the child's primary language and the child's language proficiency in the primary language.

As part of the assessment plan, the parent shall be informed that upon completion of the administration of tests and other assessment materials, an IEP team meeting shall be scheduled to determine whether the child is a child with a disability and to discuss the assessment(s), the educational recommendations, and the reasons for the recommendations.

## **Section D – Assessment Requirements**

An individual comprehensive assessment of a child must be conducted according to the following Education Code requirements:

1. Assessment materials and procedures must be selected and administered so as not to be racially, culturally, or sexually discriminatory.
2. Tests and other assessment materials must meet all of the following requirements:
  - (a) Are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible;
  - (b) Have been validated for the specific purpose for which they are used;
  - (c) Are administered by trained personnel in conformance with the instructions provided by the producer of the tests and other assessment materials, except that individually administered tests of intellectual or emotional functioning shall be administered by a credentialed school psychologist; and
  - (d) Are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
3. Tests and other assessment materials include those tailored to assess specific areas of educational need, and not merely those which are designed to provide a single general intelligence quotient.
4. Tests are selected and administered to best ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude, achievement level, or any other factors the test purports to measure and not the child's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure.
5. No single measure for evaluation will be used as the sole criterion for determining an educational program for a child with a disability.
6. The child is assessed in all areas related to the suspected disability including, if appropriate, health and development, vision (including low vision), hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. A developmental history is obtained, when appropriate. For children with residual vision, a low vision assessment shall be provided in accordance with guidelines established pursuant to Education Code § 56136.
7. The assessment of a child, including the assessment of a child with a suspected low incidence disability, shall be conducted by those persons knowledgeable of that disability. Special attention shall be given to the unique educational needs, including, but not limited to, skills and the need for specialized services, materials, and equipment consistent with guidelines established pursuant to Education Code § 56136.

8. Assessment must be conducted by those competent to perform the assessment, as determined by the Charter LEA, County Office, or Charter SELPA.
  - (a) Any psychological assessment must be conducted by a credentialed school psychologist, capable of assessing cultural and ethnic factors pertaining to the child being assessed;
  - (b) Any health assessment must be conducted by a credentialed school nurse or physician, capable of assessing cultural and ethnic factors pertaining to the child being assessed.
9. Assessment must include observations of the child according to the following criteria:
  - (a) For a child with suspected learning disabilities, at least one person other than the child's regular teacher shall observe his/her performance in the regular classroom setting; or
  - (b) If the child is younger than four years, nine months or is out of school, an assessment team member shall observe him/her in an environment appropriate for a child.
10. Vision and hearing screenings must be conducted for all initial assessments and three-year (triennial) reevaluations, unless parental permission was denied.

*Title 5 of the California Code of Regulations § 3027. All pupils being assessed for initial and three-year review for special education services shall have had a hearing and vision screening, unless parental permission was denied.*

11. The assessment must include consideration of information and private assessments provided by the parent.
12. Assessments must include information related to enabling the child to be involved in and progress in the general curriculum.
13. Charter LEAs must ensure that Intelligence Quotient (IQ) tests are not administered to African-American children. Alternative assessments to IQ tests will be used to obtain information about these students' cognitive development.

Under the Larry P. v. Riles decision of 1979, assessment of intelligence of African-American children referred for special education is not allowed. Additionally, there is no criterion or a process for selecting acceptable instruments.

According to the California Department of Education (CDE), Special Education Division, African-American students cannot be assured that decisions about their eligibility for special education will be based on technically or educationally-adequate instruments. To provide equal treatment and effective educational decisions for African-American children in special education, according to a presentation to the Advisory Committee on Special Education, November 20, 1998:

*The California Association of School Psychologists (CASP) in cooperation with the Special Education Division of the California Department of Education asks the Advisory Commission on Special Education to participate in establishing criteria and a committee to select acceptable tests or procedures.*

The assessment of intelligence for special education was reaffirmed in the Individuals with Disabilities Education Act (IDEA) 1997 and continues to be required under California education regulations. Intelligence is assessed for education as identification and documentation of an educational disability as required for special education services. However, identification of all educational disabilities does not require the assessment of intelligence, and several of the educational disabilities include the term intellectual disability or a synonym of the concept. Terms of general or specific intellectual abilities are found as special education service requirements for specific learning disability, intellectual disability, emotional disturbance, and traumatic brain injury.

#### Implications for California Speech Language Pathologists – Toya Wyatt Article

Although the original ruling applies to the use of standardized IQ tests with African-American children, many standardized speech and language tests also fall under the Larry P. mandate. This is because they directly or indirectly purport to measure IQ and their construct validity is partially or fully determined through correlations with other IQ tests.

A supplement to these Charter SELPA guidelines will address information regarding assessment for intelligence of African-American children as it becomes available.

See Appendix A for an opinion letter regarding the propriety of administering IQ tests to African-American students.

