

OVERVIEW OF ASSESSMENT, ELIGIBILITY AND IEP PROCESS

EIP – Early Intervention Program

1. Parent contacts EIP with concern, name, address, phone number and student name and birth date OR Regional Center schedules transition meeting if student currently has an Individualized Family Service Plan (IFSP).
2. EIP sends referral/registration packet to parent for completion and return.
3. Parent returns packet - EIP schedules, notifies parent by mail and conducts assessment planning meeting within 15 days of receipt of completed packet. *
4. Assessment planning meeting will identify student need areas, describe assessment to be conducted, develop and assessment plan and schedule assessment.
5. Parent brings child to the EIP location for assessment to be conducted by the EIP staff. Individual Educational Plan (IEP) meeting will be scheduled. **
6. IEP meeting to be held to determine eligibility ***, educational goals and objectives, placement and services.
7. Appropriate placement and services to be scheduled.
8. Some placements are reviewed by the IEP team including the parent within 30 days of initial placement and all placements annually thereafter.

* Incomplete packets will be returned to the parent and referral process will proceed when complete packet is returned by parent.

** IEP to be conducted within 60 days (excluding holidays/breaks of one week or more) of EIP's receipt of the signed assessment plan.

*** Students not meeting California State eligibility standards will not receive special education services and the process will stop at this point.

Summary of 14 DISABLING CONDITIONS

1. AUTISM:

A developmental disability significantly affecting verbal and nonverbal communication and social interaction generally evident before age three.

A child exhibits any combination of the following autistic-like behaviors, to include but not limited to:

- An inability to use oral language for appropriate communication;
- A history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood;
- An obsession to maintain sameness;
- Extreme preoccupation with objects or inappropriate use of objects or both;
- Extreme resistance to controls;
- Displays peculiar motoric mannerisms and motility patterns; or
- Self-stimulating, ritualistic behavior.

2 & 3. DEAF and HARD OF HEARING:

A hearing impairment, whether permanent or fluctuating with impairs the process of linguistic information through hearing, even with amplification, and which adversely affects education.

4. DEAF BLIND:

A combination of the two handicapping conditions DEAF and BLIND.

5. INTELLECTUAL DISABILITY (MR)

Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested in the developmental period. Adaptive behavior refers to the effectiveness with which individuals meet the standard of personal independence and social responsibility expected of individuals of their developmental age.

6. MULTIPLE DISABILITIES:

The combination of INTELLECTUAL DISABILITY and another severely disabling condition.

7. OTHER HEALTH IMPAIRED:

A child has limited strength, vitality or alertness due to a chronic or acute health problem: including but not limited to – heart condition, cancer, leukemia, rheumatic fever, chronic kidney disease, cystic fibrosis, severe asthma, epilepsy, lead poisoning, diabetes, tuberculosis, and other communicable infectious diseases, and hematological diseases such

as sickle cell anemia and hemophilia which adversely affect a child's educational performance.

8. ORTHOPEDICALLY IMPAIRED:

A severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairment caused by congenital abnormality (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., polio, bone tuberculosis), and other causes (e.g., cerebral palsy, amputations).

9. EMOTIONALLY DISTURBED:

A condition exhibiting one or more of the following characteristics OVER A LONG PERIOD OF TIME and TO A MARKED DEGREE, which ADVERSELY AFFECTS EDUCATIONAL PERFORMANCE:

- An inability to learn which cannot be explained by intellectual, sensory or health factors;
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- Inappropriate types of behavior or feeling under normal circumstances;
- A general pervasive mood of unhappiness or depression; or
- A tendency to develop physical symptoms or fears associated with personal or school problems.

10. SPECIFIC LEARNING DISABILITY:

A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written. The disorder can manifest itself in an impaired ability to listen, think, speak, read, write, spell or do mathematical calculations. To be eligible, the child must also have a severe discrepancy between intellectual ability and achievement in one or more of the following academic areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculations and mathematics reasoning.

