IMPROVING Special Education THROUGH COMPLIANCE

FINAL REPORT OF THE
ASSEMBLY BILL 602
WORKGROUP TO THE
LEGISLATURE AND GOVERNOR

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QUESTIONS CONCERNING THIS REPORT, OR THE PROCESS
FOR SUBMITTING A FINAL REPORT TO THE
LEGISLATURE AND GOVERNOR, CAN BE DIRECTED TO
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Introduction

On October 10, 1997, Governor Wilson signed the Poochigian and Davis Special Education Reform Act, Assembly Bill (AB) 602, creating Chapter 854, Statutes of 1997. AB 602 reformed California's funding formula for special education. As the bill moved through the Legislature, advocates and educators expressed concerns regarding current difficulties in achieving compliance with federal special education law and the impact that the new formula might have on California's level of compliance. Concerns were also expressed regarding the efficacy of current procedures for enforcing compliance.

Based on these concerns, Section 69 was added to AB 602. Section 69 required the California Department of Education (CDE) to convene a working group composed of a "balance" of representatives of "State and local education agencies and employees" on the one hand and "individuals with exceptional needs and their families" on the other. The purpose of this working group was to submit recommendations to the Legislature and the Governor that would "define how the State Department of Education and local education agencies will assure and maintain compliance." The Legislature directed the working group to formulate recommendations by focusing on certain areas including, but not limited to, "State compliance training and technical assistance, State review and monitoring of local compliance, the State complaint process and timetable, State corrective action and follow up, and local and State agency sanctions for noncompliance." (See Appendix 1 for full text of Section 69.)

In December 1997, CDE formally invited parents, advocates, teachers, and administrators to the first meeting of the working group. (See Appendix 2 for the AB 602 Workgroup members.)

The recommendations of the Workgroup are summarized in the Executive Summary and in Figure 1 and Figure 2 (pages 8 & 9).

A preliminary report was submitted to the Legislature in August 1998. It was used to promote discussion and input from constituents in both general and special education. Based on that input, the report was revised. This is the final report of the Workgroup to the Legislature and Governor as required by AB 602.

The state superintendent of public instruction, the director of the Special Education Division, and all managers and staff associated with the AB 602 Workgroup would like to express their admiration and appreciation for the commitment and goodwill brought to the Workgroup by each member.

Executive Summary

The federal Individuals with Disabilities Education Act (IDEA, Public Law 105-17) governs special education. All special education programs must adhere to the procedural safeguards and standards in IDEA.

Special education law gives students with disabilities the right to specially designed instruction and related services necessary for the student to benefit from his or her instructional program. A plan for special instruction and related services must be developed for each student by an individualized education program (IEP) team composed of educators, the student's parents, the student (if appropriate), and other service providers (if appropriate). The purpose of this plan is to guarantee students with disabilities educational opportunities, in both curricular and extracurricular activities, that are comparable to the opportunities provided to their nondisabled peers. Their education must be comparable in scope and duration, and the specialized instruction and related services provided must be reasonably designed to allow the same opportunity for academic achievement available to nondisabled students.

This interpretation of federal law views compliance as integral to the educational achievement of students with disabilities. Procedures that guarantee students with disabilities beneficial access to public education are not just legal hurdles. They exist to ensure that students with disabilities are guaranteed the same educational opportunities as nondisabled students.

State education agencies are charged with ensuring that special education programs are compliant with the procedures and standards specified in IDEA. To discharge this duty, CDE requires that local education agencies (LEAs) submit local plans demonstrating compliance with federal requirements, monitors local compliance through on-site visits, provides technical assistance, investigates and resolves complaints, and provides a system of administrative hearings.

FINDINGS OF THE WORKGROUP

As a result of our meetings and discussion, the Workgroup concluded that the current system for ensuring and maintaining special education compliance in California is in need of substantial improvement. At various times, members of the Workgroup cited as evidence increases in the numbers of complaints and due process hearings, the consent decree signed in federal court by the Los Angeles Unified School District, the fact that two districts currently have full-time special education monitors resulting from findings of systemic noncompliance, the results of federal monitoring of California, and the number of LEAs remaining noncompliant after CDE has requested corrective actions.

In addition, the Workgroup expressed its concern that the implementation of AB 602 not result in a reduction of services or placement options. The funding formula in AB 602 may encourage LEAs to focus on the fixed amount of funds they receive, regardless of the number of students found eligible or the services provided, thereby creating an incentive to under-serve students with disabilities.

First Cause of Noncompliance: Inadequate Procedures for Monitoring and Technical Assistance Leading to Corrective Action

The Workgroup found the current procedures for ensuring and maintaining compliance deficient in two dimensions. First, procedures for monitoring LEAs and providing technical assistance are not designed to develop the local capacity to undertake the operational changes necessary to correct noncompliance and support continuing compliance. To correct this deficiency, the Workgroup recommends transforming CDE's cyclical, one-size-fits-all monitoring system. Instead, CDE should use data regarding student performance and other key indicators to identify LEAs for focused monitoring designed to identify and correct problems. Data and the results of on-site monitoring should be combined in a process of public program evaluation, goal setting, feedback, and planning. This new monitoring system should also identify and acknowledge compliant programs and practices producing high student performance.

Where *systemic* noncompliance is discovered, corrective actions cannot depend on any one individual (e.g., local superintendent, special education director). Systemic improvement must involve renewed understanding by parents, general and special education teachers, administrators, and trustees regarding the requirements of federal law and the importance of those requirements to student

achievement. Participants in this process should be empowered to make enduring organizational change.

CDE staff should contribute to the local process of implementing corrective actions by setting standards for compliance, making information and support available to the field, performing data analysis and on-site monitoring reviews, and encouraging and reviewing the local implementation of corrective actions. CDE must use its administrative authority to create a framework for local change and to verify that corrective actions have taken place. The Workgroup believes that the local development and state approval of annual service and budget plans as required by AB 602 provides a vehicle for public evaluation of programs and the implementation of corrective actions where change is necessary.

Second Cause of Noncompliance: Inadequate Enforcement Authority

The Workgroup found that CDE lacks clear and unequivocal authority to enforce corrective actions in those LEAs where noncompliance is persistent. Federal law allows the state education agency to withhold federal funds from an LEA only if the state agency provides the student with services directly. Use of this authority is impractical — CDE must use state contracting procedures to provide direct services, causing further delays in service delivery. Direct service by CDE may also be a questionable public policy. Placing ultimate responsibility on the state to implement corrective actions does not contribute directly to the local district's capacity to improve compliance. It also reinforces the notion that educating students with disabilities is largely a state responsibility.

State law, on the other hand, contains no specific authority for CDE to withhold the special education apportionment for noncompliance. No provisions of law specify the circumstances meriting sanction, due process or appeal of a proposed sanction, nor any statutory direction regarding how CDE should treat funds withheld from an LEA.

Although sanctions or other enforcement actions should only be used as a last resort — after exhaustive efforts to provide technical assistance and to build local capacity for corrective action — the lack of any clear consequence for persistent noncompliance is a clear failing of the current system. The Workgroup found substantial evidence that persistent noncompliance exists in areas of the State, and that unambiguous and unavoidable consequences, specified in law, for

failing to remedy persistent noncompliance would reduce this problem. Effective enforcement must be 1) fair — those held accountable must have the authority to implement the required action and rights to appeal; 2) consistent – every LEA must be treated alike; and 3) predictable.

Individual vs. Systemic Noncompliance

For the purpose of designing enforcement strategies, the Workgroup separated noncompliance into two types:

- individual noncompliance, defined as the failure to provide required services to an individual student, and
- systemic noncompliance, defined as the failure to provide one or more elements of the system of specialized instruction and related services necessary to ensure that students with disabilities receive an appropriate public education.

As stated above, individual noncompliance involves a single student. Persistent individual noncompliance involves the *prolonged* failure by an LEA to implement a legally binding decision, resulting from either a complaint investigation or an administrative hearing, requiring that the LEA deliver specific services to a specific student. Of the complaints received and investigated by CDE, approximately 80 percent involved the alleged failure of an LEA to provide a service required in a student's IEP. Local administrators have both the authority and responsibility to implement the corrective actions required by these decisions, e.g., to remedy individual noncompliance. Therefore, the sanction recommended for persistent individual noncompliance includes withholding the local superintendent's salary.

Systemic noncompliance involves groups of students. Remedying systemic noncompliance requires a joint effort by trustees, administrators, teachers, and parents; a renewed understanding of the obligation to educate children with disabilities; and a renewed commitment to achieving educational results. Persistent, systemic noncompliance involves the *prolonged* failure of an LEA to undertake the process of change leading to the implementation of required corrective actions, after being informed of the noncompliance and specific corrective actions that must be implemented. Before systemic noncompliance can

be deemed persistent, the LEA must be given timelines for the implementation of corrective actions and continuous technical assistance enabling them to meet those timelines. Because no local administrator, including the local superintendent, can single-handedly remedy persistent, systemic noncompliance, the recommended sanction involves the appointment of an individual with sufficient authority to implement change.

RECOMMENDATIONS OF THE WORKGROUP

The Workgroup made many specific recommendations for administrative and legislative action based on the above findings. These recommendations are summarized on page 8.

The findings and recommendations, including the rationale and legal basis for each, are discussed in the five sections that comprise this Report. A summary of the background and recommendations occurs at the beginning of each section.

The first four recommendations are administrative in nature. CDE, with support from the Governor, Legislature, and State Board of Education, has the authority to adopt policies and procedures to implement these recommendations. As this Report is being written, CDE has begun the process of implementing many of the specific recommendations. CDE has focused on a new monitoring system as the core of this effort and has identified the annual service and budget plans required by AB 602 as the vehicle for implementing local change.

The final three recommendations require changes to current statute. To assist the field and Legislators in understanding the specific recommendations, diagrams are included in Chapter 5 describing current law and practice and the proposed changes.

In transmitting this Report to the Legislature and the Governor, the Workgroup recognizes that implementing the recommendations will involve the commitment of additional resources to special education at both the state and local level. However, the Workgroup also believes that attaining and maintaining substantial compliance will reduce the resources being dedicated to legal and administrative processes such as complaint investigations and hearings. Improving the educational services provided to children with disabilities should be a priority for policy makers.

Figure 1. Recommendations of the Assembly Bill 602 Workgroup

RECOMMENDATIONS FOR ADMINISTRATIVE CHANGE

- CDE should develop regulations and guidelines, as appropriate, for the content of annual service and budget plans and the process for developing these plans. These standards should make it clear that the annual service and budget plans are the local process for evaluating programs and implementing improvements to achieve compliance.
- CDE should coordinate the requirements for the annual budget plan with the Statewide Account Code Structure for program expenditures and use both to monitor and enforce the requirements of IDEA regarding the permissible use of funds and local maintenance of effort.
- CDE should develop a comprehensive system for using data on student progress, data analysis of local trends in identification and service levels, data regarding complaint investigations, and the local plan review process to target LEAs and special education local plan areas (SELPAs) for monitoring.
- When on-site monitoring reveals systemic noncompliance, CDE must have procedures available to involve educators, parents, and trustees in corrective actions. These procedures should assist LEAs to develop the capacity for change. Correcting noncompliance within timelines specified by CDE would eliminate any possibility of the noncompliance being deemed persistent.

RECOMMENDATIONS FOR STATUTORY CHANGE

- The Legislature should adopt language proposed by the Advisory Commission on Special Education relating to the educational progress of students with disabilities.
- For individual noncompliance, the Legislature should specify a statutory deadline after which an instance of individual noncompliance would be deemed *persistent* and sanctions would be required. This deadline should be preceded by ample opportunity to receive technical assistance and correct the noncompliance. After an LEA has exceeded the statutory deadline, the superintendent should be required to
  - withhold the local superintendent's salary until the noncompliance is corrected, and if this fails,
  - withhold federal funds and serve the student directly.
- For systemic noncompliance, the Legislature should adopt a statutory deadline after which a situation of systemic noncompliance would be deemed *persistent* and sanctions would be required. This deadline should be preceded by ample opportunity to receive intensive technical assistance and to undertake the necessary changes. After a situation of systemic noncompliance has passed the statutory deadline, the superintendent should be required to schedule a hearing before the State Board of Education. If the State Board finds the LEA is still noncompliant, the superintendent should be required to appoint an individual authorized to undertake the corrective actions. The authority granted this individual should parallel the authority provided in AB 1200 for insolvent LEAs.

Figure 2. Major Findings and Recommendations of the Assembly Bill 602 Compliance Workgroup

FINDINGS	RECOMMENDATIONS
I. California is experiencing a significant problem with noncompliance. 1. Inadequate procedures at the state level for monitoring and technical assistance leading to corrective actions.	**I. To Address Noncompliance:** 1. The California Department of Education should develop a system of monitoring that: ■ uses analysis of key performance data to identify local agencies that may be experiencing problems with compliance; and ■ directs monitoring and intensive technical assistance to those agencies, targeting the specific areas of noncompliance.
2. Inadequate legal authority to enforce corrective actions in those local agencies that are *persistently* out of compliance.	2. Legislation should be enacted that: ■ defines persistent noncompliance by setting statutory timelines for implementing required corrective actions after official notification of the area of noncompliance; and ■ creates a system of unambiguous consequences – sanctions – for failure to implement corrective actions.
II. Persistent noncompliance can be separated into two types: 1. Individual noncompliance, characterized by: ■ failure to implement a binding decision, resulting from a complaint investigation or due process hearing, to provide services to an individual student, or ■ the local superintendent having the authority to implement corrective action.	**II. Sanctions for Persistent Noncompliance:** 1. For individual noncompliance, first provide information and technical assistance. If this fails, ■ withhold the salary of the local superintendent. If this fails, ■ withhold federal funds, and use them to serve the student.
2. Systemic noncompliance, characterized by: ■ failure to provide one or more of the key elements of special education as required by State and federal law; ■ its widespread effect on students; ■ the role of monitoring in its identification and correction; ■ the need for a systemwide approach to corrective action.	2. For systemic noncompliance, first provide intensive technical assistance to trustees, educators, and parents to understand the failure and implement corrective actions. If this fails, ■ schedule a hearing before the State Board to determine if the LEA is out of compliance. If it is, ■ appoint an individual with sufficient authority to implement the corrective action (similar to the authority granted in AB 1200) should be appointed for the district.

1. Program Accountability & Local Plans

SUMMARY

Since the enactment of the Individuals with Disabilities Education Act (IDEA) nearly 20 years ago, federal special education law has required that State and local education agencies (LEAs) adopt plans to operate special education. These plans are to include written assurances, policies, and procedures that demonstrate compliance with federal law. Federal law requires that CDE monitor these local plans and ensure compliance.

Recent changes to federal and State law mandate significant changes to the content and process for developing local plans. The reauthorization of IDEA in 1997 imposed new fiscal and pupil performance requirements on LEAs that must be reflected in local plans. (See Chapters 2 and 3: Pupil Performance and Fiscal Compliance and Local Plans.)

Assembly Bill (AB) 602 added two new sections to local plans: an annual service plan and an annual budget plan. The addition of these two sections means local plans will no longer be merely a description of the governance structure and written policies and procedures that comply with federal and State law. After AB 602, the local plan and specifically the annual service plan will be a dynamic document that describes the configuration of instructional and related services in each LEA. This description of instruction and services must demonstrate that all students with disabilities have access to services and instruction appropriate to meet their needs as specified in their individualized education programs (IEPs).

Previously, State law contained requirements regarding the process for developing local plans. Specifically, the law established community advisory committees (CACs), local committees of parents and educators, to advise officials in developing local plans and implementing special education programs

CDE develop standards or guidelines for

- ***the required content of local plans and annual service plans;***
- ***requirements for the process of development of the local plan and annual service plan; and***
- ***requirements for continuous evaluation of the effectiveness of special education services and compliance with federal law.***

(Education Code Section 56195.9). AB 602 added new requirements for local participation in the development of local plans [Education Code Section 56205(b)(5)].

The changes to federal and State law place renewed emphasis on using continuous evaluation, as required by Section 56195.7, as a means of ensuring program compliance. This section requires that each local plan contain provisions for ongoing review of programs and procedures and mechanisms for correcting identified problems. A system of ongoing, public evaluation of program effectiveness must be described in every local plan. The results of these evaluations must be included in the annual service plan, along with any actions taken to address deficiencies.

As a result of AB 602, the annual service plan will become a central component in the process of ensuring and maintaining compliance. Therefore, it is recommended that CDE develop regulations and guidelines, as necessary, covering the items that follow.

1. The required content of local plans and annual service plans, including
   - the configuration of instructional and related services demonstrating that the full continuum of program options is available to each student with a disability within the special education local plan area (SELPA);
   - SELPA and LEA policies and procedures to hire and retain qualified personnel, including the participation of special education teachers in Beginning Teachers Support and Assessment (BTSA) programs; and
   - any proposal to eliminate, significantly reduce, or transfer a program or service offered by an LEA for students with disabilities.
2. Requirements for the process of developing the local plan and annual service plan, including
   - the participation of parents from CACs, teachers, and administrators in the formulation of the annual service plan and the selection of CAC members consistent with the requirements of State law;
   - the continuous evaluation of the effectiveness of special education services and compliance with federal law and incorporating the results of evaluations in annual service plans;

- participation of parents, educators, and district trustees in understanding and responding to evaluation results; and
- inservice training and other actions taken in response to program evaluations.

AB 602 also requires CDE to develop transition forms and guidelines to assist LEAs and SELPAs in the transition from the Master Plan to the local plan requirements of AB 602 (Education Code Section 56836.03). The Workgroup believes it is important for transition guidelines and reports to serve as monitoring tools; therefore, the Workgroup recommends CDE apply the compliance recommendations in this section to the development of transition guidelines and forms mandated by Section 56836.03.

DISCUSSION

Federal law requires that each LEA provide access to a full continuum of placement options to meet the needs of pupils with disabilities. Federal law also requires that children with disabilities be educated to the maximum extent appropriate, with children who are not disabled or in the "least restrictive environment" (LRE) [20 USC 1412(a)(5)]. In California, LEAs join together in SELPAs to achieve sufficient size and scope to effectively provide the full continuum of placement and program options called for in federal law.

