



# Special Education Rights of Parents and Children

## Under the Individuals with Disabilities Education Act, Part B

### NOTICE OF PROCEDURAL SAFEGUARDS – Revised April 2013

**Note:** The term District is used throughout this document to describe the public education agency responsible for providing your child’s special education program. This document is periodically revised to incorporate any changes in applicable laws and regulations.

*What are procedural safeguards?*

This information provides you as parents, legal guardians, and surrogate parents of children with disabilities from 3 years of age through age 21 with an overview of your 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. (20 USC 1415; EC 56321)

*What is the IDEA?*

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

*When will I be notified?*

The Notice of Procedural Safeguards must be given to you:

- Once per school year;
  - When you ask for a copy;
  - The first time your child is referred for a special education assessment;
  - Each time you request an assessment for your child; and
  - When a decision is made to make a disciplinary removal for violation of a code of pupil conduct that constitutes a change of placement;
  - The first time you request a due process hearing in a school year;
  - The first time you file a compliance complaint with the California Department of Education in a school year;
- (20 USC 1415[d]; EC 56301, 56321, 56500.2, 56500.3[k], 56506[a])

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

You have the right to refer your child for special education assessment and services.

You have the right to participate in IEP meetings about the identification (eligibility), assessment, educational placement of your child and other matters relating to your child's free, appropriate public education. (20 USC 1414[b][c][d] and [f]; EC 56341[b], 56343[c])

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 available program options, and of all other available alternative programs, both public and nonpublic. (EC 56321, 56301, and 56506[d])

Additionally, you have the right to electronically record the meeting on an audio tape recorder. The law requires that you notify the District 24 hours prior to meeting if you intend to record the proceedings. (EC 56321.5 and 56341.1[f]) The District may also record the meeting upon proper notice.

*Where can I get more help?*

When you have a concern about your child's education, it is important that you call or contact your child's teacher or administrators to talk about your child and any problems you see. Staff in your school district or special education local plan area (SELPA) can answer questions about your child's education, your rights, and procedural safeguards. Mount Diablo Unified School District is pleased to offer parent support services through the Parent Liaison's office.

HILARY SHEN, Parent Liaison, is available to help you understand your rights and answer questions you may have related to the Individual Education Program (IEP) process. Ms. Shen can be reached at 682-8000 ext. 4297.

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 these procedural safeguards.

**NOTICE, CONSENT, ASSESSMENT, AND ACCESS**

**Prior Written Notice**

*When is notice needed?*

The District must inform you about proposed evaluations of your child in a notice 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 also be given when the 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]; EC 56321, 56506[a])

*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 District;
2. An explanation of why the action was proposed or refused;
3. A description of any other options considered and the reasons those options were rejected;
4. A description of each assessment procedure, test, record or report used as a basis for the action proposed or refused;
5. A description of factors relevant to the action proposed or refused;
6. A statement that parents of a child with a disability are protected by the procedural safeguards; and
7. A description of sources for parents to contact to obtain assistance in understanding the procedural safeguards.

If the Prior Written Notice is not regarding an initial referral for assessment, the Notice must provide information on how to obtain a copy of these procedural safeguards. (20 USC 1415[c])

## Parent Consent

### *When is my approval required?*

Parents' written approval is required for:

**First Evaluation:** The District must have your informed written consent before it can evaluate your child. You will be informed about the evaluations to be used with your child.

**Reevaluation:** The District must have your informed written consent before reevaluating your child. However, the District may reevaluate your child without your written consent if the school district has taken reasonable measures to get your consent and you have not responded. (20 U.S.C. 1414[a][c]) You may refuse consent for an initial evaluation or reevaluation of your child.

To avoid confusion, you should inform the school in writing if you choose not to consent to an initial evaluation or reevaluation. The District may seek to evaluate or reevaluate your child through a due process hearing if it believes that it is necessary for your child's education. The district must document reasonable measures to obtain your consent. You and the District may agree to first try mediation to resolve your disagreements. (EC 56321[c], 56346[c]; 20 USC 1414[a][c])

**Initial Placement in Special Education:** You must give informed written consent before the District can place your child in a special education program or provide any special education or related services to your child. You may refuse consent for the initial placement of your child in special education. To avoid confusion, you should inform the school in writing if you want to refuse consent to the initial placement of your child in special education. If you refuse to consent to the initial placement of your child, the District will not provide any special education or related and may not file a request for due process to challenge your decision. Under these circumstances, the District would not be deemed to have denied your child a free, appropriate public education.

