

**NOTICE OF PROCEDURAL SAFEGUARDS**  
**The Individuals with Disabilities Education Act (IDEA), Part B**

This information provides parents, legal guardians, and surrogate parents of children with disabilities from 3 years of age through age 21 an overview of their educational rights, sometimes called **procedural safeguards**. This information is your **Notice of Procedural Safeguards** as required under the Individuals with Disabilities Education Act (IDEA). *This notice is also provided for students who are entitled to these rights at age 18.* (NOTE: The term *school district* is used throughout this document to describe any public education agency responsible for providing your child's special education program. The term *assessment* is used to mean *evaluation*.)

**INTRODUCTION:** The IDEA is a federal law that requires school districts to provide a free, appropriate public education to eligible children with disabilities. "A free appropriate public education" means special education and related services provided as described in an individualized education program (IEP) and under public supervision, to your child at no cost to you. When you have a concern about your child's education, it is important that you call or contact your child's teacher or administrators to talk about your child and any problems you see. Staff in your school district or special education local plan area (SELPA) can answer questions about your child's education, your rights and procedural safeguards. When you have a concern, it is this informal conversation that often solves the problem and helps maintain open communication.

**Prior Written Notice:** The school district must inform you about proposed evaluations of your child in a written notice or an assessment plan within fifteen (15) days of your written request for evaluation that is understandable and in your native language or other mode of communication unless it is clearly not feasible to do so. This notice must be given when the school district proposes or refuses to initiate a change in the identification, assessment, or educational placement of your child with special needs or the provision of a free appropriate public education. If you refuse consent for the initial or continued placement and receipt of special education and related services for your child, the district is not required to develop an IEP and is not considered to be in violation of the requirement to make available a free and appropriate public education. You may only revoke consent in writing and the district must then provide you written notice that services for your child will be discontinued. The school district must also provide reasonable written prior notice that your child will be aging out (reaching age 22) or graduating from high school with a regular high school diploma because graduation from high school constitutes a change in placement.

**The Prior Written Notice Must Include the Following:** A description of the actions proposed or refused by the school district; an explanation of why the action is proposed or refused; a description of any other options considered and the reasons those options were rejected; a description of each assessment procedure, test, record or report used as a basis for the action proposed or refused; a description of any other factors relevant to the action proposed or refused; and a statement that you as a parent of a child with a disability are protected by the procedural safeguards. If the notice is not in regard to an initial referral for assessment, the notice must provide a statement that you have protections under procedural safeguards; information on how you can obtain a copy of described procedural safeguards; and sources of additional assistance in understanding the procedural safeguards.

**The Notice of Procedural Safeguards must be given to you [E.C. 56301(d)(2)]:**

- Upon initial referral for special education
- Your request for an evaluation
- Once each year
- The first occurrence of mediation or a due process hearing
- When you request them

**Parent Participation:** You have the right to refer your child for special education services. You must be given opportunities to participate in any decision-making meeting regarding your child's special education program. You have the right to participate in IEP meetings about the identification (eligibility), assessment, and educational placement of your child and other matters relating to your child's free appropriate public education. You also have the right to participate in the development of the IEP and to be informed of the availability of free appropriate public education including all program options and of all available alternative programs, both public and nonpublic. You have the right to record electronically the proceedings of the IEP team on an audiotape recorder. The law requires that you notify the district at least 24 hours prior to meeting if you intend to record the proceedings.

**Surrogate Parents:** School districts must ensure that an individual is assigned to act as a surrogate parent for the parents of a child with a disability when a parent cannot be identified and the school district cannot discover the whereabouts of a parent. A surrogate parent may be appointed if the child is an unaccompanied homeless youth, adjudicated dependent or ward of the court under the state *Welfare and Institution Code* and the child is referred to special education or already has an IEP.

**Parent Consent:** You must give informed, written consent before your child's first special education assessment can proceed and before the school district can provide your child's special education program. The parent has fifteen (15) days from the receipt of the proposed assessment plan to arrive at a decision. The assessment may begin immediately upon receipt of the consent and must be completed and an IEP developed within sixty (60) days of your consent. In the case of reevaluations, the school district must document reasonable attempts to obtain parental consent. If the parents do not respond to these attempts, the school district may proceed with the reevaluation without consent.

**Consent to Bill California Medi-Cal & Release/Exchange Information for Health Related Special Education and Related Services:** School districts may submit claims to California Medi-Cal for covered services provided to Medi-Cal eligible children enrolled in special education programs. The Medi-Cal program is a way for school districts and/or County Offices of Education (COEs) to receive federal funds to help pay for health related special education and related services.

