



MARCH 2024
CSEA CONFERENCE

SPECIAL EDUCATION BASICS

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YOUTH PRACTICE GROUP

Disability Rights California

MISSION:

Disability Rights California (DRC) defends, advances, and strengthens the rights and opportunities of people with disabilities.



Overview

1. Helpful Laws for Students with Disabilities
2. The Special Education Process
3. Elements of an IEP
4. Disagreements with IEP Team



Laws for Students with Disabilities

Section 504 of the Rehabilitation Act of 1973

29 U.S.C. § 794; 34 C.F.R. Part 104

Title II of the Americans with Disabilities Act

42 U.S.C. § 12131 et seq.; 28 C.F.R. Part 35

Individuals with Disabilities Education Act (“IDEA”)

20 U.S.C. § 1400 et seq.; 34 C.F.R. Part 300

California State Education Laws

EC § 56000 et seq.; 5 CCR § 3000 et seq.



SECTION 504

“504 Plan”

To be protected under Section 504, a student must be determined to:

1. have a physical or mental impairment that substantially limits one or more major life activities; or
2. have a record of such an impairment; or
3. be regarded as having such an impairment.

Often for students whose disabilities do not adversely affect educational performance, but still need accommodations to gain access to and benefit from the school’s programs.

In contrast to IEPs under IDEA, students and parents may receive fewer guarantees and procedural protections under Section 504. Nonetheless, it provides a foundation for disability-based discrimination claims.



504 Entitles a Student with Disabilities to:

Reasonable Accommodations to ensure equal access

- Free from discrimination
- Least Restrictive Environment
- 504 Plan
- Right to file a Complaint with the Office for Civil Rights with the Department of Education

IDEA

“Individualized Education Program (IEP)”

Special Education

A program of services and supports available to qualifying students with disabilities that ensure the receipt of a **FREE AND APPROPRIATE PUBLIC EDUCATION**.

‘Free and Appropriate Public Education’ (“FAPE”) is a statutory term whose meaning has been interpreted and clarified by the US Supreme Court.

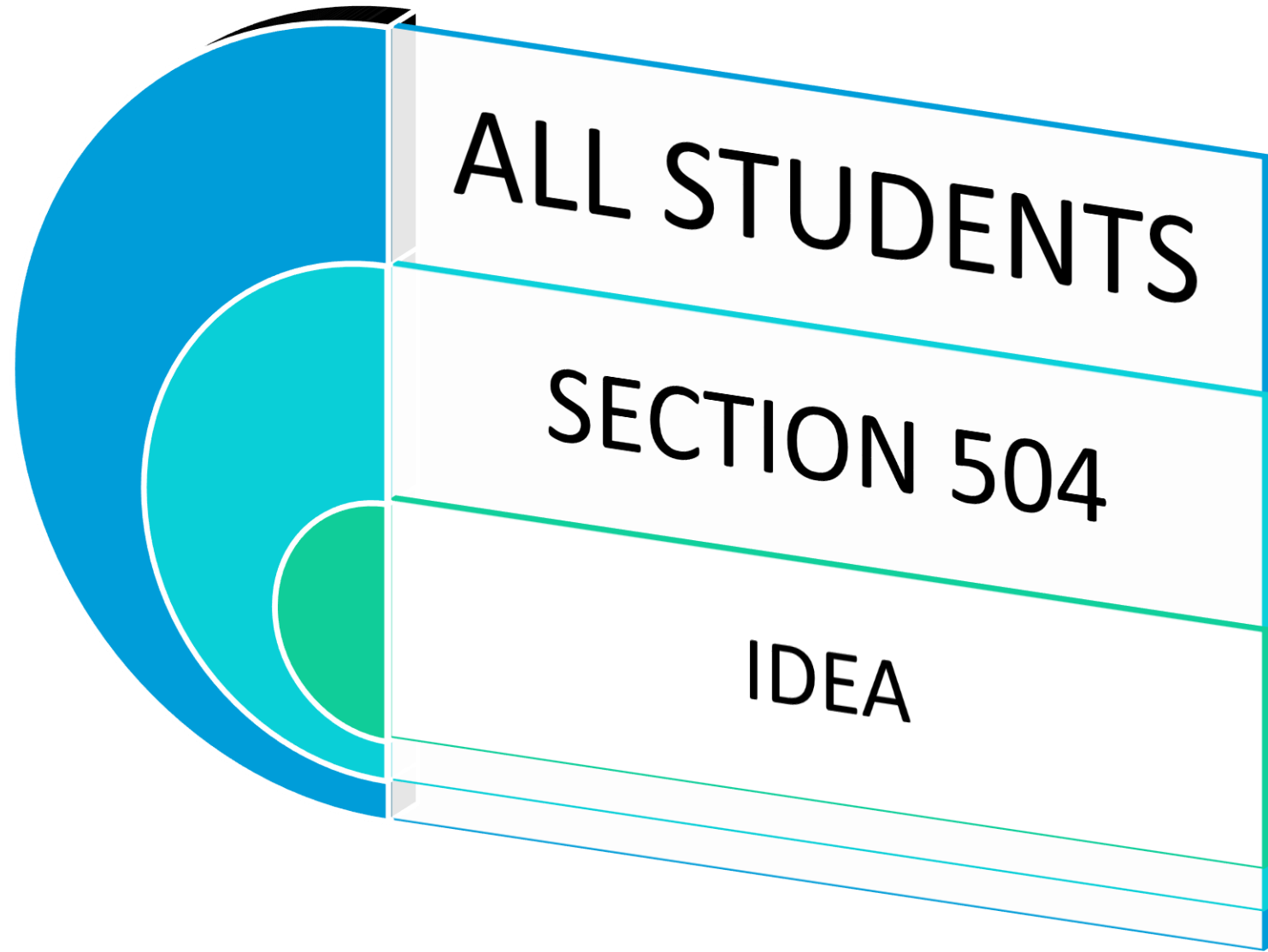
Students must be found eligible for special education services under one of **thirteen** categories.



