

# Special Education Rights of Parents and Children

Under the Individuals with Disabilities Education Act, Part B

## Notice of Procedural Safeguards

Nevada County Special Education Local Planning Area

<http://www.nevco.k12.ca.us/selpa.htm>

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 or testing.

### What is the Notice of Procedural Safeguards?

This information provides you as parents, legal guardians, and surrogate parents of children with disabilities from three (3) years of age through age twenty-one (21) and students who have reached age eighteen (18), the age of majority, with an overview of your educational rights or procedural safeguards.

The Notice of Procedural Safeguards is required under the **Individuals with Disabilities Education Act (IDEA)** and must be provided to you one time per year, and:

- When you ask for a copy;
- The first time your child is referred for a special education assessment;
- Each time you are given an assessment plan to evaluate your child;
- Upon receipt of the first state or due process complaint in a school year; and
- When the decision is made to make a removal that constitutes a change of placement.

### What is the Individuals with Disabilities Education Act (IDEA)?

IDEA is a federal law that requires school districts to provide a "free appropriate public education" (FAPE) to eligible children with disabilities. A free appropriate public education means that special education and related services are to be provided as described in an individualized education program (IEP) and under public supervision to your child at no cost to you.

### May I participate in decisions about my child's education?

Yes. You are an important member of the team. 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 team meetings about the identification (eligibility), assessment, or educational placement of your child and other matters relating to your child's FAPE.

The parent or guardian, or the school district has the right to participate in the development of the IEP and to initiate their intent to electronically audiotape the proceedings of the IEP team meetings. At least 24 hours prior to the meeting, the parent or guardian shall notify the members of the IEP team of their intent to record a meeting. If the parent or guardian does not consent to the school district audiotape recording an IEP meeting, the meeting shall not be recorded on an audiotape recorder.

Your rights include information about the availability of FAPE, including all program options, and all available alternative programs, both public and nonpublic.

### Where can I get more help?

When you have a concern about your child's education, it is important that you contact your child's teacher or administrator to talk about your child and any problems you see. Staff at your school or in the district can answer questions about your child's education, your rights, and procedural safeguards. Also, when you have a concern, this informal conversation often solves the problem and helps to maintain open communication. Additional resources are listed at the end of this document to help you understand the procedural safeguards.

# **Notice, Consent, Assessment, Surrogate Parent Appointment, and Access to Records**

## **Prior Written Notice**

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### **When is a notice needed?**

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. This notice is also sent to you if you revoke your consent for all special education and related services and wish to withdraw your student from special education.

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. The notice must be understandable and in your native language or other mode of communication, unless it is clearly not feasible to do so.

You will be given this notice if the school district refuses your request to take the actions described above.

### **What will the notice contain?**

The Prior Written Notice must include the following:

1. A description of the actions proposed or refused by the school district;
2. An explanation of why the action was proposed or refused;
3. A description of each assessment procedure, record, or report the agency used as a basis for the action proposed or refused;
4. A statement that parents of a child with a disability have protection under the procedural safeguards;
5. Sources for parents to contact to obtain assistance in understanding the provisions of this part;
6. A description of other options that the IEP team considered and the reasons those options were rejected; and
7. A description of any other factors relevant to the action proposed or refused.

## **How will a notice be given to me?**

Most often you will receive written notices sent to you in the mail or hand delivered by district staff. If you wish, you may elect to receive notices by an electronic mail communication. If you wish this option, you must submit a written request to the coordinator of special education.

## **Parental Consent**

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### **When is my approval required for assessment?**

You have the right to refer your child for special education services. You must give informed, written consent before your child's first special education assessment can proceed. As the parent, you have at least 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 not counting days during school breaks longer than five days.

### **When is my approval required for services?**

You must give informed, written consent before your school district can place your child in special education for the first time and before it can initially provide your child with special education and related services.

### **Can I refuse to give my consent?**

Yes. As the parent, you can refuse to give your consent for the initial assessment and the re-assessment of your child. You can also refuse to give your consent for the initial placement in special education.

