SANTA ANA UNIFIED SCHOOL DISTRICT SPECIAL EDUCATION LOCAL PLAN AREA

SANTA ANA UNIFIED SCHOOL DISTRICT SCHOOL DISTRICT

Notice to Parent/Guardian/Surrogate
Notice of Procedural Safeguards

This notice is provided to you as parents, legal guardians, surrogate parents or court appointed educational rights holder, because your child is receiving special education services or has been referred for possible placement in special education. This information is your Notice of Procedural Safeguards (Notice) as required under the Individuals with Disabilities Education Act (IDEA). The IDEA is a federal law that requires school districts to provide a "free appropriate public education" (FAPE) to eligible children with disabilities, as defined further below. This Notice will also be provided to students who are entitled to these rights at age eighteen (18). The purpose of this Notice is to explain to you your rights as a parent of a child with disabilities under federal and state laws. In California, special education is provided to disabled students between birth and the student's twenty-second (22nd) birthday. Federal and state laws protect you and your child throughout the procedures for evaluation and identification of special education placement and services. Parents of children with disabilities have the right to participate in the individualized education program (IEP) process, including development of the IEP, and be informed of the availability of FAPE and of all available alternate programs, including public and nonpublic programs.

A copy of this Notice will be given to you only one time a school year; except that a copy must also be given to you upon (1) initial referral or your request for evaluation; (2) upon the receipt of the first filing of a state complaint or due process compliant in a school year; (3) when a decision is made to make a disciplinary change of placement; or (4) upon your request. You have a right to receive this Notice in your primary/native language or other mode of communication, unless to do so is clearly not feasible. This Notice may also be translated orally to you if your primary/native language or other

mode of communication is not a written language. The definitions below will help you understand the Notice of rights provided herein.
(20 U.S.C. section 1415(d); 34 C.F.R. sections 300.29 and 300.504; Education Code sections 56021.1(a), 56301(d)(2), 56321(b), and 56506(a).)

DEFINITIONS

Children With Disabilities also referred to as individuals with exceptional needs is defined by federal and state law as including children with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities; and who by reason thereof, need special education and related services.
(20 U.S.C. section 1402(3); 34 C.F.R. section 300.8; Education Code section 56026; 5 California Code of Regulations (CCR) section 3030.)

Evaluation means the assessment of your child using various tests and measures in accordance with state and federal laws to determine whether your child has a disability and the nature and extent of special education and related services needed by your child for his or her educational benefit. The assessment tools are individually selected for your child and are administered by trained and knowledgeable professionals employed or contracted by the school district. These tests do not include the basic tests given to all children in the school setting.
(34 C.F.R. sections 300.15, 300.304 – 300.311; Education Code sections 56302.5 and 56320.)

Individualized Education Program (IEP) is defined as a written document developed by your child's IEP team that includes at least all of the following: (1) present levels of academic achievement and functional performance; (2) measurable annual goals; (3) a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on progress the child is making toward meeting

the annual goals will be provided; (4) a statement of the special education and related services and supplementary aids and services to be provided to the child; (5) an explanation of the extent to which the child will not participate with non-disabled children in the general education programs; (6) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and district wide assessments; and (7) the projected date for initiation and the anticipated duration, frequency and location of the programs, services and modifications included in the IEP.

(20 U.S.C. section 1414(d); 34 C.F.R. sections 300.22, 300.320-300.324; Education Code section 56345.)

Free Appropriate Public Education (FAPE) is defined as special education and related services that: (1) are provided at public expense, under public supervision and direction, and without charge to you; (2) meet the standards of the California Department of Education (CDE); (3) are provided in conformity with a written IEP developed for your child to confer an educational benefit; and (4) are provided in an appropriate preschool, elementary or secondary school program of the State, or in a nonpublic school if there is no appropriate program available in a school district.

(20 U.S.C. section 1402(9); 34 C.F.R. section 300.17; Education Code section 56040.)

Least Restrictive Environment (LRE) means that to the maximum extent appropriate, children with disabilities will be educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular education environment will occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(20 U.S.C. section 1412(a)(5); 34 C.F.R. section 300.114; Education Code section 56040.1.)

Related Services means transportation and such developmental, corrective and supportive services that may be required to assist a child with a disability to benefit from special education, including the early identification and assessment of disabling conditions. Related services may also include:

1. Speech-language pathology and audiology services.
2. Interpreting services.
3. Psychological services.
4. Physical and occupational therapy.
5. Recreation, including therapeutic recreation.
6. Counseling services, including rehabilitation counseling.
7. Orientation and mobility services.
8. School health services and school nurse services.
9. Medical services for diagnostic or evaluation purposes only.
10. Social work services.
11. Parent counseling and training.

(20 U.S.C. section 1402(26); 34 C.F.R. section 300.34; Education Code section 56363.)

Special Education means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings, and instruction in physical education.

(20 U.S.C. section 1402(29); 34 C.F.R. section 300.39; Education Code section 56031.)

