



EAST VALLEY SPECIAL EDUCATION LOCAL PLAN AREA

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NOTICE OF PROCEDURAL SAFEGUARDS AND PARENTS' RIGHTS

*Special Education Rights of Parents and Children
Under the Individuals with Disabilities Education Act, Part B
2004 Reauthorization (H.R. 1350)*

INTRODUCTION

This information provides you as parents, legal guardians, persons authorized to make educational decisions, 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 notice is also provided for students who are entitled to these rights at age 18. (20 USC §1415; EC §56321) A copy of these safeguards will be given to you once a year. Additional copies may be given upon an initial referral or parent request for evaluation, upon the first occurrence of the filing of a complaint under Section 615(b) (6) of H.R. 1350, upon provision of an assessment plan to parents and at your request. If your district has a website, a copy of these procedural safeguards may be made available to you through that website. You may elect to receive this notice and other notices required under this section by electronic mail (e-mail) communication, if your district makes such an option available. (H.R. 1350 §615(n))

Individuals with Disabilities Education Act (IDEA)

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

Participation in making decisions about your child's education: You have the right to refer your child for special education services. You must be given opportunities to participate in any decision-making meeting regarding your child's special education program. You have the right to participate in an IEP meeting either in person, by teleconference, written communication and/or by sending a representative to discuss 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 all appropriate program options, and of all available alternative programs, both public and nonpublic.

Additionally, you have the right to make an audio recording of the meeting. The law requires that you notify the district at least 24 hours prior to meeting if you intend to record the proceedings. If the parent or guardian does not consent to the LEA audiotape recording an IEP meeting, the meeting shall not be recorded on an audiotape recorder. (EC §56341.1(g)(1))

Additional Assistance: 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 the Special Education Department can answer questions about your child's education, your rights and procedural safeguards. When you have a concern, this informal conversation often solves the problem and helps maintain open communication. Additional resources are listed at the end of this document to help you understand the procedural safeguards.

NOTICE, CONSENT, ASSESSMENT, AND ACCESS

Prior Written Notice

You have the right to receive a written notice from the school district before decisions affecting your child's special education are put into place. These include decisions to:

- identify your child as a child with a disability, or change your child's eligibility from one disability to another;
- evaluate or reevaluate your child;
- provide a free appropriate public education to your child, or change a component of your child's free appropriate public education;

- place your child in a special education program;
- change your child's special education placement. (20 USC 1415[b]; EC §56500.4) or,
- revoke consent after consenting to the initial provision of services. [34 CFR §300.300(b)(3) and (4), §1415 (c)(1), §1414 (b)(1); 34 CFR §300.503 and 300.9; EC §56329 and §56506(a)]

The school district must inform you about proposed evaluations of your child in a written notice or an assessment plan within fifteen (15) days of your written request for evaluation. The notice must be understandable and in your native language or other mode of communication, unless it is clearly not feasible to do so. [34 CFR §300.304; EC56321]

You also have the right to written notice from the school district if the district refuses your request to take these actions. The Prior Written Notice must include the following:

- a description of the actions proposed or refused by the school district;
- an explanation of why the action was proposed or refused;
- a description of other options considered and the reasons those options were rejected;
- a description of each assessment procedure, test, record or report used as a basis for the action proposed or refused;
- a description of any other factors relevant to the action proposed or refused; and
- a statement that parents of a child with a disability are protected by the procedural safeguards; and,
- sources for parents to contact to obtain assistance in understanding the provisions of this subchapter. (20 USC §1415(b)(3) and (4), §1415(c)(1), §1414(b)(1); 34 CFR §300.503)

Parent Consent

Parents' written approval is required for:

- **First (Initial) Evaluation:** The school 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. The parent has at least fifteen (15) days from the receipt of the proposed assessment plan to arrive at a decision. The assessment may begin immediately upon receipt of the consent and must be completed and an IEP developed within sixty (60) days of your consent not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays. The school district may seek to evaluate your child in special education through a due process hearing, if it believes that is necessary for your child's education. You and the school district may agree to first try mediation to resolve your disagreements. (20 USC §1414(a)(1)(D) and (c); EC §56321(c)(d), §56346, 56506(e)) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child via mediation or a hearing request. (34 C.F.R. §300.300) If a parent of a child who is homeschooled or placed in a private school by the parents at their own expense, does not provide consent for the initial evaluation or the reevaluation or the parent fails to respond to a request to provide consent, the district may not use the due process hearing consent override procedures and is not required to consider the child eligible for services. (34 C.F.R. §300.300)
- **Re-evaluation:** The school district must have your informed written consent before reevaluating your child. However, the school 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. (34 CFR §300.300(c)(1)(ii)) The assessment may begin immediately upon receipt of the consent and must be completed and an IEP developed within sixty (60) days of your consent, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays. Parental consent is not required before reviewing existing data as part of an evaluation or reevaluation or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children. (34 C.F.R. §300.300)
- **Initial Placement in Special Education:** You must give informed written consent before the school district can place your child in a special education program. You can refuse consent for an evaluation, a reevaluation, or 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 a reevaluation. If you refuse to consent to the initiation of services, the school district must not provide special education and related services and shall not seek to provide services through due process procedures. If you consent in writing to the special education and related services for your child but do not consent to all of the components of the IEP, those components of the program to which you have consented must be implemented without delay. The district must make reasonable efforts to obtain informed consent from the parent, for an initial evaluation to determine whether the child is a child with a disability and requires special education and related services. (34 C.F.R. §300.300)
- **Revocation of Consent:** Parents may only revoke consent in writing, and this action is not retroactive. Once the parent revokes consent the district will provide prior written notice and exit the student from all special education services. If in the future the parent seeks reenrollment in special education, the assessment will be treated as an

initial assessment. [34 CFR 300.9] A district may not use a parent refusal to consent to one service or activity to deny the parent or child any other service, benefit, or activity of the public agency, except as permitted by the regulations. (34 C.F.R. §300.300)

➤ **Authorization to Request/Release information:**

To obtain information from outside agencies, consent forms must describe the activity for which consent is sought and list the records (if any) that will be release and to whom. You can revoke consent at any time, except that revocation is not retroactive (does not negate actions that occurred after consent was given and before consent was revoked). (34 CFR §300.500) Written parent consent is not required to release educational information, under certain circumstances. (EC §49076)

➤ **Consent to Bill California Medi-Cal & Release/Exchange information for Health-Related Special Education and Related Services:** School districts may submit claims to California Medi-Cal for covered services provided to Medi-Cal eligible children enrolled in special education programs. The Medi-Cal program is a way for school districts and/or County Offices of Education (COEs) to receive federal funds to help pay for health-related special education and related services. Your consent is voluntary and can be revoked at any time. If you do revoke consent, the revocation is not retroactive. Consent will not result in denial or limitation of community-based services provided outside the school. If you refuse to consent for the school district and/or COE to access California Medi-Cal to pay for health related special education and/or related services, the school district and/or COE is still responsible to ensure that all required special education and related services are provided at no cost to you. As a parent you need to know that:

- You may refuse to sign consent.
- Information about your family and child is strictly confidential.
- Your rights are protected under Title 34, Code of Federal Regulations §300.154; Family Education Rights Privacy Act of 1974 (FERPA); Title 20, United States Code Section 1232(g); Title 34 Code of Federal Regulations Section 99.
- Your consent is good for one year unless you withdraw your consent before that time. Your consent can be renewed annually at the IEP team meeting. Furthermore, as a public agency, the school district may access your public benefits or insurance to pay for related services required under Part B of the IDEA, for a free appropriate public education (FAPE). For related services required to provide FAPE to an eligible student, the school district:
 - May not require you to sign up for or enroll in public benefits or Insurance programs (Medi-Cal) in order for your child to receive FAPE under Part B of the IDEA (3 CFR §300.154(d)(2)(i)).
 - May not require you to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services and reimbursement through Medi-Cal (34 CFR §300.154(d)(2)(ii)).
 - May not use your child's benefits under Medi-Cal if that use would:
 - Decrease available lifetime coverage or any other insured benefit.
 - Result in the family paying for services that would otherwise be covered by the public benefits or insurance programs (Medi-Cal) and are required for your child outside of the time your child is in school.
 - Increase premiums or lead to the discontinuation of public benefits or insurance (Medi-Cal).
 - Risk loss of eligibility for home and community-based waivers, based on aggregate health related expenditures.