### **What are the procedures when you, as the parent, do not provide consent?**

If you do not provide consent for an initial assessment or fail to respond to a request to provide the consent, the school district may pursue the initial assessment by utilizing due process procedures.

If you refuse to consent to the initiation of special education services, the school district must not provide special education and related services. The district cannot seek to provide services through due process procedures.

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 school district 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.

In the case of reevaluations, the school district must document reasonable measures to obtain your consent. If you fail to respond, the school district may proceed with the reevaluation without your consent.

You and the district may agree to try mediation first to resolve your disagreements. Mediation is a voluntary step in problem-solving.

## **Revoking your consent for all special education and related services**

### **Can I revoke my consent for special education?**

Yes. You have the right to revoke your consent for your child to receive all special education and related services. You can revoke your consent for placement in special education at any time. The school district does not have any procedure or right to deny your revocation of consent.

The district may ask you for the reason that you revoked your consent but you are not required to give a response to the district's question. You cannot be required to attend any meetings to discuss your revocation.

The district cannot file for a due process hearing or request mediation to dispute your revoking your consent. The district is also protected by law from any later allegations that it failed to offer your child FAPE because you revoked your consent.

### **How do I revoke my consent?**

You must revoke your consent in writing. The written revocation of your consent may be given to your child's special education teacher, your school administrator, or the district's special education administrator.

### **What happens after I revoke my consent?**

If you submit a written statement revoking your consent, the district will give you a Prior Written Notice to let you know that the district received your written revocation of consent for your child to be provided all special education and related services. The Prior Written Notice

will tell you the date that all special education and related services will cease. The district is required to give you this notice before it can cease providing services to your child.

### **What happens after all services cease?**

On the date that all services cease, your child is no longer a student with disabilities under state and federal special education law. Your child will be a general education student. Your child will no longer be protected by these procedural safeguards except for those in respect to referral, assessment, and identification. The modifications and accommodations, if any, which were offered by your child's IEP will no longer be guaranteed. The protections and safeguards related to discipline, statewide and districtwide testing programs, graduation, and other educational areas guaranteed to students with disabilities will no longer be available to your child.

The school and classroom that your child is in as a general education student may be affected by the revocation if the placement in the school or classroom was made by your child's IEP team.

### **Is my revocation of consent retroactive?**

No. Your revocation of your consent is effective on the date that services cease as stated in the Prior Written Notice sent to you by the district.

### **What happens to my child's education records?**

If you revoke your consent for your child to receive special education and related services, your child's records are not changed. The district is not required to amend your child's educational records regarding the special education status or services of your child prior to your revoking consent. You do have rights to review your child's records and to request that they be amended to correct any inaccuracies.

### **What if I want my child in special education later?**

Your child can be referred again for assessment to determine if your child is eligible for special education. You cannot reinstate your consent once you have revoked it in writing.

If your child is re-referred, the timelines and other procedures for an initial referral are in force.

## **Surrogate Parent Appointment**

### **What if a parent cannot be identified or located?**

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 also be appointed if the child is an unaccompanied homeless youth, an adjudicated dependent or ward of the court under the state Welfare and Institution Code, and is referred to special education or already has an IEP.

## **Nondiscriminatory Assessment**

### **How is my child assessed for special education services?**

You have the right to have your child assessed in all areas of suspected disability. Materials and procedures used for assessment and placement must not be racially, culturally, or sexually discriminatory.

Assessment materials must be provided and the test 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 so provide or administer.

No single procedure can be the sole criterion for determining eligibility and developing FAPE for your child.

## **Independent Educational Assessments**

### **May my child be tested independently at the district's expense?**

If you disagree with the results of the assessment conducted by the school district, you have the right to ask for and obtain an independent educational assessment for your child from a person qualified to conduct the assessment at public expense.

The parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

The school district must respond to your request for an independent educational assessment and provide you information about where to obtain an independent educational assessment.