CONFIDENTIALITY AND ACCESS TO EDUCATIONAL RECORDS

All parents of a child enrolled in the school district have the right to inspect their child's educational records under the federal Family Educational Rights and Privacy Act (FERPA), and the California Education Code. Under the federal and state laws, parents of a child with disabilities (including noncustodial parents whose rights have not been limited) are presumed to and have the right to inspect and review all educational records regarding their child unless the school district has been advised that the parent

does not have the authority to do so under applicable state laws. This includes the right to inspect and review all educational records with respect to the identification, evaluation, educational placement and the provision of a FAPE, as well as to receive an explanation and interpretation of the records without unnecessary delay, including prior to a meeting regarding your child's IEP or before a resolution session or due process hearing. Under California statutes, parents have the right to review and to receive copies of educational records. You also have the right to have a representative inspect and review the records in accordance with FERPA. These rights transfer to a pupil upon their eighteenth (18th) birthday unless the pupil has had a conservator appointed by a court to assume the educational rights of the pupil.

Educational records are those records that are directly related to your child and maintained by the school district, or an agency, or institution acting for the school district that collects, maintains, or uses personally identifiable information, or from which information is obtained. Both federal and state laws further define an educational record or pupil record as any item of information directly related to an identifiable pupil, other than directory information, which is maintained by a school district, whether recorded by handwriting, print, computer media, video or audio tape, film, microfilm, microfiche or by other means. If records contain information about more than one child, you have access only to that portion of the record pertaining to your child. The school district must keep a record of parties obtaining access to educational records collected, maintained, or used under the IDEA, other than school district employees in accordance with FERPA.

The school district must protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under the IDEA and FERPA. Each school district must maintain, for public inspection, a current listing of the names and positions of those employees who may have access to personally identifiable information.

The school district must inform you when personally identifiable information collected, maintained or used under the IDEA is no longer needed to provide educational services to your child. Upon receiving notice that the records are no longer necessary to the school district, you may request destruction of the records, which will take place either by physical destruction or by removing personal identifiers from the records so that the information is no longer personally identifiable. However, the school district is obligated to keep a permanent record for each child.

Personally identifiable information may include: (1) the name of the child, the child's parent or family member; (2) the address of the child; (3) a personal identifier such as the child's social security number, student number, court file number, or biometric record; (4) other indirect identifiers such as the child's date of birth, place of birth and mother's maiden name; (5) a list of personal characteristics or other information that would make it possible to identify the child with a reasonable certainty. Parental consent must be obtained before personally identifiable information is disclosed to parties other than school district employees and in accordance with FERPA.

The custodian of records at each school site is the principal of the school. The district custodian of records is David Richey. Pupil records may be kept at the school site or the 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). A request for a copy of your child's special education records may be made to the District's Director of Special Education.

A review and/or copies of educational records will be provided to the parent within five (5) business days after the request is made by the parent, either orally or in writing. A fee for copies, but not the cost to search and retrieve, is determined by local policy and will be charged unless charging the fee would effectively prevent the parent

from exercising the right to receive the copies. Once a complete copy of the records has been provided, a fee will be charged for additional copies of the same records.

If you believe that information in the education records collected, maintained or used by the school district is inaccurate, misleading or violates the privacy or other rights of the child, you may request in writing that the school district amend the information. If the school district agrees with your request, the record will be amended and you will be informed within a reasonable time after receipt of the request. Should the school district refuse to amend the information as requested, the school district will notify you of the right to a hearing to determine whether the challenged information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child. If you request a hearing, the school district will provide a hearing, within a reasonable time, which must be conducted according to the procedures for such hearings under FERPA.

If as a result of the hearing the school district decides the record will not be amended, you have a right to provide what you believe is a corrective written statement, which will be permanently attached to the contested record and also provided if the contested record is disclosed to any party. Additional information regarding your right to access and challenge educational records is available in the District's Annual Notice of Parent Student Rights and Responsibilities.

(20 U.S.C. section 1232g; 34 C.F.R. sections 99.1-99.67; 34 C.F.R. sections 300.610-300.625, 300.613; Education Code sections 48980, 49060-49079; Education Code sections 56041.5, 56043(n) and 56504; 5 CCR section 432(b)(1).)

PRIOR WRITTEN NOTICE

The IDEA requires school districts to provide prior written notice to you as the parent of a child with disabilities when the school district proposes or refuses to initiate or change the identification, evaluation or educational placement of your child or the provision of a FAPE to your child or if you revoke consent in writing for the continued provision of special education and related services. The notice will be provided in your

native language or other mode of communication you use, unless it is clearly not feasible to do so, and must be provided to you within a reasonable time.