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 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.

**Continued Placement in Special Education:** You must give informed written consent for IEP services at every IEP meeting you attend for your child.

Consent for release of information forms must describe the activity for which consent is sought and list the records (if any) that will be released and to whom.

You may revoke consent at any time, except that revocation is not retroactive (does not negate actions that occurred after consent was given). (34 CFR 300.500)

## Revoking 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; however an IEP Team meeting may be convened.

The district cannot file for a due process hearing or request mediation to dispute your revocation of 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 provide you with 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 will no longer be considered a student with disabilities under state and federal special education law. Your child will be treated as a general education student for all purposes.

Your child will no longer be protected by these procedural safeguards except for those in respect to referral, initial 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 district-wide 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 and assessment are applicable.

### **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(s) administered in the language and form in a manner most likely to yield accurate information regarding what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to do so. No single procedure can be the sole criterion for determining eligibility and developing an appropriate educational program for your child. (20 USC EC 1414[a][b]; EC 56320)

When the District is seeking to assess your child, you will be given a written, proposed assessment plan. If you request an assessment, the assessment plan will be provided to you within fifteen (15) days of the referral. Along with that plan you will receive a copy of this Procedural Safeguards document. When the assessment is completed, an individualized education program team meeting, which includes you, the parent or guardian, and/or your representatives, will be scheduled to review the assessment. This meeting will occur within sixty (60) days of receiving the signed assessment plan from you. The IEP Team will discuss the assessment, the educational recommendations and the reasons for these recommendations. A copy of the assessment report and the documentation of determination of eligibility will be given to you. (EC 56329[a])

### **Independent Educational Evaluation**

*May I have my child tested independently at the District's expense?*

If you disagree with the results of an assessment conducted by the District, you have the right to ask for an independent educational assessment for your child from a person qualified to conduct the assessment at public expense. The District must respond to your request for an independent educational assessment within a reasonable time, and provide you information about where to obtain an independent educational assessment.

If the District disagrees that an independent assessment is necessary, the 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 assessment results. (20 USC 1415; EC 56506[c] and 56329[b]; 34 CFR 300.502)

District assessment procedures allow in-class observation of students. If the District observes your child in his or her classroom during an assessment, or if the District has assessment procedures that allow in-class observations of your child, an individual conducting an independent educational assessment must also be allowed to observe your child in the classroom and in any "educational" placement and setting proposed by the District.

If the District proposes a new school setting for your child and an independent educational assessment is being

conducted, the independent assessor must be allowed to observe the proposed new setting. (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 educational records without unnecessary delay, including prior to a meeting about your child's IEP or before a due process hearing. The District must provide you access to and/or copies of the records within five business days after you request the records orally or in writing. A fee for copies, but not the cost to search and retrieve, may be charged unless charging the fee would effectively deny access to the parent. (20 USC 1415[d]; EC 56501[b], 56504, 49060, and 49069)

Parents of a child enrolled in a school district have the right to inspect records under the Family Education Rights and Privacy Act (FERPA), which has been implemented in California under Education Code Sections 49060-49079. Under FERPA, parents of a child with disabilities (including non-custodial parents whose rights have not been limited) have the right to access all educational records regarding the identification, evaluation, and educational placement of the child and the provision of a free, appropriate public education, and to receive an explanation and interpretation of the records. Under California statutes the parents have the right to review and to receive copies of educational records. These rights transfer to a nonconserved pupil who is eighteen years old or attending an institution of post secondary education.

"**Educational record**" means those records that are directly related to a pupil and maintained by an educational agency or a party acting for the agency or institutions in the regular course of business, and may include (1) the name of the child, the child's parents or other family member; (2) the address of the child; (3) a personal identifier such as the child's social security number, student number, or court file number; (4) a list of personal characteristics or other information that would make it possible to identify the child with a reasonable certainty. Both federal and state law further define a pupil record as any item of information directly related to an identifiable pupil, other than directory information, which is maintained by a school district or required to be maintained by an employee in the performance of his duties whether recorded by handwriting, print, tapes, film, microfilm, computer or by other means. Pupil records do not include informal personal notes prepared and kept by a school employee for his/her own use or the use of a substitute. If records contain information about more than one student, a parent can have access only to that portion of the record pertaining to his/her child.