- a) Basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, cognitive abilities including association, conceptualization, and expression.
- b) Intellectual ability includes both acquired learning and learning potential and shall be determined by a systematic assessment of intellectual functioning.

11. SPEECH LANGUAGE IMPAIRED:

A speech/language disorder is exhibited in one or more of the following ways:

- Articulation disorder – reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention;
- Abnormal voice – persistent, defective voice quality, pitch, or loudness;
- Fluency disorder – the flow of verbal expression including rate and rhythm adversely affects communication between child and listener; or
- Language disorder – meets both of the following:
 - a) Scoring 1.5 standard deviations or below the 7th percentile for his/her chronological or developmental age on tests in one or more of these areas: morphology, syntax, semantics, or pragmatics.
 - b) Child displays inappropriate or inadequate usage of expressive language as measured on a representative spontaneous language sample of a minimum of 50 utterances.

12. TRAUMATIC BRAIN INJURY:

An injury to the brain caused by an external physical force resulting in a total or partial functional disability or psychosocial impairment or both adversely affects educational performance.

13. VISUALLY IMPAIRED:

A visual impairment which even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

14. ESTABLISHED MEDICAL DISABILITY (0-5 YRS):

A disabling condition or congenital syndrome that the individualized educational program team determines has a high predictability of requiring special education services.

Special Education Rights of Parents and Children
Under the Individuals with Disabilities Education Act, Part B, and the
California Education Code

Notice of Procedural Safeguards
Revised October 2016

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. Federal and state laws are cited throughout this notice using English abbreviations, which are explained in a glossary on the last page of this notification.

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 (in English, referred to as IDEA) and must be provided to you:

- 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

(20 USC 1415[d]; 34 CFR 300.504; EC 56301[d] [2], EC 56321, and 56341.1[g] [1])

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" (in English, referred to as 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 (in English, known as IEP) and under public supervision to your child at no cost to you.

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

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. (20 USC 1414[d] [1]B-[d][1][D]; 34 CFR 300.321; EC 56341[b], 56343[c])

The parent or guardian, or the local educational agency (LEA), 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 LEA 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. (20 USC 1401[3], 1412[a][3]; 34 CFR 300.111; EC 56301, 56341.1[g][1], and 56506)

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 in your school district or special education local plan area (SELPA) may 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.

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 CDE special education California Parent Organizations Web page at <http://www.cde.ca.gov/sp/se/qa/caprntorg.asp>.

Additional resources are listed at the end of this document to help you understand the procedural safeguards.

What if my child is deaf, hard of hearing, blind, visually impaired, or deaf-blind?

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. Such programs are offered to students aged 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 California Department of Education (CDE) Web site at <http://www.cde.ca.gov/sp/ss/> or ask for more information from the members of your child's IEP team.

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

Prior Written Notice

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. (20 USC 1415[b][3] and (4), 1415[c][1], 1414[b][1]; 34 CFR 300.503; EC 56329 and 56506[a])

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. (34 CFR 300.304; EC 56321)

What will the notice tell me?

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. (20 USC 1415[b][3] and [4], 1415[c][1], 1414[b][1]; 34 CFR 300.503)

Parental Consent

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. The parent has 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.

When is my approval required for services?

You must give informed, written consent before your school district can provide your child with special education and related services.

What are the procedures when a parent does 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 services, the school district must not provide special education and related services and shall not 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. (20 USC 1414[a][1][D] and 1414[c]; 34 CFR 300.300; EC 56506[e], 56321[c] and [d], and 56346).

When may I revoke consent?