The prior written notice must include:

1. A description of the action proposed or refused by the school district.
2. An explanation of why the school district proposes or refuses to take the action.
3. A description of each evaluation procedure, assessment, record, or report the school district used as a basis for the proposed or refused action.
4. A description of other options that the IEP team considered and the reasons why those options were rejected.
5. A description of other factors that are relevant to the school district's proposal or refusal.
6. A statement that the parents of a child with a disability have protection under the procedural safeguards of the IDEA, and if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.
7. Sources for parents to contact to obtain assistance in understanding the provisions of this part.

(20 U.S.C. section 1415(c); 34 C.F.R. sections 300.503 and 300.300(b)(4); Education Code section 56500.4.)

INFORMED PARENTAL CONSENT

The IDEA requires that school districts obtain informed consent from you before the commencement of an initial evaluation of your child to determine if your child qualifies as a child with disabilities. Informed consent means you have been fully informed in your native language, or other mode of communication, of all information about the action for which you are giving consent and that you understand and agree in writing to the carrying out of the activity for which consent is sought, such as an evaluation or educational placement decision for your child. Your consent is voluntary and may be withdrawn at any time. Should you withdraw/revoke consent the revocation

is not retroactive, it will not negate an action that has occurred after the consent was given and before the consent was revoked.

Your consent for the initial evaluation does not imply or grant consent for placement and receipt of special education and related services. The school district will request your consent for special education and related services separately and at a later date. The school district will also obtain your informed consent for reevaluations of your child and will not conduct a reevaluation unless you fail to respond to requests for your 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 using due process procedures.

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

If at any time after the initial provision of special education and related services, you revoke consent in writing for the continued provision of special education and related services after having consented to those services in the past, the school district must provide you prior written notice before ceasing the provision of special education and related services to your child and shall not seek to provide services through due process procedures. If you submit a written revocation of consent after the initial provision of special education and related services to your child, the school district is not required to amend the education records of your child to remove any reference of your child's receipt of special education and services.

If you consent in writing to the receipt of 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 so as not to delay

providing instruction and services. 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, the school district must file a request for a due process hearing. If a due process hearing is held, the hearing decision shall be final and binding, unless appealed within 90 days from the date of the decision.

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 U.S.C. sections 1414(a)(1)(D), 1414(c) and 1415; 34 C.F.R. sections 300.9 and 300.300, 300.514 and 300.516; Education Code sections 56021.1, 56321(c) and (d), 56346, 56381(f) and 56506(e).)

When a parent cannot be identified and the school district cannot locate the whereabouts of a parent to obtain consent, the school district must ensure that an individual is assigned to act as a surrogate for the parents of a child with a disability. A surrogate parent may also be appointed for unaccompanied homeless youth or a child who is a dependent or ward and an educational representative has not been appointed by the Court.
(20 U.S.C. section 1415(b)(2); 34 C.F.R. section 300.519; Education Code section 56050; CA Rules of Court Rule 5.650.)

PROTECTION IN EVALUATION PROCEDURES

Federal law refers to “evaluation” and California law refers to “assessment”. Therefore, these words may be used interchangeably by employees of the school district and in this Notice. The school district must provide you with a written assessment plan or prior written notice within fifteen (15) days after a referral for special education has been received, including your written request for evaluation. You will have a minimum of fifteen (15) days in which to review the assessment plan and to provide consent to the school district to conduct the written assessment. The proposed

assessment plan will be provided to you in your native language or other mode of communication used, unless to do so is clearly not feasible, and will include the following: the types of assessments to be conducted, notification that no education program will be developed from the assessment without your consent, description of any recent assessments conducted, including any available independent assessments and any assessment information you want considered, and information indicating your child's primary language and your child's proficiency in his/her primary language. You may request assessment in additional areas of suspected disability. Thereafter, the school district has sixty (60) days after receipt of your written consent to complete the assessment and to develop an IEP to determine the educational needs of your child. However, this timeline is extended by periods of school holiday or vacation, if you refuse to make your child available for assessment, or if your child transfers to another school district and you and the receiving school district agree to a specific time when the assessment will be completed.

The IDEA states that in conducting the evaluation the school district will:

1. Use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;
2. Not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and
3. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

The school district will also make sure that tests and other evaluation materials used to assess your child are selected and administered so as not to be racially, culturally or sexually discriminatory and are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so. Any standardized tests that are given to the child will have been validated for the specific purpose for which they are used, administered by trained and knowledgeable personnel, and administered in accordance with any instructions provided by the producer of such tests. Your child will be assessed in all areas of suspected disability and the school district will use assessment tools and strategies that provide relevant information that will directly assist the school district in determining the educational needs of your child. Upon completion of the administration of evaluation materials, the determination of whether the child is a child with a disability will be made by you and qualified professionals comprising the IEP team. A copy of the evaluation report and documentation of the determination of eligibility will be given to you.

In making a determination of eligibility, your child will not be determined to be a child with a disability due to a lack of instruction in reading or math or as a result of limited English proficiency.