Federal law also establishes local plans as the documents through which LEAs affirm the implementation of local policies and procedures complying with federal law. These local plans also serve as applications for federal funds. In California, local plans are developed at the SELPA level and must demonstrate that a full continuum of placement options, necessary to provide a free appropriate public education in the least restrictive environment, is available to each student with a disability.

Education Code Section 56205(g), as added by AB 602, requires that an annual service plan be adopted at a public hearing and submitted to the state superintendent of public instruction for review. The annual service plan is described as an amendment to the local plan that would be adopted locally pursuant to the policy making process of the SELPA. The annual service plan is

based on the premise that instructional and related services shall be arranged to fulfill the requirements of the IEPs of students with disabilities. Therefore, the Workgroup recommends that CDE develop regulations and guidelines specifying minimum requirements for the content of annual service plans, which include

- the nature of special education instruction and the type of related service provided at each location;
- the school sites or areas covered by itinerant teachers and service providers, including special education personnel who work in the general education classroom; and
- the responsibility of each LEA for providing services, including services in year-round schools, extended year services, services to students with severe and/or low incidence disabilities, and coordinated services with other local agencies.

CDE should develop regulations and guidelines, as necessary, for the content of annual service plans.

The regulations and guidelines should require that sufficient data be provided to separately calculate the ratio of children with IEPs to special education teachers, aides, and other service providers, both credentialed and classified. LEAs should provide information regarding the number of IEPs that contain specific types of service (e.g., speech therapy, adaptive physical education, etc.) and how staffing patterns support the delivery of required services. Explanations should accompany changes in program configuration or changes in staffing ratios, and the plan should explain how a determination was made that these ratios were appropriate.

Review of annual service plans should be coordinated with monitoring and implementation of corrective actions.

Annual review at the state level of budget and service plans should be coordinated with other State monitoring efforts. This coordination will allow CDE staff to be involved proactively and constructively with local administrators regarding special education program compliance. CDE staff can request modifications to local plans and the inclusion of corrective actions prior to the plans being approved. Staff can follow up any recommendations with technical assistance when necessary or requested.

The Workgroup believes that a proactive approach to improving compliance will reduce the number of complaints and administrative hearings and avoid the imposition of sanctions to achieve compliance. Annual review and approval of

local service and budget plans should, however, be coordinated with sanctions and enforcement tools when these are necessary.

Consistent with the responsibility assigned to each LEA for program operations, local plans should also identify a responsible individual that parents or educators with questions or concerns about special education programs or services may contact. This person must be knowledgeable about the requirements of federal and State law, and responsible for implementing the policies and procedures of the LEA and SELPA.

To be compliant with federal law [20 USC 1412(a)(15)], the local plan must also address a continuous, good faith local effort to recruit, employ, and retain trained and qualified personnel to provide special education. The diversity of communities in California indicates that efforts should be made to recruit and retain staff reflecting the communities they serve. The local plan should address any areas of personnel shortage, including shortages of fully credentialed teachers, and include a description of LEA and SELPA activities to remedy the shortage. Mentoring, in-service training, collaboration with institutions of higher education, internships, salary stipends, and career ladder programs are options that could be considered.

CDE should require that special education personnel be given the opportunity to participate in BTSA programs operated by LEAs that have difficulty recruiting and retaining qualified staff.

In addressing areas of personnel shortage, consideration must be given to including special education teachers in BTSA programs. Some LEAs that operate BTSA programs do not include special education staff. The Workgroup recommends that special education personnel be provided the opportunity to participate in BTSA programs offered by LEAs, especially those that have difficulty recruiting and retaining qualified staff.

Maintaining Services and Programs

The new funding model contained in AB 602 provides LEAs with the opportunity to configure programs to better meet the needs of their students. Many LEAs will use this opportunity to adopt promising practices that improve the educational performance of their students. However, some LEAs may mistakenly view this change as an opportunity to reduce or eliminate expensive programs and services. Maintaining compliance with federal and State law requires that LEAs continue to provide all services required in students' IEPs.

The previous funding model for special education, the Master Plan, encouraged LEAs to place students in programs operated by the LEA with the highest unit rate. This financial incentive was not consistent with federal requirements regarding LRE. By eliminating unit rates, the new funding model will remove an impediment to students being served in their own district or their neighborhood school. As a result of AB 602, LEAs may find that it is preferable to operate their own programs rather than use other service providers. These "program transfers" are governed by Education Code Section 56207 and must be reflected in the annual service plan.

Therefore, consistent with the requirements of Education Code Section 56207, CDE should establish standards for annual service plans and for transition documents that would easily identify a significant reduction or elimination of any program or service for students with disabilities. The annual service plans and transition documents must also contain explanations for a program reduction or elimination, including the extent to which budgetary considerations contributed to the proposed reduction. Programs that serve students with intensive needs (such as students with emotional disturbance) or students with low incidence disabilities should be given special attention. Because the needs of these students are complex and their numbers few, programs that serve them concentrate extensive resources on a small portion of the population.

CDE should establish standards for annual service plans and for transition documents that would easily identify a significant reduction or elimination of any program or service for students with disabilities.

As stated above, reducing or eliminating a program may be justified. In addition to considerations regarding education in the least restrictive environment, students may graduate or relocate or the LEA may combine resources with other LEAs to regionalize operations. However, pursuant to Education Code Section 56207, the justification for reducing or eliminating a program should be subject to a thorough review. Therefore, the Workgroup recommends that the review of the annual service plan also include a thorough review of the justification for program reduction or elimination. This review should include on-site monitoring, if appropriate.

We recommend that CDE establish standards for review of the annual service plan and transition documents pursuant to Education Code Section 56836.03 that ensure that program transfers do not result in a decrease in compliance. Aspects of the proposed program should be reviewed for comparability with the current program, including administrative expertise

(program specialists); training and expertise of psychologists in assessing students' needs; training, experience, and qualifications of teachers, aides, and other service providers; and quality of facilities. The review of program transfers by CDE should likewise include on-site monitoring, if appropriate.

Community Partnership in Local Plan Development

One mechanism for assuring that local plans and annual service plans meet the needs of students with disabilities is to enforce State law that guarantees vigorous input into the process of local plan development. Prior to the enactment of AB 602, State law established CACs, local committees composed of educators and parents and appointed by school boards. Their duties were to consult with local administrators regarding special education policy and development of the local plan.

CDE should develop regulations and guidelines, as necessary, for the process of local plan development.

State law, currently in Education Code Section 56195.9, has required that local plans be "developed and updated cooperatively by a committee of representatives of special and regular education teachers and administrators selected by the groups they represent, with participation by parent members of the CAC or parents selected by the CAC, to ensure adequate and effective participation and communication." Provisions of Education Code Section 56205(b)(5), as enacted by AB 602, state that the local plan must reflect a "schedule of regular consultations" with teachers, parents, and local administrators regarding policy and budget development.

The Workgroup believes that to ensure adequate implementation of the provisions of law, CDE should develop regulations defining terms like "developed and updated cooperatively" and "schedule of regular consultations." Guidelines and regulations should also ensure that individuals appointed to the CAC represent all local special education constituencies. Based on provisions of State law, CACs are intended to be an integral part of the formulation and evaluation of local special education programs. For CACs to perform this function, they must include individuals knowledgeable of the requirements of federal and State law and the rights of students with disabilities and their parents.

Furthermore, guidelines or regulations, as necessary, should specify acceptable local procedures for ensuring that the parent representatives from the CAC and teachers and administrators that are to be consulted regarding all

aspects of the local plan are "selected by the groups they represent." The active involvement of all parties committed to educating students with disabilities will facilitate the revisions to the local plan that are required by IDEA and AB 602 and will support effective and appropriate services.

Evaluating Local Plans

Education Code Section 56195.7 requires that local plans specify a process for the continuous evaluation of local special education programs. Because IDEA requires that State and local educational agencies collect data on the educational progress of students with disabilities (see section on Pupil Performance), the requirements of Section 56195.7 assume added importance. The collection of data regarding the educational progress of students with disabilities will provide a new and very important measure of the effectiveness of special education programs. The Workgroup recommends that CDE develop procedures and standards for incorporating this data into its process for monitoring local programs. (See section on Monitoring and Complaints.)

CDE should develop regulations and guidelines, as necessary, for program evaluation. These guidelines must incorporate assessments of pupil performance.

Similarly, CDE should publish guidelines that specify methods for self-reviews and ongoing evaluations that incorporate pupil performance data. Local self-reviews should mirror the new state system for monitoring described in Chapter 4. Using data regarding student progress is central to establishing the connection between the procedures and standards in IDEA and the educational achievement of students with disabilities. Evaluations of local compliance, whether done by local personnel or state staff, must always establish this connection.

Monitoring and program evaluation guidelines must correct procedural requirements of IDEA and student achievement.

CDE should establish procedures for ensuring that general and special education administrators and teachers have adequate knowledge of the legal requirements of special education and familiarity with promising educational practices. Implementation of new or promising practices should be evaluated based on the educational progress attained by students participating in the programs. Inservice training must be considered as part of any corrective action for identified shortcomings. These ongoing evaluation functions must be accomplished with the participation of parents, educators, and the CAC and incorporated into the annual service plan update of the local plan.

The importance of increasing the knowledge of local educators and parents regarding the purpose of federal law cannot be overstated. At present, familiarity

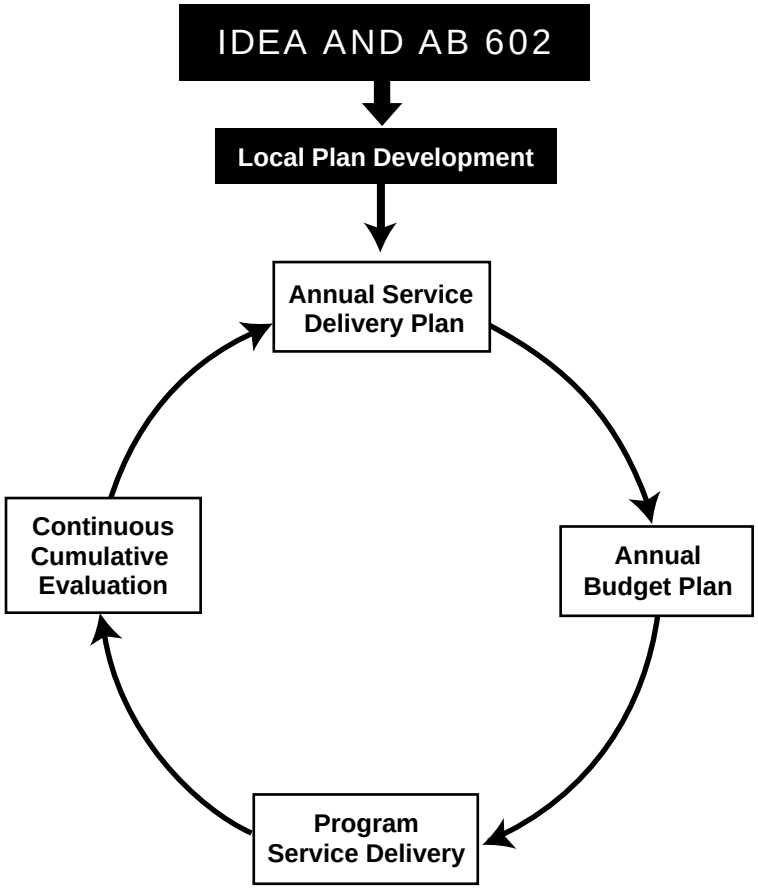
with special education law often involves a working knowledge of certain procedures, without an understanding or appreciation of their role in ensuring that students with disabilities have opportunities for educational achievement that are the equivalent of those available to nondisabled students.

Special education, because of its legal and constitutional basis, is driven by legally defined procedures far more than other educational programs. A lack of understanding of the purpose of procedural safeguards can produce exasperation with the requirements of special education. Communicating the link between these procedures and the educational achievement of students with disabilities to local educators is the duty of CDE. More than 20 years after the enactment of the first federal special education law, it is a task that has yet to be completed.

The process of continuous evaluation must be public, and must communicate and reinforce the link between compliance and pupil performance to all persons concerned with special education. Parents and educators must be involved in understanding the results of program evaluations, whether performed locally or by state staff. The results of state monitoring and complaint investigations must be discussed locally. Parents and educators must be involved in crafting improvements. The actions taken to improve compliance should be reported to CDE through the annual service plan. The results of improved compliance should be reflected in improved student performance data. In addition, the process of continuous evaluation must identify and acknowledge programs and practices that are compliant.

State law and regulations, and federal law and forthcoming regulations, contain requirements for special education programs and services. The Workgroup believes that CDE should review these documents to determine where further definition, in the

Figure 3. The Process of Continuous Evaluation



form of guidelines or regulations, is necessary for these requirements to be appropriately reflected in local plans, specifically in the annual service plan.

The subgroup began a review of federal and State law. Appendix 3 lists the sections that the Workgroup identified as having requirements that could be addressed in the local plan. The language of many of these requirements includes what could be considered "standards." However, many of the legal requirements are unclear and lead to inconsistent interpretation and implementation. Appendix 4 identifies sections that might require further definition. ◗

2. Pupil Performance

SUMMARY

Recently adopted changes to IDEA require that all students with disabilities be included in statewide testing programs, with accommodations if required, and be included in the same type of reporting on performance as their nondisabled peers. The purpose of these recent amendments to IDEA is to link pupil progress to compliance. IDEA specifically states that if a student is not included in statewide testing, a statement explaining the reasons for this exclusion and a description of how that student's educational progress will be assessed must be part of that child's IEP. IDEA also states that district and statewide alternate assessments will be available for students unable to participate in standardized tests by July 1, 2000 [20 USC 1414(c)(5)(A) and 1412(a)(17)].

Federal law stipulates that information from student test results regarding participation in statewide assessments, type of tests taken, and performance information shall be provided to the public. It is the intent of federal law that the participation of students with disabilities in assessments and the reporting of that information will lead to improvements in the delivery of instruction and services.

The Workgroup recommends adopting the statutory language by the Advisory Commission on Special Education regarding student performance.

In 1997, the Advisory Commission on Special Education recommended statutory changes to conform State law to federal law regarding the performance assessment of students with disabilities. The proposed changes would give the superintendent of public instruction the authority to establish standards and guidelines for the participation of students with disabilities in standardized and alternate assessments. The Workgroup recommends the adoption of the statutory language proposed by the Advisory Commission. (The text of the language proposed by the Advisory Commission is attached as Appendix 5.)

DISCUSSION

In Education Code Section 60604, enacted by AB 265 (Alpert), the Legislature had already mandated that the superintendent implement a statewide assessment program based on state-adopted content and performance standards. California's Standardized Testing and Reporting Program (STAR) requires all students from grades 2 through 11 be tested by a statewide test. The STAR program also mentions that specific accommodations may be made for students with disabilities to permit them to take the standardized format of the Stanford Achievement Test, Ninth Edition, Form T (Stanford 9), published by Harcourt Brace. Education Code Section 60615 stipulates that a parent/guardian may exclude his or her child from part, or all, of the statewide test by submitting a request in writing.

Participation in statewide assessments is necessary to link special education services to student achievement.

IDEA and the STAR program require reporting individual, district, and statewide achievement scores based on statewide tests. It is the intent of IDEA that information provided on students with disabilities be comparable to reporting procedures for their nondisabled peers. In California this generally means quarter, semester, and end-of-the year progress reports.

Participation in Assessments

IDEA guarantees that individuals with exceptional needs have the right to participate in statewide tests and they will be provided appropriate accommodations when necessary [20 USC 1412(a)(17)(A)]. Because the Stanford 9 was not standardized with accommodations, the requirement that accommodations be available for students with disabilities has created controversy. The Special Education Division has attempted to respond to concerns and questions from field staff, in part by scoring tests given with accommodations for LEAs. However, more direction is necessary concerning what accommodations can be used, how they should be used, or how information will be provided and reported for students using accommodations.

Studies completed by the National Center on Educational Outcomes found that many students with disabilities do not participate in statewide assessments. The current requirement that all students participate is a federal mandate and is supported by most parents, provided there are explanations regarding how the

information acquired from testing will be used. With appropriate accommodations, many parents would like to have their children participate in the standardized testing program or an alternate testing program.

The Workgroup expects the vast majority of students with disabilities to participate in statewide assessments. However, for those students whose IEPs specify that a standardized assessment would not be appropriate, the State must address the requirement of developing statewide alternate assessments by July 1, 2000 that can provide information on educational progress comparable to the information provided by standardized tests. At present there are no statewide, and few, if any, districtwide alternate assessments available.

Measuring educational progress through the IEP process represents one method to achieve federal compliance. However, using IEPs would require that portions of IEP forms relating to goals and objectives, instructional placements, and the frequency and nature of related services be standardized statewide. Assessment of the extent to which the student achieved the goals and objectives would have to be reported in a uniform manner.

CDE should develop sample IEP forms to encourage LEAs to standardize reporting procedures.

The existence of sample forms for necessary functions may encourage LEAs to standardize portions of the IEP. Therefore, the Workgroup recommends that CDE provide best practice, sample forms for necessary functions such as determinations of eligibility, IEPs, transition plans, functional analysis assessment reports, behavior intervention plans and emergency reports, IEP notices, notices of change of placement, parents rights advisements, and requests for due process.

Advisory Commission Offers Statutory Language

The Legislature should adopt the statutory language proposed by the Advisory Commission in 1997 to achieve compliance with IDEA regarding pupil performance.