14. In conducting an assessment, the Charter LEA must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child including information provided by the parent that may assist in determining whether the child is a child with a disability and the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general curriculum.
15. English Learners (ELs)

*California Education Code § 56320(b). Tests and other assessment materials meet all of the following requirements: (1) are provided and administered in the language and form most likely to yield accurate information on what the pupil knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer as required by Section 1414(b)(3)(A)(ii) of Title 20 of the United States Code.*

*Title 5 of the California Code of Regulations § 3001(q). "Primary Language" means the language other than English, or other mode of*

*communication, the person first learned, or the language which is used in the person's home.*

According to the California Department of Education publication, Guidelines for Individual Evaluations of California Students with Disabilities, Birth Through Age Twenty-One, 1999, changes occurred in IDEA 1997 that relate to evaluation requirements for English learners who are suspected of having a disability. Per that document:

- a. The definition of native language was changed in IDEA 1997 to refer to the language normally used by the parents of the English-learning child. If a disability is suspected, school districts should provide and administer tests and other evaluative procedures using the child's native language or other mode of communication, unless it is clearly not feasible to do so.
- b. Procedural safeguards during the evaluation process are the same for all students, with these additional requirements: (1) the plan for evaluation shall be provided in the native language of the parent or other mode of communication used by the parent, unless doing so is clearly not feasible; (2) the plan for evaluation must indicate the student's primary language; and (3) procedures and test materials for use with pupils having limited English proficiency, as defined in Education Code § 52163(m), shall be in the individual's primary language.
- c. To consider whether an English language learner suspected of having a disability is eligible for special education, the IEP team determines whether the learning disability is demonstrated in his/her native language and in English. Test procedures and interpretation of results must cover the child's achievement in the district curriculum and in the district-adopted sheltered or structured English immersion program. In addition, the IEP team must consider whether a lack of instruction in reading or mathematics, temporary physical disabilities, social maladjustment, or environmental, cultural, or economic factors contribute to the child's performance.

## **Section E – Response to Intervention (RtI) and Progress Monitoring Data**

Response to Intervention (RtI) is a general education approach of high-quality instruction, early intervention, and prevention and behavioral strategies aligned with Multi-Tiered Systems of Support. In the context of an RtI prevention model, progress monitoring is used to assess a child's progress or performance in areas in which he/she were identified by universal screening as being at-risk for failure. RtI is a process that is highly dependent on accurate and timely data collection. The use of informal assessments during the course of instruction can provide teachers with additional information on which to base instructional decisions. Teachers may use progress monitoring to design more effective, individualized instructional programs for struggling learners.

The following are important components in the RtI data collection process:



- Interventions implemented were scientifically research-based and implemented with fidelity as documented by data sheets, computer records, or other permanent products;
- Progression Monitoring: Documentation supports that data was collected at reasonable intervals;
- Data: Identify the extent to which the child exhibited adequate progress based on local or national norms;
- Systemic Observation(s): Observe the child and document his/her interaction with teacher(s) in the environment(s) in which the he/she is experiencing difficulties;
- Student Interview: Conduct a student interview, as appropriate, to obtain the child's perceptions of his/her academic, behavioral, and social performance; and
- Core Teacher(s) Interview: Talk to the child's core teachers to obtain information regarding referral concerns and the child's academic performance, behavior, and peer interactions.

## **Section F – Assessment Reports**

Personnel who assess children suspected of having a disability shall prepare a written report, or reports, as appropriate, of the results of each assessment. The report shall include, but not be limited to, all of the following:

1. Whether the child may need special education and related services;
2. The basis for making the determination based on the eligibility criteria;
3. The relevant behavior noted during the observation of the child in an appropriate setting;
4. The relationship of that behavior to the child's academic and social functioning;
5. The educationally-relevant health and development, and medical findings, if any;
6. For a child with a learning disability, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services;
7. A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate;
8. The need for specialized services, materials, and equipment for a child with a low incidence disability, consistent with guidelines established pursuant to Education Code § 56136;
9. Information related to enabling the child to be involved in and progress in the general curriculum or, for a preschool child, to participate in appropriate activities;

10. Documentation of the language of assessment for a child whose primary language is not English, and the results of tests administered in the child's primary language by qualified personnel;
11. A statement regarding the validity of the assessment if the assessment was administered through an interpreter; and
12. A copy of the assessment report shall be given to the parent. Best practices suggest that the parent receive the report in sufficient time prior to the IEP meeting to read and assimilate the information.

## **Section G – Assessment of Students with Specific Learning Disabilities (SLD)**

For a child suspected of having a specific learning disability (SLD), the documentation of the determination of eligibility must contain a statement that the learning disability is not primarily the result of visual; hearing; motor disability; intellectual disability; emotional disturbance; cultural, environmental or economic disadvantage; and that the disability is due to a disorder in one or more of the basic psychological processes (Complete SELPA form D/M 154 – Specific Learning Disability).

When standardized tests are considered to be invalid for a specific child, the discrepancy between ability and achievement shall be measured by alternative means as specified on the assessment plan. Each member conducting the assessment must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the member must submit a separate statement presenting the member's conclusion.