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, will:

1. Review existing evaluation data on the child, including evaluations and information provided by you, current classroom-based assessments and observations, and teacher observation; and
2. On the basis of that review, and input from you, identify what additional data, if any, are needed to determine:
    a. Whether the child has a particular disability, or, in case of reevaluation of a child, whether the child continues to have such a disability and such educational needs;

b. The present levels of performance and related developmental needs of the child;

c. Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

d. Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

Generally, a reevaluation is required every three (3) years. However, if the IEP Team determines that no additional data is needed to determine whether your child continues to be a child with a disability and to determine the child's educational needs the school district will notify you as to the reasons the school district believes a reevaluation is not necessary. After receiving this notice, you may request a reevaluation of your child. If the school district does not receive a reevaluation request from you, the school district will not conduct a reevaluation of your child.

Before determining that your child is no longer a child with a disability, the school district must conduct an assessment in accordance with the procedures discussed above.

(20 U.S.C. sections 1414, 1415; 34 C.F.R. sections 300.301 – 300.306; Education Code sections 56320, 56321, 56329, and 56381; 5 CCR section 3022.)

INDEPENDENT EDUCATIONAL EVALUATION

After the school district has completed its evaluation, if you disagree with the school district's evaluation of your child and notify the school district of your disagreement, you have the right to request an independent educational evaluation at school district expense. Upon your request for an independent educational evaluation, the school district will provide you with information about where to obtain an independent educational evaluation and the district's criteria applicable for independent

educational evaluations. A parent is entitled to only one (1) independent educational evaluation at public expense each time the district conducts an evaluation with which the parent disagrees. However, if the school district disagrees that an independent educational evaluation is necessary, the school district must request a hearing before a due process hearing officer to dispute your request for an independent educational evaluation and to show that the school district's assessment is appropriate. If the school district prevails, you still have the right to an independent evaluation but not at public expense. If you choose to obtain an independent educational evaluation at your own expense, the results of the assessment must be considered by the district. The independent educational evaluation must comply with all of the requirements that apply to school district evaluations.

If the school district observes your child in his or her classroom during an assessment, or if the school district procedures provide for in-class observations, an equivalent opportunity must be provided for any independent educational evaluation in the current and any proposed educational placement.

If you unilaterally place your child in a nonpublic school and you propose the placement in the nonpublic school to be publicly financed, the school district must be given the opportunity to first observe the proposed placement and your child in the proposed placement.
(20 U.S.C. section 1415(b)(1); 34 C.F.R. section 300.502; Education Code section 56329.)

IEP MEETINGS

As the parent of a special education student, you have the right to be a part of the IEP Team and participate in any meeting regarding the identification, assessment and educational placement of your child. The term IEP or Individualized Education Program means a written document for each child with a disability that is developed, reviewed and revised in accordance with federal and state law. The IEP includes the child's present levels of academic achievement and functional performance and must

consider your concerns as a parent for improving the education of your child. As a parent, you have the right to be a member of any group that makes decisions with respect to the educational placement of your child. You also have the right to bring individuals who have knowledge or special expertise regarding your child to an IEP meeting. The school district will provide you with a copy of the IEP in your primary language upon request. If you are a parent of a child age three through five years, the individualized family service plan (IFSP) may serve as the IEP if agreed to by the parent and the school district.

Federal and state law requires that the first IEP to be in effect beginning at age sixteen include a statement of the transition service needs of the child and that the IEP be updated annually thereafter. Beginning at age sixteen or younger, if determined appropriate by the IEP Team, appropriate measurable postsecondary goals related to training, education, employment, and where appropriate, independent living skills, a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or linkages between the agencies is required. Beginning at least one year before the child reaches age eighteen (18), a statement must be included in the IEP that the child has been informed of his or her rights that will transfer to the child on reaching the age of majority. Under California law, when a child turns age eighteen (18), he or she is considered an adult and unless the parent obtains a conservatorship or guardianship over the child through court proceedings, the child may make decisions regarding his or her education.

In developing an IEP for your child, the IEP Team must include positive behavioral intervention strategies and supports in cases where the child's behavior prevents the child from learning and consider, when appropriate, strategies, including positive behavioral intervention strategies and supports to address the child's behavior. The regular education teacher of your child, as a member of the IEP Team, must to the extent appropriate, participate in the development of the IEP of your child, including the determination of appropriate, positive behavioral intervention strategies and the

determination of supplementary agency services, program modifications and support for the school personnel.

The IEP will be reviewed by the IEP Team at least annually in order to determine whether the annual goals for your child are being achieved and revise the IEP as appropriate to: (1) address any lack of anticipated progress toward the annual goals and in the general curriculum, where appropriate, (2) to address the results of any reevaluation conducted, (3) to address information about your child provided by you, and 4) to address your child's anticipated needs, if necessary. Your child will also receive report cards in the same manner as regular education students. You and the school district may agree in writing that the attendance of an IEP Team member is not necessary because the member's area of curriculum or related service is not being modified or discussed at the meeting. In addition, if you and the school district agree in writing to excuse a member of the IEP team from the IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area or the curriculum or related service, the member must submit in writing to you and the IEP Team, input into the development of the IEP prior to the meeting. Under state law, you have the right to electronically record IEP meetings by audio tape if you give 24 hours notice to other members of the IEP Team. After the annual IEP meeting for a school year, you and the school district may agree in writing not to convene an IEP meeting to make changes to the annual IEP, and instead may develop a written document to amend or modify the current IEP.