Surrogate Parent Appointment: In order to protect the rights of the child, school districts must ensure that an individual is assigned to act as a surrogate parent for the parents of a child with a disability when a parent cannot be identified and the school district cannot discover the whereabouts of a parent. A surrogate parent may be appointed if the child is an unaccompanied homeless youth, an adjudicated dependent or ward of the court under the state Welfare and Institutions Code and the child is referred to special education or already has an IEP. A district must make reasonable efforts to appoint a surrogate within 30 days after determining that a surrogate is needed. (20 USC §1415[b]; EC §56050)

Age of Majority: When your child reaches the age of 18, all rights under Part B of the Individuals with Disabilities Education Act (IDEA) will transfer to your child. The only exception will be if your child is determined to be incompetent under State Law. (34 CFR §300.517 30; EC §56041.5)

Assessment

Nondiscriminatory Assessment: 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 your child's native language or mode of communication, unless it is clearly not feasible to do so. No single procedure can be the sole criterion for determining

eligibility and developing an appropriate education program for your child. (20 USC §1414[a][b]; EC §56001(j) and §56320)

Assessment Plan: When the district is seeking to assess your child, you will be given a written, proposed assessment plan. 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 determine whether the student qualifies for special education services. Upon completion of the assessment the IEP Team will meet to discuss the assessment, the educational recommendations and the reasons for these recommendations. (EC §56329(a)(1)) A copy of the assessment report and the documentation of determination of eligibility will be given to the parent or guardian. (EC §56329 (a)(3))

Limiting Factors on Special Education Eligibility

In making a determination of eligibility for special education and related services, a pupil shall not be determined to be an individual with exceptional needs if the determinant factor for the determination is one of the following:

1. Lack of appropriate instruction in reading, including the essential components of reading instruction as defined in Section 6368(3) of Title 20 of the United States Code.
2. Lack of appropriate instruction in mathematics.
3. Limited-English proficiency.
4. If the pupil does not otherwise meet the eligibility criteria under Section 300.8(a) of Title 34 of the Code of Federal Regulations (EC §56329(a)(2))

Independent Educational Evaluation: If you disagree with the results of the assessment conducted by the school district, you have the right to ask for one independent education evaluation (IEE) for your child, per evaluation conducted by the district, from a person qualified to conduct the assessment, at public expense. The school district must respond to your request for independent educational evaluation and provide you information, upon request, about where to obtain an independent educational evaluation. Alternatively, the school district must request a due process hearing to prove that its assessment was appropriate. The school district must fund the IEE or file for due process “without unnecessary delay.” The school district may ask for parent’s reason(s) why he or she objects to public evaluation, but may not require parent to provide an explanation and may not unreasonably delay a fund or file response. A parent-initiated evaluation whether or not the school district funded, may be shared as evidence by either party in a hearing. (34 C.F.R. §300.502) If the district prevails, you still have the right to an independent assessment but not at public expense. If the IEE is at public expense, the criteria under which the evaluation is obtained must be the same as the school district’s criteria to the extent those criteria are consistent with the parent’s right to the IEE. The school district may not impose any other conditions or timelines on the IEE. The IEP Team must consider independent assessments. (34 C.F.R. §300.502)

If the parent or guardian obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the school district with respect to the provision of free appropriate public education to the child, and may be presented as evidence at a due process hearing regarding the child. (EC §56329(c))

District assessment procedures may allow in-class observation of students. If the school district observed your child in his or her classroom during an assessment, or if the school district would have been allowed to observe your child, an individual conducting an independent educational assessment must also be allowed an equivalent opportunity to observe your child in the classroom.