If at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency:

1. May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 34 CFR Section 300.503 before ceasing such services
2. May not use the procedures in subpart E of Part 300 34 CFR (including the mediation procedures under 34 CFR Section 300.506 or the due process procedures under 34 CFR Sections 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child
3. Will not be considered to be in violation of the requirement to make a free appropriate public education (FAPE) available to the child because of the failure to provide the child with further special education and related services
4. Is not required to convene an IEP team meeting or develop an IEP under 34 CFR Sections 300.320 and 300.324 for the child for further provision of special education and related services

Please note, in accordance with 34 CFR Section 300.9 (c)(3), that if the parents revoke consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

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. (20 USC 1415[b][2] ; 34 CFR 300.519; EC 56050; GC 7579.5 and 7579.6)

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. (20 USC 1414[b][1]–[3], 1412[a][6][B]; 34 CFR 300.304; EC 56001[j] and 56320)

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. (20 USC 1415[b][1] and [d][2][A]; 34 CFR 300.502; EC 56329[b] and [c])

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. (EC 49060, 56043[n], 56501[b][3], and 56504)

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. (20 USC 1415[b][6]; 34 CFR 300.507; EC 56501 and 56505[l])

Mediation and Alternative Dispute Resolution

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. (*EC 56500.3 and 56503*)

Due Process Rights

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 (20 USC 1415[f][1][A], 1415[f][3][A]-[D]; 34 CFR 300.511; *EC 56501[b][4]*)
2. Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities (*EC 56505 [e][1]*)
3. Present evidence, written arguments, and oral arguments (*EC 56505[e][2]*)
4. Confront, cross-examine, and require witnesses to be present (*EC 56505[e][3]*)
5. Receive a written or, at the option of the parent, an electronic verbatim record of the hearing, including findings of fact and decisions (*EC 56505[e][4]*)
6. Have your child present at the hearing (*EC 56501[c][1]*)
7. Have the hearing be open or closed to the public (*EC 56501[c][2]*)
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 (*EC 56505[e][7] and 56043[v]*)
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 (*EC 56505[e][6]*)
10. Have an interpreter provided (CCR 3082[d])
11. Request an extension of the hearing timeline (*EC 56505[f][3]*)
12. Have a mediation conference at any point during the due process hearing (*EC 56501[b][2]*), and

13. 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 (*EC 56507[a]*). (20 USC 1415[e]; 34 CFR 300.506, 300.508, 300.512 and 300.515)

Filing a Written Due Process Complaint

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. (20 USC 1415[b][7], 1415[c][2]; 34 CFR 300.508; *EC 56502[c][1]*)

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. (20 USC 1415[f][1][B]; 34 CFR 300.510)

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. (20 USC 1415[f][1][B]; 34 CFR 300.510)

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. (20 USC 1415[j]; 34 CFR 300.518; EC 56505[d])

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. (20 USC 1415[i][2] and [3][A], 1415[l]; 34 CFR 300.516; EC 56505[h] and [k], EC 56043[w])

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. (20 USC 1415[i][3][B]-[G]; 34 CFR 300.517)

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. (20 USC 1415[i][3][B]-[G]; 34 CFR 300.517)

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, a child will receive, as appropriate, 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. (20 USC 1415[k][1] and [7]; 34 CFR 300.530)

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. (20 USC 1415[k][2]; 34 CFR 300.531[c])

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. (34 CFR 300.530; EC 48915.5[b])

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. (20 USC 1415[a][10][A]; 34 CFR 300.137 and 300.138; EC 56173)

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. (20 USC 1412[a][10][C]; 34 CFR 300.148; EC 56175)

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.

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. (20 USC 1412[a][10][C]; 34 CFR 300.148; EC 56176)

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

(20 USC 1412[a] [10] [C]; 34 CFR 300.148; EC 56177)

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. (34 CFR 300.151–153; 5 CCR 4600)

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 CDE, Special Education Division, Procedural Safeguards Referral Service, by telephone at (800) 926-0648; by fax at 916-327-3704; or by visiting the CDE Web site at <http://www.cde.ca.gov/sp/se>.