Additional considerations for a child who is:

1. Suspected of having a specific learning disability
  - (a) At least one member of the IEP team shall be qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher; and
  - (b) At least one team member other than the child's general education teacher shall observe the child's academic performance in the general classroom setting. In the case of a child who is less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.
2. Receiving postsecondary services
  - (a) The LEA will invite the child to attend the IEP meeting if the purpose of the meeting will be the consideration of the needed transition services for the child. If the child does not attend the IEP meeting, the LEA shall take reasonable steps to ensure that the child's preferences and interests are considered; and

- (b) The LEA shall invite, with parental permission, a representative that is likely to be responsible for providing or paying for transition services. If the participating agency does not attend the IEP meeting, the LEA is no longer required to take other steps to obtain participation of an agency in the planning of any transition services (see Title 34 of the Code of Federal Regulations § 300.321(b)(1) and (3); Title 20 of the United States Code § 1414(d)(1)).

### 3. Receiving a functional behavioral analysis assessment

- (a) The IEP team will review the results of the functional behavioral analysis assessment and, if necessary, develop a behavioral intervention plan (BIP).

## **Section H – Annual IEP Review**

The IEP team shall meet at least annually to review the child’s progress, the IEP, including whether the annual goals for the child are being met, the appropriateness of placement, and to make any necessary revisions.

The annual IEP review shall consist of the required IEP team members. Other individuals may participate in the annual review if they possess expertise or knowledge essential for the review.

An elementary Charter LEA shall notify a high school Charter LEA of all students placed in nonpublic school or agency programs prior to the annual review of the IEP for each child who may transfer to the LEA high school.

To assist in maintaining annual review schedules, it is recommended that teachers, psychologists, support staff, and site administrators receive appropriate lists of students that include the annual IEP review schedule.

All required components of parent notice and informed consent are to be included in the annual IEP review process.

## **Section I – Triennial IEP Review**

*California Education Code § 56381(a)(1). A reassessment of the pupil, based upon procedures specified in Section 56302.1 and in Article 2 (commencing with Section 56320), and in accordance with Section 1414(a), (b), and (c) of Title 20 of the United States Code, shall be conducted if the local educational agency determines that the educational or related service needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment, or if the pupil’s parents or teacher requests a reassessment.*

*(2) A reassessment shall occur not more frequently than once a year, unless the parent and the local educational agency agree otherwise, and shall occur at least once every three years, unless the parent and the local educational agency agree,*

*in writing, that a reassessment is unnecessary. If the reassessment so indicates, a new individualized education program shall be developed.*

State and federal laws and regulations require that children with disabilities receive a reevaluation at least once every three years or more frequently if conditions warrant or if the child's parent or teacher requests an assessment. A reevaluation shall not occur more frequently than once a year, unless the parent and the Charter LEA agree otherwise, and shall occur at least once every three years, unless the parent and the Charter LEA agree, in writing that a reevaluation is unnecessary. The date of the IEP meeting following the three-year reevaluation must occur on or before the calendar date that is two years and 364 days from the initial IEP meeting (or previous triennial). If the reassessment so indicates, a new IEP shall be developed (see SELPA form D/M 119 – Triennial Assessment Determination Form).

As part of any reevaluation, the IEP team and other qualified professionals, as appropriate, shall do the following:

1. Review existing assessment data, including assessments and information provided by the parents of the child;
2. Review current classroom-based local or state assessments and classroom-based observations;
3. Review teacher and related service(s) provider(s) observations; and
4. Ensure that a vision and hearing screening is completed, unless the parent denies permission.

On the basis of the information obtained from the above sources, the team members shall identify what assessments, if any, is needed to determine:

1. Whether the child continues to have a disability;
2. The present levels of performance and the educational needs of the child;
3. Whether the child continues to need special education and related service; and
4. Whether any additions or modifications to the special education and related services are needed to enable the child to meet the annual goals included in the child's IEP and to participate, as appropriate, in the general curriculum.

According to California law, no reevaluation shall be conducted unless the written consent of the parent is obtained prior to the reevaluation. However, parental consent is not required for a review of existing data.

## **Implementation Procedures**

In anticipation of the triennial review date, the special education case manager will consult with relevant general education teachers and triennial assessment team members to examine what types of data are needed for the determination of a disability and other key components of the IEP review. In cases where comprehensive assessment data may not be required, a consultation should be facilitated by the case manager completing the SELPA's Triennial Assessment Determination Form (D/M 119) and submitting it to assessment team members for input. If all members of the assessment team agree that a comprehensive assessment is not required, a parent letter is sent, along with the IEP Meeting Notification (D/M 67), which explains the abbreviated assessment process and the parent's right to request a comprehensive assessment.