Access to Educational Records

All parents of a child enrolled in the school district have the right to inspect records under the federal Family Educational Rights and Privacy Act (FERPA), which has been implemented in California under Education Code sections 49060-49079. Under IDEA, parents of a child with disabilities (including noncustodial parents whose rights have not been limited) have the right to review 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.

Parental consent, or the consent of an adult student, is required before personally identifiable information is released to officials of participating agencies providing or paying for transition services related to post secondary goals.

“Education 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, and may include (1) the name of the child, the child’s parent 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 laws 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.

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

The district custodian of the 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 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. Unauthorized access will be denied unless the parent has provided written consent to release the records or the records are released pursuant to a subpoena or court order. The district shall keep a log indicating the time, name and purpose for access of those individuals who are not employed by the school district.

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 school district must provide you with access to records and copies, if requested, within five days after the request has been made 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. (34 C.F.R. §300.610-300.627; 20 USC §1415[b]; EC §56501, §56504, and §49069)

Parents who believe that information in the education records collected, maintained or used by the school district is (among other things) inaccurate, misleading or violates the privacy or other rights of the pupil may request in writing that the school 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 requested, the district shall notify the parent of the right to and provide 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 by the governing board after the hearing that a record will not be amended, the parent shall have the right to provide what he or 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 school district, may contact the District's Custodian of Records. However, the district is required to maintain certain information in perpetuity. (34 CFR §99; CFR §300.561—573; 20 USC §1415 [b](1); 34 CFR §500.567; EC §49070)

Individualized Education Program (IEP)

The public education agency initiates and conducts meetings for the purpose of developing, reviewing and revising the individualized education program of each child with a disability. The IEP documents the child's eligibility for special education services and parents receive a copy of each IEP for their child. The individualized education program (IEP) team conducts these meetings.

When the IEP has been completed and appropriate parental consent has been provided, the IEP is implemented as soon as possible following the IEP team meeting. A copy of the IEP is provided to the parents at no cost. If necessary and at parent request, a copy of the IEP will be provided in the primary language of the parent(s). An individualized family service plan (IFSP) for a child aged three through five may serve as the IEP after a full explanation of the difference and written parent consent. The IEP team must consider the concerns of the parents for enhancing their child's education.

IEP Team Members and Responsibilities

The IEP team includes:

- An administrator or a representative designated by administration who is knowledgeable about program options appropriate for the child and who is qualified to provide, or supervise the provision of special education;
- At least one general education teacher of the child, if the child is, or may be participating, in the general education environment;
- At least one special education teacher of the child, or if appropriate, at least one special education provider of the child; and,
- One or both of the child's parents, individuals selected by the parent, or both.

When appropriate, the IEP team will also include:

- The child, including when the team will discuss transition services;
- Other persons who possess expertise or knowledge necessary for the development of the IEP;
- When the child has been assessed for purposes of developing, reviewing or revising the IEP, a person who has conducted an assessment of the child or who is knowledgeable about the assessment procedures used to assess the child and is familiar with the results of the assessment; and,
- When the child is suspected to have a learning disability, at least one member of the IEP team, other than the child's regular teacher, will be a person who has observed the child's educational performance in an appropriate setting. If the child is younger than five years or is not enrolled in a school, a team member will observe the child in an environment appropriate for a child that age.

A member of the IEP team may be excused from an IEP team meeting, in whole or in part, when the LEA and the parent agree that the attendance of the member is not necessary because the member's area of curriculum or related services is not being modified or discussed at the meeting. When the member's area of curriculum or related services is being modified or discussed at the meeting, a required member of the IEP team may be excused, but only when the LEA and the parent consent to the excusal in writing, and the member submits in writing input into the development of the IEP prior to the meeting. The excusal provisions do not apply to parents, the student or persons with special knowledge or expertise.

If the child does not attend an IEP team meeting where transition services will be discussed, the district will ensure that the child's needs and preferences are considered. The district may invite representatives from other agencies that are likely to be responsible for transition services.