If the school district believes that the district's assessment is appropriate and disagrees that an independent assessment is necessary, the school district must request a due process hearing to prove that its assessment was appropriate. If the district prevails, you still have the

right to an independent assessment but not at public expense. The IEP team must consider independent assessments.

District assessment procedures allow in-class observation of students. If the school district observes your child in his or her classroom during an assessment, or if the school district would have been allowed to observe your child, an individual conducting an independent educational assessment 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 assessment is being conducted, the independent assessor must be allowed to first observe the proposed new setting.

## **Access to Educational Records**

### **May I examine my child's educational records?**

You have a right to inspect and review all of your child's education records without unnecessary delay, including prior to a meeting about your child's IEP or before a due process hearing. The school district must provide you access to records and copies, if requested, within five (5) **business** days after the request has been made orally or in writing.

## **How Disputes Are Resolved**

### **Due Process Hearing**

#### **When is a due process hearing available?**

You have the right to request an impartial due process hearing regarding the identification, assessment, and educational placement of your child or the provision of FAPE. The request for a due process hearing must be filed within two years from the date you knew or should have known about the alleged action that forms the basis of the due process complaint.

## **Mediation and Alternative Dispute Resolution**

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### **May I request mediation or an alternative way to resolve the dispute?**

A request for 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 mediation or alternative dispute resolution (ADR), which is less adversarial than a due process hearing. The ADR and mediation are voluntary methods of resolving a dispute and may not be used to delay your right to a due process hearing.

### **What is a pre-hearing mediation conference?**

You may seek resolution through mediation prior to filing a request for a due process hearing. The conference is an informal proceeding conducted in a nonadversarial manner to resolve issues relating to the identification, assessment, or educational placement of a child or to a FAPE.

At the prehearing mediation conference, the parent or the school district may be accompanied and advised by nonattorney representatives and may consult with an attorney prior to or following the conference. However, requesting or participating in a prehearing mediation conference is not a prerequisite to requesting a due process hearing.

All requests for a prehearing mediation conference shall be filed with the Superintendent. The party initiating a prehearing mediation conference by filing a written request with the Superintendent shall provide the other party to the mediation with a copy of the request at the same time the request is filed.

The prehearing mediation conference shall be scheduled within fifteen (15) days of receipt by the Superintendent of the request for mediation and shall be completed within thirty (30) days after receipt of the request for mediation unless both parties agree to extend the time. If a resolution is reached, the parties shall execute a legally binding written agreement that sets forth the resolution. All discussions during the mediation process shall be confidential. All prehearing mediation conferences shall be scheduled in a timely manner and held at a time and place reasonably convenient to the parties. 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.

## **Due Process Rights**

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### **What are my due process rights?**

You have a right to:

1. Have 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;
2. Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities;
3. Present evidence, written arguments, and oral arguments ;
4. Confront, cross-examine, and require witnesses to be present;
5. Receive a written or, at the option of the parent, an electronic verbatim record of the hearing, including findings of fact and decisions;
6. Have your child present at the hearing;
7. Have the hearing be open or closed to the public;
8. 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 within five (5) business days before a hearing;
9. Be informed by the other parties of the issues and their proposed resolution of the issues at least ten (10) calendar days prior to the hearing;
10. Have an interpreter provided (CCR 3082[d]);
11. Request an extension of the hearing timeline;
12. Have a mediation conference at any point during the due process hearing; and

Receive notice from the other party at least ten days prior to the hearing that the other party intends to be represented by an attorney

## **Filing a Written Due Process Complaint**

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### **How do I request a due process hearing?**

You need to file a written request for a due process hearing. You or your representative needs to submit the following information in your request:

1. Name of the child;
2. Address of the residence of the child;
3. Name of the school the child is attending;

4. In the case of a homeless child, available contact information for the child and the name of the school the child is attending; and
5. A description of the nature of the problem, including facts relating to the problem(s) and a proposed resolution of the problem(s).

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.

Prior to filing for a due process hearing, the school district shall be provided the opportunity to resolve the matter by convening a resolution session, which is a meeting between the parents and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process hearing request.

