

## **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 three 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 *LEA (local education agency)* 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 or testing*.)

## **Introduction:**

The IDEA is a Federal law that requires LEAs to provide a free appropriate public education (FAPE) 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 LEA 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. You may also want to contact one of the California parent organizations (Family Empowerment Centers and Parent Training Institutes), which were developed to increase collaboration between parents and educators to improve the educational system. Contact information for these organizations is found on the [California Department of Education Parent Organizations](http://www.cde.ca.gov/sp/se/aq/capnrtorg.asp) web page (<http://www.cde.ca.gov/sp/se/aq/capnrtorg.asp>).

## **Prior Written Notice:**

The LEA must inform you about proposed evaluations of your child in a written notice or an assessment plan within 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 LEA 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 LEA 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 LEA must then provide you written notice that services for your child will be discontinued. The LEA 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 LEA; 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 regards 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 (Education Code section 56301(d)(2):**

- Upon initial referral for special education
- Once each year
- When you request them
- Your request for an evaluation
- The first occurrence of mediation or a due process hearing
- Decision made to make a removal that constitutes a change of placement

## **Parent Participation:**

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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 LEA at least 24 hours prior to meeting if you intend to record the proceedings. If the LEA initiates the notice of intent to audio record a meeting and you object or refuse to attend the meeting because it will be audio recorded, the meeting shall not be audio recorded.

### **Surrogate Parents:**

LEAs 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 LEA 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 (34 CFR 300.519; EC 56050; GC 7579.5 and 7579.6).

### **Parent Consent:**

You must give informed, written consent before your child's first special education assessment can proceed and before the LEA can provide your child's special education program. You have 15 days from the receipt of the proposed assessment plan to arrive at a decision. The assessment may begin immediately upon receipt of your consent and must be completed and an IEP developed within 60 days of your consent. In the case of reevaluations, the LEA must document reasonable attempts to obtain parental consent. If the parents do not respond to these attempts, the LEA may proceed with the reevaluation without consent (34 CFR 300.300; EC 56506(e) and (d), and 56346). If you do not provide consent for an initial assessment or fail to respond to a request to provide consent, the LEA may pursue the initial assessment by utilizing due process procedures. If you refuse to consent to the initiation of services, the LEA will not provide special education and related services and will not seek to provide services through due process. If you consent in writing to the special education and related services for your child but do not consent to all of the components of the IEP, those components of the program to which you have consented must be implemented without delay. If the LEA determines that the proposed special education program component to which you do not consent is necessary to provide a free appropriate public education to your child, a due process hearing must be initiated. If a due process hearing is held, the hearing decision shall be final and binding.

### **Consent to Bill California Medi-Cal:**

*Release/Exchange Information for Health Related Special Education and Related Services.* LEAs 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 LEAs 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 LEA and/or COE to access California Medi-Cal to pay for health related special education and/or related services, the LEA 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.

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- Your rights are protected under Title 34 of the Code of Federal Regulations 300.154; Family Education Rights Privacy Act of 1974 (FERPA); Title 20 of the United States Code Section 1232(g); and Title 34 of the Code of Federal Regulations Section 99.
- Your consent is good for one 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 LEA 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. For related services required to provide FAPE to an eligible student, the LEA:

- 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); and/or
  - ❖ 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 LEA 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. The LEA may not use the procedures in subpart E of Part 300, 34 CFR (including the mediation procedures under 34 CFR 300.506 or the due process procedures under 34 CFR 300.507 through 300.516) to obtain agreement or a ruling that the services may be provided to your child. The LEA will not be in violation of the requirement to make a free appropriate public education available to your child because of the failure to provide the child with further special education and related services. The LEA is not required to convene an IEP team meeting or develop an IEP under 34 CFR 300.320 and 300.324 for your child for further provision of special education and related services. In accordance with 34 CFR 300.9(c)(3), if you revoke consent in writing for your child's receipt of special education services after your child is initially provided special education and related services, the LEA is not required to amend your child's education records to remove any references to your child's receipt of special education and related services because of the revocation of consent.

## **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 (EC 56341.5(d)).

## **Age of Majority:**

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When your child reaches the age of 18, all rights under Part B of the IDEA will transfer to your child. The only exception will be if your child is determined to be incompetent under State law.

### **Nondiscriminatory Evaluations:**

You have the right to have your child assessed in all areas of suspected disability. 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 and in the form, most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, 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 LEA must provide you access to records and copies if requested, within five days after the request has been made orally or in writing (Education Code sections 49060, 56043(n), 56501(b)(3), and 56504).

### **Independent Educational Evaluation:**

If you disagree with the results of the evaluation conducted by the LEA, you have the right to ask for and obtain an independent educational evaluation (IEE) 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 LEA conducts an evaluation with which you disagree. The LEA 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 LEA disagrees that an independent evaluation is necessary, the LEA must request a due process hearing to prove that its evaluation was appropriate. If the LEA 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. LEA evaluation procedures allow in-class observation of students. If the LEA observes your child in his or her classroom during an evaluation or if the LEA 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 LEA 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 (Title 34 of the Code of Federal Regulations section 300.502; Education Code section 56329(b) and (c)).