HOW DISPUTES ARE RESOLVED

Alternative Dispute Resolution (ADR)

The East Valley SELPA encourages parents and school staff to work collaboratively to resolve concerns as early and as locally as possible, beginning at the school site then with the school district, and, if needed, with support by the East Valley SELPA. When additional support is needed, the SELPA offers an Alternative Dispute Resolution (ADR) process to promote positive communication and collaboration. ADR provides voluntary, confidential, and free options to help address special education disagreements in a constructive and timely way. These options may include facilitated IEP meetings, informal conferences, or mediation sessions, all focused on building understanding and reaching mutually agreeable solutions that support the students' needs. ADR can be requested by either the parent or the district at any time and does not limit or delay the right to request a due process hearing.

To request ADR or information regarding ADR, please contact the East Valley SELPA at (909) 252-4507, email at evselpa@sbcss.net or go to Parent Resources on the East Valley SELPA website www.eastvalleyselpa.org

California Department of Education (CDE) Constituent Support Services Unit – Constituency Office

The California Department of Education (CDE), Special Education Division's Constituent Support Services Unit assists families by answering special education questions, addressing concerns, and connecting them with the appropriate staff or local resources. The Unit works collaboratively with local SELPA office to help resolve complaints and support positive communication between families and schools. Families may contact the Unit by phone at 1-800-926-0648 (Monday–Friday, 8:00 a.m.–5:00 p.m.) or by email at SEDCO@cde.ca.gov

Family Empowerment Center

Family Empowerment Centers (FECs) provide training and information to families of children and young adults with disabilities, between the ages of 3 and 22 in California. These nonprofit organizations offer specialized training, peer-to-peer support, information and referral services. They aim to assist parents to better understand their child's educational and developmental needs, effectively communicate with service providers, serve as a resource for the IEP process, participate in school reform and improvement activities, promote alternative dispute resolution, and support positive relationships between parents and professionals. Services available through each FEC vary based on the needs of the community. Several FECs are involved with additional federal, state, or local initiatives which expand or specialize their services and support for families with children with disabilities from as early as birth up to age 26.

The local Family Empowerment Center to San Bernardino County is the Early Start Family Resource Network and Family Empowerment Center located at 1365 S. Waterman Ave., San Bernardino, CA 92408. They serve Riverside and San Bernardino Counties and can be reached at (909) 890-4788 or online at www.esfrn.org.

Due Process Hearing

You have the right to request an impartial due process hearing regarding:

- The identification of your child for special education eligibility.
- The assessment of your child.
- The educational placement of your child.
- The provision of a free appropriate public education (FAPE) for your child.

The request for a due process hearing must be filed within two years from the date you knew or had reason to know of the facts that were the basis for the hearing request. (20 U.S.C. §1415)

There is an exception to this timeline if you were prevented from requesting the hearing earlier because:

- a) the district misrepresented that it had resolved the problem.
- b) the district withheld information that should have been provided to you. (H.R.1350 §615(f)(3)(D) 20 USC 1415(f)(3)(D))

Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing, the district must convene a meeting, often referred to as an early resolution session, with the parent and district. The meeting may not include an attorney of the district, unless an attorney accompanies the parent. The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so the district has an opportunity to resolve the dispute that is the basis for the due process complaint. This meeting may not be held if the parent and district agree in writing to waive the meeting or the parent and district agree to use the mediation process. (34 C.F.R. §300.510)

If the parties do not come to an agreement during the early resolution session, the parties can agree to Mediation.

Mediation

Mediation is a voluntary process that allows parents and the school district to resolve disputes in a less adversarial way than a due process hearing. Either party may request mediation at any time, before or after a request for a due process hearing is made. Mediation is free of charge and may not be used to delay your right to a due process hearing. Both the parents and the school district must agree to participate before mediation takes place. A mediator from the Office of Administrative Hearings (OAH) will attend and is a neutral person trained in conflict resolution who helps the parties communicate, clarify issues, and work toward a mutually acceptable agreement. Mediation discussions are confidential, and any agreement reached must be put in writing and signed by both parties. (20 U.S.C. §1415(e); CA Ed. Code §56500.3)