Glossary of Abbreviations Used in This Notification

ADR	Alternative Dispute Resolution
CFR:	<i>Code of Federal Regulations</i>
EC	California <i>Education Code</i>
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:	<i>United States Code</i>

North Coastal Consortium for Special Education

255 Pico Avenue #101, San Marcos, CA 92069
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WRITTEN NOTIFICATION FOR PARENTS/GUARDIANS/ADULT STUDENTS REGARDING USE OF PUBLIC BENEFITS (MEDI-CAL) OR INSURANCE

INTRODUCTION

You are receiving this written notification to give you information about your rights and protections under Part B of the Individuals with Disabilities Education Act (IDEA), so that you can make an informed decision about whether you should give your written consent to allow your school district to use your or your child's public benefits or insurance to pay for special education and related services that your school district is required to provide at no cost to you and your child under IDEA. First, we will provide some basic information about IDEA. Part B of IDEA is the Federal law that provides for assistance to States and school districts in making a free appropriate public education (FAPE), which includes special education and related services, available to children with disabilities in the least restrictive environment. If your child has been evaluated and found eligible for services under IDEA because he or she has a disability and needs special education and related services, your school district must develop an individualized education program (IEP) for your child. Your school district must provide the special education and related services included in your child's IEP at no charge to you or your child. IDEA funds pay a portion of your child's special education and related services. Funds from a public benefits or insurance program (for example, Medi-cal or Medicaid funds) also may be used by your school district to help pay for special education and related services, but only if you choose to provide your consent, as explained below. Also, your school district cannot access your or your child's public benefits or insurance if it would result in a cost to you, such as a decrease in your benefits or an increase in your premiums. These "no cost" provisions are explained below as well. Before your school district can ask you to provide your consent to access your or your child's public benefits or insurance for the first time, it must provide you with this notification of the rights and protections available to you under IDEA. This notification is intended to help you understand these rights and protections, including the type of consent your school district will ask you to provide. If you choose not to provide your consent, or later decide to withdraw your consent, your school district has a continuing responsibility to ensure that your child is provided all required special education and related services under IDEA at no charge to you or your child.

When Notification Must Be Provided

You must receive this notification before your school district seeks to use your or your child's public benefits or insurance for the first time and before it obtains your consent to use those benefits or insurance for the first time (the consent requirement is described below); and annually thereafter.

NOTIFICATION REQUIREMENTS

34 CFR §300.154(d)(2)(v)

You are receiving this notification because IDEA requires that you be informed of your

rights and protections when your school district seeks to use your or your child's public benefits or insurance to pay for special education and related services. The following sections explain when you must receive this notification and what information must be included in the notification

PARENTAL CONSENT

34 CFR §300.154(d)(2)(iv)(A)-(B)

If your school district has not accessed your public benefits or insurance in the past to pay for services that it was required to provide your child under IDEA at no charge to you or your child, all of the parental consent requirements described below apply.

Before your school district can use your or your child's public benefits or insurance for the first time to pay for special education and related services under IDEA, it must obtain your signed and dated written consent. **The consent may be provided via the signature page of your child's IEP.** Note that your school district is only required to obtain your consent one time.

This consent requirement has two parts:

1) Consent for Disclosure of Your Child's Personally Identifiable Information to the State agency responsible for administering your State's Public Benefits or Insurance Program

Under Federal law—the Family Educational Rights and Privacy Act (FERPA) and the confidentiality of information provisions in IDEA—your school district is required to obtain your written consent before disclosing personally identifiable information (such as your child's name, address, social security number, student number, IEP, or evaluation results) from your child's education records to a party other than your school district, with some exceptions. In this situation, your school district is required to obtain your consent before disclosing personally identifiable information for billing purposes to the agency in your State that administers the public benefits or insurance program. Your consent must specify the personally identifiable information that your school district may disclose (for example, records or information about the services that may be provided to your child), the purpose of the disclosure (for example, billing for special education and related services), and the agency to which your school district may disclose the information (for example, the Medicaid or other agency in your State that administers the public benefits or insurance program).

2) Statement to Access Public Benefits or Insurance

Your consent must include a statement specifying that you understand and agree that your school district may use your or your child's public benefits or insurance to pay for services under 34 CFR part 300, which are special education and related services under IDEA. Both parts of this consent requirement apply to the school district that is responsible for serving your child under IDEA. If your child moves to a new school within the same school district, you would not be required to provide a new consent because the same school district is still responsible for serving your child under IDEA. But if you enroll your child in a new school in a new school district, the new school district that is responsible for serving your child under IDEA must obtain a new consent from you before it can bill your child's public benefits or insurance program for the first time. The consent you would provide to your child's new school district must include both parts of the consent as described

above.