After a review of federal and State law, as well as relevant studies, the Workgroup believes the proposed language submitted by the Advisory Commission contains the essential elements for achieving compliance with federal law. It is understood that this language was not included in AB 602 based upon concerns expressed about reimbursable, State-mandated costs. However, after a review of the language and relevant federal law, the Workgroup can find no requirements that exceed the letter of federal law. In particular, the Workgroup would cite 20 USC 1413(a)(6), which requires the LEA to submit to the State any documents and information necessary for the State to comply with federal

requirements regarding measuring pupil performance and participation in assessments. The language proposed by the Advisory Commission is summarized as follows:

- The superintendent shall develop and the State Board shall adopt goals and standards for the performance of individuals with exceptional needs that are consistent with goals and standards for all pupils in the public education system.
- The superintendent shall develop and the State Board shall adopt content standards developed by the Commission Establishing Academic and Performance Standards and performance indicators that will be used to assess progress toward achieving established goals.
- Each SELPA shall assure that each district within the local plan area develops and implements content standards and performance standards appropriate to pupils requiring special education services that will be aligned to State standards and guidelines.
- Each district governing board shall establish goals and outcomes for individuals with exceptional needs consistent with the district's content standards and performance standards, including goals and outcomes for pupils working on alternative communication, self-help skills, and gross and fine motor skills.
- Each district shall have in place written differential standards. This policy shall be communicated to students and their families.
- The local plan of each SELPA shall specify criteria and guidelines to be used by each district governing board in determining when alternative content and performance standards are to be used for students with IEPs.
- Individuals with exceptional needs shall be included in general statewide and districtwide assessment programs, with appropriate accommodations, unless an alternate assessment procedure is specified in the IEP.
- The superintendent shall develop guidelines for the participation of individuals with exceptional needs in alternate assessments for those pupils who cannot participate in statewide and districtwide assessment programs.

- CDE shall make available to the public, with the same frequency and in the same detail as it reports on the assessment of nondisabled pupils, the following:

  1. The number of individuals with exceptional needs participating in regular assessments.
  2. The number of individuals with exceptional needs participating in alternate assessments.
  3. The performance of individuals with exceptional needs on regular assessments.
  4. Data relating to the performance of individuals with exceptional needs broken out in accordance with federal law including, but not limited to, special education program options and disability categories.

- The local plan of each SELPA shall specify, consistent with guidelines developed by the superintendent, how individuals with exceptional needs will be included in school and district assessment programs, including accommodations in regular, large-scale assessments and alternate assessments.
- Each county office and district shall annually report the number of pupils receiving special education services who participate in the regular education assessment process and the number participating in an alternate assessment process.
- Each county office and district shall provide a public report of the recommendations for instructional and curricular modifications developed as a result of the county office and district evaluation of special education pupil performance data.
- Each county office and district shall conduct an annual evaluation of the effectiveness of the special education program it operates consistent with program guidelines developed by the superintendent.
- CDE's Special Education Division will offer an electronic IEP model and procedural safeguards notice for districts to use that would be available on its website in multiple languages. ◗

3. Fiscal Compliance & Local Plans

SUMMARY

Recent amendments to IDEA impose new fiscal requirements on LEAs and new requirements on State education agencies to monitor fiscal compliance. Section 1413 in 20 USC requires that federal funds be used only for the excess costs of special education and that increases in federal funds not be used "to reduce the level of expenditures for the education of children with disabilities made by the local education agency from local funds below the level of those expenditures for the preceding fiscal year." Exceptions to this rule are also specified in federal law. State education agencies must develop monitoring procedures and practices for these new requirements. Because some of the fiscal requirements in IDEA are new, CDE staff should also suggest to the State Controller's Office (SCO) appropriate criteria and guidelines to audit LEAs for compliance.

Education Code Section 56836.04, as added by AB 602, requires that the superintendent monitor the use of funds by LEAs. Provisions of AB 602 also require the development and submission to the State of annual budget plans for special education, along with the annual service plans discussed in the section on Program Accountability and Local Plans. The annual budget plan would also be an amendment to the local plan, subject to approval at the state level. The annual budget plan would be adopted locally pursuant to the policy process of each SELPA.

CDE should coordinate annual budget plans with the new Statewide Account Code Structure to monitor compliance with federal and State fiscal requirements.

The Workgroup recommends that the annual budget plan be coordinated with the expenditure information contained in the new Statewide Account Code Structure (SACS). Utilization of the annual budget information in conjunction with expenditure information from SACS will permit CDE to compare prior year expenditures to projected expenditures from federal, State, and local funds. Through this comparison, CDE will monitor the use of federal and State funds and the maintenance of local financial effort pursuant to federal law.

DISCUSSION

IDEA requires federal funds be used only for the excess costs of special education and that increases in federal funds not be used "to reduce the level of expenditures for the education of children with disabilities made by the local education agency from local funds below the level of those expenditures for the preceding fiscal year," with specified exceptions. The exceptions are that an LEA may reduce the commitment of local funds to special education if their costs go down based on

CDE should work with the State Controller's Office to develop audit procedures.

1. the voluntary termination of special education personnel;
2. a decrease in the enrollment of pupils with disabilities;
3. the termination or transfer of a special education program based on the IEPs of pupils with disabilities; or
4. the termination of expenditures for long-term purchases.

In addition, in any year in which the total federal appropriation for Part B of IDEA exceeds $4.1 billion, up to 20 percent of the amount of increase in the federal grant may be used to offset expenditures from local funds.

Education Code Section 56836.04 contains similar requirements. It reads, in part, "The superintendent shall *continuously monitor* and review all special education programs approved under this part to assure that *all funds* appropriated to special education local plan areas under this part are *expended for the purposes intended*." [Emphasis added.]

AB 602 requires that SELPAs submit an annual service and budget plan to the State as an amendment to their local plan. For multidistrict SELPAs the budget plans should be a collection of the budgets of member LEAs that support

the services described in the annual service plan. After arriving at decisions regarding service configuration, each LEA's budget would display the projected program expenditures for special education and any transfer from unrestricted funds to special education to support the estimated expenditures. Arrangements among LEAs to share costs for regionalized services should be reflected in the budget plan and described in the service plan.

Implementing a New Account Code System

Independent of any changes in federal and State law regarding special education, California has begun the process of developing and implementing the new SACS, which will make it possible to identify expenditures for special education by object (e.g., teacher salaries and instructional materials), activity (e.g., instruction, transportation, related services), program goals, and location. SACS will also identify the transfer of local unrestricted funds (i.e., revenue limit funds) to special education. When fully implemented, SACS will replace the current forms for recording education expenditures by program (the J-380 and J-580 forms) and will provide local and State administrators with comprehensive information about local expenditures for special education and the funds dedicated locally to special education.

Use of SACS is not mandated for all LEAs in California. However, because SACS provides an efficient, comprehensive, and flexible method for tracking expenditures it is believed that its use will be widespread within a few years. LEAs that utilize SACS will record expenditures for special education in a consistent manner. The widespread implementation of SACS should facilitate implementation of the new fiscal monitoring requirements of IDEA and the local budget requirements of AB 602.

Because budgets display the sources of funds that support program expenditures, CDE will be able to compare prior year estimated expenditures to budget-year projected expenditures to ensure that funds are used appropriately and that local fund support for special education is not declining. If the budget submitted to CDE indicates that local funds supporting special education are declining, the service plan should describe which federal exception justifies the reduction. Corroborating evidence (e.g., personnel records) should support the justification. Service plans that describe the number of children being served in

each setting operated by the LEA, the number of full-time or part-time staff providing services, and the qualifications for all personnel would facilitate verification of the federal exception cited in the budget plan.

Budget plans that do not meet federal and State standards regarding the use of funds or maintenance of effort should be returned to the submitting SELPA for modification. Once modifications that meet federal and State standards are made to the plan, it would be submitted to the State Board for approval.

Organizing the budget and service delivery plans in this way would be consistent with Section 56205(l) of AB 602, which requires that the local budget and service plans be "written in language that is understandable to the general public." Budgets and service delivery plans organized according to common program configurations will facilitate parent and teacher understanding and input.

Monitoring Fiscal Compliance

Budget plans must meet federal standards prior to approval by State Board.

To perform the fiscal monitoring of local operations required by federal and State law, CDE must receive annual budget plans formatted in a consistent manner. To eliminate any additional workload on LEAs, the Workgroup recommends that the budget format be aligned with SACS. However, because SACS is not mandated, it is not certain that all LEAs will convert to this system. Therefore, the Workgroup believes that CDE staff should develop other procedures to enforce compliance with federal fiscal requirements that depend on current fiscal reports (such as the J-380 and the J-200) for those LEAs that do not convert. Education Code Section 56836.03, as enacted by AB 602, requires that CDE develop guidelines and documents to assist LEAs in transitioning from the previous to the current funding system. Appropriate procedures to enforce compliance with federal fiscal requirements should be developed as part of this transition.

Although SACS has the ability to adapt reporting requirements to fit changing federal and State requirements, it was developed prior to the enactment of AB 602. Therefore, some of the categories for recording special education expenditures reflect the prior funding system. (While a discussion of changes to SACS to make it more consistent with AB 602 is too technical for this Report, a short discussion of this issue is included as Appendix 6.)

The Workgroup recommends that CDE's review of annual budget and service plans be coordinated with other monitoring efforts. (See Chapters 1 and 4: Program Accountability and Local Plans, and Monitoring and Complaints.) The monitoring of LEAs performed by CDE should include the verification of services, staff, and delivery sites described in the local service plan. If the local plan has been accepted as compliant, CDE must have procedures in place for verifying access to services described in the plan.

When monitoring efforts result in findings of noncompliance and requirements for corrective actions, these actions must be included in annual local budget and service plans whenever possible. Failure to include corrective actions in the service and budget plans must result in the State disapproving the local plan. Disapproval should be accompanied by predictable consequences for the SELPA and LEA. (See section on Sanctions and Other Enforcement Tools.) This approach is consistent with the intent of AB 602, which created annual service and budget plans as monitoring tools.

Annual service and budget plans must be coordinated with CDE's monitoring at local programs.

Finally, federal requirements concerning a local maintenance of financial effort for special education and allowable reductions of financial effort under certain conditions are new. Therefore, until LEAs and the State establish procedures for these requirements, it would be appropriate to include some or all of these in the annual audits performed by the SCO. The results of these audits should be included in CDE's annual evaluation of the service and budget plans. It is recommended CDE fiscal staff submit recommendations to the SCO and engage in discussions with the SCO regarding the proper criteria and guidelines for auditing federal financial requirements. Additionally, staff from the Special Education Division should use these audits in evaluating the compliance of annual budget plans. ◗

4. Monitoring & Complaints

SUMMARY

Every State education agency has a responsibility under IDEA to ensure that all children with disabilities are provided a free appropriate public education. Every state has administrative procedures at its disposal to carry out the above responsibility. Most states engage in some form of monitoring of local program operations and have both complaint resolution procedures and administrative hearing procedures available to resolve disputes. This chapter examines California's monitoring and complaint procedures and makes recommendations for their improvement.

CDE's current monitoring system, the Coordinated Compliance Review (CCR) process, is a uniform, cyclical process. Each LEA in the State is potentially subject to an identical on-site review of its programs every four years. These reviews utilize little in the way of data analysis, instead depending on each reviewer's observation of local policies and procedures.

While the CCR process has positive attributes, the Workgroup finds that a "one-size-fits-all" monitoring system is not meeting the needs of a state as large and diverse as California. Specifically, the current CCR process does not use data to direct CDE staff to those areas of the state with the greatest difficulties, does not require that CDE staff adjust their level of involvement based on the level of noncompliance, and does not require on-site follow-up by state staff after a finding of noncompliance. The Workgroup finds that the lack of effective monitoring and follow-up — in the form of technical assistance, training, and an on-site presence by CDE staff — contribute to systemic noncompliance in California.

As stated earlier in this report, the importance of technical assistance and training for local educators cannot be overstated. Comments the Workgroup

received on the Preliminary Report issued in August 1998 indicated a lack of understanding of the obligations to educate students with disabilities contained in federal law. For many local administrators, special education must appear as a maze of procedures that are not connected to sound educational practices. It is the obligation of CDE to create these connections — to communicate to the field the nature of the obligation to educate students with disabilities and the purpose for which that obligation exists.

Therefore, the following recommendations are made to transform the current monitoring system into a more effective, efficient, and productive one:

1. Personnel involved in monitoring must be adequately trained in the requirements of federal and State law, and the application of those requirements to local conditions.
2. The monitoring system must combine data analysis, the results of complaint investigations and administrative hearings, the review of local plans and local audits, and the results of local self-evaluations into a system of focused and targeted reviews.
3. The reviews must target LEAs that, based on data gathered from the above sources, may be experiencing systemic problems with compliance and must focus on the area of suspected noncompliance.
4. If monitoring results in a finding of noncompliance, there should be fixed deadlines for constructing corrective action plans and follow-up to ensure that corrective actions are implemented.
5. Parents of students with disabilities, general and special educators, the CAC, and responsible local policy makers, including superintendents and school board trustees, must be informed of problems and involved in solutions.
6. State-approved and State-operated technical assistance and training should be continuously available for parents and educators in those LEAs experiencing noncompliance.
7. Corrective actions should be coordinated with the process of continuous self-evaluation and linked to development of the annual service plan, thereby making program improvement an ongoing activity. (See Chapter 1: Program Accountability and Local Plans.)

State education agencies are obligated under IDEA to administer procedures for receiving, investigating, and resolving complaints [20 USC 1411(f)(3)(B) and 1115(d)(2)(E) and 34 CFR 300.660]. The Workgroup recommends CDE survey complainants after investigations are completed to measure satisfaction with CDE's response and to measure the utilization of the complaint process by low-income communities.

Several alternatives are suggested to the State complaint process to resolve disputes. Firstly, LEAs, with support from the State, should explore alternative dispute resolution (ADR) procedures. Secondly, LEAs and SELPAs could make impartial individuals available to respond to parents' concerns or questions regarding special education. State staff should also offer mediation, where appropriate, as an alternative to a complaint investigation.

The Workgroup also recommends that the current system for investigating and resolving complaints be modified to provide incentives for maintaining compliance.

The Workgroup also recommends that the current system for investigating and resolving complaints be modified to provide incentives for maintaining compliance. Specifically, the Workgroup recommends that:

- CDE establish written procedures for the use of compensatory education and reimbursement for out-of-pocket expenses in cases where such resolutions are appropriate; and
- Statute be amended to allow CDE to assess LEAs for the investigation costs of sustained complaints, except that LEAs may avoid this assessment by resolving the complaint themselves within the 60-day time period set in federal law for complaint investigations.

Implementation of these recommendations — a coordinated system of complaints; data analysis; local plan review; focused, on-site monitoring, and follow-up — may entail additional state staff and/or the reassignment of existing staff. Additional funding may be needed for local activities such as ADR. However, the Workgroup believes compliance with IDEA and the educational progress of students with disabilities should be priorities for additional resources.

DISCUSSION

As stated above, the State currently uses the CCR process to monitor special education. CCRs are regular, on-site reviews conducted on a cyclical basis. During the CCR process, CDE staff review all categorical programs to determine whether local operations are consistent with federal and State requirements. The areas to be examined by CDE staff during the CCR are uniform for every LEA and are listed in the CCR manual. LEAs are notified in advance and spend a great deal of effort on assembling and organizing documents for the reviewer to examine. During the CCR process, staff conduct meetings with parents and teachers and observe instructional and other services being delivered to students.

Prior to conducting a CCR review, CDE staff do not possess data regarding recent complaints against the district, the results of the complaint investigations, the number of qualified teachers or classified staff, the efficacy of special education programs (i.e., pupil progress), or the placements of students with disabilities. Staff are generally not asked to assess the knowledge of local administrators in the legal requirements of federal and State special education law, nor the familiarity of local administrators and teachers with promising educational practices related to students with disabilities.

CDE must ensure that training is provided to staff assigned to monitoring and that those staff identify the training needs of local staff.

On the positive side, CCR guidelines do contain specific tests for compliance with relevant requirements of federal law. If areas of noncompliance are noted, LEAs are asked to write corrective action plans and submit them to CDE. Timelines exist for the submission and implementation of corrective action plans. CDE may require evidence that the corrective action has been implemented, although the LEA's affirmation that they have implemented the plan is usually sufficient.

Elements of an Effective Monitoring System

After examining the current CCR process, the Workgroup decided that a monitoring system had to have the following characteristics to be effective, productive, and efficient.

1. **The personnel involved in the monitoring function, both locally and at the state level, must be well informed and properly trained to carry out their functions.**

IDEA and State special education laws are the context in which special education is provided. These laws present legal and procedural responsibilities generally not included in the course of study of teachers and administrators, including those in special education. Investigative techniques, application of legal standards to fact situations, evaluations of program effectiveness, and identification of legal obligations are not, typically, skills that all educators possess.

CDE must ensure that training is provided to the staff assigned to monitoring and that those staff identify, as part of the monitoring effort, the training needs of local staff. Inservice training for local staff or technical assistance by state staff should be included in corrective actions and program improvement plans. Local policies and procedures must assign clear responsibility at the local level for ensuring and maintaining compliance with special education laws. Training should also be accessible to parents and members of the CAC. Additional funding, in the form of capacity building grants or other appropriations, should be available for training local staff and parents.

CDE should assemble a database and use the data to identify LEAs where monitoring would be most effective.

2. **Compliance reviews must consist of a coordinated system utilizing all informational sources available to CDE and produce focused monitoring of the LEAs most likely to have systemic problems.**

In a state with nearly 1,100 LEAs of all demographic, geographic, and population types, a one-size-fits-all approach to monitoring is simply not functional. Monitors must have access to and use available data that indicate the efficacy of special education programs. This data must be combined with review of the annual service and budget plans to identify LEAs with potential areas of noncompliance. This data should include:

- the number of qualified teachers and classified staff;
- any additional training teachers or classified staff may have received;
- student performance indicators, such as, graduation rates, grade retention rates, student performance on standardized and/or alternate assessments, rates of students exiting special education, and data from other evaluation and accreditation processes;

- rates for student suspension and expulsion;
- the number of students receiving extended year services;
- the number of complaints filed and sustained;
- the exemption rate from standardized assessments;
- attendance rates;
- the rate of referral and identification of students with disabilities; and
- the placement of students with disabilities (e.g., how many are served in their neighborhood school, how many in another school in the district, how many in another district's programs, or the level of participation in the general education classroom and curriculum).

Data should permit analysis of services to students with low incidence disabilities.

We recommend that CDE develop a database that includes the incidence and results of complaint investigations and administrative hearings by LEAs and SELPAs. The results of CDE's review of annual service and budget plans and the LEA's self-evaluation should be used in targeting LEAs for monitoring. In addition, state staff should be able to access and query a variety of databases concerning the LEA. The data described above should be analyzed to identify potential areas of noncompliance. Significant changes in some of these data, including such things as identification rates, should be examined for potential areas of noncompliance. The gathering of available data and the beginning point for analyzing significant changes should begin in the 1997-98 school year prior to the enactment of AB 602.