When an abbreviated assessment is anticipated, it is recommended that the IEP team meeting be held 60 days prior to the triennial date. At the IEP meeting, the team reviews the Triennial Assessment Determination Form (D/M 119). If the parent requests a full evaluation at this time, this is documented on the IEP Meeting Notes (D/M 68N). A second IEP meeting is scheduled in these cases within 60 days in order to consider the comprehensive assessment results.

All members of the IEP team are required to submit reports regarding assessment findings, even if an abbreviated assessment has been conducted. Reports should summarize the information gleaned from the abbreviated procedures. In cases where no or any limited assessment has been conducted, the three-year reassessment report should make reference to the assessment information contained in previous psychoeducational evaluations.

The following are examples of children who should receive a comprehensive assessment at the time of their triennial review:

- Initially assessed three years prior;
- Not making expected progress in their special education programs;
- Have undergone a serious illness or serious life-changing event;
- A change of special education placement may be anticipated, including children anticipated to exit their special education program;
- Special education eligibility/disabling condition is no longer apparent;
- Previous assessments have contained unusual variability in results; or
- Under the age of nine years.

## **Section J – Protection in Assessment Procedures**

### **A. Conducting the Assessment**

1. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining:

- (a) Whether the child has a disability; and
  - (b) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities).
2. Do not use any single measure or assessment as the sole criterion for determining whether a child has a disability or for determining an appropriate educational program for the child; and
3. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical and developmental factors.

## **B. Selecting Tools**

Use assessments and other assessment materials that are:

1. Nondiscriminatory – selected and administered so as not to be discriminatory on a racial or cultural basis;
2. Provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
3. Valid and Reliable – used for the purposes for which the assessments or measures are valid and reliable;
4. Administered by trained and knowledgeable personnel;
5. Administered in accordance with any instructions provided by the producer of the assessments; and
6. Assessments are selected and administered to best ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

## **C. Comprehensive Assessment**

1. Ensure that the assessment is sufficiently comprehensive to identify all of the child's special education and related service needs whether or not they are commonly linked to the disability category in which the child has been classified; and

2. The child is assessed in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

#### **D. Emotional Disturbance**

Children with emotional disturbance are assessed in the same way that nondisabled children are assessed. Assessment options include: state and Charter LEA-selected assessments, other norm-referenced tests, curriculum-based assessments, and alternative assessments. If modifications or accommodations are needed for classroom work, then those modifications or accommodations are recorded on the IEP and are appropriate for the evaluation or assessment process. If the behavior is unpredictable, an alternative assessment can be determined by the IEP team and documented on the IEP.

*Title 5 of the California Code of Regulations § 3030(b)(4). The disability terms used in defining an individual with exceptional needs are as follows...(4) 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.*
- (F) *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 subdivision (b)(4) of this section.*

#### **E. Transfer Students**

Assessments of children who transfer from one public agency to another public agency in the same school year are coordinated with those child's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full assessments.

#### **F. Individuals Conducting the Assessments**

Assessments must be administered by qualified personnel who are competent in both the oral and sign-language skills and written skills of the child's primary language or mode of communication and have a knowledge and understanding of the cultural and ethnic background of the child. If it is clearly not feasible to do so, an interpreter must be used, and the assessment report must document this condition and note that the validity of the assessment may have been affected.

#### **G. Determining Mode of Communication and Cultural Identification**

1. Before the assessment, the case manager and assessment team members ensure that the child's native language, general cultural identification, and mode of communication are determined;
2. Native language is the primary language used in the child's home (i.e., language typically used for communication between the child and parents, siblings, and other family members);
3. English proficiency if the child has non-English speaking background, his/her proficiency in English must be determined (California English Language Development Test (CELDT));
4. Mode of communication – mode of communication is determined by assessing the extent to which the child uses verbal expressive language and the use of other modes of communication (e.g., gestures, signing, unstructured sounds) as a substitute for verbal expressive language; and
5. Note the language-use pattern, proficiency in English, mode of communication, and general cultural identification in the child's record. This information is used to design the assessment and develop and implement the IEP.



# APPENDIX A: Lozano Smith Opinion Letter

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## Lozano Smith Attorneys At Law

*Propriety of Administering I.Q. Tests  
to African-American Students*

Sarah E. Tigerman  
Attorney at Law  
E-Mail: [stigerman@lozanosmith.com](mailto:stigerman@lozanosmith.com)

March 18, 2002

### **OPINION LETTER**

XXXX XXXXXXXXXXXX, Director  
Special Education  
XXXXX Unified School District  
10615 Severan Street  
XXXXXXX, CA 90000

Re: Propriety of Administering I.Q. Tests to African-American Students

Dear XXXX:

You have requested our opinion regarding the effect of the Crawford v. Honig<sup>1</sup> decision on the propriety of using I.Q. testing with African-American students, assuming that the test is not culturally biased and is not used to identify students as “educable mentally retarded” (“EMR”). The short answer is that standardized tests of intelligence should not be used to determine special education eligibility for African-American students, pursuant to the stated policy of the California Department of Education (“CDE”). While the case law establishes that I.Q. testing of African-American students is only prohibited if used to determine placement in EMR classes or their “substantial equivalent,” the CDE’s policy is to prohibit the use of intelligence tests to assess special education eligibility of African-American students in general. Significantly, the CDE will make a finding of noncompliance if a district has used a prohibited test for assessing special education eligibility of African-American students.