(20 U.S.C. section 1414(d); 34 C.F.R. sections 300.320-300.324; Education Code sections 56032, 56304, 56341, 56341.1, 56341.5, 56342.5 and 56345; 5 CCR section 3040.)

PLACEMENT ("STAY-PUT") DURING THE PENDENCY OF DUE PROCESS PROCEDURES

As a parent of a child with disabilities, should you get involved in a disagreement with the school district over the identification, evaluation or placement of your child and you file a request for a due process hearing, your child will remain ("stay-put") in the

current educational placement during the pendency of the proceedings. Unless you and the school district agree to a change in placement, or the school district obtains a court order or an order from a hearing officer, your child will remain in his or her current educational placement during the pendency of the proceedings. For initial admission to school, your child will be placed in a public school program, with parental consent, until the proceedings have been completed. There are exceptions to this general rule which allow the school district to place your child in an alternative educational setting for a limited period of time. These exceptions will be discussed in the next section on interim alternative educational settings.

(20 U.S.C. section 1415(j); 34 C.F.R. section 300.518; Education Code section 56505(d).)

INTERIM ALTERNATIVE EDUCATIONAL SETTINGS
DISCIPLINE PROCEDURES

School personnel may change the placement of your child if he or she violates a code of student conduct to (1) an appropriate interim alternative educational setting; (2) another educational setting, or (3) suspend your child for not more than ten (10) consecutive school days (to the extent such alternatives would be applied to children without disabilities) and for additional removals of not more than ten (10) consecutive school days in that same school year for separate incidents of misconduct. If school personnel seek a change in placement that exceeds more than ten (10) school days in the same school year, school personnel must determine if the behavior that gave rise to the violation of the code of student conduct is a manifestation of your child's disability. If a determination is made that the behavior is not a manifestation of your child's disability, school personnel may discipline your child under the same procedures applicable to children without disabilities.

In order to determine if the behavior that gave rise to the violation of the code of student conduct is a manifestation of your child's disability, the school district, you and relevant members of the IEP Team must review all relevant information in your child's file, including the IEP, any teacher observations, and any relevant information provided

by you to determine if the conduct in question was caused by, or had a direct and substantial relationship to your child's disability. This meeting must take place within ten (10) school days of any decision to take disciplinary action. If the IEP Team determines that the conduct is a manifestation of your child's disability, the IEP Team must either conduct a functional behavioral assessment, and implement a behavioral intervention plan for your child, or review and modify as necessary the existing behavioral intervention plan.

School personnel may also place your child in an interim alternative educational setting for up to forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of your child's disability, in cases where: (1) your child carries or possesses a weapon to or at school, on school premises, or to or at a school function or activity; (2) your child knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or a school function or activity; or (3) your child inflicts serious bodily injury upon another person while at school, on school premises, or at a school function or activity. The IEP team determines the interim alternative education setting for services.

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 school district must provide services to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the IEP goals. If appropriate, the child may receive a functional behavioral assessment and behavior intervention services and modifications designed to address the behavior violation so that it does not recur.

No later than the date on which the decision to take disciplinary action against your child is made, the school district must notify you of that decision and notify you of your procedural safeguards. If you disagree with any decision regarding placement, or the manifestation determination of your child, you may request an expedited due process hearing which must occur within twenty (20) school days of the date of the

hearing request. During the pendency of the due process hearing, your child will remain in the interim alternative education setting pending the decision of the hearing officer or for forty-five (45) school days, whichever occurs first, unless you and the school district agree otherwise. If the school district believes it is dangerous for your child or others for your child to return to the current educational placement, the school district may request an expedited hearing.

A hearing officer may order a change in the placement of your child to an appropriate interim alternative educational setting for not more than forty-five (45) days, if the hearing officer determines that maintaining your child in his or her current placement is substantially likely to result in injury to your child or to others.
(20 U.S.C. section 1415(k); 34 C.F.R section 300.530; Education Code section 48915.5.)

CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS

A school district's obligation to children with disabilities enrolled in private schools is limited. Under the IDEA *"no parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school."* School districts must locate, identify and assess all private school children with disabilities, including religiously affiliated school age children, who have disabilities and are in need of special education and related services, referred to as "child find". The school district in which the private school is located, also referred to as the "District of Location" is responsible for conducting child find activities for children enrolled by their parents in private schools. If the District of Location is <u>not</u> the same school district in which the parents of the private school student reside, then the District of Location may contract with the school district of residence to assess the child.