Services delivered to students who are relatively small in numbers, but whose needs are relatively complex, should be given special attention, both in the informational analysis and in the actual monitoring visit. These students, those with low incidence disabilities, merit special attention because normal sampling procedures do not result in a thorough review of their situation. Programs or services identified as in need of statewide improvement should be given special attention in the same manner.

By assembling and analyzing information in the above manner, CDE should target LEAs where monitoring will be the most productive. The length and content of the visit should be determined by the size and needs of the LEA. To be thorough, the monitoring process should continue to investigate all areas of

federal compliance. Special attention, however, should be placed on potential problem areas identified in advance. This attention could also focus on "qualitative" data that is available locally, such as

- interventions used prior to referring students to special education;
- the connection between the student's assessment for eligibility and his or her IEP goals;
- the connection between the IEP goals and the general education curriculum;
- the participation of parents;
- postschool outcomes; and
- parent satisfaction.

CDE should provide local administrators and teachers with instructions that will allow local officials to replicate state monitoring efforts.

In short, a constellation of data and information sources should be coordinated to select LEAs for monitoring and to determine the particular focus of the monitoring effort in each LEA. Random monitoring of LEAs can still occur but should be a lower priority than LEAs identified in the above manner.

3. An effective monitoring system must provide information that is public and useful to parents, administrators, and trustees; must be coordinated with the ongoing local activity of self-evaluation; and must lead to systemic improvement.

State monitoring should be coordinated with local self-evaluation and development of the annual service plan.

The purpose of monitoring should be to reduce the incidence of noncompliance and to involve the educational community in improving programs. Therefore the data discussed above should be available to local educators in addition to CDE staff.

State monitoring should be coordinated with local self-evaluation procedures. CDE should provide local administrators and teachers with instructions that will allow local officials to use the data described above to replicate state monitoring efforts (similar to the training provided to local staff for CCRs). These instructions should cover both procedural compliance and pupil performance. The State should provide methods for data analysis and evaluating local knowledge of special education law and promising practices in special education instruction.

The results of local self-evaluation procedures should be public and accessible to parents, teachers, and CACs. Education Code Section 56205 requires a "schedule of regular consultations" with the parents and teachers regarding policy development. If consultations are to be meaningful, they must include a discussion of the self-evaluation process, the results of that process, and strategies for improvement. Perennial change and improvement should not be perceived as program weaknesses, but rather as a cooperative effort that benefits students. Similarly, the self-evaluation process could be used as a means to educate school board members regarding special education.

If CDE monitoring efforts reveal areas of noncompliance, the Workgroup recommends that the results be forwarded to elected trustees and the CAC, in addition to the superintendent, SELPA director, or other administrative officials. Similarly, the results of complaint investigations should be forwarded to trustees and the CAC if, in the opinion of CDE staff, the results reveal a pattern of noncompliance. Local trustees should be involved in achieving compliance and positive educational outcomes for students with disabilities.

A finding of noncompliance should produce subsequent on-site monitoring until there is a finding of compliance.

As stated in Chapter 1, the annual service and budget plans required by AB 602 must be coordinated with the monitoring efforts, whether those efforts are conducted by local or state staff. The development of annual service and budget plans must involve a discussion of the result of self-evaluations and must include remedies for identified deficiencies. Annual service and budget plans must become a vehicle for establishing relationships among educators and parents, correcting local areas of noncompliance, and avoiding the need for the types of interventions discussed in Chapter 5.

4. An effective monitoring system must consist of firm deadlines for submitting and implementing corrective actions and a clear set of consequences for failure.

One of the deficiencies of the current system is the absence of enforceable deadlines, certain consequences, and objective verification that problems have been corrected. An effective monitoring system must include follow-up and enforcement procedures that preclude LEAs from remaining noncompliant.

Current CDE policies regarding the complaint process call for the submission by the LEA of evidence documenting that identified complaints have been remedied. At times, complaint investigators initiate subsequent on-site visits

or contact with the complainant to ensure that decisions are being implemented. The Workgroup strongly recommends that the State institute similar procedures for the results of administrative decisions and monitoring efforts. Monitoring that has resulted in a finding of noncompliance should produce subsequent on-site monitoring until there is a finding of compliance.

If any monitoring system is to be effective, State law and regulations must include a set of unambiguous consequences for failure to remedy identified problems and state staff must be provided little discretion about whether or not to implement a particular consequence. (See section on Sanctions and Other Enforcement Tools.)

Procedures for Receiving and Resolving Complaints

Finally, State education agencies are also obligated under IDEA to administer procedures for receiving and resolving complaints [20 USC 1411(f)(3)(B) and 1415(d)(2)(E) and 34 CFR 300.660]. Any individual may file a complaint alleging a violation of procedural rights of a student with disabilities or the failure to provide instruction or services called for in an IEP. Most states, like California, comply with this requirement by retaining investigators familiar with special education legal requirements to determine the facts relevant to the complaint and issue decisions.

In meetings of the Workgroup, concerns have been raised regarding whether investigations are being conducted in a manner consistent with CDE's policies and procedures. To resolve these concerns, it is suggested CDE develop a customer satisfaction survey that could be mailed to all individuals filing a complaint. The survey should ask the respondent to rate CDE in a number of areas, including

- was the complainant contacted directly;
- was the dispute resolved within 60 days from the date of the complaint;
- was the decision adequately explained;
- was the decision promptly implemented;
- was follow-up or verification by CDE regarding implementation of the decision adequate; and
- if the decision was not to uphold the complaint, were other remedies or the appeal process described?

The Department's complaint investigation functions should be improved by

- ***conducting a customer satisfaction survey;***
- ***establishing written policies and procedures for accelerated complaint investigations;***
- ***establishing written policies regarding awarding compensatory education and reimbursement for out-of-pocket expenses in sustained complaint investigations; and***
- ***investigating the efficacy of alternative dispute resolution, and seeking funding for the expansion of this practice if it is effective.***

This customer satisfaction survey should also include a section that could be filled out by the complainant. This would allow CDE to develop information regarding the availability of the complaint process to families of varying income levels, ethnic composition, and linguistic diversity. Understanding who uses the current complaint system would assist CDE in targeting education and training.

Accelerated complaint investigation procedures should be utilized in cases where rapid intervention appears necessary. Although the Workgroup is informed of CDE policies regarding emergency or accelerated response, it recommends that these policies be committed to writing so they will be uniformly applied by each complaint investigator.

CDE should adopt written procedures for complaint investigators that include the offer of mediation to both parties after receiving a complaint.

The Workgroup also recommends CDE examine the efficacy of alternatives to the complaint process. State regulations require that LEAs have uniform complaint procedures and that the State offer mediation as an alternative to proceeding with a complaint. It is recommended that CDE adopt written procedures for complaint investigators that include the offer of mediation to both parties after receiving a complaint.

Some LEAs have adopted ADR procedures as a supplemental procedure for resolving disagreements. If both parties consent to use ADR, the complaint can be temporarily suspended while the issue is referred to an objective panel. This panel consists of individuals informed and trained in the requirements of special education law and the principles of ADR. These individuals may be parents, teachers, advocates, or administrators. Anecdotal evidence exists that these procedures have worked well, yielded positive resolutions of issues, and resulted in cost savings.

The Workgroup believes CDE should determine if ADR produces positive outcomes and cost savings and, if so, begin administrative steps to implement ADR statewide. The existence of ADR at a local level may also assist CDE in complying with provisions of Title V of the California Code of Regulations that requires mediation to be offered as an alternative to the State complaint process.

In Chapter 1, Program Accountability and Local Plans, it was stated that the local plan should identify a local administrator in each LEA capable of responding to parent concerns and questions. In the event these concerns or questions cannot be resolved by the local administrator, local plans should set policies for advising the parent where he or she might obtain impartial advice. For example, parents

might be advised to contact a CAC representative, a local Parent Training and Information Center, someone on the ADR panel knowledgeable in special education, or an impartial individual associated with local complaint procedures required by Title V. Although parents should always be informed about the due process rights available to them, informal avenues for resolving concerns may reduce the need to use due process proceedings.

Complaint Procedures Should Provide Incentives for Compliance

The Workgroup recommends that CDE's procedures for resolving complaints should be modified to provide incentives for compliance. First, the Workgroup recommends that CDE staff award compensatory education or reimbursement for out-of-pocket expenses, as required by State and federal law, in complaint investigations where there is a finding that a service specified in the student's IEP has not been provided. Failure to provide a service required by a mediated agreement or due process proceeding should be treated in an identical fashion.

CDE staff should be required to award compensatory education or reimbursement for out-of-pocket expenses in complaint investigations where CDE finds an LEA has failed to provide a specified service in the student's IEP.

In making this recommendation, the Workgroup recognizes that not all LEAs that fail to provide services included in a child's IEP are negligent. At times, sudden personnel changes or other unpredictable events can deprive an LEA of the ability to provide a particular service, regardless of the intentions of local administrators. However, the goal here is to preserve the educational opportunities open to the student. Services that are included in the IEP are necessary for the student to make educational progress. The absence of a service for a significant period of time has the effect of denying the student the ability to achieve educational goals. Compensating for the missing service is the equivalent of making up lost days of attendance. The use of compensatory education in these circumstances is intended to provide educational opportunities guaranteed to the student and provide an incentive for LEAs to remain compliant where that option is available to them.

Similarly, if the parent has had to purchase the identical service required on the child's IEP from a private provider during the time the LEA was not providing the service, the parent should be compensated for out-of-pocket expenses. And if a service or placement has been required by a mediated agreement or due process proceeding, the LEA should be required to compensate

for the failure to provide the service from the date its legal obligation began.

The Workgroup has also noted that the number of formal complaints being filed with CDE and sustained by them has increased dramatically in the last several years. This increase has resulted in the tripling of resources and staff dedicated to complaint investigations during the last two years. The resources that CDE expends investigating and resolving complaints could be available for other priorities. Therefore, the Workgroup recommends that a self-sustaining system of funding be created for the Complaints, Management, and Mediation Unit.

Statute should be amended to allow CDE to assess LEAs for the investigation costs of sustained complaints.

The Workgroup recommends that when CDE sustains a complaint, the LEA should be billed for the cost of the complaint investigation, except as noted below. Payment should be required from unrestricted (nonspecial education) funds and deposited in a special fund at the state level. In this way LEAs will have an incentive to develop procedures, such as alternative dispute resolution, for resolving complaints locally and remaining in compliance. If the complaint investigation function were self-sustaining, CDE would not have to divert resources from other activities to meet the additional workload. Federal funds now used for complaint investigations would become available for other priorities, including local assistance. And if the number of sustained complaints fell, CDE staff could be reduced accordingly.

To provide an incentive for compliance, LEAs must be able to avoid paying the costs of a complaint investigation if they act in an expeditious manner to resolve the complaint. For an LEA to act to resolve a complaint, CDE must notify the LEA upon receipt of the complaint and prior to initiating an investigation. The Workgroup was informed that CDE implemented procedures in January 1999 to notify an LEA within 24 hours of receiving a phone call from a parent that might initiate a complaint. Therefore, the Workgroup further recommends that LEAs that present evidence to CDE that a complaint has been resolved prior to the expiration of the 60-day period given CDE in federal law to resolve complaints should avoid any assessment of charges for the investigation. LEAs that make an attempt to resolve the complaint and fail, but ask in writing for technical assistance from CDE prior to expiration of the 60-day time period should also be exempted from any assessment for investigation costs. ◗

5. Sanctions & Other Enforcement Tools

SUMMARY

In recent years, three LEAs in California have experienced systemic, persistent noncompliance that led to major federal and state monitoring efforts or litigation. In addition, during the last three years the number of special education complaints received by the Department of Education has doubled. Estimates are that the number of complaints will exceed 700 in the current school year.

Federal monitoring of California has also disclosed persistent, systemic noncompliance. Instances of noncompliance identified in federal monitoring of LEAs in 1995 persisted in the same LEAs when federal representatives returned in 1998. In addition, currently 72 LEAs have not implemented corrective actions 120 days after the expiration of timelines set by CDE. Nineteen LEAs have not implemented corrective actions more than 400 days after the expiration of timelines set by CDE.

In previous chapters, the Workgroup recommended an improved monitoring system, tied to a system that can develop and implement changes in local district educational practices. The Workgroup believes that the development of a system in which the obligation for ensuring compliance is shared by CDE and LEAs is essential for ensuring and maintaining compliance.

Although the recommendations contained in previous chapters are the core of an improved system of compliance, the Workgroup recognizes that no system of monitoring combined with local change will succeed in every case. To fulfill our goal of ensuring and maintaining compliance, the Workgroup proposes an enforcement system with clearly defined, tiered consequences for persistent

noncompliance. The Workgroup finds that the lack of such a system has contributed to the documented problems California has with persistent noncompliance. The Workgroup also believes that serious efforts to ensure compliance must address the current lack of a viable system for enforcement and must propose constructive alternatives.

Lack of Clear Statutory Authority for Enforcement

Federal law allows the state education agency to withhold federal funds from an LEA, after providing the LEA with an opportunity for a hearing, only if the state agency provides the student with services directly. Use of this authority is impractical because CDE must use state contracting procedures to provide direct services, causing further delays in service delivery. Direct service by CDE as the first enforcement option may also be a questionable public policy. Placing ultimate responsibility on the state to implement corrective actions does not create local understanding or capacity for change. It also reinforces the notion that educating students with disabilities is largely a state responsibility.

State law, on the other hand, contains no specific authority for CDE to withhold the special education apportionment for noncompliance. No provisions of law specify the circumstances meriting sanction, due process or appeal of a proposed sanction, or direction regarding how CDE should treat funds withheld from an LEA.

An effective enforcement system must be
• fair;
• consistent; and
• predictable.

Characteristics of an Effective Enforcement System

The Workgroup believes that an effective enforcement system must first allow a fixed and clear period of time for CDE staff to work with local staff in a supportive and nonadversarial manner. However, an enforcement system must also communicate to LEAs that noncompliance is not a viable option. An effective system of enforcement must have the following attributes:

- It must be fair — those held accountable must have the authority to implement the required action(s), must have reasonable notice and assistance regarding what is required, and must have rights to appeal;
- It must be consistent — every LEA must be treated alike; and
- It must be predictable — the statute must contain clear, certain consequences for prolonged failure to implement required actions.

To begin designing such a system of enforcement, the Workgroup first divided noncompliance into two types: individual noncompliance and systemic noncompliance. Individual noncompliance is defined as the failure to provide a lawfully required service or procedure to an individual student.

Recommended Sanctions for Individual Noncompliance

As discussed in the previous chapter, CDE is obligated to receive, investigate and issue decisions for complaints involving individual students. More than 80 percent of the complaints received by CDE involved the failure by an LEA to provide services that have been specified in an IEP. Decisions issued by CDE on sustained complaints specify corrective actions and reasonable timelines for implementing the corrective action(s). During investigations CDE staff discuss issues and provide technical assistance to local staff. Decisions also specify the evidence that must be submitted to CDE to indicate the action has been implemented. LEAs have opportunities to appeal any decision issued by CDE, first to the superintendent of public instruction, and subsequently to the federal Department of Education.

The Workgroup recommends that the Legislature first define persistent individual noncompliance by setting a fixed period, after the timeline specified in decisions issued by CDE, after which continued noncompliance would be deemed persistent.

While the momentary failure to provide a service required in an IEP is noncompliant, it is often understandable and should not be subject to sanction. Personnel emergencies or unexpected needs for service may contribute to momentary interruptions in service. Noncompliance that is corrected within the timelines specified by CDE should not subject the LEA to adverse action.

Rather, it is the persistent, prolonged failure to provide a legally required service after an LEA has been informed of the requirement, the corrective action to be implemented, and given a reasonable timeline for implementation, that should result in a clear consequence. Regarding services to individual students, local administrators have both the responsibility and authority to ensure that services are provided. Therefore, for individual noncompliance, the Workgroup's recommendations focus on local administrators.

To establish an enforcement system, the Workgroup recommends that the Legislature first define *persistent* noncompliance by setting a fixed period, after the timeline specified in decisions issued by CDE, after which continued noncompliance would be deemed persistent. Once this time period has expired, CDE should immediately be required to:

- Withhold the superintendent's salary until satisfactory evidence has been submitted to CDE that the required corrective action(s) has been implemented; and
- If the noncompliance persists after a second period of time defined in statute, withhold all federal special education funds from the LEA and use those funds to provide the services necessary to resolve the noncompliance.

If the noncompliance persists, it is recommended that the superintendent's salary be withheld and that all federal special education funds be withheld from the LEA.

In the unlikely event that withholding federal funds becomes necessary, State law should be further amended to:

- Provide for a hearing before an appropriate state agency, such as the State Board of Education, prior to withholding funds; and
- For this purpose and this purpose only, exempt CDE from contracting procedures required in State law and allow for the issuance of a sole source contract to an LEA or nonpublic school or agency to ensure that the student receives services in a timely manner.

Recommended Sanctions for Systemic Noncompliance

The second type of noncompliance is systemic in nature and relates to groups of students. It involves the failure by an LEA to provide one or more of the key elements of the continuum of services and placements specified in federal or State law as necessary to special education. This type of noncompliance is often discovered, and always confirmed, through monitoring.

Correcting systemic noncompliance often involves the re-direction of resources and staff and always involves a renewed understanding of the responsibilities of LEAs to students with disabilities.

Similar to complaint investigations, when an LEA is found noncompliant through CDE's monitoring efforts, a report is issued specifying corrective actions and reasonable timelines for implementing those actions. However, unlike situations of individual noncompliance, implementing change cannot rely solely on the authority of any single individual, including the local superintendent. Correcting systemic noncompliance often involves the re-direction of resources and staff and always involves a renewed understanding of the responsibilities of LEAs to students with disabilities. For change to become permanent, this renewed understanding must infuse and guide the relationships between general and special education administrators, business officials, trustees, teachers, and parents, and must lead to concrete actions to provide educational opportunities to students with disabilities.