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<sup>1</sup> 37 F.3d 485 (9<sup>th</sup> Cir. 1944).

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## **BACKGROUND**

### **The Larry P. Decision**

The seminal case on this matter is Larry P. v. Riles, 495 F. Supp. 926 (N.D. Cal. 1979) *aff'd* 79 F.2d 969 (9th Cir. 1986). In Larry P., a group of black students filed a lawsuit challenging the use of I.Q. tests to identify and determine placement in EMR classes. The court found that the use of standardized intelligence tests were racially and culturally biased, and issued a permanent injunction against the use of such tests “for the identification of black EMR children or their placement into EMR classes.” The court defined an EMR designation to include any “substantially equivalent” category, and defined EMR classes to include “other special classes serving substantially the same functions.” The court noted that EMR classes were considered “dead-end classes” that students were “unlikely to escape” to return to regular education classes. Although the EMR designation and classes were abandoned long ago, no published court decision has since interpreted the meaning of a “substantially equivalent” designation or class. Thus, there is limited guidance available regarding what constitutes the types of labels or class placements that should not be determined based on standardized I.Q. tests. The decision included a list of about seventeen (17) prohibited intelligence tests.

### **The Larry P. Settlement**

In 1986, after California had abolished the EMR category, the parties to the Larry P. case entered a settlement agreement to modify the earlier injunction. Specifically, the parties agreed to have the injunction expanded to preclude the use of I.Q. tests to assess African-American students for any special education identification or placement. The district court modified its 1979 injunction based upon the settlement agreement and entered a new judgment reflecting the modified injunction.

### **The Larry P. Task Force**

In response to the 1986 modification of the Larry P. injunction, the State Director of Special Education appointed a task force to develop recommendations regarding policies and alternative assessments to comply with the injunction. In 1989, the task force issued a lengthy report that included lists of prohibited intelligence tests. The task force lists included the tests from the Larry P. decision, as well as about twelve additional tests the task force suggested were subject to the injunction.

### **1992 Legal Advisory from the CDE**

Following the district court decision in the Crawford case, but before the appeal to the Ninth Circuit, the CDE issued an analysis of the district court order vacating the 1989 modification to the injunction. In this Advisory, the CDE noted that the original Larry P. decision concluded that I.Q. testes were racially and culturally biased and resulted in disproportionate placement of black students in “dead-end” classes. The CDE adopted criteria for complying with the original Larry P. injunction from the unpublished district court opinion. The CDE determined that all special education designations could result in the placement of African-American students in “dead-end” classes, because research showed that many black students of all designations ended up in special day classes and were seldom returned to regular education. The CDE took the position that alternative assessments should be used to assess African-American students for special education eligibility.

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## **CURRENT LAW AND POLICY**

### **Federal and State Law**

Both federal and state laws prohibit the use of evaluation materials that are racially or culturally biased for assessing special education eligibility. (See 20 U.S.C. § 1412(a)(6)(B); 34 C.F.R. § 300.532(a)(1)(i); Educ. Code § 56320(a).) The laws further require that any standardized tests be validated for the specific purpose used. (See 34 C.F.R. § 300.532(C)(1)(i); Educ. Code § 56320(b)(2).)

### **Crawford v. Honig**

In the Crawford case, a group of African-American students challenged the 1986 modification to the 1979 Larry P. injunction. The district court vacated the 1986 modification, leaving the original Larry P. injunction intact. The Ninth Circuit affirmed the district court's decision to vacate the 1986 modification because there were no factual findings to support the expansion of the injunction. The circuit court noted that the original Larry P. injunction was limited to a ban of I.Q. testing for placement of African-American students in EMR classes, and was not a determination of the validity of I.Q. testing for other purposes. The district court had also ordered further proceedings to determine the "substantial equivalent" to EMR classes. However, those proceedings were either not completed or did not result in a published opinion.

### **CDE Analysis of Crawford v. Honig**

Shortly after the Crawford decision was rendered in 1994, the CDE issued a memorandum reaffirming the 1992 Advisory and the CDE's position prohibiting intelligence testing for assessing special education eligibility of African-American students. The CDE confirmed that the original Larry P. injunction remained intact and was unchanged by the Crawford case. The memorandum emphasized that American versions of standard I.Q. tests had been found racially and culturally biased by the Larry P. court and that parental consent could not overcome the inherent bias in the tests. The CDE further asserted that, under state and federal law, it has the authority to prohibit the use of tests not validated for the purpose used, and made clear that no standardized intelligence test has been validated for determining special education eligibility for placement. The CDE views the statutory ban on use of discriminatory testing materials very broadly and not limited by the terms of the Larry P. injunction. Thus, the CDE's position is that I.Q. tests may not be used to identify African-American students as either mentally retarded or learning disabled.