Children with disabilities enrolled in private school may receive equitable special education services as determined through consultation with private schools and

parents. In order to receive such equitable services, a "Service Plan" must be developed for the private school student and consented to by the parents. The school district in which the private school is located, the District of Location, is responsible for developing and implementing the Service Plan.

A parent of a child enrolled by that parent in a private school has the right to file a due process complaint only regarding the school district's child find activities. A due process complaint must be filed with the school district in which the private school is located, the District of Location, and the California Department of Education (CDE). However, because there is no individual right to services for children enrolled by their parents in private school, any complaints regarding a Service Plan can only be filed in accordance with the CDE's compliance complaint procedures.
(20 U.S.C. section 1412(a)(10)(A); 34 C.F.R. section 300.130–300.144; Education Code sections 56170–56177.)

UNILATERAL PLACEMENT BY PARENTS IN PRIVATE SCHOOL

If you decide to unilaterally enroll your child in a private school after the school district made a free appropriate public education available to your child, the school district is not required to pay for the cost of your child's education. In order to obtain reimbursement for the cost of the private school from the school district, including special education and related services, you must first attempt to obtain the consent of the school district, and establish that the school district does not have an appropriate program for your child. Reimbursement may be denied or reduced if: 1) at the most recent IEP meeting that you attended prior to removal of your child from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by the school district to provide a free appropriate public education to your child, including a statement of your concerns and your intent to enroll your child in a private school at public expense; or 2) at least 10 business days prior to the removal of your child from the public school, you did not give written notice to the school district of your concerns regarding the school district's proposed placement and your intent to enroll your child in a private school at public expense.

If the school district notifies you prior to the removal of your child from the public school that the school district wishes to evaluate your child and indicates the purpose of the evaluation, you should make your child available for the evaluation. If you have not complied with these requirements, a court or hearing officer may find that you acted unreasonably in unilaterally removing your child from the public school and in placing your child in a private school. The court or hearing officer may deny you reimbursement unless you can show one or more of the following: 1) you are illiterate and cannot write in English, or 2) the school district's placement would result in physical or serious emotional harm to your child.

(20 U.S.C. section 1412(a)(10)(C); 34 C.F.R. section 300.148; Education Code sections 56175-56177.)

OPPORTUNITY TO PRESENT AND RESOLVE COMPLAINTS

A. STATE COMPLAINT PROCEDURES

The IDEA grants parents an opportunity to present and resolve complaints with respect to any matter relating to the identification, evaluation or educational placement of your child or the provision of a free appropriate public education to your child. Written complaints may be filed with the school district or the state or federal agencies at the addresses listed below. Compliance complaints must allege a violation that occurred not more than one (1) year prior to the date the complaint is received. A copy of the written complaint must also be provided to the school district serving the child at the same time it is filed with the state agency. The school district, state or federal agency has sixty (60) days from the date of receipt of the complaint to render a decision in the matter. For complaints filed with the school district, within fifteen (15) days of receiving the school district's decision, you may appeal the school district's decision to the California Department of Education (CDE). Complaints may also be filed directly with the CDE.

You may also avail yourself of the compliance complaint process to report an instance of discrimination, harassment, intimidation or bullying. A complaint must be filed with the school district no later than six months from the date the incident occurred,

or the date you first obtained knowledge that the incident occurred. The timelines for conducting and completing an investigation of the complaint and rendering a decision are listed in the previous paragraph.

Santa Ana Unified School District
Attn: Dr. Lorraine Perez, Deputy Superintendent
1601 E. Chestnut
Santa Ana, CA 92701
Phone: (714) 558-5832
Fax: (714) 480-5311

California Department of Education
Special Education Division
Procedural Safeguards Referral Service
1430 N Street, Suite 2401
Sacramento, California 95814
Phone: 1-800-926-0648
Fax: (916) 327-3704
http://www.cde.ca.gov/re/cp/uc/index.asp

United States Department of Education
Office for Civil Rights
50 Beale Street, Suite 7200
San Francisco, CA 94105
Phone: (415) 486-5555
Fax: (415) 486-5570
TDD: (800) 877-8339
http://www2.ed.gov/about/offices/list/ocr/index.html

The school district encourages you to file your complaint with the school district. We will meet with you and investigate your complaint in a timely manner and attempt to

resolve any concerns. The school district has established confidential procedures for the filing of complaints. A complaint form is available from the school district. (20 U.S.C. Section 1415(b)(6); 34 C.F.R. section 300.153; Education Code section 56500.2; 5 CCR section 4600.)

B. MEDIATION AND DUE PROCESS HEARING PROCEDURES

The IDEA requires states to establish procedures for mediation and impartial due process hearings regarding the identification, assessment, and educational placement of your child or the provision of a FAPE. You or the school district may file a request for mediation-only or a due process hearing complaint.