As described in previous chapters, to remedy situations of systemic noncompliance, CDE must establish practices and procedures, grounded in the development of the annual service and budget plans, to develop local capacity for change. However, the ultimate responsibility to remedy situations of persistent noncompliance must rest with LEAs. Therefore, the Workgroup recommends that the Legislature set a fixed period of time, subsequent to the timelines for corrective actions contained in monitoring reports issued by CDE, after which systemic noncompliance would be deemed *persistent*. Once noncompliance has been deemed persistent, State law should required the following steps to be taken:

- The State Board should be required to hold a hearing at which the LEA may respond to the allegations of systemic noncompliance. If the State Board finds the LEA is noncompliant, the Board should disapprove the annual service and budget plans submitted by the LEA.
- Upon disapproval of the annual service and budget plans, the superintendent of public instruction shall be required to appoint an individual authorized to bring the LEA into compliance. This individual should have the same authority given the county superintendent pursuant to AB 1200 (Education Code Section 42127 et seq.) to remedy financial problems in insolvent districts.
- The costs incurred through the appointment of the individual shall be paid through withholding federal funds as described above.

The Workgroup recommends the Legislature set a fixed period of time after which systemic noncompliance would be deemed persistent and State law should require certain steps be taken to remedy this situation.

To assist in the implementation of the above recommendations, the following changes should also occur:

- CDE should establish procedures requiring that corrective actions for systemic noncompliance be included in the annual service and budget plans.
- Timely submission of annual service and budget plans pursuant to Education Code Section 56205 should be added to Education Code Section 42129. This would permit the withholding of superintendents' salaries if annual service or budget plans are not submitted.
- LEAs with unresolved issues of noncompliance should be unable to receive any State or national award until the noncompliance is resolved.

DISCUSSION

Current Statute Regarding Enforcement

To begin analysis of the issue of enforcement, the Workgroup first reviewed the enforcement procedures available in current law. Federal law permits state education agencies to withhold federal funds from noncompliant LEAs [20 USC 1413(d)]. If state agencies elect to withhold funds after providing an opportunity for a hearing, they must use those funds to correct the noncompliance, i.e., to provide direct services to students with disabilities [20 USC 1413(h)]. When the State of California has attempted to sanction LEAs using this authority in the past, State contracting requirements have caused delays in delivering services to the student(s) and imposed an unsustainable administrative burden on CDE staff.

State law provides questionable authority for withholding State funds. Statute is clear that funds appropriated for special education may only be used for special education programs. However, clear statutory authority does not exist for withholding funds from noncompliant programs. Statute does not define the circumstances that would merit a withholding of state funds, nor are rights to appeal a decision to withhold before appropriate state agencies specified.

In addition, withholding both federal and State funds could jeopardize the financial viability of small LEAs and may have detrimental effects on the education of students. Withholding State funds would also limit the resources available to LEAs to implement required corrective actions.

Individual Noncompliance

To develop recommendations for an effective system of enforcement the Workgroup distinguished between two types of noncompliance. The first pertains to individual situations, the second to a systemic situation. While any noncompliance issue is serious, it is recognized that systemic noncompliance has the potential to impact the educational outcomes of large numbers of students. Therefore, the Workgroup believes that an effective enforcement system should distinguish between remedies appropriate to each type. The monitoring system described in Chapter 4 has been designed to reveal connections between the two; i.e., to analyze when a series of noncompliance issues of the first type indicate that there may be a systemic problem.

Noncompliance regarding an individual student results from a complaint investigation completed by CDE or an administrative hearing decision completed by the Hearing Office. These decisions are legally binding on LEAs. LEAs are currently given a fixed deadline for implementing corrective actions that result from complaint investigations. The timelines chosen by CDE are calculated to provide a reasonable amount of time to implement corrective actions. LEAs are also required to submit specific evidence of implementation. The Workgroup believes that the process of setting timelines for completion of corrective actions should be extended to administrative hearing decisions.

CDE currently has procedures regarding follow-up with LEAs that have not met the timelines indicated in the complaint decision. The Workgroup also believes that these procedures, which are nonadversarial in nature, should be given an opportunity to work. This process involves correspondence directed to the local superintendent and, eventually, trustees of the district, informing them of the noncompliance and the corrective actions required to achieve compliance. CDE is also available to provide technical assistance to districts in whatever manner they request during this period.

State law should be amended to define persistent individual noncompliance and set deadlines for implementation of corrective actions.

However, when nonadversarial measures fail to achieve compliance within a fixed and reasonable period of time after the original deadline in CDE's decision, State law should be amended to compel CDE to take specified enforcement actions. As a first enforcement step, the Workgroup recommends that State law be amended to define the period of time during which the LEA must implement corrective actions prior to noncompliance being deemed *persistent*.

Once a situation of individual noncompliance has been deemed persistent, the Workgroup recommends that CDE be required to withhold the superintendent's salary until compliance is verified. If withholding the superintendent's salary does not result in compliance within a second fixed period of time, the law should require CDE to withhold all federal special education funds from the LEA. Pursuant to federal law, CDE would use the federal funds to provide the legally required services for the student. If the law was changed as recommended above, LEAs should be informed of these legally required enforcement procedures and of CDE's obligation to obey the law as part of any sustained complaint.

In seeking to convince LEAs to implement corrective actions resulting from complaint investigations, CDE directs initial correspondence to district superintendents and other local administrators. This is done because local superintendents have the authority to order the implementation of corrective actions regarding individual students. Providing services that have already been specified in a student's IEP does not involve a re-direction of resources that exceeds the authority given superintendents. For this reason, the above recommendations for enforcing corrective actions for persistent individual noncompliance focus on the local administrator authorized to take the required actions.

Withholding the local superintendent's salary will likely remedy nearly every situation of persistent individual noncompliance. However, the Workgroup also recommends that State law be amended to give CDE the ability to withhold federal funds pursuant to federal law. To make withholding funds a practical alternative, State law must also be amended to exempt CDE from state contracting requirements for the purpose of providing direct service. This would facilitate CDE entering into sole source contracts with other LEAs or nonpublic schools and agencies to serve the student. CDE should also be able to deduct any administrative expenses incurred to carry out the above functions from the federal funds withheld from the LEA.

Once noncompliance has been deemed persistent, State law should require that

- ***the local superintendent's salary be withheld, and if this fails;***
- ***CDE be given the authority to withhold federal funds pursuant to law;***
- ***procedures for a hearing on this issue be established by the State Board; and***
- ***the current funding model be amended to ensure that withholding federal funds does not result in a corresponding increase in State funds.***

Pursuant to federal law, LEAs must also be given an opportunity for a hearing on the issue of withholding funds prior to any funds being withheld. The Workgroup recommends that procedures for such a hearing be established before the State Board of Education or other appropriate public agency where LEAs have an opportunity to rebut evidence that they have failed to comply with a legally binding decision regarding an individual student.

In addition, statute regarding the current funding formula for special education should be amended to ensure that withholding federal funds does not result in a corresponding increase in State funds. Without this amendment, a funding formula that uses federal funds to contribute to an overall level of funding might automatically increase State funds to compensate for any reduction in federal funds.

If federal funds are withheld from an LEA and used to provide direct service to student with disabilities, when CDE has received an assurance from the local

Diagram 1a.
Individual Noncompliance:
Current Practice

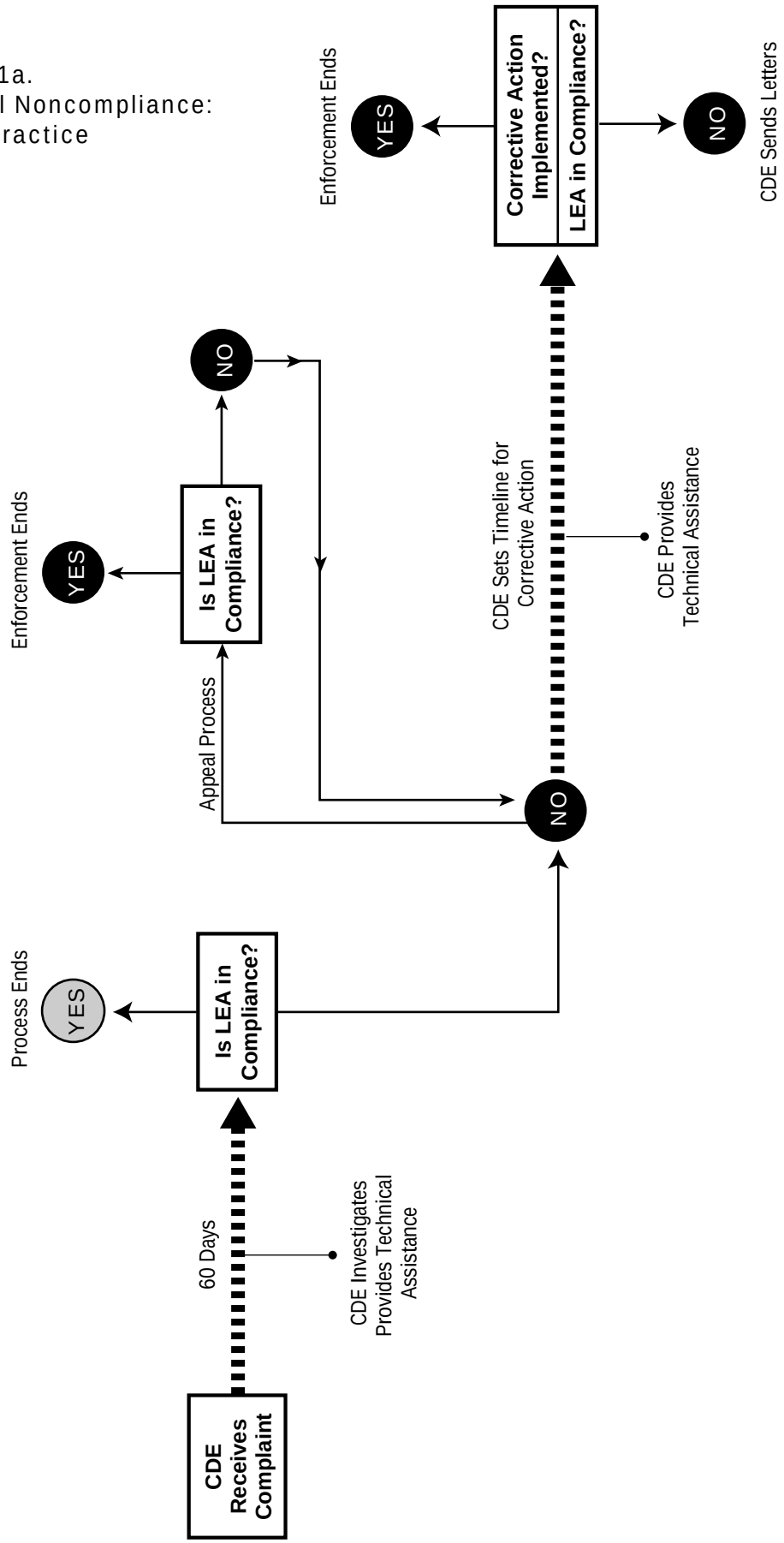
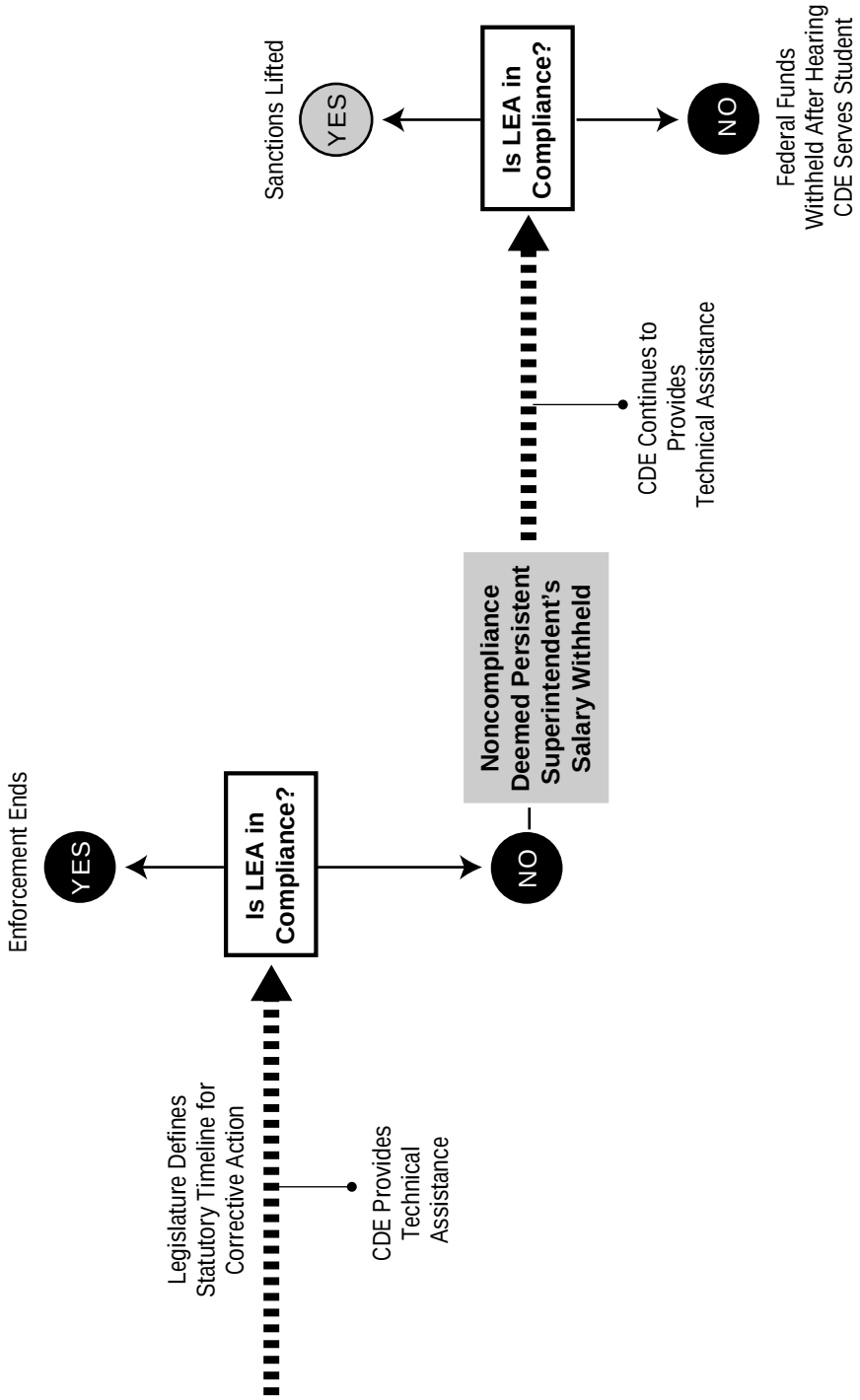


Diagram 1b. Individual Noncompliance: Recommended Sanctions/Enforcement (Continues from Current Practice, shown in Diagram 1a.)



superintendent and/or school board regarding the steps taken to ensure that compliance will continue, the federal funds that remain in the LEA's grant award should be returned. The Workgroup's recommendations regarding individual noncompliance are displayed in Diagram 1a and Diagram 1b.

Systemic Noncompliance

The second type of noncompliance identified by the Workgroup is systemic noncompliance. Systemic noncompliance affects groups of students and involves the failure to provide one or more of the essential elements specified in federal or State law as necessary to the full continuum of educational settings and services comprising special education. Systemic noncompliance is often discovered, and always confirmed, through monitoring. Monitoring reports, like complaint investigation decisions, specify corrective actions to remedy the noncompliance and reasonable timelines for implementation of corrective actions.

Efforts to correct systemic noncompliance must involve a renewed appreciation for the obligations of LEAs to students with disabilities and the connection between those obligations and educational achievement.

In situations of systemic noncompliance nonadversarial approaches should also be given an opportunity to work. CDE has procedures for clearly describing the noncompliance, for setting timelines for implementing corrective actions, and for follow-up when timelines are not met.

Because systemic noncompliance is confirmed through monitoring, the Workgroup recommends that CDE should always use on-site monitoring to verify that compliance has been achieved. As discussed in Chapter 4, correcting systemic noncompliance cannot be a process that involves only local administrators. Therefore, when CDE discovers systemic noncompliance, the Workgroup recommends that reports be directed to trustees, administrators, teachers, and parents and that CDE develop procedures for involving all stakeholders in a concerted and cooperative effort to achieve compliance. As discussed in several places previously in this report, efforts to correct systemic noncompliance must involve a renewed appreciation for the obligations of LEAs to students with disabilities and the connection between those obligations and educational achievement. This renewed understanding must lead to the concrete and verifiable implementation of change.

Corrective actions should be included in annual service and budget plans, which should be conditionally approved until corrective actions are implemented.

The Workgroup believes that corrective actions necessary to remedy systemic noncompliance must be included in the LEA and SELPA annual service plan submitted for approval at the state level. Sufficient funds to implement the

corrective actions must be reflected in the accompanying budget plans. Any service and budget plan that contains corrective actions resulting from State monitoring should only be conditionally approved by the State Board until evidence has been submitted indicating that corrective actions have been implemented.

Similar to the above recommendations, the Workgroup believes that systemic noncompliance should not lead automatically to punishment or sanction. In fact, LEAs that correct systemic noncompliance should be recognized for their efforts. They can often provide successful examples for other LEAs struggling with similar issues. It is only when systemic noncompliance becomes persistent, i.e., when there is a failure to engage in a constructive process of change leading to implementation of the required corrective actions, that sanctions become necessary.

Therefore, the Workgroup recommends that State law be amended to specify that when an LEA fails to implement corrective actions at the end of a fixed and reasonable period of time subsequent to the timelines given the LEA in a monitoring report, that the noncompliance will be deemed *persistent.* Once noncompliance has been deemed persistent, a series of enforcement actions should be required. First, the superintendent should be required to set a hearing before the State Board of Education to determine whether the LEA is noncompliant and take action to disapprove the annual service and budget plans of the LEA. During this hearing the LEA may present evidence disputing the fact that it remains out of compliance.