The custodian of records at each school site is the principal of the school. The District custodian of records is the Director of Student Services. Pupil records may be kept at the school site or the school district office, but a written request for records at either site will be treated as a request for records from all sites. The custodian of records will provide you with a list of the types and locations of pupil records (if requested).

The custodian of records shall limit access to those persons authorized to review the pupil record, which includes the parents of the pupil, a pupil who is at least sixteen years old, individuals who have been authorized by the parent to inspect the records, school officials and employees who have a legitimate educational interest in the records, post secondary institutions designated by the pupil, and employees of federal, state and local education agencies. In all other instances access will be denied unless the parent has provided written consent to release the records or the records are released pursuant to valid subpoena or court order. The District shall keep a log

indicating the time, name and purpose for access of those individuals who are not school officials.

A "school official" is a person employed by the school as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the school has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A "legitimate educational interest" is any interest related to provision of a student's educational program or as specified by law.

Parents who believe that information in the education records collected, maintained or used by the District is inaccurate, misleading, or violates the privacy rights of the pupil may request in writing that the District amend the information. If the District concurs, the record will be amended and the parent will be informed. Should the District refuse to make the amendment, the District shall notify the parent of the right to a hearing, if required, to determine whether the challenged information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the pupil. If it is decided after the hearing that a record will not be amended, the parent shall have the right to provide what he/she believes is a corrective written statement to be permanently attached to the record. The District has policies and procedures governing the retention and destruction of records. Parents wishing to request the destruction of records, which are no longer necessary to the District, may contact the District's Custodian of Records. However, the District is required to maintain certain information in perpetuity. (34 CFR 300.561 -573; 20 USC 1415[b][1]; EC 49070)

## 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, educational placement of your child and the provision of a free, appropriate public education.

The request for due process must be filed within two years from the date you knew or had reason to know of the facts that were the basis for the hearing request. The time periods described above do not apply if (1) the District made specific representations that it had solved the problem forming the basis of the due process complaint or (2) the District withheld information from the parents, which it was required to disclose.

### Mediation and Alternative Dispute Resolution

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

You may ask the District to resolve disputes through mediation or alternative dispute resolution (ADR), which are less formal and adversarial than a due process hearing. ADR and mediation are voluntary methods of resolving a dispute and may not be used to delay your right to a due process hearing. You may also file for mediation only, with the Office of Administrative Hearings.

The parents and the District must consent to mediation before it proceeds. A mediator is a person who is trained in strategies that help people come to agreement over difficult issues. (20 USC 1415[d]; EC 56500.3)

## Due Process Rights

*What are my due process rights?*

You have a right to:

1. Have an impartial administrative hearing at the state level with a person who is knowledgeable about the laws governing special education and administrative hearings (EC 56501[6]);
2. Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities (EC 56505 [e]; 20 USC 1415[h];
3. Present evidence, written arguments, and oral arguments (EC 56505[e]);
4. Confront, cross-examine, and require witnesses to be present (EC 56505[e]);
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]; 20 USC 1415 [h]);
6. Have your child present at the hearing (EC 56501[c]);
7. Have the hearing be open or closed to the public (EC 56501[c]);
8. Be informed by the other parties of the issues and their proposed resolution of the issues at least ten calendar days prior to the hearing (EC 5065[e]and 56043[s]);
9. 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 business days before a hearing and seek to bar the introduction of any documents or witnesses if not informed within five business days (EC 56505[e]);
10. Have an interpreter provided at the expense of the California Department of Education (CCR 3082[d]);
11. Request an extension of the hearing timeline (EC 56505[f]);
12. Request a mediation conference at any point during the due process hearing (EC 56501[b]; and
13. Receive notice from the other party at least ten days prior to the hearing that it intends to be represented by an attorney. (EC 56507[a])

### Filing a Written Due Process Complaint

*How do I request a due process hearing?*

To file for mediation or a due process hearing, contact:

Office of Administrative Hearings  
Special Education Division  
2349 Gateway Oaks Dr., Suite 200  
Sacramento, California 95833-4231  
Phone: (916) 263-0880  
Fax: (916) 376-6319

You need to file a written request for a due process hearing or mediation. The written notice shall be kept confidential. You or your representative need 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; and
4. A description of the nature of the problem, including facts relating to the problem(s) and a proposed resolution of the problem(s).