Your consent is voluntary and can be revoked at any time. If you do revoke consent, the revocation is not retroactive. Consent will not result in denial or limitation of community-based services provided outside the school. If you refuse to consent for the school district and/or COE to access California Medi-Cal to pay for health related special education and/or related services, the school district and/or COE is still responsible to ensure that all required special education and related services are provided at no cost to you. As a parent, you need to know that:

- You may refuse to sign consent
- Information about your family and child is strictly confidential

- Your rights are protected under Title 34, Code of Federal Regulations 300.154; Family Education Rights Privacy Act of 1974 (FERPA); Title 20, United States Code Section 1232(g); Title 34 Code of Federal Regulations Section 99.

- Your consent is good for one (1) year unless you withdraw your consent before that time. Your consent can be renewed annually at the IEP team meeting

Furthermore, as a public agency, the school district may access your public benefits or insurance to pay for related services required under Part B of the IDEA, for a free appropriate public education (FAPE). For related services required to provide FAPE to an eligible student, the school district:

- May not require you to sign up for or enroll in public benefits or Insurance programs (Medi-Cal) in order for your child to receive FAPE under Part B of the IDEA (34 CFR 300.154(d)(2)(i))
- May not require you to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services and reimbursement through Medi-Cal (34 CFR 300.154(d)(2)(ii))
- May not use your child's benefits under Medi-Cal if that use would:
  - ❖ Decrease available lifetime coverage or any other insured benefit.
  - ❖ Result in the family paying for services that would otherwise be covered by the public benefits or insurance program (Medi-Cal) and are required for your child outside of the time your child is in school.
  - ❖ Increase premiums or lead to the discontinuation of public benefits or insurance (Medi-Cal).
  - ❖ Risk loss of eligibility for home and community-based waivers, based on aggregate health related expenditures.

**Parental Revocation of Consent after Consenting to Initial Provision of Services:** You may only revoke your consent in writing and this action cannot be retroactive. Once you revoke consent to the initial provision of services, the district will provide prior written notice before ceasing the services. If in the future you seek re-enrollment in special education for your child, the assessment will be treated as an initial evaluation.

**Child Participation/Right:** As part of the participation of an individual with exceptional needs in the development of an individualized education program, as required by federal law, your child has the right to meet with his/her IEP team at any time, to provide confidential input to any representative of his/her IEP team. [CCR 56341.5(d)]

**Age of Majority:** When your child reaches the age of 18, all rights under Part B of the Individuals with Disabilities Education Act (IDEA) will transfer to your child. The only exception will be if your child is determined to be incompetent under State law.

**Nondiscriminatory Evaluations:** Evaluations are conducted prior to an initial placement, triennially, but not more frequently than once per year unless the parent and the school agree otherwise. Materials and procedures used for evaluations and placement must not be racially, culturally, or sexually discriminatory. Tests must be administered in your child's native language or mode of communication unless it is clearly not feasible to do so. No single procedure can be the sole criteria for determining an appropriate educational program for your child.

**Access to Educational Records and Other Rights Related to Records:** You have a right to inspect and review all of your child's education records without unnecessary delay before any meeting about your child's IEP or before any due process hearing. The school district must provide you access to records and copies if requested, within 5 days after the request has been made orally or in writing.

**Independent Educational Evaluation:** If you disagree with the results of the evaluation conducted by the school district, you have the right to ask for and obtain an independent educational evaluation for your child from a person qualified to conduct the evaluation at public expense. You are entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees. The school district must respond to your request for an independent educational evaluation and provide you information upon request about where to obtain an independent educational evaluation. If the school district disagrees that an independent evaluation is necessary, the school district must request a due process hearing to prove that its evaluation was appropriate. If the district prevails, you still have the right to an independent evaluation but not at public expense. The IEP team must consider the results and recommendations of independent evaluations. District evaluation procedures allow in-class observation of students. If the school district observes your child in his or her classroom during an evaluation or if the school district would have been allowed to observe your child, an individual conducting an independent educational evaluation must also be allowed to observe your child in the classroom. If the school district proposes a new school setting for your child and an independent educational evaluation is being conducted, the independent evaluator must be allowed to first observe the proposed new setting.

**Local Mediation/Alternative Dispute Resolution:** A request for local mediation may be made either before or after a request for a due process hearing is made. You may ask the school district to resolve disputes through local mediation/alternative dispute resolution (ADR), which is less adversarial than a due process hearing. ADR and mediation are voluntary methods of resolving a dispute and may not be used to delay your right to a due process hearing. Both parents and the school district must agree in order to try local mediation/ADR. For more information, contact the Desert/Mountain SELPA Program Manager for Due Process at (760) 242-6333. If a resolution is reached, the parties shall execute a legally binding agreement that sets forth the resolutions. All discussions during the mediation process shall be confidential. If the issues fail to be resolved to the satisfaction of all parties, the party who requested the mediation conference has the option of filing for a due process hearing.