Statutory deadlines should be set for implementation of corrective actions. If corrective actions are not implemented within the deadlines, noncompliance will be deemed persistent and will result in a series of actions.

If the State Board finds the LEA noncompliant, it should disapprove the local plan. Once the local plan has been disapproved, the Workgroup recommends that the superintendent be required to appoint an individual who shall be authorized to take any actions necessary to bring the LEA into compliance. This individual should have legal authority to take whatever steps are necessary to implement the necessary corrective actions, including establishing positions, hiring and reassigning staff, and transferring funds from unrestricted accounts to special education. This authority would parallel the legal authority given to county superintendents pursuant to AB 1200 (Education Code Section 42127 et seq.) regarding financially insolvent districts and would include the authority to rescind or stay any action by the local school board.

Given the authority granted this individual, utilizing federal agencies or legal action to ensure compliance would probably be unnecessary. However, recourse to these other enforcement tools should remain an option, if necessary.

Although the recommendations for enforcement are similar to the authority provided in AB 1200, the Workgroup is not recommending the creation of an organization (such as the Fiscal Crisis and Management Assistance Team under AB 1200) from which this individual should be selected. Provided that he or she is not an employee of the noncompliant LEA, the individual may be employed by a local county office of education, a district, CDE, or another public or private agency.

Once corrective actions are in place and the school board and SELPA governance council send a letter to the superintendent affirming their continuation and inclusion in the annual service and budget plans, the superintendent would recommend approval of the local plan and the individual would be relieved of responsibility. All costs incurred by the appointment of this individual, including salary and benefits, would be the financial responsibility of the LEA. If necessary, federal funds could be withheld, pursuant to earlier recommendations, to cover these expenses.

Refusal to include corrective action in annual service and budget plans should also result in the disapproval of these plans.

The Workgroup recommends that the refusal of an LEA or a SELPA to include corrective actions that result from monitoring in their annual service plans and budget plans after being requested to do so by CDE should be treated in an identical fashion. The State Board of Education, on the recommendation of CDE, should disapprove the annual service and budget plans. Once the service and budget plans are disapproved, the superintendent should be required to appoint an individual empowered to implement the necessary corrective actions. This individual would also have the authority to amend the annual service and budget plans to include the corrective actions.

The Workgroup recognizes that these recommended enforcement procedures for systemic noncompliance might appear severe. However, the Workgroup would point out that because they do not involve withholding State funds, there is no potential conflict with Proposition 98. Systemic noncompliance, because it affects many students, should raise concerns about student welfare and overall district operations. A system of enforcement for systemic noncompliance should produce a conclusive remedy and should do so in a way that is not

detrimental to the education of any student. The Workgroup believes the proposed system meets these criteria. The Workgroup's recommendations concerning systemic noncompliance are displayed in Diagram 2 and Diagram 3.

To support the enforcement system discussed above, we recommend the following additional changes to State statute:

- Failure to submit the annual service and budget plans in a timely fashion pursuant to Education Code Section 56205 be added to Education Code Section 42129, which permits withholding of the superintendent's salary.
- LEAs with outstanding, unresolved issues of compliance should be prohibited from receiving any State or national award while the situation of noncompliance remains unresolved. ◗

Diagram 2.
Systemic Noncompliance:
Current Process

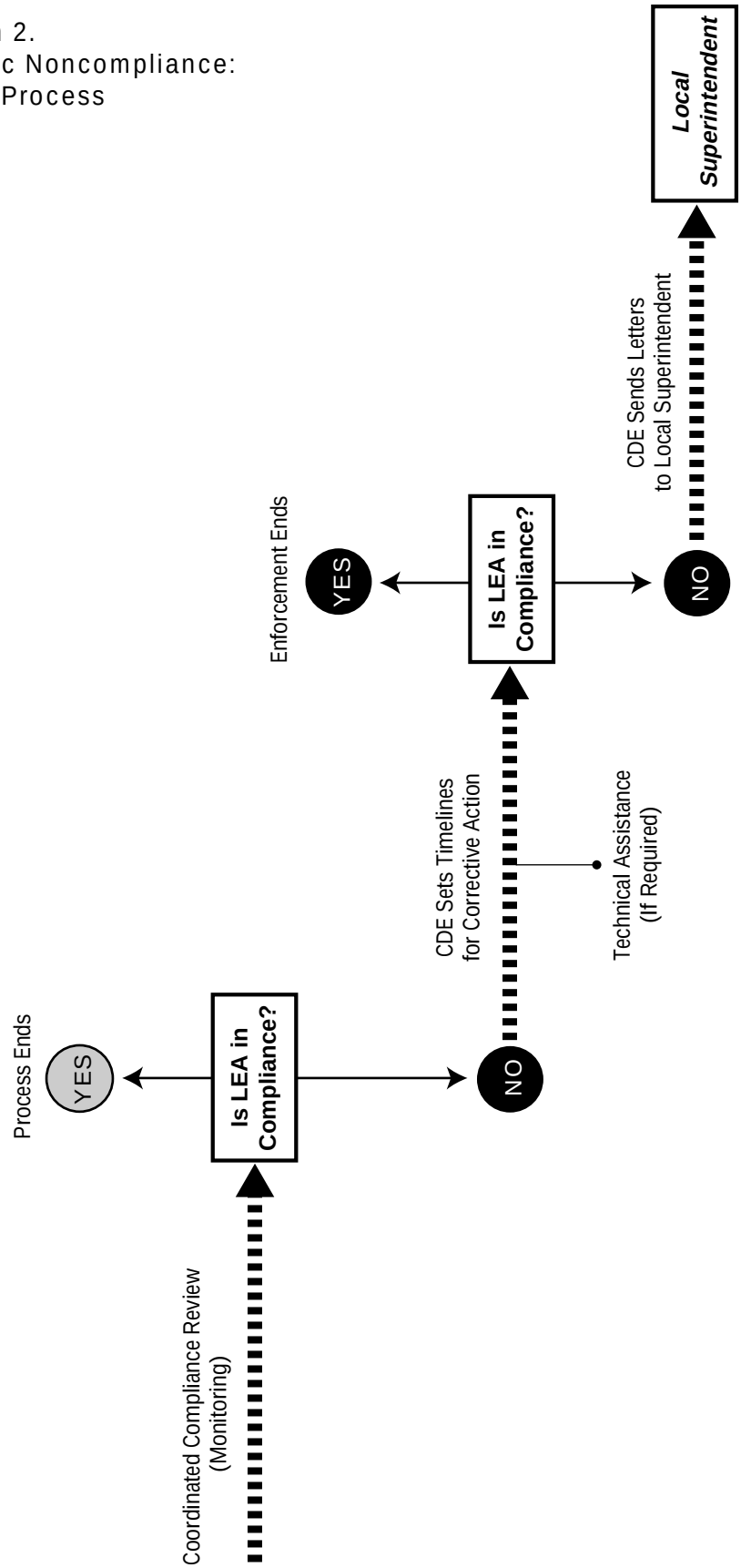


Diagram 3.
Systemic Noncompliance:
Recommended Process
Sanctions/Enforcement

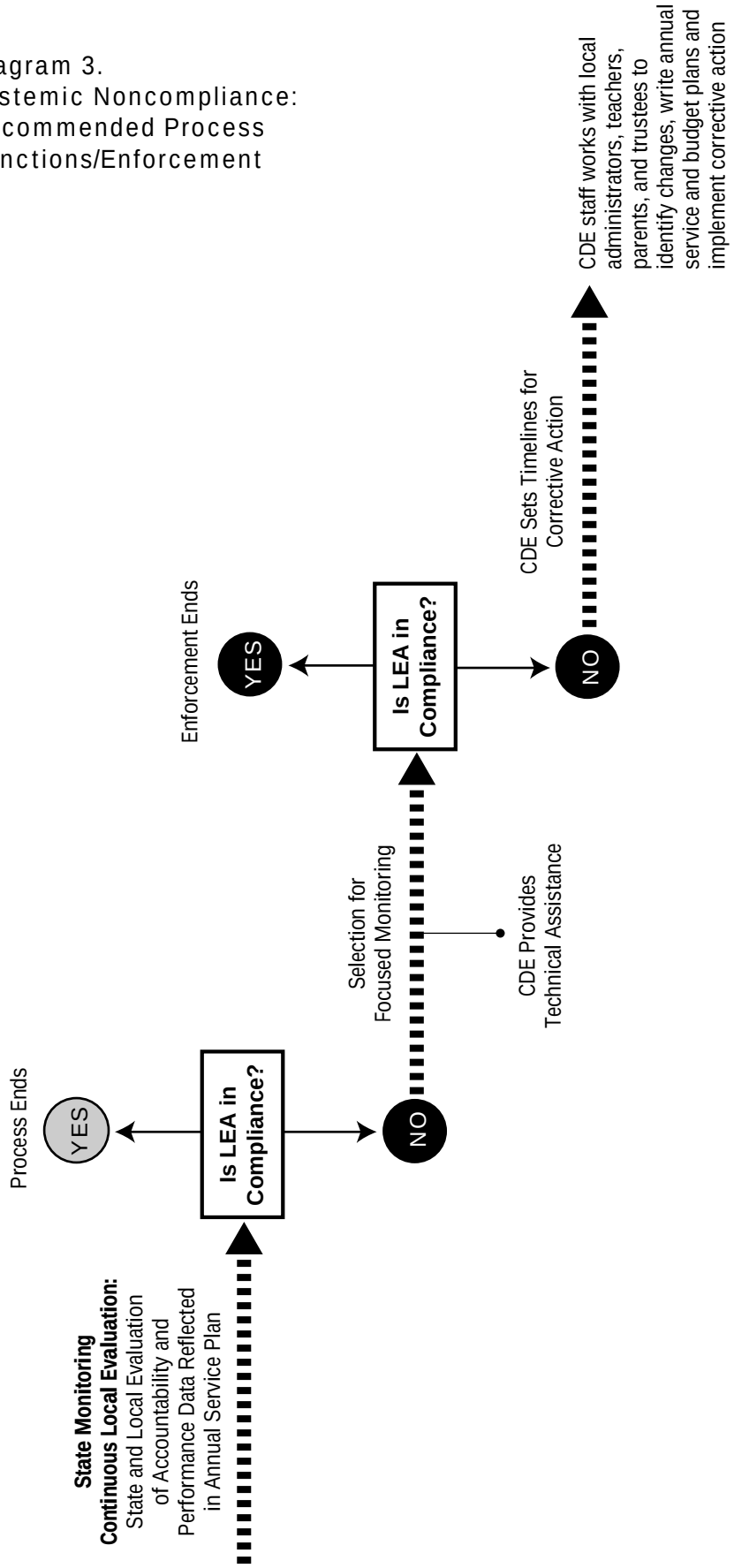
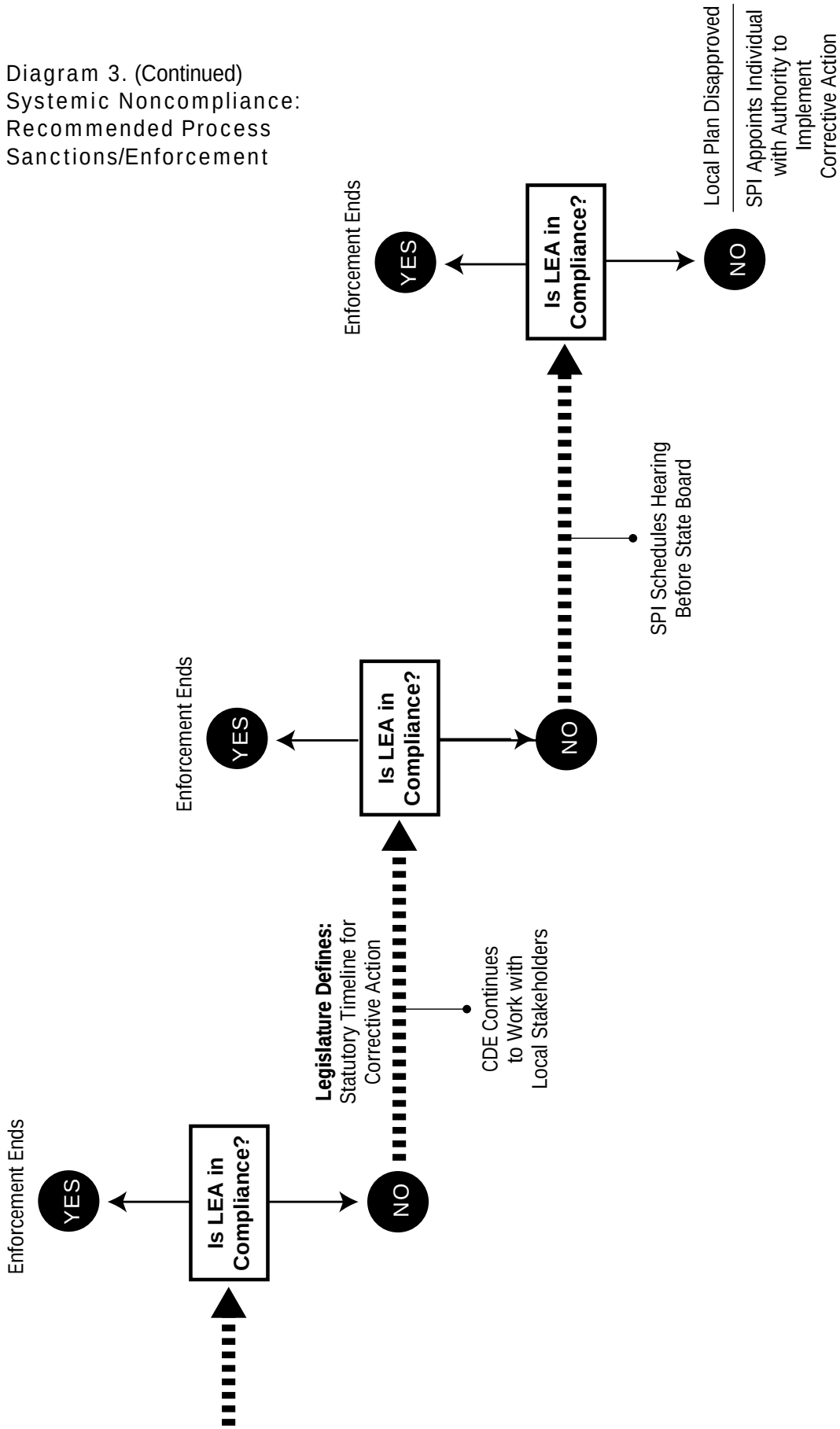


Diagram 3. (Continued)
Systemic Noncompliance:
Recommended Process
Sanctions/Enforcement



Appendices

APPENDIX 1

Text of Section 69 of Assembly Bill 602

SEC. 69.

(a) The State Department of Education shall convene a working group to develop recommendations for improving the compliance of State and local education agencies with federal and State special education laws and regulations. These recommendations shall define how the State Department of Education and local education agencies will assure and maintain compliance of special education laws and regulations in providing services to individuals with exceptional needs. Final recommendations shall include, but not be limited to, State compliance training and technical assistance, State review and monitoring of local compliance, the State complaint process and timetable, State corrective action and follow up, and local and State agency sanctions for noncompliance.

(b) The working group shall include members representing the State Board of Education, the State Department of Education, county offices of education, school districts, special education local plan areas, the Special Education Advisory Commission, the State Department of Education administrative hearing office, the federal Office of Civil Rights or Office for Special Education Programs, organizations advocating for, or consisting of, individuals with exceptional needs and their families, parents of individuals with exceptional needs, and organizations representing school teachers and other support services staff serving individuals with exceptional needs. It is the intent of the Legislature that the working group convened by the State Department of Education shall include a balance of members representing State and local education agencies and employees, and members representing individuals with exceptional needs and their families.

(c) The State Department of Education shall submit a report of the working group's recommendations no later than September 1, 1998, to the Governor and the appropriate policy and fiscal committees of the Senate and the Assembly of the California Legislature.

APPENDIX 2

Members of Assembly Bill 602 Workgroup

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California Institute of Human Services

Terry Prechter
Learning Disabilities Association

Janny Latno
California Association of Resource Specialists and Special Education Teachers

Glenn Fait
McGeorge School of Law Special Education Hearing Office

Diane Lipton
Disability Rights and Education Defense Fund

Lawrence Siegel
Advisory Commission on Special Education

Carol Risley
Organization of Area Boards

Donnel Jordan
California Teachers Association

Barbara Moore-Brown
California Speech-Language-Hearing Association

Pat Winget
Resources in Special Education

Catherine Walsh
Deaf-Ed Coalition

Maureen Burness
Association of California School Administrators

Margie Gentzel
Californians for Inclusive Schools

Michael Grimes
Council for Exceptional Children

Alice Borunda-Cunningham

Joni Samples
Glenn County Office of Education

Dan Halcomb
Yuba County Office of Education

Robert Conant
Children and Adults with Attention Deficit Disorder

Larry Komar
Advisory Commission on Special Education

Tim McNulty
Los Angeles County Office of Education

Jackie Hamilton
California Association of School Psychologists

Laurie Shields
The ARC-California

Leslie Lee
Exceptional Parents Unlimited

Patti Massey
Parents Helping Parents

Dee Hayden
Matrix

Dale Mentink
Protection and Advocacy, Inc.