### **The CDE Clarification**

In 1997, the CDE issued its latest memorandum on this topic – Clarification of the Use of Intelligence Tests with African-American Students for Special Education Assessment. In the Clarification, the CDE appears to have entirely ignored the Crawford decision and expressly states that districts will be found out of compliance for using any of the tests

XX. XXXX XXXXXXXXXXXX, Director  
March 18, 2002  
Page 5

listed in the Task Force report to assess black students for special education eligibility. The CDE Clarification further states that no standardized intelligence tests, even if not on the task force lists, should be used to assess African-American students' eligibility for special education. The CDE's reasoning remains based on the original Larry P. decision, in which the court found that all the I.Q. tests reviewed were culturally biased, and the statutory prohibition against using discriminatory evaluation materials for special education eligibility.

The 1977 Clarification represents the CDE's current policy regarding intelligence testing of African-American students, and remains the basis for non-compliance findings. Thus, while the case law creates a narrower prohibition regarding I.Q. testing of black students, school districts are cautioned to avoid standardized intelligence tests and use alternative assessments to evaluate special education eligibility and placement of African-American students.

Should you have any questions, or wish to discuss this matter further, please feel free to call.

Sincerely

**LOZANO SMITH**

**Sarah E. Tigerman**

# APPENDIX B: Observation OR Screening v. Assessment

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Peter K. Fagen  
Howard A. Friedman  
Howard J. Fulfrost  
Melanie A. Petersen  
Laurie S. Juengert  
Laurie E. Reynolds  
Deborah R. G. Cesario  
James B. Fernow  
Christopher D. Keeler  
Jan E. Tomlsy  
Jonathan P. Read  
Christopher J. Fernandes  
Ricardo R. Silva  
Wesley B. Parsons

Kimberly A. Smith  
Sophie Castillo Agopian  
Lee G. Rideout  
Shawn Olson Brown  
Angela Gordon  
Jennifer R. Rowe  
Joshua A. Stevens  
Allen J. Korenstein  
Emily E. Ross  
Rachel C. Disario  
Dean T. Adams  
Summer D. Dalessandro  
Vivian L. Haun  
Tiffany M. Santos  
L. Carlos Villegas  
Vivian R. Anaya  
Sarah S. Orman  
Susan Park  
Kerrie E. Taylor

Diana McDonough  
Of Counsel

May 1, 2007

Christopher J. Fernandes  
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Via E-Mail and U.S. Mail

Camille Giometti-May  
Assistant Superintendent/SELPA Director  
Yolo County Office Of Education  
1280 Santa Anita Court, Suite 100  
Woodland, CA 95776-6127

Re: Consent for Observations of Students

Dear Camille:

You have asked us for a legal opinion explaining the circumstances under which parental consent is required in order to observe a student. We understand that, in light of the changes to the federal regulation regarding observations, questions have arisen regarding the need for parental consent before observing a student.

Informed parental consent generally is required prior to any assessment or evaluation. A school district or local education agency, however, may conduct a "screening" of a student, as that term is defined under federal law, without parental consent. Thus, a school district must determine whether the observation constitutes a "screening" or an "assessment." If and when the observation constitutes an assessment, the school district must obtain informed parental consent before conducting the observation.

#### Distinction Between Screening and Assessment

It is clear that parental consent is not required before "[a]dministering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children." (34 C.F.R. § 300.300(d)(1); Cal. Educ. Code § 56321, subd. (f).) Beyond this situation, a school district must determine whether an observation constitutes a "screening" or an "assessment." The distinction is significant because a screening may be conducted without parental consent, though federal and state law require parental consent before an assessment may be conducted. (20

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May 1, 2007  
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U.S.C. § 1414(a)(1)(D)(i); 34 C.F.R. § 300.300(a)(1); Cal. Educ. Code § 56321(c).<sup>1</sup>

Staff should consider the following factors when determine whether an observation is a screening or an assessment: (1) The purpose of the testing; (2) whether the testing is used with an individual student or a group of students; and (3) the complexity of the testing measure.

The first distinction between screening and assessment lies in the purpose for which the student-related data is being gathered. Under Individuals with Disabilities Education Act of 2004 and its implementing regulations, "[t]he screening of a student by a teacher or specialist *to determine appropriate instructional strategies for curriculum implementation* shall not be considered to be an evaluation for eligibility for special education and related services." (20 U.S.C. § 1414(a)(1)(E); 34 C.F.R. § 300.302.) (Emphasis added.) In the comments to the Federal Regulations, the United States Department of Education emphasizes that screening "refers to a process that a teacher or specialist uses to determine appropriate instructional strategies." (Federal Digest, p. 46639.)<sup>2</sup> In other words, if an observation is used to gather data to help a teacher adjust his or her delivery of instruction in the classroom, that process may be a screening that does not require parental consent. However, if the observation is motivated by a suspicion that a student may have a disability or disability-related need— even if the observation is initiated solely to determine whether such suspicion warrants more formal assessments— that observation likely is an assessment.