State law requires that either party filing for a due process hearing must provide a copy of the written request to the other party. (20 USC 1415[h]; EC 56502[a])

### *Does my placement change during the proceedings?*

Except in cases involving student discipline, the child involved in any administrative or judicial proceeding must remain in their current educational placement unless you and the District agree on another arrangement or a court order says otherwise. If you are applying for initial admission 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]; EC 56505[d])

### **Opportunity for District to Informally Resolve Complaint**

If you choose to file a due process complaint as explained in the section titled "Filing a Written Due Process Complaint", the District must convene a resolution session meeting within fifteen (15) days of receiving notice of your due process complaint. The purpose of the meeting is to give you the opportunity to discuss your due process complaint and the facts on which you based your complaint and to provide the District a chance to address your concerns and work with you to reach a resolution.

This meeting must be held before the initiation of a due process hearing. However, the meeting need not occur if both parties agree in writing to waive the resolution session or if both parties choose to utilize the mediation process instead.

The meeting must include the parents, a representative from the District with decision making authority, and other relevant members of the IEP team who have specific knowledge of the facts. The meeting may not include an attorney for the District unless the parents are accompanied by an attorney.

If resolution is reached at the meeting, the parties must execute a legally binding settlement agreement. Either party may void the agreement within 3 business days of executing the document.

The District has 30 days from the receipt of the due process complaint to resolve the due process complaint or the due process hearing will be scheduled. If the case is scheduled for hearing, the parties may still consent to formal mediation to try to resolve the issues. (34 CFR 510; 20 U.S.C. 1415[f][1][B])

### *Can the decision be appealed?*

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. (20 USC 1415[j]; EC 56505[g] and [i]; EC 56043[u])

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

In any action or proceeding brought under Section 1415 of the IDEA, 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 awarded following the conclusion of the administrative hearing by court order or with the agreement of the parties. (20 USC 1415[j]; EC 56507[b]) Fees may be reduced for any of the following:

1. The court finds that you unreasonably delayed the final resolution of the controversy;
2. The hourly attorneys' fees rate 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 District the appropriate information in the due process complaint.

Attorneys' fees will not be reduced, however, if the court finds that the state or the District unreasonably delayed the final resolution of the action or proceeding or if there was a procedural safeguards violation. (20 USC 1415[i])

A court, in its discretion, may also award reasonable attorneys' fees to the District against the attorney of a parent who files a due process complaint or subsequent civil action that is frivolous, unreasonable, or without foundation or if the attorney

continues to litigate after the litigation clearly becomes frivolous, unreasonable, or without foundation. (20 USC 1415[j])

A court, in its discretion may also award reasonable attorneys' fees to the District against the parent's attorney or parent if the due process complaint or subsequent civil action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. (20 USC 1415[j])

Attorneys' fees may not be awarded relating to meeting of the IEP team unless an IEP 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 agency ten days before the hearing begins and the hearing decision is not more favorable than the settlement offer. (20 USC 1415[d])

## **COMPLIANCE COMPLAINT PROCEDURES**

*Note:* Compliance complaint procedures in this section are not the same as the due process hearing procedures covered earlier in this document.

If you wish to file a complaint with the California Department of Education alleging violations of the IDEA, implementing regulations or implementing state law and regulations, you should submit your complaint in writing to:

*California Department of Education*  
Special Education Division  
Procedural Safeguards Referral Service  
1430 N Street, Suite 2401  
Sacramento, California 95814  
(800) 926-0648  
<http://www.cde.ca.gov/spbranch/sed>

Complaints filed with the California Department of Education may allege a violation of the IDEA and implementing laws and regulations that occurred not more than one year prior to the date the Department receives the Complaint.

Upon receipt of the complaint, the school district has 10 days to investigate its compliance relative to the allegations contained in the complaint, and may meet with you to informally resolve the issues raised in the complaint.

If the issues are not resolved, the California Department of Education will, within 60 days after a complaint is filed: carry out an independent investigation, give the complainant an opportunity to provide additional information, review all information and make a determination as to whether the LEA has violated laws or regulations, and issue a written decision that addresses each allegation.