Paul Grossman/Julie Bacuziger
Federal Office of Civil Rights

Joan Tellefson
Team of Advocates for Special Kids

Denise Le Grande
Parent-Teacher Association

Jan Wadsworth
Low Incidence Disabilities Advisory Committee

Kathryn Dronenburg
California State Board of Education

Irene Martinez
Fiesta Educativa

Jeff Bell
Department of Finance Education Systems Unit

Maxine Williford

Caitlin O'Halloran
Office of Assemblymember Susan Davis

Kuldip Chohan
Office of Assemblymember Charles Poochigian

APPENDIX 3

Sections Containing Program Standards Related To Special Education

California Code of Regulations – Title V, Division 1, Chapter 3

DEFINITIONS

5 CCR 3001(b)	Definition - appropriate education
5 CCR 3001(c)	Definition - behavior emergency
5 CCR 3001(d)	Definition - behavior intervention
5 CCR 3001 (e)	Definition - behavior intervention case manager
5 CCR 3001 (f)	Definition - behavioral intervention plan
5 CCR 3001 (m)	Definition – instructional day
5 CCR 3001 (n)	Definition - intensive special education and services
5 CCR 3001 (p)	Definition – linguistically appropriate goals, objectives, and programs
5 CCR 3001 (u)	Definition - prescribed course of study
5 CCR 3001 (v)	Definition - primary Language
5 CCR 3001 (w)	Definition - program
5 CCR 3001 (x)	Definition - qualified
5 CCR 3001 (y)	Definition - serious behavior problem
5 CCR 3001 (z)	Definition - specialized physical health care services
5 CCR 3001 (aa)	Definition - temporary physical disability

REFERRAL

5 CCR 3021	Referral
5 CCR 3021.1	Referral of pupils having a diagnosed chronic illness

ASSESSMENT

5 CCR 3022	Assessment plan
5 CCR 3023	Assessment - qualified personnel for deaf or limited English proficient (LEP)
5 CCR 3024 (b)	Transition from elementary school district to high school district
5 CCR 3025 (a)	Assessment option - referral to state schools for further assessment
5 CCR 3027	Hearing and vision screening
5 CCR 3028	Audiological assessment
5 CCR 3029	Contracting for individually administered tests of psychological functioning due to unavailability of school psychologists

ELIGIBILITY

5 CCR 3030	Eligibility criteria
5 CCR 3031	Additional eligibility criteria for birth to three

INDIVIDUALIZED EDUCATION PROGRAM

5 CCR 3040	Individualized education program (IEP) - program implementation
5 CCR 3042	Placement
5 CCR 3043	Extended School Year Services

DESIGNATED INSTRUCTION AND SERVICES

5 CCR 3051	Standards for designated instruction and services (DIS)
5 CCR 3051.1	Language, speech, and hearing
5 CCR 3051.2	Audiological services
5 CCR 3051.3	Mobility instruction
5 CCR 3051.4	Instruction in home and hospital
5 CCR 3051.5	Adapted physical education
5 CCR 3051.6	Physical and occupational therapy
5 CCR 3051.7	Vision services
5 CCR 3051.75	Vision therapy
5 CCR 3051.8	Specialized driver training instruction
5 CCR 3051.9	Counseling and guidance services
5 CCR 3051.10	Psychological services
5 CCR 3051.11	Parent counseling and training
5 CCR 3051.12	Health and nursing services
5 CCR 3051.13	Social Worker services
5 CCR 3051.14	Specially designed vocational education and career development

5 CCR 3051.15	Recreation services
5 CCR 3051.16	Specialized services for low incidence disabilities
5 CCR 3051.17	Services for pupils with chronic illnesses or acute health problems
5 CCR 3051.18	Instruction and services for deaf and hard of hearing

BEHAVIOR INTERVENTION

5 CCR 3052	Behavior intervention - plans, functional assessments, IEP team meeting, intervention, acceptable responses, evaluation of effectiveness, contingency plans, emergency interventions, prohibitions, due process hearings
5 CCR 3053	Special classes - standards, special class teacher
5 CCR 3054	Special centers - standards, interaction with regular education

IEP REVIEW

5 CCR 3068	Annual review of IEP
5 CCR 3069	Diploma

PROCEDURAL SAFEGUARDS

5 CCR 3080	Procedural safeguards - general provisions
5 CCR 3082	Procedural safeguards - due process hearing procedures

Education Code – Part 30, Special Education Programs

INTENT/FREE APPROPRIATE PUBLIC EDUCATION

30 EC 56000	Intent - Free Appropriate Public Education (FAPE)
30 EC 56000	Intent - assure rights to appropriate programs and services
30 EC 56000	Intent - standard of educating
30 EC 56000	Intent - provide equal opportunity
30 EC 56000.5 (a)(2)	Findings - pupils with low incidence disabilities require highly specialized services, equipment and materials
30 EC 56000.5 (b)(1)	Findings - ensure that all hard of hearing and deaf children have appropriate, ongoing, and accessible educational opportunities
30 EC 56000.5 (b)(2)	Findings - unique communication mode, trained personnel, language mode peers, parental involvement, role models, access to educational process, vocational needs, least restrictive environment (LRE), regional programs
30 EC 56001 (a)	Intent - assured an education appropriate to needs
30 EC 56001 (b)	Intent - available between ages of 3 and 5
30 EC 56001 (c)	Intent - available birth to 3
30 EC 56001 (d)	Intent - protections for children under 3
30 EC 56001 (e)	Intent - written IEP
30 EC 56001 (f)	Intent - provided under local plan
30 EC 56001 (g)	Intent - maximum interaction
30 EC 56001 (h)	Intent - transferred out
30 EC 56001 (j)	Intent - assessment procedures and materials
30 EC 56001 (k)	Intent - coordination of education programs
30 EC 56001 (l)	Intent - psychological and health services
30 EC 56001 (m)	Intent - continuous evaluation
30 EC 56001 (n)	Intent - qualified staff
30 EC 56001 (o)	Intent - prepared personnel

DEFINITIONS

30 EC 56026	Definition - individual with exceptional needs, reference to federal definition, impairment requires special instruction/ services, age categories
30 EC 56027	Definition - local plan
30 EC 56028	Definition - parent
30 EC 56029	Definition - referral for assessment

30 EC 56031	Definition - special education
30 EC 56040	Definition - free appropriate education instruction/services
30 EC 56050 (a, b, d)	Definition - surrogate parents, representation, government code

SUBSTITUTES

30 EC 56060	Noncredentialed substitutes prohibited
30 EC 56061	Number of days - substitutes
30 EC 56062	Substitute teacher priorities

STATE BOARD ADOPTION OF GUIDELINES

30 EC 56100 (h)	State Board - adoption of pupil progress guidelines

PROGRAMS

30 EC 56105	Programs provided once individual adjudicated

SUPERINTENDENT

30 EC 56122	Superintendent - establish local plan guidelines
30 EC 56124	Superintendent - promote innovation and improvement
30 EC 56125	Superintendent - monitor implementation of local plans
30 EC 56127	Superintendent - make recommendations for staff development, curriculum, testing, and development of special education
30 EC 56132	Superintendent - assist districts and county offices in improvement and evaluation of programs

JUVENILE COURT SCHOOLS

30 EC 56150	Juvenile court schools - basic authorization
30 EC 56157	For licensed children's institutions (LCIs) or foster family homes (FFH) first consider public options
30 EC 56167	Educational responsibility for individuals with exceptional needs in hospitals
30 EC 56168 (b)	Educational responsibility for individuals with exceptional needs in ineligible hospital

LOCAL PLAN

30 EC 56200 (a)	Local plan - compliance assurances
30 EC 56200 (b)	Local plan - description of services
30 EC 56200 (g)	Local plan - description of program requirements
30 EC 56200 (h)	Local plan - description of process used in considering regular education program
30 EC 56200 (i)	Local plan - description of process being used to meet requirements for birth to 3

EQUITABLE ACCESS

30 EC 56210 (a)	Intent - equitable access for pupils in small, sparse special education local plan areas (SELPAs)

LOCAL REQUIREMENTS

30 EC 56195.7 (a)	Local requirements - coordinated identification referral and placement system
30 EC 56195.7 (b)	Local requirements - procedural safeguards
30 EC 56195.7 (c)(1)	Local requirements - regionalized services - program specialists
30 EC 56195.7 (c)(2)	Local requirements - regionalized services - personnel development
30 EC 56195.7 (c)(3)	Local requirements - regionalized services - evaluation
30 EC 56195.7 (c)(4)	Local requirements - data collection and development of management information systems
30 EC 56195.7 (c)(5)	Local requirements - regionalized services - curriculum development
30 EC 56195.7 (c)(6)	Local requirements - regionalized services - monitoring and correction
30 EC 56195.7 (d)	Local requirements - coordination with local public agencies
30 EC 56195.7 (e)	Local requirements - coordination with public/proprietary hospitals
30 EC 56195.7 (f)	Local requirements - coordination and provision of services to children in LCIs
30 EC 56195.7 (g)	Local requirements - coordination and provision of services to children in juvenile court/ community schools

30 EC 56195.8 (b)(1)	Local requirements - adopt policies - nonpublic school/agency (NPS/A)
30 EC 56195.8 (b)(2)	Local requirements - adopt policies - review of class assignment at teacher's request
30 EC 56195.8 (b)(3)	Local requirements - adopt policies - procedural safeguards
30 EC 56195.8 (b)(4)	Local requirements - adopt policies - resource specialists
30 EC 56195.8 (b)(5)	Local requirements - adopt policies - transportation
30 EC 56195.8 (b)(1)	Local requirements - adopt policies - caseloads

STAFF DEVELOPMENT

30 EC 56240	Staff development - participants
30 EC 56241	Staff development - program requirements (general)
30 EC 56242 (b)	Staff development - number of staff development days
30 EC 56243	Staff development - regular classroom teachers
30 EC 56244	Staff development - to improve child care services
30 EC 56245	Staff development - inservice training regarding specific learning disabilities

IDENTIFICATION AND REFERRAL

30 EC 56300	Identification and referral - systematically seek out
30 EC 56301	Identification and referral - continuous Child Find
30 EC 56302	Identification and referral - identification procedures
30 EC 56303	Identification and referral - consider regular education program resources

ASSESSMENT

30 EC 56320	Assessment - general selection and administration
30 EC 56321	Assessment - assessment plan, notice of rights, consent
30 EC 56321.5	Assessment - notice of rights to include right to electronically record IEP proceedings
30 EC 565322	Assessment - conducted by competent persons
30 EC 56323	Admission to special education
30 EC 56324	Assessment - psychological and health assessments
30 EC 56325	Transfers
30 EC 56327	Assessment - written assessment report
30 EC 56329	Assessment - parent right to written copy of assessment, discussion of findings at IEP team conference, independent evaluation at public expense

ELIGIBILITY

30 EC 56333	Eligibility - language/speech criteria
30 EC 56337	Eligibility - specific learning disability criteria
30 EC 56337.5	Dyslexia - eligibility for special education, regular education responsibility, program guidelines
30 EC 56338	Eligibility - specific learning disability includes visual perceptual/visual motor dysfunction
30 EC 56339	Eligibility - attention deficit and hyperactivity disorders

INDIVIDUALIZED EDUCATION PROGRAM

30 EC 56340	IEP - initiate and conduct meetings
30 EC 56340.1	IEP - instruction planning for infants and toddlers
30 EC 56341	IEP - team membership, parents rights to present information, right to electronically record, nonadversarial
30 EC 56342	IEP team responsibilities, review of NPS recommendations, IEP timeline waiver
30 EC 56343	IEP - IEP team meetings required
30 EC 56343.5	IEP - parent request for IEP team review
30 EC 56344	IEP - development timelines
30 EC 56345	IEP - contents
30 EC 56345.1	IEP - statement of needed transition services

30 EC 56345.5	IEP - health care services exclusion
30 EC 56346	IEP - parent consent for IEP contents
30 EC 56347	IEP - teacher and providers knowledgeable of contents
30 EC 56350	IEP for Visually Impaired - definitions
30 EC 56351	IEP for Visually Impaired - provide opportunities for Braille instruction
30 EC 56352	IEP for Visually Impaired - assessment for appropriate reading media

IMPLEMENTATION

30 EC 56360	Implementation - SELPA shall ensure continuum of program options
30 EC 56361	Implementation - list of program options as modified by 602
30 EC 56361.2	Implementation - infants and toddlers
30 EC 56361.5	Implementation - contracting with hospitals for DIS
30 EC 56362	Implementation - resource specialist program (RSP)
30 EC 56362.1	Implementation - RSP caseload definition
30 EC 56362.7	Findings - need for specially trained personnel - bilingual cross-cultural competence
30 EC 56363	Implementation - DIS
30 EC 56363.1	Implementation - medical equipment
30 EC 56363.3	Implementation - caseload for speech, language, and hearing specialists
30 EC 56364	Implementation - special classes and centers
30 EC 56364.1	Implementation - special classes for low incidence
30 EC 56365 (a)	Implementation - NPS/A shall be available
30 EC 56365 (h)	Implementation - out of state school/agency shall be certified or licensed
30 EC 56366 (a)(4)	Implementation - NPS/A provide specified services
30 EC 56366 (a)(5)	Implementation - NPA - related services
30 EC 56366 (d)	Implementation - NPS/A meet certification standards
30 EC 56366 (l)	Implementation - NPS/A staff qualifications
30 EC 56366 (o)	Implementation - NPS/A written assurances
30 EC 56366.1 (m)	Implementation - NPS/A - superintendent establish guidelines in consultation with others
30 EC 56366.4 (a)	Implementation - NPS/A revocation or suspension of certification
30 EC 56367	Implementation - placements in state special schools
30 EC 56368 (a)	Implementation - program specialist qualifications

INDIVIDUALIZED EDUCATION PROGRAM REVIEW

30 EC 56380	IEP Review - annual basis, parent notice
30 EC 56381	IEP Review - reassessment
30 EC 56382	IEP Review - review and reassessment for infants

EARLY EDUCATION

30 EC 56425.5	Early Education - findings and intent
30 EC 56426	Early Education - purpose and focus, program options
30 EC 56426.1	Early Education - home-based services
30 EC 56426.2	Early Education - home visits and group services
30 EC 56426.3	Early Education - related services
30 EC 56426.4	Early Education - family involvement
30 EC 56426.5	Early Education - parental choice
30 EC 56426.6	Early Education - transdisciplinary team and other personnel qualifications
30 EC 56426.7	Early Education - medically necessary occupational therapy (OT) and physical therapy (PT)

30 EC 56426.8	Early Education - education and services based on infant and family needs, individualized family service plan (IFSP) developed in consultation with the child's physician
30 EC 56426.9	Early Education - services beyond age 3
30 EC 56430	Early Education - methods of providing services

PRESCHOOL

30 EC 56440 (f)	Preschool - provide technical assistance to alleviate school facilities impact situation.
30 EC 56440 (g)	Preschool - facilities standards
30 EC 56441.1	Preschool - provided in coordination with other agencies
30 EC 56441.2	Preschool - program focus, services, options
30 EC 56441.3	Preschool - services to individuals or small groups
30 EC 56441.4	Preschool - appropriate settings
30 EC 56441.5	Preschool - adult-child ratios
30 EC 56441.6	Preschool - transdisciplinary team
30 EC 56441.7	Preschool - preschool speech and language caseload guidelines
30 EC 56441.11	Preschool - eligibility requirements for preschool
30 EC 56442	Preschool - coordination of preschool programs
30 EC 56445	Preschool - transition to kindergarten

CAREER/VOCATIONAL

30 EC 56462 (a)	Career/Vocational - components of transition services
30 EC 56462 (b)	Career/Vocational - role of special education
30 EC 56462 (c)	Career/Vocational - systematic and longitudinal curriculum
30 EC 56462 (d)	Career/Vocational - support active participation of families
30 EC 56462 (e - f)	Career/Vocational - resources and inservice, demonstration sites
30 EC 56462 (g)	Career/Vocational - coordination with other programs
30 EC 56462 (h)	Career/Vocational - research, evaluation and dissemination

WORKABILITY

30 EC 56470 (a)	WorkAbility - finding - WorkAbility an essential component of transition services

INTERAGENCY AGREEMENTS

30 EC 56475 (a)	Interagency agreements - superintendent shall develop agreements that include fiscal responsibilities

PROCEDURAL SAFEGUARDS

30 EC 56500.1	Procedural safeguards - federal safeguards adopted
30 EC 56500.2	Procedural safeguards - resolution of complaints
30 EC 56500.3	Procedural safeguards - mediation conferences
30 EC 56501	Procedural safeguards - due process hearings
30 EC 56502 (b)	Procedural safeguards - informal meeting to resolve issues
30 EC 56503	Procedural safeguards - mediation conference to be nonadversarial
30 EC 56504	Procedural safeguards - parent right to examine school records/ receive copies
30 EC 56505 (d)	Procedural safeguards - mediation - during proceedings pupil remains in present placement
30 EC 56506	Procedural safeguards - additional due process rights

BEHAVIOR INTERVENTIONS

30 EC 56520	Behavior interventions - findings and declarations, intents

EVALUATIONS

30 EC 56600.5(A)	Evaluation - evaluation plan
30 EC 56602	Evaluation - annual evaluation report
30 EC 56603	Evaluation - report information
30 EC 56606	Evaluation - on-site program and fiscal reviews

Title 34 Code of Federal Regulations – Individuals with Disabilities Education Act Part 300 – Assistance for Education of All Children with Disabilities

PURPOSES

34 CFR 300.1 (a, b, d)	Purposes

DEFINITIONS

34 CFR 300.5	Definition - assistive technology device
34 CFR 300.6	Definition - assistive technology service
34 CFR 300.7 *including note 5*	Definition - child with a disability
34 CFR 300.8	Definition - day
34 CFR 300.10	Definition - equipment
34 CFR 300.11	Definition - free appropriate public education (FAPE)
34 CFR 300.12	Definition - general curriculum
34 CFR 300.15	Definition - IEP team
34 CFR 300.18 *including notes*	Definition - native language
34 CFR 300.19(a) *including note 1*	Definition - parent
34 CFR 300.21	Definition - qualified
34 CFR 300.22 *including note 1*	Definition - related services
34 CFR 300.24	Definition - special education
34 CFR 300.26	Definition - supplementary aids and services
34 CFR 300.27 *including note*	Definition - transition services

STATE ELIGIBILITY

34 CFR 300.121 (a, c) *including note 1*	State eligibility - free appropriate public education (FAPE)
34 CFR 300.122 (a)(2, 3) *including note 1*	State eligibility - exception to FAPE for certain ages
34 CFR 300.125 (a, c) *including note 2*	State eligibility - child find
34 CFR 300.132	State eligibility - transition of children from Part C to preschool programs
34 CFR 300.135 (a)(1)	State eligibility - comprehensive system of personnel development (CSPD)
34 CFR 300.136 (g)	State eligibility - personnel standards
34 CFR 300.137 (a-c)	State eligibility - performance goals and indicators
34 CFR 300.138	State eligibility - participation in assessments
34 CFR 300.139	State eligibility - reports relating to assessments
34 CFR 300.142 (e)	State eligibility - methods of ensuring services - private insurance
34 CFR 300.146	State eligibility - suspension and expulsion rates
34 CFR 300.192 (a, c)	State eligibility - requirements for establishing eligibility