Your request for mediation-only or a due process hearing must include the name and address of the child, date of birth, grade level and name of the school the child is attending, parent information, parties to the mediation, a description of the nature of the problem, including facts relating to such problem, and a proposed resolution of the problem. The CDE has developed model forms to assist you in filing a request for mediation-only or a due process hearing. You may access these model forms at:

http://www.dgs.ca.gov/oah/home/forms.aspx

You must serve the mediation-only or due process hearing complaint on the school district and file a copy with the Office of Administrative Hearings at the address listed below:

Office of Administrative Hearings
Attn: Special Education Division
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833-4231
Phone: (916) 263-0880
Fax: (916) 376-6319
SEFilings@dgs.ca.gov

In California, mediation is voluntary. You may request a due process hearing or mediation-only. Mediation-only means you are asking for mediation without asking for a due process hearing. Mediation is an informal proceeding conducted in a nonadversarial manner. If you request mediation-only you and the school district will receive a notice that mediation has been scheduled, and the notice will contain the time, date and location of the mediation as well as the name, address, and phone number of a knowledgeable and impartial mediator assigned to the case. The mediation must be scheduled within 15 days of the Office of Administrative Hearing's receipt of the request. Attorneys cannot attend mediation-only. However, you or the school district may be accompanied and advised by non-attorney representatives. Statements made by you and the school district during mediation are confidential and may not be used in a due process hearing or court action. Any agreement reached during mediation must be in writing and signed by all parties. You may also ask the school district to resolve disputes through alternative dispute resolution (ADR), which is also less adversarial than a due process hearing. ADR and mediation are voluntary methods of resolving a dispute. If the dispute is not resolved during mediation or through ADR, you may proceed to a due process hearing. Mediation or ADR are not prerequisites to requesting a due process hearing.

A due process hearing is a formal proceeding where you and the school district are given the opportunity to present witnesses, documentary evidence, and oral and written argument in support of your respective positions on disputed special education issues. You may request a mediation conference at any point during the due process hearing. A request for a due process hearing must be filed within (2) years from the date you or the school district knew or should have known about the alleged action that forms the basis of the due process hearing complaint. Upon receiving a request for a due process hearing, you and the school district will receive a notice from the Office of Administrative Hearings with the time, date and location of the due process hearing. If your primary language is other than English, or other mode of communication, an interpreter will be provided for you at the hearing.

Prior to the opportunity for an impartial due process hearing, within fifteen (15) days of receiving your due process hearing complaint, the school district is required to convene a mandatory resolution meeting with you and the relevant members of the IEP Team who have specific knowledge of the facts raised in your complaint, where you can discuss your complaint and the facts that form the basis of your complaint, and the school district is provided the opportunity to resolve the complaint. The resolution meeting must include a representative from the school district who has decision making authority on behalf of the school district, but may not include an attorney for the school district unless the parent is also accompanied by an attorney. Attorneys' fees may not be awarded relating to a resolution meeting. Unless the school district agrees, you may not waive the mandatory resolution meeting. If resolution is reached to resolve the complaint at the mandatory resolution meeting, the parties must sign a legally binding agreement. If the school district has not resolved the complaint to your satisfaction within thirty (30) days of the receipt of the complaint, the due process hearing may move forward and all applicable timelines for a due process hearing shall commence.

The due process hearing is limited to those issues raised in your due process hearing complaint. An impartial hearing officer presides over the due process hearing. You have the right to be accompanied and advised by an attorney and by individuals with special knowledge or training related to the problems of children with exceptional needs; the right to present evidence, written and oral arguments; the right to confront, cross-examine and compel attendance of witnesses; the right to a written or electronic verbatim record of the hearing; and the right to written findings of fact and decision.

At least ten (10) days prior to the hearing you and the school district must inform each other of the issues to be decided at the hearing and the proposed resolution of those issues as well as whether the parties will be represented by an attorney at the hearing. At least five (5) business days prior to the hearing you and the school district must disclose all your witnesses and evidence you intend to introduce at the hearing including evaluations completed to the other party, or the witnesses, evidence or evaluations cannot be introduced as evidence at the hearing.

In general, a hearing officer's decision should be made on substantive grounds based on a determination of whether your child received FAPE. The hearing officer must reach a final decision and mail a copy of the written decision to you and the school district within forty-five (45) days of the receipt of the request for a hearing by the Office of Administrative Hearings or State Superintendent of Public Instruction, unless a continuance has been granted for good cause. The decision made in a due process hearing is final, except that any party involved in the hearing may appeal the decision by filing a civil action with respect to the findings and decision in the due process complaint.

(20 U.S.C. sections 1415(b)(7)(a)–1415(j); 34 C.F.R. sections 300.506–300.518; Education Code sections 56500.3, 56502–56507; 5 CCR section 3082.)

CIVIL ACTIONS

Either you or the school district may appeal the hearing officer's decision by filing a civil action. This appeal must be made within ninety (90) days after the date of the decision of the hearing officer. In a civil action, the records and transcription of the administrative proceedings shall be filed with the court. The court may hear additional evidence at the request of either party and must base its decision on the preponderance of the evidence. The action may be filed in the United States District Court or in Orange County Superior Court.