All requests for a mediation shall be filed with the State Superintendent via the Office of Administrative Hearing (OAH). The party initiating a mediation shall provide the other party to the mediation with a copy of the request at the same time the request is filled. All mediation conferences shall be scheduled in a timely manner and held at a time and place reasonably convenient to the parties. If the issues fail to be resolved to the satisfaction of all parties, the party who requested the mediation conference the due process hearing will stay on calendar. (EC §56500.3 and §56503)

Mediation Only

"Mediation Only" is requested through the Office of Administrative Hearings and participation is voluntary. If one of the parties declines the opportunity to participate, the mediation cannot occur. However, either party still has the option of requesting a due process hearing. The law provides that attorneys and other independent contractors who provide legal advocacy services shall not attend or otherwise participate in "Mediation Only". However, they may participate during all stages of the due process procedures. This does not preclude the parent or the public agency from being accompanied and advised by nonattorney representatives in the mediation conferences and consulting with an attorney prior to or following a mediation conference. This means that by requesting "Mediation Only" you may not have an attorney or advocate present at mediation. The OAH will assign your request to a specific mediator. All mediators are under contract with the Office of Administrative Hearings and are experienced in the area of Special Education Law and Mediation. (EC §56500.3(b))

Due Process Rights

You have a right to:

1. Have a fair and impartial administrative hearing at the state level with a person who is knowledgeable of the laws governing special education and administrative hearings (EC §56501[b]);
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 §56505[e]* and *§56043[s]*; *20 USC 1415[b]*);
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. (*EC §56505[e]*);
10. Prohibit the introduction of any evidence at hearing that has not been disclosed to the other party at least five business days before the hearing. (*EC §56505*)
11. Have an interpreter provided at the expense of the California Dept. of Education (*C.C.R. §3082[d]*);
12. Request an extension of the hearing timeline (*EC §56505(f)(3)*);
13. Request a mediation conference at any point during the due process hearing (*EC §56501[b]*); and
14. 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]*)

In any action or proceeding regarding the due process hearing, the court, in its discretion, may award reasonable attorneys' fees as a part of the costs to you as the 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 with the agreement of the parties. (*20 USC §1415[i]*; *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 exceed the prevailing rate in the community for similar services by attorneys of reasonable comparable skill, reputation and experience;
3. The time spent and legal services provided were excessive; or
4. Your attorney did not provide to the school district the appropriate information in the due process request.

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

Attorneys' fees may not be awarded relating to any meeting of the IEP team unless an IEP meeting is convened as a result of a due process hearing proceeding or judicial action. Attorney fees may also be denied if you reject a reasonable settlement offer made by the district/public agency at any time more than 10 days before the hearing begins and the hearing decision is not more favorable than the settlement offer. (*20 USC §1415(d)*)

Attorneys' fees may be awarded to a prevailing party who is a State or Local Education Agency against the attorney of a parent who files a due process request or subsequent cause of action that is frivolous, unreasonable or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable or without foundation. Attorneys' fees may also be awarded to a State or Local Education Agency against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. (*34 CFR §300.517(a)[ii][iii]*)

Filing a Written Due Process Request

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

Office of Administrative Hearings
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833
Phone: (916) 263-0880
Fax: (916) 376-4207
www.dgs.ca.gov/OAH

You need to file a written request for a due process hearing. The written notice shall be kept confidential. You or your representative needs to submit the following information in your request:

1. Name of the child;
2. Address of the residence of the child;
3. Name of the school the child is attending;
4. In the case of a homeless child, available contact information for the child and the name of the school the child is attending; and,

5. A description of the nature of the problem, including facts relating to the problem(s) and a proposed resolution of the problem(s).

Federal and state 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(c))

Federal law also requires the State educational agency to develop a model form to assist parents in filing a complaint and due process hearings in accordance with 20 U.S.C. §1415(b)(8) and can be found on the California Department of Education website at: <https://www.cde.ca.gov/sp/se/qa/documents/sedcomplaintform.pdf>.