### **Local Mediation/Alternative Dispute Resolution:**

LEAs have the opportunity to resolve parent concerns and complaints at the local level through individual Uniform Complaint Process/Procedures which are described in the LEA's board policy or charter petition. Alternate Dispute Resolution (ADR) is another voluntary method of resolving a dispute at the local level and is requested by the parent or LEA. It provides the opportunity for both the parent and LEA to meet at a convenient location and time to resolve concerns. It is facilitated by a trained ADR Coordinator. A request to schedule an ADR session is made to the Desert/Mountain Special Education Local Plan Area (SELPA), office of the Program Manager for Due Process. A request for Mediation Only is made by the parent or LEA to the Office of Administrative Hearings (OAH) before a due process complaint is filed. Mediation Only is a voluntary process and all discussion during a mediation session is confidential. Attorneys or advocates are not in attendance during a Mediation Only session. An Administrative Law Judge (ALJ) from OAH is assigned to facilitate this confidential process. The Uniform Complaint Process, ADR, and Mediation Only are voluntary methods of resolving a dispute and may not delay a parent's right to a due process hearing. All three methods are less adversarial and allow all parties to resolve the concerns in a timely manner. The mandatory early resolution session (ERS) and mediation are the first two steps in the three-step

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process initiated when a parent files a due process complaint with OAH. Attorneys and advocates are invited to attend both the ERS and Mediation session when a due process complaint has been filed.

### **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 (Title 34 of the Code of Federal Regulations section 300.507; Education Code sections 56501 and 56505(l)). There is an exception to this timeline if you were prevented from requesting a hearing earlier because the LEA 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 Special Education Headquarters, Office of Administrative Hearings, 2349 Gateway Drive, Suite 200, Sacramento, CA 95833-4231. Requests must include the student's name; residential address; the name of the student's school; in the case of a homeless child, available contact information and the name of the school the child is attending; and 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 10 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; and
- Receive notice from the other party at least 10 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 LEA 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 LEA 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 LEA who has decision-making authority on behalf of the LEA. The LEA will not have an attorney present at this meeting unless an attorney accompanies you. During the Resolution Meeting, you discuss the complaint and the LEA is provided the opportunity to resolve the complaint. You and the LEA 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

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written agreement that is signed by both you and the LEA. Either party may void the agreement within three 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. Parents and the LEA 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 LEA 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. Federal and State laws require that either party filing for a due process hearing must provide a copy of the written request to the other party.

### **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 LEA if the attorney of the parent files a 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; or (4) your attorney did not provide to the LEA the appropriate information in the due process complaint. Attorney fees will not be reduced, however, if the court finds that the State or the LEA 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 LEA/public agency at least 10 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 compliance complaint with the California Department of Education (CDE) if you believe the LEA 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, Sacramento, CA 95814. This is NOT the same thing as filing for due process. Your written complaint must specify at least one alleged violation of Federal and State special education laws, and the violation must have occurred not more than one year prior to the date the complaint is received by the California Department of Education. 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 LEA 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 LEA. To obtain more information about dispute resolution, including how to file a complaint, contact the California Department of Education, Special Education Division, Procedural Safeguards Referral Services, by telephone at (800) 926-0648; by fax at (916) 327-3704; or by visiting the [California Department of Education, Special Education](http://www.cde.ca.gov/sp/se) website (<http://www.cde.ca.gov/sp/se>).

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## **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 10 consecutive days in such a placement, or more than 10 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 10 days of the LEA'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 LEA 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 LEA 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, which must occur within 20 school days of the date on which you requested the hearing (Title 34 of the Code of Federal Regulations section 300.531(c)) 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 45 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; and ensure continuation of services and modifications detailed in the IEP.

## **Unilateral Placement by Parents in Private School:**

Children who are enrolled in private schools may participate in publicly funded special education programs. The LEA must consult with private schools and with parents to determine the services that will be offered to private school students. Although LEAs have a clear responsibility to offer FAPE to children with disabilities, those children, when placed by their parent in private schools, do not have the right to receive some or all of the special education and related services necessary to provide FAPE. If you enroll your child in a private school, you may be entitled to reimbursement for the cost of a private school from the LEA, including special education and related services, if the court or hearing officer determines that the LEA has not made a free and appropriate public education available to your child. You must first attempt to obtain consent of the LEA, and you must also establish that the LEA 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 LEA 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 LEA that you were rejecting the special education placement proposed by the LEA and/or you failed to give the LEA notice of your concerns and your intent to enroll your child at a private school at public expense. Your notice to the LEA 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 LEA at least 10 business days (including holidays) before removing your child from the public school.

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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 LEA must be given the opportunity to observe the proposed placement and your child in the proposed placement. The LEA 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 LEA when considering such placements. For more information about the State Special Schools, please visit the [California Department of Education State Special Schools](http://www.cde.ca.gov/sp/ss/) website (<http://www.cde.ca.gov/sp/ss/>) or ask for more information from the members of your child's IEP team.