



*California's Protection & Advocacy System
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Special Education Instead of Adult Services for Consumers between the Ages of 18-22 - Fact Sheet¹

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The State Legislature required the Department of Developmental Services (DDS) to reduce its budget by 174 million dollars for this fiscal year (2011-2012), in addition to the required 334 million dollar reduction effective July, 2009.² As a result, there are changes to the types and amounts of services that regional centers can purchase. This fact sheet describes the 2011 changes in the use of school services for consumers between the ages of 18 to 22 who are eligible for special education and have not received a diploma or certificate of completion, any exemptions to those changes, and what will happen if the regional center wants to change your services.

¹ The changes are part of the Budget Trailer Bill (TBL) AB104. You may find the law at http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0101-0150/ab_104_bill_20110630_chaptered.html. The changes regarding Special Education are found at Welfare and Institutions Code section 4648.55.

² The new law requires DDS to obtain even greater savings if certain triggers are not met in the state budget throughout the year. Disability Rights California will discuss this on its website if the triggers are not met.

HOW THE LAW CHANGED

A section added to the Lanterman Act prohibits a regional center from purchasing certain services for consumers between the ages of 18 to 22 who are eligible for special education and related services and have not received a diploma or certificate of completion from high school.³ The statute divides this group into three separate groups, each of which is discussed separately below. There are certain exemptions to the new statute, which are also discussed below. Remember, if you have received a diploma or certificate of completion from high school, the changes in the law made by the Budget Trailer Bill do not apply to you.

However, under special education law, students who have earned certificates of completion are still eligible for special education services until they earn a regular diploma or reach the age of 22. Because these students are still entitled to services from special education, and because there are other, older laws in the Lanterman Act which prohibit regional centers from purchasing services that a consumer is able to receive from other sources, like special education, regional centers may still deny one or more of the services listed in Section B below if these service needs can be met through special education. Regional centers' denials of services in these situations have been upheld by administrative law judges based on these other Lanterman Act laws. As with any service a consumer is requesting the regional center to pay for, the consumer must be ready to prove that the service which the consumer really needs is not available to the consumer from any other source.

Because the Budget Trailer Bill talks only about consumers who have Certificates of Completion, the changes in the law do not apply to only consumers with Certificates of Completion. Education law gives school districts the ability to award a special education student, who is not getting a diploma, either a Certificate of Completion or a Certificate of Achievement. A regional center should treat any Certificate of Achievement the same as a Certificate of Completion, but some regional centers may not. If a consumer wants to be sure that this new law applies

³ Welfare and Institutions Code section 4648.55

to him/her after high school, he/she should try to have the school district label the document a Certificate of Completion and not a Certificate or Achievement or any other type of certificate.

A. The Three Groups Identified by the Statute

It is important to understand which group you are in as the changes are different for each group.

Group #1. If you are 18-22 and you are still in school and you are either receiving or you want/need to receive one or more of the services listed under Section B below.

Group #2. If you are 18-22 and you are not in school but are currently receiving services under Section B from the regional center.

Group #3. If you are 18-22 and you are not in school and you are not getting - either from the school or from the regional center - any of the listed services in Section B below.

B. List of Involved Services

The new law only applies to the five services listed below. It does not apply to other services the regional center provides such as respite, supported living services (SLS), nursing and other health services or residential placement.

- 1) Day program
- 2) Vocational education
- 3) Work services
- 4) Independent living program
- 5) Mobility training and related transportation services

C. IPP Planning Team Process to Determine If Regional Center May Purchase Services.

Group #1: Consumers 18-22 Who Are Attending School and Are Either Receiving or Want/Need to Receive the Listed Services⁴

For Group #1, if you are 18-22 and are still in school, the Individual Program Plan (IPP) planning team has to determine whether the school can meet your need for the services listed under Section B. If the planning team determines that the school can meet your needs for any of the five listed services under Section B, then the regional center is required by law to help you get those services. You, or where appropriate, your parent, legal guardian, or conservator, can ask the regional center service coordinator to attend the Individualized Education Program (IEP) planning team meeting.⁵ Additionally, each regional center is required to have staff identified as having special education expertise who may be asked to help or attend meetings on your behalf.⁶

If the IPP planning team determines that the school cannot meet your needs for the services under Section B, or grants you an exemption (discussed in Section D below), then the regional center has to purchase or continue to purchase those services for you.