In addition to the purpose for gathering the student data, other factors may help distinguish between a screening and an assessment. The Federal Regulations refer to an evaluation as an "*individual* assessment," but the comments to the Federal Regulations describe screening as "typically a relatively *simple and quick* process that can be used with *groups* of children." (Federal Digest, p. 46339.) (Emphases added.) Thus, an observation of an individual student is more likely to be an assessment than an observation of all students in a particular group (e.g. a school, grade or class). Similarly, the more time it takes to conduct the observation, and the more complex or intrusive the observation is, the more likely it is that the observation is an assessment rather than a screening.

This important distinction between a screening and an assessment applies equally to the new federal regulation clarifying the observation requirements relating to a determination of whether

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<sup>1</sup> California Education Code section 56302.5 provides that "the term 'assessment' shall have the same meaning as the term 'evaluation' in the Individuals with Disabilities Education Act, as provided in Section 1414 of Title 20 of the United States Code."

<sup>2</sup> IDEA 2004 requires the United States Department of Education to develop federal regulations to provide administrative interpretation. The federal regulations regarding IDEA 2004 are accompanied in the Federal Register by a section called "Analysis of Comments and Changes" which explains the rationales for recent changes in the regulations. While the comments to the regulations are not technically law, they are issued by the United States Department of Education to help detail how the regulations and IDEA 2004 should be applied.

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a student has a specific learning disability.<sup>3</sup> (34 C.F.R. § 300.310.) Specifically, Section 300.310(a) provides that: “The public agency must ensure that the child is observed in the child’s learning environment (including the regular classroom setting) to document the child’s academic performance and behavior in the areas of difficulty.” This provision does not authorize an assessment without parental consent; school district staff still must determine whether the required observation constitutes a screening or an assessment to decide whether parental consent is necessary.

In addition, the group determining whether a child has a specific learning disability must:

- (1) Use information from an *observation in routine classroom instruction and monitoring* of the child’s performance that was done before the child was referred for an evaluation; or
- (2) Have at least one member of the group . . . conduct an observation of the child’s academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with § 300.300(a), is obtained.

(34 C.F.R. § 300.310(b).) (Emphasis added.) This provision merely requires that, as part of an evaluation to determine whether a child has a specific learning disability, the group must use information from an observation of “routine classroom instruction and monitoring” that occurred prior to a referral for assessment or conduct an observation in the regular classroom after the assessment referral has been made and parental consent has been obtained. The observation of routine instruction could be part of a test or other evaluation that is administered to all children in a class or a “screening.” In that case, parental consent would not be required. This provision, however, does not contemplate or authorize an individualized observation motivated by a suspicion that a student may have a disability or to determine disability-related needs.

#### Informed Parental Consent

As explained above, if an observation constitutes an assessment, a school district must obtain parental consent prior to conducting that observation. Parental consent is required prior to conducting both initial evaluations and reevaluations, however when reevaluation is at issue, such consent need not be obtained if the district can demonstrate it took reasonable measures<sup>4</sup> to obtain such consent and the child’s parents failed to respond. (20 U.S.C. § 1414(c)(3).) A

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<sup>3</sup> Section 300.310 of Title 34 of the Code of Federal Regulations modified former Section 300.542.

<sup>4</sup> Reasonable measures include maintaining a record of the school district’s attempts to obtain consent, such as: Detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents and any responses received; and detailed records of those visits made to the parent’s home or place of employment and the results of those visits.



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May 1, 2007  
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parent's refusal to consent to an assessment does not constitute a failure to respond; therefore, a district cannot proceed with a reevaluation when a parent has refused to consent.

The Federal Regulations state that parental consent must be informed. (34 C.F.R. § 300.300.) In order to obtain informed parental consent, the district must be able to demonstrate that:

- a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
- b. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive.

(34 C.F.R. § 300.9.) If and when a school district obtains informed parental consent, it may proceed with its proposed assessments.

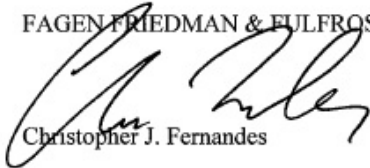
#### Conclusion

In summary, an observation constitutes an assessment if it is conducted for the purpose of determining eligibility for special education and/or needs relating to a disability, including appropriate accommodations, modifications or other special education support. Conversely, observations likely constitute screenings when they are relatively simple and quick, are administered to a group of students (e.g., an entire class), and are conducted for the purpose of refining instructional strategies for that group. If an observation constitutes an assessment the school district must obtain informed parental consent prior to conducting the observation.

If you have any further questions or concerns regarding this matter, please do not hesitate to contact me.