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**Due Process Hearing:** You have the right to request an impartial due process hearing regarding the identification, evaluation, educational placement or the provision of a free, appropriate public education for your child. The request for a due process hearing must be filed within two years from the date you knew, or had reason to know of the facts that are the basis for the hearing request. There is an exception to this timeline if you were prevented from requesting a hearing earlier because the district misrepresented that it had resolved the problem or withheld information that should have been provided to you. Requests for a hearing are to be sent to the Office of Administrative Hearings, Special Education Unit, 1102 Q Street, Sacramento, CA 95814. Requests must include the student's name, residential address, the name of the student's school, a description of the problem, facts about the problem and a proposed resolution. A due process hearing may not take place until the party or the attorney representing the party files a notice that meets these requirements.

**Due Process Rights:** You have a right to:

- A fair and impartial administrative hearing at the state level before a person who is knowledgeable of the laws governing special education and administrative hearings
- Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities
- Present evidence, written arguments, and oral arguments
- Confront, cross-examine, and require witnesses to be present
- Receive a written or electronic verbatim record of the hearing, including findings of fact and decisions
- Have your child present at the hearing
- Have the hearing open or closed to the public
- Be informed by the other parties of the issues and their proposed resolution of the issues at least ten calendar days prior to the hearing
- Within five business days before a hearing, receive a copy of all documents, including assessments completed by that date and recommendations, and a list of witnesses and their general area of testimony
- Have an interpreter provided
- Request an extension of the hearing timeline
- Have a mediation conference at any point during the hearing
- Receive notice from the other party at least ten days prior to the hearing that it intends to be represented by an attorney

**Filing a Written Due Process Complaint:** Whenever a request for a due process hearing has been filed, you and the district have the opportunity for an impartial due process hearing which is conducted by officials of the State. Within 15 days of receiving the notice of the complaint and prior to the opportunity for an impartial due process hearing, the district shall convene a Resolution Meeting with you and the other relevant members of the IEP team who have specific knowledge of the facts contained in the complaint. This meeting includes a representative of the district who has decision-making authority on behalf of the district. The district will not have an attorney present at this meeting unless an attorney accompanies you. During the Resolution Meeting, you discuss the complaint and the district is provided the opportunity to resolve the complaint. You and the district can agree to waive the Resolution Meeting or agree to the mediation process. If a resolution is reached at the meeting, the parties will execute a written agreement that is signed by both you and the district. Either party may void the agreement within 3 business days. If the complaint is not resolved within 30 days of receiving the complaint, the due process hearing may take place and all applicable timelines will commence. Mediation is a voluntary method of resolving a dispute and may not be used to delay your right to a due process hearing. The parents and the school district must agree to try mediation before mediation is attempted. A mediator is a person who is trained in strategies that help people come to agreement over difficult issues.

The child involved in any administrative or judicial proceeding must remain in the current educational placement pending the decision of the hearing officer or 45 school days whichever comes first, unless you and the school district agree on another arrangement. If you are applying for initial admission to a public school, your child may be placed in a public school program with parental consent until all proceedings are completed. The hearing decision is final and binding on both parties. Either party can appeal the hearing decision by filing a civil action in state or federal court within 90 days of the final decision.

**Attorney Fees:** In any action or proceeding regarding a due process hearing, a court, in its discretion, may award reasonable attorney's fees as part of the costs to you as parent of a child with a disability if you are the prevailing party in the hearing. Reasonable attorney fees may also be awarded following the conclusion of the administrative hearing with the agreement of the parties. The court may also award attorney fees to the State or district if the attorney of the parent files the claim or subsequent cause of action that is frivolous, unreasonable, and without foundation or is presented for any improper use such as harassment, delay or needlessly increasing the cost of litigation.

Fees may be reduced if any of the following conditions prevail: (1) the court finds that you unreasonably delayed the final resolution of the controversy; (2) the hourly attorney fees exceed the prevailing rate in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; (3) the time spent and legal services provided were excessive; (4) your attorney did not provide to the school district the appropriate information in the due process complaint. Attorney fees will not be reduced, however, if the court finds that the state or the school district unreasonably delayed the final resolution of the action or proceeding or there was a violation of this section of law.

Attorney fees may not be awarded relating to any meeting of the IEP team unless an IEP meeting is convened as a result of a due process hearing proceeding or judicial action. Attorney fees may also be denied if you reject a reasonable settlement offer made by the

district/public agency at least ten days before the hearing begins and the hearing decision is not more favorable than the settlement offer.