Child's Placement While Due Process Proceedings are Pending: According to the "stay put" provision of the law, a child involved in any administrative or judicial proceeding must remain in the current educational placement unless you and the school district agree on another arrangement. If you are applying for initial admission 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 Resolve the Due Process Issue(s): If you choose to file a due process request as explained in the section entitled "Filing a Written Due Process Request," a Resolution Session meeting must be scheduled by the district within 15 days of receiving the notice of your due process request. The purpose of the Resolution Session is to give you opportunity to discuss your due process request and the facts on which you based your filing so that the district has 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 unless you and the school district agree in writing to waive the meeting and use the mediation and/or hearing process. The meeting must include the parents and other members of the IEP team who have specific knowledge of the facts. The district has 30 days from the receipt of the due process request to resolve the due process issues or the due process hearing may occur. These timelines are expedited if you request a hearing regarding pending disciplinary action.

If you fail to participate in the Resolution Session, the district may (after 30 days) seek dismissal of your due process request. If the school district fails to convene or participate in a Resolution Session within 15 days of receiving your due process request, you may ask a hearing officer to begin the due process timeline.

If the parents and the district are unable to resolve the due process issue(s) and the case goes to hearing, 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(i); EC §56505(k))

SCHOOL DISCIPLINE AND PLACEMENT PROCEDURES FOR STUDENTS WITH DISABILITIES

Children with disabilities may be suspended or placed in other alternative interim settings or other settings to the same extent these options would be used for children without disabilities. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct. A manifestation determination IEP amendment meeting will be called to determine the need for a change of placement from the current setting when (1) the administrator has decided to suspend the student for ten or more cumulative days, and/or (2) removal of the student for more than ten consecutive days has been considered. This IEP meeting must take place immediately, if possible, or within ten days of the school district's decision to take this type of disciplinary action. [20 USC §1415(k)] If the district obtains consent for a suspension, longer than 10 days, it must continue to provide special education and services. (20 USC §1415(k)(3)(B)(i); 34 CFR §300.530; 30 EC §48915.5; *Honing vs. Doe*)

As a parent, you will be invited to participate as a member of the IEP Team. The school district must provide you with a written notice of the required action. During the meeting, the team member will discuss the alleged misconduct and the student's relevant disciplinary history, current IEP, educational placement, behavior supports, attendance and health records, and assessment reports on file. They will also consider teacher observations, relevant information provided by the parent/guardian, and other relevant unique circumstances to be considered. From this discussion, the team will make manifestation determination review findings and make recommendations. The options are either not continue with the discipline process and consider possible changes to current IEP or continue with the discipline processes applicable to nondisabled students.

After a student 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

student will receive, as appropriate, a functional behavioral assessment and behavioral interventions which are designed to address the behavior violation so that it does not reoccur.

Placement in an Interim Alternative Educational Setting: Under Federal law, a school district may place a child in an appropriate interim alternative placement for up to forty-five school days under certain circumstances. Those circumstances are when: the child carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a state educational agency or local educational agency; knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a state educational agency or local educational agency; or has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a state educational agency or local educational agency. (34 C.F.R. §300.530(g))

If you request a hearing or an appeal regarding disciplinary action or manifestation determination, your child will stay in the interim alternative setting or disciplinary setting unless the maximum time for that setting is reached, or the parents and school district agree to another placement. (34 CFR §300.526)

Alternative educational settings, when permissible, must allow the child to continue to participate in the general curriculum and receive services designed to address the behavior so it does not recur. (20 USC §1415(k))

If you disagree with the IEP Team's decision, you may request an expedited due process hearing from the Office of Administrative Hearings which must occur within twenty (20) school days of the date on which you requested the hearing. (20 USC §1415(k)(2); 34 CFR §300.531(c)) If you request a hearing or an appeal regarding disciplinary action or manifestation determination, your child will stay in the interim alternative setting unless the maximum of 45 days is reached, another time frame is established by a hearing officer, or the parents and school district agree to another placement. (34 CFR §300.533)