34 CFR §300.154(d)(2)(i)-(iii)

The IDEA “no cost” protections regarding the use of public benefits or insurance are as follows:

- 1) Your school district may not require you to sign up for, or enroll in, a public benefits or insurance program in order for your child to receive FAPE. This means that your school district may not make your enrollment in a public benefits or insurance program a condition of providing your child the services it is required to provide your child under IDEA at no charge to you or your child.
- 2) Your school district may not require you to pay an out-of-pocket expense, such as the payment of a deductible or co-pay amount for filing a claim for services that your school district is otherwise required to provide your child without charge. For example, if your child’s IEP includes speech therapy and your insurance requires a \$25 co-pay or deductible payment for a session, you could not be charged the \$25. Your school district would need to pay the cost of your co-pay or deductible in order to bill your or your child’s public benefits or insurance program for the particular service.
- 3) Your school district may not use your or your child’s public benefits or insurance if using those benefits or insurance would:
- 4) Decrease your available lifetime coverage or any other insured benefit, such as a decrease in your plan’s allowable number of physical therapy sessions available to your child or a decrease in your plan’s allowable number of sessions for mental health services; Cause you to pay for services that would otherwise be covered by your public benefits or insurance program because your child also requires those services outside of the time your child is in school;
- 5) Increase your premium or lead to the cancelation of your public benefits or insurance; or, Cause you to risk the loss of your or your child’s eligibility for home and community-based waivers that are based on your total health-related expenditures.

WITHDRAWAL OF CONSENT

34 CFR §300.154(d)(2)(v)(C)

If you provided your consent for your school district to disclose your child’s personally identifiable information to the State agency that is responsible for administering your public benefits or insurance program [insert the name of the agency], you have the right under 34 CFR part 99 (FERPA regulations) and 34 CFR part 300 (IDEA regulations) to withdraw that consent at any time.

If you do not want your school district to continue to bill your or your child’s public benefits or insurance program for special education and related services under IDEA, you would need to withdraw your consent to your school district’s disclosure of your child’s personally identifiable information to the agency in your State that is responsible for administering that program. The FERPA and IDEA regulations, however, do not contain procedures for withdrawal of consent to disclosure of your child’s personally identifiable information. If you wish to withdraw your consent, you should ask your school district what procedures you would need to follow. For example, your school district may ask you to submit your withdrawal request in writing.

WHAT YOUR SCHOOL DISTRICT MUST DO IF YOU WITHDRAW YOUR CONSENT OR REFUSE TO PROVIDE YOUR CONSENT

34 CFR §300.154(d)(2)(v)(D)

Finally, without your consent, your school district cannot bill your or your child's public benefits or insurance program to pay for special education and related services that it is required to provide your child under IDEA at no charge to you or your child. If you withdraw your consent or refuse to provide consent under the FERPA and IDEA regulations, your school district may not use your withdrawal of consent or refusal to provide consent to disclose personally identifiable information to a public benefits or insurance program to deny your child the special education and related services he or she is otherwise entitled to receive under IDEA. Therefore, if you refuse to provide consent or withdraw consent, your school district has a continuing responsibility to ensure that your child is provided all required services necessary to receive an appropriate education at no charge to you or your child.

We hope this information is helpful to you in making an informed decision regarding whether to allow your school district to use your or your child's public benefits or insurance to pay for special education and related services under IDEA.

CONTACT INFORMATION:

For additional information and guidance on the requirements governing the use of public benefits or insurance to pay for special education and related services see:

<http://www2.ed.gov/policy/speced/reg/idea/part-b/part-b-parental-consent.html>

You may also contact the North Coastal Consortium for Special Education (SELPA) for further information:

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