**Complaint Regarding Violation of a State or Federal Law:** You may file a complaint with the California Department of Education if you believe the district has, or is, violating a state or federal law. You may send a written complaint to the California Department of Education, Special Education Division, Procedural Safeguards Referral Service, 1430 N Street, Suite 2401, 515 L Street, Room 270, Sacramento, CA 95814. This is NOT the same thing as filing for due process. Within 60 days after a complaint is filed, the California Department of Education will carry out an independent investigation, give the complainant an opportunity to provide additional information and make a determination as to whether the district has violated laws or regulations and issue a written decision that addresses the allegations. Complaints not involving IDEA 2004 generally fall under the Uniform Complaint Procedures in each district.

**School Discipline and Placement Procedures for Students with Disabilities:** Children with disabilities may be suspended or placed in other alternative interim settings or other settings to the same extent these options would be used for children without disabilities. If a child exceeds ten consecutive days in such a placement, or more than ten cumulative days in certain circumstances, an IEP meeting must be held to determine whether the child's misconduct was a manifestation of his/her disability. This IEP meeting must take place immediately, if possible, or within ten days of the school district's decision to take this type of disciplinary action.

As a parent, you will be invited to participate as a member of this IEP team to help determine if your child's behavior was a manifestation of their disability. If the team determines that this is the case, the school district may be required to develop an assessment plan to address the misconduct or if your child has a behavior intervention plan, review and modify the plan, as necessary. If the IEP team concludes that the misconduct was *not* a manifestation of your child's disability, the school district might take disciplinary action, such as expulsion, in the same manner as it would for a child without disabilities. If you disagree with the IEP team's decision, you may request an expedited due process hearing from the Office of Administrative Hearings, Special Education Unit.

**Alternative Interim Educational Settings:** Federal and state laws allow the use of alternative educational placements for up to forty-five school days if a child with a disability carries a weapon, knowingly possesses or uses illegal drugs, inflicts serious bodily injury or sells or solicits the sale of a controlled substance while at school or at a school function. An alternative educational setting must be determined by an IEP team that allows the child to: continue to participate in the general curriculum, although in another setting; ensure continuation of services and modifications detailed in the IEP.

**Unilateral Placement by Parents in Private School:** If you enroll your child in a private school, you may be entitled to reimbursement for the cost of a private school from the school district, including special education and related services, if the court or hearing officer determines that the school district has not made a free and appropriate public education available to your child. You must first attempt to obtain consent of the school district, and you must also establish that the school district does not have an appropriate program for your child.

**When reimbursement may be reduced or denied.** The court or hearing officer may reduce or deny reimbursement for private school costs if you did not make your child available for an assessment upon notice from the school district before removing your child from public school. If you have not complied with these requirements, a court may find that you acted unreasonably in unilaterally removing your child from the public school and placing your child in a private school. Your request for reimbursement may also be reduced or denied if you did not inform the school district that you were rejecting the special education placement proposed by the school district and/or you failed to give the school district notice of your concerns and your intent to enroll your child at a private school at public expense. Your notice to the school district must be given either:

- At the most recent IEP meeting you attended before removing your child from the public school; or
- In writing, to the school district at least ten business days (including holidays) before removing your child from the public school.

A court or hearing officer may not reduce or deny reimbursement to you if you failed to give this notice for any of the following reasons: illiteracy and inability to write in English; giving notice would likely result in physical or serious emotional harm to the child; the school prevented you from giving notice; or you had not received a copy of this **Notice of Procedural Safeguards** or otherwise been informed of this notice requirement.

**Observation of Your Child at a Nonpublic School:** If you unilaterally place your child in a nonpublic school and you propose the placement in the nonpublic school to be publicly financed, the school district must be given the opportunity to observe the proposed placement and your child in the proposed placement. The school district may not observe or assess any other child at the nonpublic school without permission from the other child's parent or guardian.

**State Special Schools:** The State Special Schools provide services to students who are deaf, hard of hearing, blind, visually impaired, or deaf-blind at each of its three facilities: the California Schools for the Deaf in Fremont and Riverside and at the California School for the Blind in Fremont. Residential and day school programs are offered to students from infancy to age 21 at both State Schools for the Deaf and from ages five through 21 at the California School for the Blind. The State Special Schools also offer assessment services and technical assistance. Referrals for State Special Schools are part of the IEP process and parents must be referred by their local school district when considering such placements. For more information about the State Special Schools, please visit the California Department of Education Web site at <http://www.cde.ca.gov/sp/ss/> or ask for more information from the members of your child's IEP team.