For complaints involving issues not covered by IDEA, consult your District's Uniform Complaint Procedures.

The District would like to work with you to resolve all complaints at the local level whenever possible. We invite you to meet with the administrator who has been designated to work with compliance issues and attempt to resolve your concern informally before a complaint is filed. S/he will maintain confidentiality as permitted by law. If your complaint cannot be resolved, a formal investigation will be initiated or you will be referred to the appropriate agency for assistance.

## **SCHOOL DISCIPLINE AND PLACEMENT PROCEDURES FOR STUDENTS WITH DISABILITIES**

### **School Discipline**

#### *May my child be suspended or expelled?*

Children with disabilities may be suspended, expelled, disciplined, or placed in other alternative settings to the same extent these options would be used for children without disabilities.

If a child with a disability is removed from school for more than ten consecutive school days, when a series of removals constitutes a change in placement, or when a change in placement is contemplated following a violation of the student code of conduct, a meeting must be held to determine whether the child's misconduct is a manifestation of the child's disability. The behavior will be deemed a manifestation of your child's disability if it was caused by, or had a direct and substantial relationship to the disability, or if the conduct was the direct result of the District's failure to implement the IEP.

The meeting must take place immediately, if possible, or within ten school days of the District's decision to change the student's placement. As a parent, you will be invited to participate in the meeting along with relevant members of the IEP team (as determined by the parent and the District). The District must provide you with a written notice of the required action.

If the team concludes that the misconduct was not a manifestation of your child's disability, the District may take disciplinary action, such as expulsion, in the same manner as it would for a child without disabilities. The District may be required to conduct a functional behavioral assessment to address the misconduct or, if your child has a behavior intervention plan, review and modify the plan, as necessary.

If the team concludes that the misconduct was a manifestation of your child's disability, the IEP team shall:

- conduct a functional behavioral assessment, and implement a behavior intervention plan, provided that the District has not conducted such assessment prior to such determination before the behavior that resulted in a change in placement;
- in the situation where a behavior intervention plan has been developed, review the behavior intervention plan and modify it as necessary to address the behavior; and
- return the child to the placement from which the child was removed, unless you and the District agree to change of placement as part of the modification of the behavior intervention plan.

If you disagree with the team's decision as to whether the conduct was a manifestation of the child's disability, or how disciplinary action has been handled, you may request an expedited due process hearing from the Office of Administrative Hearings. (20 USC 1415(d))

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.

### **Interim Alternative Educational Settings**

*May my child be placed an interim alternative educational setting for disciplinary purposes?*

Federal law allows the use of interim alternative educational settings under certain disciplinary circumstances for up to forty-five school days without regard to whether the conduct was a manifestation of the child's disability. Those circumstances are when the child has carried or possessed a weapon, has knowingly possessed or used illegal drugs or sold or solicited the sale of controlled substances, or has inflicted serious bodily injury

upon another. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct. (20 USC 1415(k))

The interim alternative setting will be selected so as to enable your child to continue to receive educational services, to enable your child to continue to participate in the general curriculum and to progress towards meeting the goals set out in your child's IEP. Your child may also receive, as appropriate, a functional behavioral assessment, behavior intervention services and modifications that are designed to address the behavior that resulted in the disciplinary action. (20 USC 1415(k))

If the District has placed your child in an interim alternative educational setting and you request a due process hearing to challenge this decision, your child will stay in the interim alternative education setting until the maximum forty-five school days is reached, another time frame is established by a hearing officer, or the parents and District agree to another placement. If the school district believes it is dangerous for your child to return to the current educational placement, the District may request a hearing. Appeals are on an expedited basis.

### **Children Attending Private School**

*When is reimbursement required for private school tuition?*

Federal law significantly limits a school district's responsibility to provide services to students whose parents have made the choice for them to attend private schools. Students placed in private schools by their parents do not have the right to obtain some or all of the special education and related services necessary for the provision of a free, appropriate public education. Districts are only obligated to spend a proportionate share of federal IDEA funds on students enrolled in private schools. Eligible private school students do not have any individual entitlement to services, but instead share in equitable services made available to all eligible private school students, provided through an individual services plan.