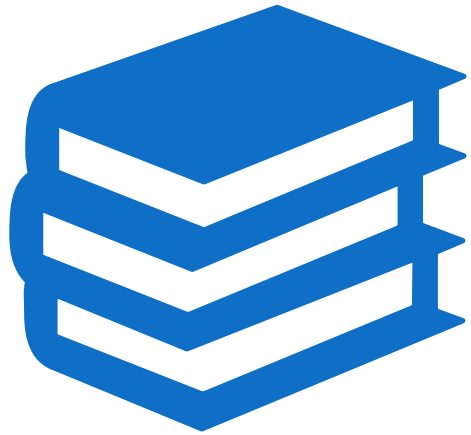
IDEA Entitles a Student with Disabilities to:

- Free Appropriate Public Education (FAPE)
- Least Restrictive Environment (LRE)
- Assessments
- Individualized Education Plan (IEP)
- Right to File Complaint
- Right to Due Process (Mediation, Administrative Hearing).

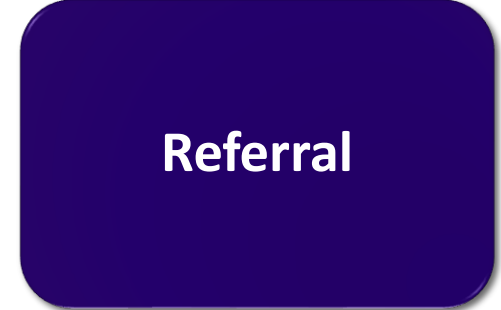




The
Landscape



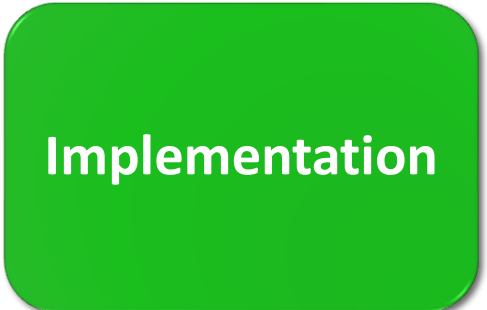
The Special Education Process



Upon referral, school has 15 days to develop and send assessment plan to the parent.



School has 60 days from receipt of signed assessment plan to conduct assessments and hold IEP meeting



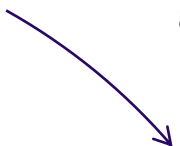
IEP must be implemented immediately following the meeting

The Special Education Cycle



Regular written reports on progress toward IEP goals must be provided.

A triennial review, including a review of eligibility based on new assessments is conducted at least every 3 years.



Referral

Triggered by parent's written request

In California, if parent requests initial special education assessments, the District must provide an assessment plan within 15 days

Other individuals who can initiate an assessment plan:

- Teacher
- Principal
- Counselors
- School personnel

When to Refer

The District's Child Find obligation toward a specific child is triggered when there is a reason to suspect a disability and reason to suspect that special education services may be needed to address that disability.