#### **What does a resolution session include?**

Resolution sessions shall be convened within fifteen (15) days of receiving notice of the parents' due process hearing request. The sessions shall include a representative of the school district who has decision-making authority and not include an attorney of the school district unless the parent is accompanied by an attorney. The parent of the child may discuss the due process hearing issue and the facts that form the basis of the due process hearing request.

The resolution session is not required if the parent and the school district agree in writing to waive the meeting. If the school district has not resolved the due process hearing issue within thirty (30) days, the due process hearing may occur. If a resolution is reached, the parties shall execute a legally binding agreement.

#### **Does my child's placement change during the proceedings?**

The child involved in any administrative or judicial proceeding must remain in the current educational placement unless you and the school district agree on another arrangement. If you are applying for initial admission of your child to a public school, your child will be placed in a public school program with your consent until all proceedings are completed.

#### **May the decision be appealed?**

The hearing decision is final and binding on both parties. Either party may appeal the hearing decision by filing a civil action in state or federal court within 90 days of the final decision.

#### **Who pays for my attorneys' fees?**

In any action or proceeding regarding the due process hearing, the court, in its discretion, may award reasonable attorneys' 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 attorneys' fees may also be made following the conclusion of the administrative hearing, with the agreement of the parties. (20 USC 1415[i][3][B]-[G]; 34 CFR 300.517; EC 56507[b])

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 attorneys' hourly 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 school district the appropriate information in the due process request notice.

Attorneys' 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 that there was a violation of this section of law.

Attorneys' fees relating to any meeting of the IEP team may not be awarded unless an IEP team meeting is convened as a result of a due process hearing proceeding or judicial action. Attorneys' fees may also be denied if you reject a reasonable settlement offer made by the district/public agency ten (10) days before the hearing begins and the hearing decision is not more favorable than the offer of settlement.

#### **To obtain more information or to file for mediation or a due process hearing, contact:**

Office of Administrative Hearings  
 Attention: Special Education Division  
 2349 Gateway Oaks Drive, Suite 200  
 Sacramento, CA 95833-4231  
 (916) 263-0880  
 FAX (916) 263-0890

# School Discipline and Placement Procedures for Students with Disabilities

## School Discipline and Alternative Interim Educational Settings

### May my child be suspended or expelled?

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct from his or her setting to an appropriate interim alternative education setting, another setting, or suspension for not more than ten (10) consecutive school days; and additional removals of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct

### What occurs after a removal of more than ten (10) days?

After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal the public agency must provide services to enable the child to continue to participate in the general education curriculum and progress toward meeting the goals set out in the child's IEP. Also, when indicated, a child may receive a functional behavioral assessment and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not recur.

If a child exceeds ten (10) days in such a placement, an IEP team meeting must be held to determine whether the child's misconduct is caused by the disability. This IEP team meeting must take place immediately, if possible, or within ten (10) 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. 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.

### What happens if the IEP team determines that the misconduct is not caused by the disability?

If the IEP team concludes that the misconduct was not a manifestation of the child's disability, the school district may take

disciplinary action, such as expulsion, in the same manner as it would for a child without a disability.

If you disagree with the IEP team's decision, you may request an expedited due process hearing, which must occur within twenty (20) school days of the date on which you requested the hearing. (

Regardless of the setting the school district must continue to provide FAPE for your child. Alternative educational settings must allow the child to continue to participate in the general curriculum and ensure continuation of services and modifications detailed in the IEP.

## 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. For more information about the State Special Schools, please visit the 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.

## Children Attending Private School

### May students who are parentally placed in private schools participate in publicly funded special education programs?

Children who are enrolled by their parents in private schools may participate in publicly funded special education programs. The school district must consult with private schools and with parents to determine the services that will be offered to private school students. Although school districts have a clear responsibility to offer FAPE to students 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 a parent of an individual with exceptional needs who previously received special education and related services under the authority of the school district enrolls the child in a private elementary school or secondary school

without the consent of or referral by the local educational agency, the school district is not required to provide special education if the district has made FAPE available. A court or a due process hearing officer may require the school district to reimburse the parent or guardian for the cost of special education and the private school only if the court or due process hearing officer finds that the school district had not made FAPE available to the child in a timely manner prior to that enrollment in the private elementary school or secondary school and that the private placement is appropriate.