LOCAL EDUCATION AGENCY

34 CFR 300.220	Local education agency (LEA) eligibility - consistency with state policy
34 CFR 300.221	LEA eligibility - LEA and State agency implementation of CSPD
34 CFR 300.234 (a)	LEA eligibility - Schoolwide programs under title 1 of the Elementary and Secondary Education Act (ESEA)
34 CFR 300.235	LEA eligibility - permissive use of funds
34 CFR 300.241 (a)	LEA eligibility - treatment of charter schools and their students
34 CFR 300.242	LEA eligibility - public information
34 CFR 300.244 (b)(1,2, 4)	LEA eligibility - coordinated services system

SERVICES

34 CFR 300.300 (a)(b)(3,4, 5)	Services - provision of FAPE
34 CFR 300.302 *including note*	Services - residential placement
34 CFR 300.303	Services - proper functioning of hearing aids
34 CFR 300.305	Services - program options
34 CFR 300.306	Services - nonacademic services
34 CFR 300.307	Services - physical education
34 CFR 300.308	Services - assistive technology
34 CFR 300.309 *including notes*	Services - extended school year services
34 CFR 300.311	Services - FAPE requirements for students with disabilities in adult prisons

EVALUATION

34 CFR 300.320	Evaluation - initial evaluation
34 CFR 300.321	Evaluation - reevaluations
34 CFR 300.340	Evaluation - definitions

INDIVIDUALIZED EDUCATION PROGRAM

34 CFR 300.342 *including notes 1, 2*	IEP - when IEPs must be in effect
34 CFR 300.343 *including note*	IEP - IEP meetings
34 CFR 300.344 *including note*	IEP - IEP team
34 CFR 300.345 *including note*	IEP - parent participation
34 CFR 300.346	IEP - development, review and revision of IEP
34 CFR 300.347 *including notes*	IEP - content of IEP
34 CFR 300.348 (a)	IEP - agency responsibility for transition services
34 CFR 300.349	IEP - private school placements by public agencies
34 CFR 300.350	IEP - children with disabilities in religiously-affiliated or other private schools
34 CFR 300.351	IEP - accountability

PRIVATE SCHOOLS

34 CFR 300.403 (a-b)	Private schools - placement of children by parents if FAPE is at issue
34 CFR 300.451	Private schools - child find for private school children with disabilities
34 CFR 300.452	Private schools - basic requirement - services
34 CFR 300.453	Private schools - expenditures
34 CFR 300.454	Private schools - services determined
34 CFR 300.455	Private schools - services provided
34 CFR 300.456	Private schools - location of services
34 CFR 300.457	Private schools - complaints
34 CFR 300.458	Private schools - separate classes prohibited

PROCEDURAL SAFEGUARDS

34 CFR 300.500	Procedural safeguards - general responsibility of public agencies - definitions
34 CFR 300.501	Procedural safeguards - opportunity to examine records; parent participation in meetings
34 CFR 300.502 *including notes*	Procedural safeguards - independent educational evaluation
34 CFR 300.503	Procedural safeguards - prior notice by the public agency; content of notice
34 CFR 300.504	Procedural safeguards - notice
34 CFR 300.505 (a-c) *including note*	Procedural safeguards - parental consent
34 CFR 300.506	Procedural safeguards - mediation
34 CFR 300.507 (a)(2-3)	Procedural safeguards - impartial due process hearing; parent notice; disclosure
34 CFR 300.514	Procedural safeguards - child's status during proceedings
34 CFR 300.515	Procedural safeguards - surrogate parents
34 CFR 300.517	Procedural safeguards - transfer of parental rights at age of majority

DISCIPLINE

34 CFR 300.520	Discipline - authority of school personnel
34 CFR 300.522	Discipline - determination of setting
34 CFR 300.523 *including note*	Discipline - manifestation determination review
34 CFR 300.524	Discipline - determination that behavior was not manifestation of disability
34 CFR 300.525	Discipline - parent appeal
34 CFR 300.526 *including note*	Discipline - placement during appeals
34 CFR 300.527	Discipline - protections for children not yet eligible for special education and related services
34 CFR 300.529	Discipline - referral to and action by law enforcement and judicial authorities

EVALUATION AND ELIGIBILITY

34 CFR 300.530	Evaluation and Eligibility - general
34 CFR 300.531	Evaluation and Eligibility - initial evaluation
34 CFR 300.532 *including notes*	Evaluation and Eligibility - evaluation procedures
34 CFR 300.533 *including notes*	Evaluation and Eligibility - determination of needed evaluation data
34 CFR 300.534	Evaluation and Eligibility - determination of eligibility
34 CFR 300.535 *including note*	Evaluation and Eligibility - procedures for determining eligibility and placement
34 CFR 300.536	Evaluation and Eligibility - reevaluation
34 CFR 300.540	Evaluation of specific learning disability - additional team members
34 CFR 300.541	Evaluation of specific learning disability - criteria for determining the existence of a specific learning disability
34 CFR 300.542	Evaluation of specific learning disability - observation
34 CFR 300.543	Evaluation of specific learning disability - written report

LEAST RESTRICTIVE ENVIRONMENT

34 CFR 300.550 (b)	LRE - general
34 CFR 300.551	LRE - continuum of alternative placements
34 CFR 300.552 *including notes*	LRE - placements
34 CFR 300.553	LRE - nonacademic settings

CONFIDENTIALITY

34 CFR 300.560	Confidentiality - definitions
34 CFR 300.561	Confidentiality - notice to parents
34 CFR 300.562	Confidentiality - access rights
34 CFR 300.563	Confidentiality - record of access
34 CFR 300.564	Confidentiality - records on more than one child
34 CFR 300.565	Confidentiality - list of types and locations of information
34 CFR 300.566	Confidentiality - fees
34 CFR 300.567	Confidentiality - amendment of records at parent's request
34 CFR 300.568	Confidentiality - opportunity for a hearing
34 CFR 300.569	Confidentiality - result of hearing
34 CFR 300.571	Confidentiality - consent
34 CFR 300.572	Confidentiality - safeguards
34 CFR 300.573	Confidentiality - destruction of information
34 CFR 300.574	Confidentiality - children's rights

APPENDIX 4

Special Education Legal Requirements Relative to the Local Plan for Which the Development of Guidelines is Recommended

Requirements	Guidelines Needed
Governance: [E.C. 56195.1 (a);(b)(3);(C)]	Guidelines for approval process of annual service plans including guidelines for input from CAC, appropriate representation of parents, teachers, etc. [per E.C. 56001 (f)]
Community involvement: (E.C. 56195.9)	To include guidelines for adopting and including public input and public hearings such as day and time of meetings and rationale for including or excluding certain input
(E.C. 56195.3 (a-d), 56195.9) Include a list of 'authors' of the local plan and their role/position (e.g., parent; principal, etc.)	…'in an active role' (*definition needed*)
Review by CAC [E.C. 56205 (h)]	"review" (*definition needed*)
Schedule of regular consultations: [E.C. 56205 (b)(5)]	"regular consultations" (*definition needed*) "updated cooperatively;" "selected by their peers" (*definitions needed*)
Compliance assurances: [E.C. 56205 (a)] Description of governance and administration (b)(1) Description of regionalized services (2) Multidistrict SELPA responsibilities of each participating county office, LEA and board and roles of the administrative unit and SELPA and LEA administration regarding hiring: E.C. 56205 (a-e)	No guidelines needed No guidelines needed No guidelines needed No guidelines needed
Operation of special education programs (c)	Need guidelines
Monitoring the appropriate use of funds (d)	Refer to Compliance and Monitoring Subcommittee Report

Requirements	Guidelines Needed
Description of the method by which members of the public may address questions or concerns to the governing body. [E.C. 56205 (c)]	Need guidelines
[E.C. 56205 (d)]	Description of alternative dispute resolution
Copies of JPA and contracts [E.C. 56205 (e)]	Refer to Fiscal Compliance and Local Plan Subcommittee Report
Annual budget allocation plan	Guidelines needed to include: description of how the *district* ensures that each student has access to the "core" or base program and the accommodations and modifications that are available.
Annual service plan [E.C. 56205 (g)] To include a description of services to be provided by each district and county office including the nature of the services and location at which the services will be provided; and demonstrate how all individuals with exceptional needs have access to services and instruction to meet their needs.	The annual service plan must also include justification to address any decrease in the number of children served.
Description of identification, referral, assessment, instructional planning, implementation and review [E.C. 56205 (I)]	Need guidelines for Exit Criteria; access to the Core including: What is the "core" or base program and what accommodations and modifications are available to provide access to the core and how IEPs are based on the core program and include appropriate benchmarks. Include purchase of general education materials from general education budget. (Refer to annual budget allocation plan.)
Description of resources available in the regular education program. (E.C. 56303)	Guidelines for a description of general education services available and use of such either in a SELPA-wide or district-by-district basis. This would also include a copy of the district's board approved policy for providing services to students eligible for 504 services as part of the general education program, and include the name of the district's 504 coordinator.
Guidelines must meet IDEA requirements.	

Requirements	Guidelines Needed
Description of process used to meet requirements of the California Early Intervention Services Act. [E.C. 56205 (k)].	
Written in language understandable to the general public. [E.C. 56205 (1)]	(*definition needed)*
Definition of how specialized equipment and services are distributed to students with low incidence disabilities within the local plan area. (E.C. 56201, 56206)	Guidelines needed for inclusion in Local Plan
List of current written agreements and entities currently in the plan. (E.C. 56195.7)	Guidelines needed for these agreements
To include:	
(a) a coordinated identification, referral, and placement system	Guidelines needed for these agreements
(b) procedural safeguards	Guidelines needed for these agreements
(c) regionalized services (6) ongoing review and evaluation	Guidelines needed for these agreements
(d) process for coordinating services with other local public agencies funded to serve individuals with exceptional needs.	(Guidelines may include coordination with other agencies and parent groups for provision of personnel development.)
(e) process for coordinating and providing services to individuals with disabilities placed in public hospitals, proprietary hospitals and other residential medical facilities.	
(f) description of the process for coordinating and providing services to individuals with needs placed in licensed children's institutions and foster family homes.	
(g) description of process for coordinating and providing services to individuals with exceptional needs placed in juvenile court schools or county community schools.	
(h) budget for special education and related services.	See report of Fiscal Compliance and Local Plan Subcommittee

Requirements	Guidelines Needed
List of policies adopted by each local board to include but not be limited to: (E.C. 56195.8) (1) nonpublic, nonsectarian services (2) review at general education or special education teacher's request of the assignment of an individual with exceptional needs to his or her class and mandatory meeting of IEP team if review indicates a change in the pupil's placement, instruction, related services or combination thereof. To include personnel responsible for the reviews and timetable for completion of the review. (3) procedural safeguards (4) resource specialists (5) transportation which describes how special education transportation is coordinated with regular home-to-school transportation. To include compatibility between mobile seating devices when used, and securement systems, and to ensure that school bus drivers are trained in proper installation of mobile seating devices in the securement systems. (6) information on the number of individuals with exceptional needs who are being provided special education and related services. (7) caseloads.	Guidelines needed for service delivery configuration.
Personnel Standards (20 USC 1412(a)(15); CFR 300.136)	Guidelines needed
Performance Goals and Indicators (20 USC 1416(d); CFR 300.137-9)	Include participation in state and districtwide assessment.

APPENDIX 5

Advisory Commission on Special Education
Proposed Amendments To Assembly Bill 602 (Davis & Poochigian), As Amended June 2, 1997

Chapter 2.7 (Commencing with Section 56197) is added to Part 30 of the Education Code to read:

Chapter 2.7. Special Education Program Performance and Accountability

56197. The Legislature finds and declares the following:

(a) When individuals with exceptional needs do not receive the special education and related services which are essential for them to benefit from public education, and which are guaranteed by the federal Individuals with Disabilities Education Act, their educational performance suffers.

(b) When individuals with exceptional needs do not achieve proficiencies in school, including skills that are necessary to exhibit competence in the workforce, their opportunities for becoming productive, employable citizens are reduced.

(c) Individuals with exceptional needs are capable of learning and are entitled to the same access to regular education programs and core curriculum instruction as their nondisabled peers to prepare them for employment and independent living.

(d) Educational progress of individuals with exceptional needs should be monitored and measured in accordance with their individualized education program.

(e) Individuals with exceptional needs should be included as a part of State and local education accountability and quality improvement systems so as to provide these individuals with the benefits of appropriate instructional changes and educational reforms derived from measuring and monitoring pupil progress.

56197.1.

(a) The superintendent shall develop and the board shall adopt goals and standards for the performance of individuals with exceptional needs that are consistent, to the maximum extent appropriate, with goals and standards for all pupils in the public education system. These goals and standards shall include, but not be limited to, proficiency in the general curriculum and preparation for employment and independent living. In addition, the superintendent shall develop and the board shall adopt guidelines for the goals and standards to be established by each district, special education local plan area, and county office for those pupils who are working on alternative curriculum such as communication skills, self-help skills, and gross and fine motor skills.

(b) The superintendent shall develop and the board shall adopt content standards and performance indicators that will be used to assess progress toward achieving the goals established pursuant to subdivision (a). The performance indicators shall address the performance of all individuals with exceptional needs. These performance indicators shall include, but not be limited to, involvement and progress in the general curriculum and in statewide and districtwide assessments, dropout rates, and graduation rates.

56197.2.

(a) Individuals with exceptional needs shall be included in general statewide and districtwide assessment programs, with appropriate accommodations, where necessary.

(b) The superintendent shall develop guidelines for the participation of individuals with exceptional needs in alternate assessments for those pupils who cannot participate in State and districtwide assessment programs. The alternate assessments shall be used beginning not later than July 1, 2000.

(c) The Department shall make available to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled pupils, the following:

(1) The number of individuals with exceptional needs participating in regular assessments.

(2) The number of individuals with exceptional needs participating in alternate assessments.

(3) The performance of individuals with exceptional needs on regular assessments beginning not later than July 1, 1998, and on alternate assessments not later than July 1, 2000, if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual pupils.

(d) Data relating to the performance of individuals with exceptional needs shall be broken out in accordance with federal law, including, but not limited to, by special education program placement options and disability categories.

56197.3. Each special education local plan area shall assure that each district within the local plan area develop and implement content standards and performance standards appropriate to pupils requiring special education services developed and adopted pursuant to Section 56197.1.

56197.4. Each district governing board shall establish goals and outcomes for individuals with exceptional needs consistent with the district's content standards and performance standards. Each district governing board shall also establish desired goals and outcomes for those pupils who are working on alternative curriculum such as communication skills, self-help skills, and gross and fine motor skills that are consistent with the locally developed alternate content and performance standards.

56197.5.

(a) The local plan of each special education local plan area shall specify criteria to be used by the district governing boards within the local plan area in determining when alternate content and performance standards are to be used for individuals with exceptional needs with very severe and profound disabilities.

(b) The local plan of each special education local plan area shall specify, consistent with guidelines developed by the superintendent, how individuals with exceptional needs will be included in school and district assessment programs, including accommodations as needed in the regular large scale assessment and alternate assessment measures and procedures for pupils with very severe and profound disabilities.

56197.6.

(a) Each county office and district shall conduct an annual evaluation of the effectiveness of the special education programs it operates consistent with guidelines developed by the superintendent. Effectiveness shall be measured on the basis of special education pupil performance data which shall be separated from district and county office composites, and broken out by special education program placement options and disability categories.

(b) Each county office and district shall annually report the number of pupils receiving special education services participating in the regular education assessment process and the number participating in an alternate assessment process.

(c) Each county office and district shall provide a public report of the recommendations for instructional and curricular modifications developed as a result of the county office and district evaluation of special education pupil performance data. The public report shall include a plan, as may be needed, to improve performance.

APPENDIX 6

Recommendations Regarding Goal and Function Codes for Special Education in the Statewide Account Code Structure

The introduction of the new Statewide Account Code Structure (SACS) will enable the State to develop consistent expenditure and budget information for special education. To be useful to local and State administrators, the local budget plan should be organized by goals and activities that conform to the configuration of most special education services.

SACS currently codes expenditures in the placement categories determined by the Master Plan (the previous funding model for special education). The Master Plan designations of special day class (SDC), resource specialist program (RSP), and designated instruction and services (DIS) may no longer capture the configuration or organization of services under AB 602. Since one of the purposes of Assembly Bill 602 was to allow local administrators, in cooperation with teachers and parents, to devise new service delivery models, tracking expenditures using other categories may be more useful.

To determine which categories will be most useful, we believe that conversations should take place between local administrators and business officials, educators, and parents. As a way of beginning this conversation we are suggesting that expenditures could be coded initially as: 1) pupils with severe disabilities, as defined in Education Code Section 56030.5, ages 5 – 22; 2) pupils with nonsevere disabilities, ages 5 – 22; 3) Preschool pupils; and 4) Infants. Other codes should be available for a) separate classes, b) resource specialists or itinerant instruction (this could include instructional services delivered in the general education class), and c) nonpublic schools and agencies.

Further options could be provided for LEAs (e.g., urban districts) that found it useful to record expenditures in greater detail. For example, districts might have the option of dividing the first goal (pupils with severe disabilities) into pupils with low incidence disabilities, pupils with severe emotional disturbance, etc. The second goal (pupils with nonsevere disabilities) could be divided into learning disabilities and other nonsevere disabilities.

We would suggest that the concept of DIS as a separate placement be eliminated altogether. Instructional services by a teacher or aide (e.g., “small group instruction”) could be classified under the broad instructional setting categories above (separate class or resource specialist and itinerant instruction). Related services should be recorded under the Function (Activity) code of SACS. The function code already includes codes for most related services under Pupil Services. Tracking all related services as defined in federal and State law would require the addition of only a few additional codes.

Because most related services are already coded as Functions in SACS, including a DIS setting under the Goal Code is somewhat redundant. Tracking related services in the Function column may be more efficient and user-friendly. We would also note that it is consistent with the distinction in federal law between “specialized instruction” and “related services.”