Sincerely,

FAGEN FRIEDMAN & FULFROST, LLP



Christopher J. Fernandes

CJF

Enclosure

## DISTINGUISHING BETWEEN SCREENING AND ASSESSMENT

### QUICK REFERENCE GUIDELINES

Staff should consider the following factors when determining whether a test is a screening or an assessment: (1) The purpose of the testing; (2) whether the testing is used with an individual student or a group of students; and (3) the complexity of the testing measure.

#### Characteristics of Screenings

- Administered to all students in class or school
- Administered to determine appropriate instructional strategies for curriculum implementation (i.e., a process that a teacher or specialist uses to determine appropriate instructional strategies)
- Simple and quick
- Routine part of class

#### Characteristics of Assessments

- Administered to an individual student
- Administered based on suspicion that a student may have a disability or disability-related need
- More complex and lengthy
- Initiated due to individualized concerns

If staff determines that an observation or test is a screening, parental consent is not required. If staff determines that the observation or test is an assessment, informed parental consent is required.

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# APPENDIX C: Triennial Assessment Determination Form (SELPA Form D/M 119)

DESERT/MOUNTAIN SPECIAL EDUCATION LOCAL PLAN AREA  
 DESERT/MOUNTAIN CHARTER SPECIAL EDUCATION LOCAL PLAN AREA  
 17800 HIGHWAY 18 • APPLE VALLEY, CA 92307  
 (760) 552-6700 • (760) 242-5363 FAX



## Triennial Assessment Determination Form

(To be completed prior to the Triennial due date to determine what assessments, if any, need to be conducted.)

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### STUDENT INFORMATION

Student Name: _____	Date of Birth: _____	Grade: _____
School Site: _____	LEA of Attendance: _____	LEA of Residence: _____
Triennial Due Date: _____		
Parent/Guardian/Surrogate contacted on: (Date) _____		
Method of Contact: <input type="checkbox"/> Phone Conference <input type="checkbox"/> IEP Meeting <input type="checkbox"/> Other Meeting <input type="checkbox"/> Written Conference		

As part of determining the need for reassessment the LEA has completed all of the following steps:

1. Existing assessment data has been reviewed, including assessments provided by the parents
2. Current classroom-based assessments have been reviewed
3. Teacher and related service provider(s) observations have been reviewed
4. Parent/Guardian input has been reviewed and considered

Based upon a review of the information referenced above, the LEA, in collaboration with parent, has determined that  Yes  No additional assessment is needed.

If "YES," it is recommended that assessment be completed in the following areas (D/M 66 must be completed): (Check all that apply)

<input type="checkbox"/> Academic/Pre-Academic Achievement	<input type="checkbox"/> Augmentative/Alternative Communication and/or Assistive Technology
<input type="checkbox"/> Career and Vocational Development	<input type="checkbox"/> Cognitive/Intellectual Development and Learning Ability
<input type="checkbox"/> Functional Behavior	<input type="checkbox"/> Health/Developmental/Medical
<input type="checkbox"/> Perceptual/Motor Development	<input type="checkbox"/> Self-Help/Adaptive
<input type="checkbox"/> Social/Emotional/Behavioral Development	<input type="checkbox"/> Speech Language/Communication Development
<input type="checkbox"/> Other: _____	

Vision and Hearing: (Check all that apply below)

Vision and Hearing assessment (screening) dated \_\_\_\_\_ to be used for this evaluation period (within one year)

Parent to provide privately-obtained Vision or Hearing assessment

Parent declined Vision and Hearing screening by the LEA

Alternate means of assessment: (If using alternative means of assessment, explain why and what will be utilized for the assessment.) \_\_\_\_\_

Additional assessment data is needed to determine:

1. Whether the student has a particular category of disability and/or continues to meet the eligibility criteria as a child with a disability
2. The present level of performance of the student and the student's educational needs
3. Whether the student continues to need special education and related services
4. Whether any additions or modifications to special education and related services are needed to enable the student to meet the annual goals included in the student's IEP and to participate, as appropriate, in the general curriculum

If "NO," state reason(s) it was determined that further assessment data was not needed: \_\_\_\_\_

**NOTE: PARENTS MAY REQUEST FULL ASSESSMENT TO DETERMINE ELIGIBILITY/INELIGIBILITY FOR SERVICES AT ANY TIME, OR MAY AGREE TO FOCUSED DATA COLLECTION IN SPECIFIC AREAS.**

I have been advised of and given a copy of the Special Education Procedural Safeguards/Parent Rights

I agree and understand that assessment is needed in the areas marked above (Assessment Plan is required, form D/M 66)

I agree and understand that no new assessment is needed

Parent/Guardian/Surrogate	Date	Parent/Guardian/Surrogate	Date
LEA Representative	Date	Student	Date
Special Education Teacher	Date	General Education Teacher	Date
School Psychologist	Date	Speech-Language Pathologist	Date
Other/Title	Date	Other/Title	Date

# APPENDIX D: Flow Chart: Reevaluation Cycle (Triennial IEP)

## Desert/Mountain Special Education Local Plan Area (SELPA) RE-EVALUATION CYCLE - TRIENNIAL IEP