**Must I notify the district if I intend to place my child in a private school and seek public financing?**

Yes. Your notice to the school district must be given either at the most recent IEP team meeting you attended before removing your child from the public school; or in writing to the school district at least ten (10) business days (including holidays) before removing your child from the public school.

**When may reimbursement be reduced or denied?**

The court or hearing officer may reduce or deny reimbursement if you did not make your child available for an assessment upon notice from the school district before removing your child from public school. You may also be denied reimbursement if you did not inform the school district that you were rejecting the special education placement proposed by the school district, including stating your concerns and intent to enroll your child in a private school at public expense.

**When may reimbursement not be reduced or denied?**

A court or hearing officer must not reduce or deny reimbursement to you if you failed to provide written notice to the school district for any of the following reasons:

- The school prevented you from providing notice;
- You had not received a copy of this Notice of Procedural Safeguards or otherwise been informed of the requirement to notify the district;
- Providing notice would likely have resulted in physical harm to your child;
- Illiteracy and inability to write in English prevented you from providing notice; or
- Providing notice would likely have resulted in serious emotional harm to your child.

**May the District observe my child in the private school setting?**

Yes. 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 first 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 Complaint Procedures**

**When may I file a state compliance complaint?**

You may file a state compliance complaint when you believe that a school district has violated federal or state special education laws or regulations. Your written complaint must specify at least one alleged violation of federal and state special education laws. The violation must have occurred not more than one year prior to the date the complaint is received by the California Department of Education (CDE). When filing a complaint, you must forward a copy of the complaint to the school district at the same time you file a state compliance complaint with the CDE.

Complaints alleging violations of federal and state special education laws or regulations may be mailed to:

California Department of Education  
Special Education Division  
Procedural Safeguards Referral Service  
1430 N Street, Suite 2401  
Sacramento, CA 95814

For complaints involving issues **not** covered by federal or state special education laws or regulations, consult your district's uniform complaint procedures.

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 Service  
1430 N Street, Suite 2401  
Sacramento, CA 95814  
(800) 926-0648 (voice)  
(916)327-3704 (fax)  
<http://www.cde.ca.gov/sp/se>

**Times and Occurrence**  
**When Parents Must Be Given Written Notice of Procedural Safeguards**

September 2005

The IDEA 2004 requires that a copy of the Notice of Procedural Safeguards be given to a parent::

When	Who is Responsible	Location or Occurrence
once a year	Case manager or IEP meeting facilitator, if different than case manager	At Annual or Triennial IEP meeting.  NOT necessary at Program Change meeting or IEP meetings other than Annual or Triennial.
upon an initial referral	Psychologist or Speech Therapist, or Special Education Teacher (person who receives initial referral)	With Assessment Plan or with Written Prior Notice of refusal to conduct assessment.
upon the parent's request for evaluation	Psychologist or Speech Therapist, or Special Education Teacher (person who receives request for evaluation)	With Assessment Plan or with Written Prior Notice of refusal to conduct assessment.
upon the first occurrence of the filing for a due process hearing	Special Education Coordinator	When notice of filing is given to the district.
at the parent's request	Psychologist or Speech Therapist, or Special Education Teacher (person who receives parent request)	When verbal or written request for a copy is received.

## **GLOSSARY OF ABBREVIATIONS USED IN THIS NOTIFICATION**

The English acronym and term are provided:

[ADR alternative dispute resolution]

[CFR Code of Federal Regulations]

[EC California Education Code]

[FAPE free appropriate public education]

[IDEA Individuals with Disabilities Education Act]

[IEP Individualized Education Program]

[OAH Office of Administrative Hearings]

[SELPA Special Education Local Plan Area]

[USC United States Code]

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