(20 U.S.C. section 1415(i); 34 C.F.R. sections 300.514, 300.516; Education Code section 56505(k).)

ATTORNEYS' FEES

The United States District Court or the Orange County Superior Court has the authority to award you reasonable attorneys' fees if you are the prevailing party in a due process hearing or civil action; or to award the school district reasonable attorneys' fees if your attorney files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or the complaint or subsequent action was filed to harass, cause unnecessary delay, or to needlessly increase the cost of litigation. The fees awarded are based on rates prevailing in the community in which the action or

proceeding arose. No attorneys' fees may be awarded to you following a written offer of settlement from the school district made at least ten (10) days prior to hearing, if the court or hearing officer finds that the relief you ultimately obtained is not more favorable than the written offer of settlement. However, attorneys' fees will not be reduced if you were substantially justified in rejecting the settlement offer, or the school district unreasonably prolonged the proceedings.

You may not be awarded attorneys' fees and related costs if you unreasonably prolonged the final resolution of the controversy or the amount of the fees requested is unreasonable. In addition, attorneys' fees or related costs may not be awarded for attorney time spent attending resolution meetings or IEP Team meetings, unless the IEP team meeting is convened as a result of an administrative proceeding or judicial action.

(20 U.S.C. section 1415(i)(3); 34 C.F.R. section 300.517; Education Code section 56507(b).)

STATE SPECIAL SCHOOLS

The State Special Schools operated by CDE provide services to students who are deaf, hard of hearing, blind, visually impaired, or deaf-blind at each of its three facilities: the California Schools for the Deaf in Fremont and Riverside and at the California School for the Blind in Fremont. Residential and day school programs are offered to students from infancy to age 21 at both State Schools for the Deaf and from ages five through 21 at the California School for the Blind. The State Special Schools also offer assessment services and technical assistance. For more information about the State Special Schools, please visit the California Department of Education Web site at http://www.cde.ca.gov/sp/ss/ or ask for more information from the members of your child's IEP team. (Education Code section 56321.6.)

NOTIFICATION OF RIGHTS REGARDING
USE OF PUBLIC BENEFITS OR INSURANCE

This notice is provided to you as parents, legal guardians, surrogate parents or court appointed educational rights holder, because your child is or may be receiving special education services under the IDEA. The IDEA requires school districts to provide prior written notice of your rights and protections when it seeks to use your child's public benefits (i.e., Medi-Cal) or insurance to pay for special education and related services. This notice will be given to you before the school district seeks to use your child's public benefits or insurance for the first time, and annually thereafter.

With your written consent, the school district may submit claims to your child's public benefits or insurance program, such as the California Medi-Cal program.

The school district cannot require you to sign-up for or enroll in a public benefits or insurance program in order for your child to receive FAPE under the IDEA. The school district cannot require you to pay out-of-pocket expenses such as the payment of a deductible or co-pay. The school district cannot use your child's benefits under a public benefits or insurance program if to do so would (1) decrease available life time coverage or any other insured benefit; (2) 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 school day; (3) increase premiums or lead to the discontinuation of your public benefits or insurance; or (4) cause you to risk loss of eligibility for home and community based waivers based on your total health-related expenditures.
(34 CFR Section 300.154(d)(1)(2)(i)-(v) and (e); Education Code section 56363.5.)

<u>You Have The Right To</u>:

- Voluntarily provide the school district with written consent to disclose educational records containing your child's personally identifiable information such as IEPs or

assessment reports to Medi-Cal, or other public benefits or insurance programs for billing purposes.

- Withdraw your consent to the disclosure of your child's personally identifiable information to Medi-Cal, or other public benefits or insurance programs **at any time** in accordance with your rights under the Family Educational Rights and Privacy Act (FERPA; Title 20 of the United States Code, Section 1232 (g), Title 34 Code of Federal Regulations Part 99) and the IDEA (Title 20 of the United States Code, Section 1400), Title 34 Code of Federal Regulations Part 300).

- Refuse to provide consent to the disclosure of your child's personally identifiable information to Medi-Cal, or other public benefits or insurance programs for billing purposes. Without your consent the school district may not use your or your child's public benefits or insurance.

- Have your child continue to receive a FAPE **at no cost to you**, if you withdraw consent or refuse to provide consent to disclose your child's personally identifiable information to Medi-Cal, or other public benefits or insurance programs for billing purposes.

If you withdraw your consent or refuse to provide consent for the school district to use Medi-Cal or other public benefits or insurance programs to pay for eligible special education and related services, the school district must continue to ensure that all required special education and related services are provided **at no cost to you**.

If you authorize the school district to disclose personally identifiable information, please sign and date the Consent to Disclose Personally Identifiable Information form below, and specify the personally identifiable information the school district may disclose, the purpose of the disclosure, and the agency to which the school district may disclose the information.