

# SCHOOL AND COLLEGE LEGAL SERVICES of California

General Counsel  
Carl D. Corbin

A Joint Powers Authority serving school and  
college districts throughout the state

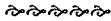
Reply to:  
Santa Rosa Office  
5350 Skylane Blvd.  
Santa Rosa, CA 95403  
(707) 524-2690  
Fax: (707) 578-0517  
[santarosa@sclscal.org](mailto:santarosa@sclscal.org)

Attorneys  
Monica D. Batanero  
Nancy L. Klein  
Margaret M. Merchat  
Mia N. Robertshaw  
Loren W. Soukup  
Patrick C. Wilson  
Frank Zotter, Jr.

## LEGAL UPDATE

June 24, 2014

Of Counsel  
Robert J. Henry  
Janna L. Lambert  
Virginia A. Riegel

  
Susanne K. Reed  
(1947 – 2010)

**To: Superintendents, Member School Districts (K-12)**

**From: Monica D. Batanero, Associate General Counsel** <sup>MPB</sup>

**Subject: Updated Special Education Regulations Take Effect July 1, 2014**  
**Memo No. 14-2014**

---

Changes to the California special education regulations adopted by the California State Board of Education (“SBE”) will take effect on July 1, 2014<sup>1</sup>. According to the SBE, these regulations are necessary to update and clarify rules governing the special education program in California. The regulations reflect changes in California statute affecting Part 30 of the Education Code and the Individuals with Disabilities Education Act (IDEA). By amending the regulations, the California Department of Education (CDE) has deleted regulations that no longer have statutory authority, has updated regulations that no longer conform in part to state and federal requirements, and has amended the authorities and references cited to make them useful once more.

Not every update or change is outlined in this legal update, but the most noteworthy ones are as follows:

### **SECTION 3001: Definitions**

#### Hughes Bill regulations (Sections 3001/3052)

On July 1, 2013, Governor Brown signed AB 86, the Education Omnibus Trailer Bill, Chapter 48, Statutes of 2013. As a result of the bill’s passage, the CDE is mandated to repeal the regulations found in 5 CCR Section 3052 – formerly known as the “Hughes Bill” regulations - and in 5 CCR 3001 subdivisions (d), (e), (f), (g), and (ab). Therefore, the definitions of “behavioral emergency,” “behavioral intervention,” behavioral intervention case manager,”

---

<sup>1</sup> <http://www.cde.ca.gov/re/lr/rr/specialeducation.asp>

“behavioral intervention plan,” and “serious behavior problems” have been deleted from the regulations.

“Qualified”

Section 3001(r) has been amended to add the phrase “*and the scope of practice as defined by the licensing or credentialing body*” to ensure that persons providing services to students with disabilities are not only licensed and/or credentialed but are also performing tasks that are within their scope of practice and not beyond the scope of practice permitted by their licenses and credentials.

“Primary Language”

Section 3001(q) has been amended to change the word “spoken” to “used” to incorporate the use of sign language.

“Specialized Physical Health Care Services”

Section 3001(s) has been amended to add clarifying language to the definition of specialized physical health care services. As a result, “specialized physical health care services” means those health services, including catheterization, gastric tube feeding, suctioning or other services prescribed by the individual’s licensed physician and surgeon requiring medically related training for the individual who performs the services and which are necessary during the school day to enable the individual to attend school.

**SECTION 3029: Contracting for Individually Administered Tests of Psychological Functioning Due to the Unavailability of School Psychologists**

Under Section 3029, a local educational agency (LEA) may contract with qualified personnel to perform individually administered tests of intellectual or emotional functioning due to the temporary unavailability of a credential school psychologist. This section has now been updated to clarify that personnel qualified to administer psychological evaluations in the State of California are not limited to Educational Psychologists. Education Code section 49422(e)(1) provides a list of persons who are qualified to administer psychological tests.

Qualified personnel are governed, within their professions, by the California Commission on Teacher Credentialing and the California Department of Consumer Affairs. The essential point in the regulations is that the person administering the tests is qualified under California law and *within the scope of practice as defined by the licensing or credentialing body*.

**SECTION 3030: Special Education Eligibility Criteria**

This section has been updated to align special education eligibility criteria with eligibility criteria pursuant to IDEA regulations, which resulted in adding traumatic brain injury (TBI) as an eligibility category.

Previously, a pupil who exhibited certain “autistic like behaviors” could be identified as an individual with exceptional needs under State special education regulations. Now, a pupil may be identified as an individual with exceptional needs if he/she exhibits certain “characteristics often associated with autism.”

This section also aligned eligibility criteria for specific learning disability (SLD) with IDEA criteria, which clarifies that an IEP team “may” consider whether a pupil has a severe discrepancy between intellectual ability and achievement OR the IEP team may find a pupil eligible under SLD if the pupil does not make sufficient progress when using a “response to intervention” process or the pupil exhibits a pattern of strengths or weaknesses in performance, achievement or both.

### **SECTION 3043: Extended School Year**

Removed the maximum number of instructional days allowed for ESY.

### **SECTION 3051.10: Psychological Services Other than Assessment and Development of the IEP**

Language has been added to this section to recognize that individuals who are either licensed by the California Department of Consumer Affairs (CDCA) or have an appropriate credential issued by the Commission on Teacher Credentialing (CTC), and also meet the minimum qualification of the employing agency, may provide psychological services.

### **SECTION 3051.19: Assistive Technology Service**

This section added language pertaining to the provision of assistive technology services.

### **SECTION 3051.21: Music Therapy**

This section includes language pertaining to the qualifications of persons who can provide music therapy. This section also includes a definition of music therapy obtained from the Certification Board for Music Therapy. According to the SBE, a definition for music therapy was added to the State regulations because it considers music therapy a valid related service to provide to students with disabilities, when appropriate.

## **SECTION 3051.24: Other Related Services**

This section was added to the regulations to incorporate from Section 3065(x) language pertaining to the qualifications of persons who can provide other related services that are not identified in Sections 3051.1 through 3051.23.

Please contact our office with questions regarding this or any other legal matter.