Group #2: Consumers 18-22 Who Have Left School and Are Currently Receiving the Listed Services from the Regional Center⁷

For Group #2, if you are 18-22 and have left school and you are receiving the listed services under Section B from the regional center, the IPP planning team has to make a determination whether the school can provide those services to you instead. If the planning team determines that your needs for the listed services under Section B can be met by the school,

⁴ Welfare and Institutions Code section 4648.55(a)

⁵ Welfare and Institutions Code section 4648.55(a)

⁶ Welfare and Institutions Code section 4640.6(g)(2)

⁷ Welfare and Institutions Code section 4648.55(b)

then the regional center is required by law to help you get those services from the school. You can always ask the regional center to attend the IEP planning team meeting with you.⁸

If the IPP planning team determines that your needs for the services listed under Section B cannot be met by the school, then the regional center can continue to purchase those services for you. Although the law is not as clear, Disability Rights California believes that you can also get an exemption (see Section D below) in order for the regional center to purchase those services for you.

Because you are currently receiving services from the regional center, the regional center must provide you with a notice of action before it takes any action to reduce, terminate or change the services that are in your IPP. Please see Section E below for more information about your due process rights.

Group #3: Consumers 18-22 Who Are Not Attending School and NOT Receiving the Listed Services from Either the School or the Regional Center⁹

For Group #3, if you are 18-22 and you are not attending school and currently NOT getting any of the services listed under Section B - from either the regional center or from the school - you can request an IPP meeting and identify in your IPP that you need these services. Once you identify in your IPP that you need these services, then the regional center must first try to get those services for you from the school. If the IPP planning team determines that the school can meet your needs for services listed under Section B, then the regional center is required by law to help you get these services. Again, you can always ask the regional center to attend the IEP planning team meeting with you.¹⁰ Generally, the regional center will not be able to purchase those services listed under Section B for you unless you meet an exemption as explained in Section D below.

⁸ Welfare and Institutions Code section 4640.6(g)(2)

⁹ Welfare and Institutions Code section 4648.55(c)

¹⁰ Welfare and Institutions Code section 4640.6(g)(2)

D. Exemption in Extraordinary Circumstances

There are two ways to get an exemption which will allow the regional center to purchase services listed under Section B for you:¹¹

1. An exemption may be granted if there was an individualized determination that an extraordinary circumstance exists in your case that justifies granting you an exemption;
or
2. An exemption must be granted if, through the IPP process, it is determined that the school cannot appropriately meet your needs for services listed under Section B.

Examples of extraordinary circumstances could be: health and safety; failure to provide services in the most inclusive environment as required by special education law and the Lanterman Act; the services specified in the IEP are not available; or, extraordinary family circumstances (e.g. the family member who provided transportation to the appropriate out of school district placement has a disability which renders him/her unable to continue to provide transportation; siblings are not advised to attend the same school and there is no other appropriate school program for the consumer, and other such other extraordinary family circumstances that may exist).

What Should You Do If You Think You Qualify for an Exemption?

If you want to receive regional center services instead of school services and you think you qualify for an exemption, you should contact your service coordinator and request an IPP meeting. An IPP meeting must be held within 30 days of your request.¹²

¹¹ Welfare and Institutions Code section 4648.55(d). The second part of the exemption in subparagraph (d) is confusing. It says “shall be granted ... based on a determination that the generic service is not appropriate to meet the consumer’s needs.” This standard is very similar to the requirement that the IPP team determines if the consumer’s needs can be met in the educational system although it adds the words “not appropriate to meet.” To reconcile the two provisions, Disability Rights California reads this to require the regional center to grant exemptions in the two ways described in Section D of this fact sheet.

¹² Welfare and Institutions Code section 4646.5(b)

E. What If the Regional Center Wants to Change Your Services?

If your regional center wants to change or deny your request for services, it must either hold an IPP meeting and reach agreement with you about the change or give you a written notice.¹³ The notice must be given 30 days before the change begins.¹⁴ The notice must give you the following information:

- the action the regional center is taking;
- the basic facts about why the regional center is making its decision;
- the reason for the action;
- the effective date; and,
- the specific law, regulation or policy that supports the action.¹⁵

If you are already receiving the service and you disagree with the regional center's decision and want to continue to receive it, you must request a fair hearing within 10 days of receiving the notice.¹⁶ Otherwise, the request must be made within 30 days.¹⁷ If exemptions are available and you think you meet an exemption, remember to additionally put "I meet an exemption" into your fair hearing request.

For information on how to appeal decisions by the regional center, read our chapter on Disagreements with Regional Centers and Developmental Centers at: <http://www.disabilityrightsca.org/pubs/506301Ch12.pdf>

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.

¹³ Usually, decisions about the services you need must be decided by an IPP team. Welfare and Institutions Code section 4646.4(a)-(c). However, the law says if a regional center wants to reduce, end or change a service in your IPP without your consent, it has to give you a 30 day notice first. Welfare and Institutions Code section 4710

¹⁴ Welfare and Institutions Code section 4710

¹⁵ Welfare and Institutions Code section 4701. The information must also be in the language you understand.

¹⁶ Welfare and Institutions Code section 4715

¹⁷ Welfare and Institutions Code section 4710.5(a)