Dept. of Educ., State of Hawaii v. Carrie Rae S., 158 F. Supp.2d 1190, 1194 (D. Hawaii 2001).

When to Refer, Cont'd

Districts ensure that an individual education program (IEP) has been developed and is being implemented by the time of the child's 3rd birthday.

Cal. Ed. Code Sec. 56426.9(b); 34 Code of Federal Regulations (C.F.R.) Sec. 300.124(b).

Prior to transitioning from preschool program to kindergarten, school district must reassess to determine if the student is still in need of special education and services.

Cal. Ed. Code Sec. 56445

Right to Assessments

In California, students have a right to be assessed in all areas of suspected disability.

Assessments are not just for eligibility, but should help District determine the type, frequency, and duration of needed services.

Assessments should be comprehensive and not just based on standardized tests. They should include interviews with people who work with the child, the parents/ guardians, and the child.

FREE to families

Assessments when Students have Social/Emotional and Behavior Needs

Assess comprehensively, consider whether the needs stem from other disabilities, including learning disabilities and/ or Autism.

Consider a Functional Behavior Assessment if the student may need a Behavior Intervention Plan.

Consider an evaluation for Educationally Related Mental Health Services (ERMHS).

Independent Education Evaluations

Parent who disagrees with District's assessment can request an Independent Educational Evaluation ("IEE") at public expense

District must either fund the IEE or file for due process.

If the District files, then it will have the burden to prove that their assessment was appropriate.

The Individual Education Program (IEP)

School district must convene an IEP meeting within 60 days of assessments and must hold an IEP meeting annually for eligible students.

If students are found eligible for special education, they have a right to an Individual Education Program or IEP.

As we have discussed, the IEP must be tailored to the student's individual needs and must provide student a free, appropriate, public education.

Assessments and Eligibility

13 Categories of Eligibility

1. Autism
2. Other Health Impairment
3. Specific Learning Disability
4. Speech or Language Impairment
5. Traumatic Brain Injury
6. Visual Impairment
7. Blindness
8. Deafness
9. Emotional Disturbance
10. Hearing Impairment
11. Intellectual Disability
12. Multiple Disabilities
13. Orthopedic

Right to a Free, Appropriate Public Education (FAPE)

“FAPE” = Specialized Academic Instruction (SAI) + Related Services that:

- Are provided at public expense
- Meet the standards of the State Educational Agency
- Include appropriate preschool, elementary, or secondary education; and
- Are provided in conformity with the individualized education program.

Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176 (1982).

- Appropriate ≠ Best

Andrew F. ex rel. v. Douglas Cty. Sch. Dist. RE-1, 580 U.S. 386 (2017).

- The IEP must be reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.
- More than de minimis

Least Restrictive Environment (LRE)

Right to learn in their neighborhood school and interact with children who do not have disabilities to the maximum extent appropriate.

Schools must provide services and supports to ensure success in the regular education classroom.

What must be included in an IEP

Eligibility

Present Levels of Performance

Goals and objectives

Related Services

Accommodations and Modifications

Behavioral Plans

Individualized Transition Plan (if age appropriate)

Classroom Placement

Team Notes(computerized system or handwritten)

If the district will not let you attach your own notes, request that refusal in writing so that you may file a compliance complaint

Special Education Services

Specialized Academic Instruction

Occupational Therapy

Physical Therapy

Speech Therapy

Functional Behavior Assessment (FBA)

Assistive Technology

Social, emotional, and behavioral needs

Educationally Related Mental Health Services
(ERMHS)

Aide Support

...and more

Behavior Intervention Services

Behavior Intervention Services may be provided by a licensed Board Certified Behavior Analyst (BCBA) – may be consult or direct services.

If a child has behavior needs, consider conducting a Functional Behavior Assessment and developing a Behavior Intervention Plan.

Educationally Related Mental Health Services

Educationally Related Mental Health Services (ERMHS) are mental health services for students who qualify for special education. ERMHS support student's social-emotional needs.

They can also help to improve the student's academics, behavior, and overall well-being. ERMHS are individually tailored to the student's needs and to their IEP goals.

ERMHS may include counseling (individual, group) and/ or social work services (collaboration and case management).