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. Parents are entitled to reimbursement for costs associated with the private school placement, only if a court or hearing officer determines that the district had not made FAPE available to the child in a timely manner prior to the private school enrollment and that the private placement is appropriate. (20 USC 1412[a]; EC56175; 34 CFR 300.453)

*When may reimbursement be reduced or denied?*

The court or hearing officer may reduce or deny reimbursement for a private school placement if you did not make your child available for an assessment before removing your child from public school. You may also be denied reimbursement if you did not inform the District that you were rejecting the special education placement proposed by the District *and* give notice of your concerns and intent to enroll your child in a private school at public expense at least ten (10) business days prior to the removal from public school. Your notice to the District must be given either:

- At the most recent IEP meeting you attended before removing your child from the public school; or

- In writing to the District at least ten business days (including holidays) before removing your child from the public school. (20 USC 1412 [a]; EC 36174, 56176)

A court or hearing officer may not reduce or deny reimbursement to you if you failed to notify the District 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. (20 USC 1412[a]; EC 56177)

### 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 funded, the District must be given the opportunity to observe the proposed placement and your child in the proposed placement.

The District may not observe or assess any other child at the nonpublic school without permission of the other child's parent or guardian. (EC 56329[d])

## ADDITIONAL INFORMATION

### *Where do I file a complaint?*

To obtain more information about dispute resolution, including how to file a complaint, contact:

**California Department of Education**  
Special Education Division  
Procedural Safeguards Referral Service (PSRS):  
(800) 926-0648/Fax (916) 327-3704, or visit the Department's web site at  
<http://www.cde.ca.gov/spbranch/sed>

Complaints alleging violations of IDEA may be mailed to:

**California Department of Education**  
Special Education Division  
Procedural Safeguards Referral Service  
1430 N Street, Suite 2401  
Sacramento, CA 95814  
Attn: PRRS Intake

For complaints involving issues not covered by IDEA, consult your District's Uniform Complaint Procedures (UCP).

### *Where do I file a request for mediation or due process hearing?*

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

**Office of Administrative Hearings/Special Division**  
2349 Gateway Oaks Dr., Suite 200  
Sacramento, California 95833-4231  
Phone: (916) 263-0880  
Fax: (916) 376-6319

The Parent Liaison's Office is available to assist you with filing a complaint, or requesting mediation or due process. *Parent Liaison Office:* (925) 682 8000 ext. 4297

## RESOURCES

### Parent Training and Information Centers:

#### Northern California

- CARE Parent Network  
(925) 313-0999
- Matrix, A Parent Network and Resource Center  
(415) 884-3535
- Disability Rights Education Defense Fund (DREDF)  
(510) 644-2555

#### Community-Based Projects

- Vietnamese Parents of Disabled Persons  
(310) 370-6704
- Loving Your Disabled Child  
(323) 299-2925
- Parents of Watts  
(213) 566-7556

#### Other Resources

- National Information Center for Youth and Children with Disabilities - (800) 695-0285 *Provides special education information on its web site and through printed materials.*
- Protection and Advocacy, Inc - (800) 776-5746  
*Funded federally to advocate for people with disabilities.*
- California Services for Technical Assistance and Training (CaISTAT) - (707) 849-2278 *Provides training on IDEA and Resources in Special Education.*
- Resources in Special Education (RISE) —  
(707) 206-0533, ext. 102  
RISE Library -(408) 727-5775, ext. 110

#### District Contact Information

Please contact the Special Education Administrator at the phone number listed below for your school district if you:

- Would like additional copies of the Notice of Procedural Safeguards;
- Need assistance in understanding the provisions of your rights and safeguards;
- Require translation orally, by other means, in a different language or other mode of communication:

#### Special Education Department

**Mt. Diablo Unified School District**  
1936 Carlotta Drive, Concord, CA 94519  
Tel.: 925-682-8000  
Fax: 925-674-0667

#### Special Education Administration

- Dr. Kerri Mills, Assistant Superintendent  
Pupil Services and Special Education —  
(925) 682-8000 ext. 4048
- Bryan Cassin, Administrator,  
Alternative Dispute Resolution /NPS/NPA —  
(925) 682-8000, ext. 4192
- Hilary Shen, Parent Liaison - (925) 682-8000, ext. 4297