Extended School Year Services

Extended School Year (ESY) is special education and related services provided during the summer

In California, a student with an IEP is eligible for ESY services if:

- The student's disabilities "are likely to continue indefinitely or for a prolonged period";
- An interruption in the student's educational program may cause regression;
- The student with a disability has limited ability to relearn skills, known as recoupment capacity; and
- The above factors make it "impossible or unlikely" that the student with a disability will attain self-sufficiency and independence without ESY services.

IEP Team Members

Parent/Guardian

The Student (when appropriate)

A Special Education Teacher

A General Education Teacher

School District Representative

Service Providers

Person who conducted assessments

A Parent Friend or Advocate

Can include paraprofessionals

Parent Rights at the IEP Meeting

Parents have the right to meaningful participation at the IEP

Ask any and all questions, submit an agenda or concerns, or take time to think about the IEP before signing consent

Parents have the right to an interpreter at the IEP free of charge, but this **MUST** be requested in advance

Parents may audio-record the IEP if they give 24 hours written notice

Parents must receive a full, **FINAL** copy of the IEP

Ask for a copy before you leave

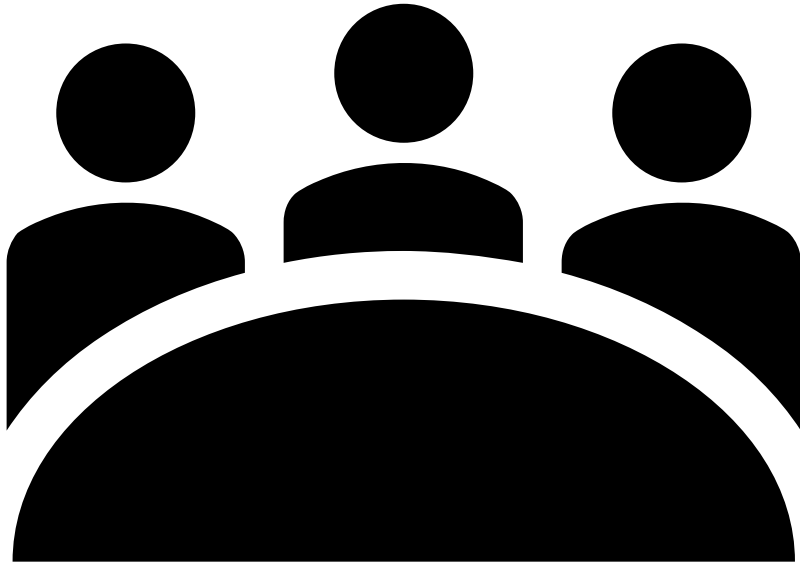
If English is not their preferred language, they may request a copy of the IEP in their primary language

Parental Consent to the IEP

An IEP cannot be implemented without the parent's consent

Parents can:

- Consent in part—meaning they agree with part of the IEP but not with all of it
- Consent in full—meaning they agree with all parts of the IEP
- Consent only to implementation—meaning they will allow the school district to implement the IEP, but do not agree it provides FAPE
- Provide no consent—which means the school district cannot implement the IEP



Disagreements with the School Team...

IEP team meetings and decision making is not a democracy/ majority-rule!

If parents disagree with the IEP team, there are options.

Right to File a Complaint

COMPLIANCE COMPLAINT

California Department of Education (CDE)

- Prompts direct investigation by CDE
- Alleges special education laws or procedures have not been followed

EDUCATION DISCRIMINATION COMPLAINT

U.S. Department of Education
Office for Civil Rights (OCR)

- Alleges discrimination on the basis of disability
- Section 504

FILING

- File Due Process Complaint with California Office of Administrative Hearings

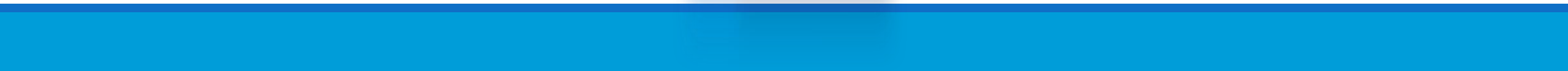
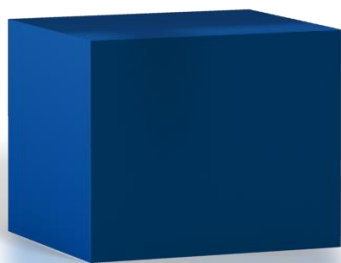
MEDIATION

- Opportunity to resolve disagreement outside of formal legal process
- Facilitated by independent mediator
- If no agreement, or only partial agreement, complaint can proceed to due process

ADMINISTRATIVE HEARING

- Due Process Hearing must be provided within 45 days
- Presided over by an impartial hearing officer
- Not a formal trial
- *For more info, see SERR Ch. 6

Right to Due Process



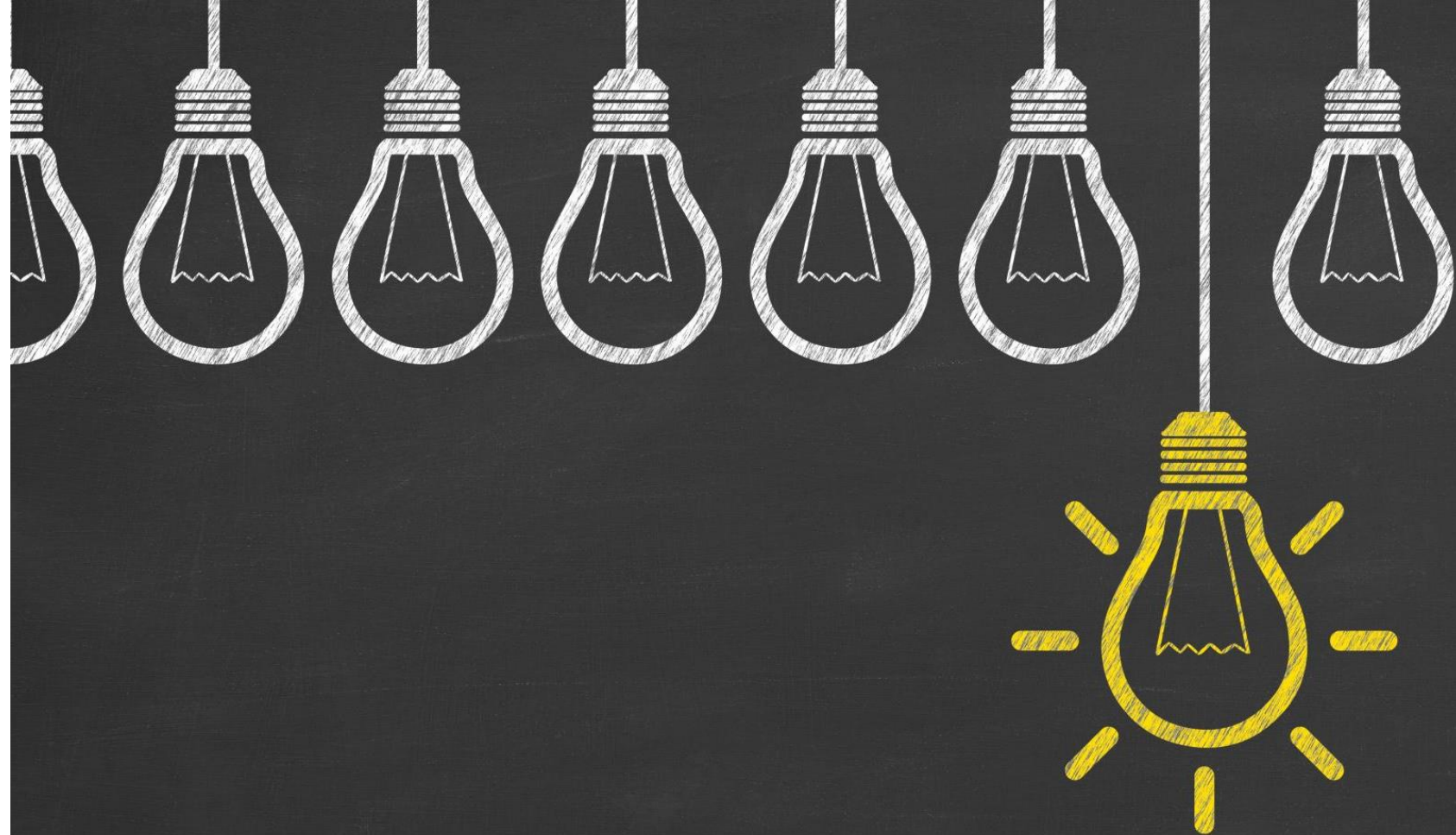
Resources

Special Education Rights
and Responsibilities Manual

<https://serr.disabilityrightsca.org/>

DRC Special Education
Resources

[https://www.disabilityrightsca.org/
resources/special-education](https://www.disabilityrightsca.org/resources/special-education)



Contact Information

Disability Rights California

Intake: 1-800-776-5746

<https://www.disabilityrightsca.org/>

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