CHILDREN ATTENDING NONPUBLIC OR PRIVATE SCHOOLS

The school district is responsible for the full cost of special education in a nonpublic, nonsectarian school, when the school district, together with the IEP Team, recommends that this would be the appropriate placement for the student. (20 USC §1412(a)(10)(B)(1); CFR §300.146) The district is not obligated to offer a free appropriate public education to a child whose parent(s) have voluntarily enrolled that child in a private school. In such cases, the district will propose an Individual Service Plan for Private School Students. (USC 1412(a)(10)(A)(i); 34 C.F.R. §300.148))

You must notify the district of your intent to place your child in a private school:

- At the most recent IEP meeting you attended before removing your child from the public school; or
- In writing to the school district at least ten business days (including holidays) before removing your child from the public school. (20 USC §1412(a)(10)(C)(iii); 34 CFR §300.148(d)(1); EC §56176)

Children who are enrolled by their parents in private school may participate in publicly funded special education programs. The school district must consult with private schools and with parents to determine the services that will be offered to private school students. Although school districts have a clear responsibility to offer FAPE to students with disabilities, those children, when placed by their parents in private schools, do not have the right to receive some or all of the special education and related services necessary to provide FAPE. (20 USC §1415(a)(10)(A); 34 CFR §300.137 and §300.138; SEC 56173)

If a parent of an individual with exceptional needs who previously received special education and related services under the authority of the school district enrolls the child in a private elementary school or secondary school without the consent of or referral by the local education agency, the school district is not required to provide special education if the district has made FAPE available. 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. (EC §56329(d)) A court or a due process hearing officer may require the school district to reimburse the parent or guardian for the cost of special education and the private school only if the court or due process hearing office find that the school district had not made FAPE available to the child in a timely manner prior to that enrolment in the private elementary school or secondary school and that the private placement is appropriate. (20 USC §1412(a)(10)(C); 34 CFR §300.148; EC §56175)

A court or hearing officer may not reduce or deny reimbursement to you if you failed to notify the school district for any of the following reasons:

- Illiteracy and inability to write;
- 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)(10)(C)(iv); 34 CFR §300.148(e); EC §56177)

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

STATE SPECIAL SCHOOLS

The State Special Schools provide services to students who are deaf, hard of hearing, blind, visually impaired, or deaf-blind at each of its three facilities: the California Schools for the Deaf in Fremont and Riverside; and at the California Schools for the Blind in Fremont. Residential and day school programs are offered to students from infancy to age 21 at both State Special Schools for the Deaf and from ages 5 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.

COMPLAINT PROCEDURES

State Appeal Process

Note: *Complaint procedures in this section are related specifically to the California State Appeal Process and are not the same as the due process request procedures covered earlier in this document.*

You may file a state compliance complaint when you believe that a school district has violated federal or state special education laws or regulations. Your written complaint must specify at least one alleged violation of federal and state special education laws. The violation must have occurred not more than one year prior to the date the complaint is received by the California Department of Education (CDE). When filing a complaint, you must forward a copy of the complaint to the school district at the same time you file a state compliance complaint with CDE. If you are not in agreement with the compliance complaint decision, you have the option of filing an appeal with the CDE to request reconsideration. (34 CFR §300.151-153; 5 CCR §4600; 5 CCR §4665)

If you wish to file a complaint with the California Department of Education, you should submit your complaint in writing to:

**California Department of Education
Special Education Division
Complaint Resolution Unit
1430 N Street Suite 2401
Sacramento, CA 95814-5901**

Within 60 days after a complaint is filed, the California Dept. of Education will: 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.

To obtain more information about dispute resolution, including how to file a complaint, contact the California Department of Education, Special Education Division by telephone at 916-445-4613; by fax at (916) 327-3704; or by visiting the CDE Web site at <http://www.cde.ca.gov/sp/se>.

You may also contact the CDE Constituency Office:

California Department of Education (CDE) Constituent Support Services Unit – Constituency Office

The California Department of Education (CDE), Special Education Division's Constituent Support Services Unit assists families by answering special education questions, addressing concerns, and connecting them with the appropriate staff or local resources. The Unit works collaboratively with local SELPA office to help resolve complaints and support positive communication between families and schools. Families may contact the Unit by phone at 1-800-926-0648 (Monday–Friday, 8:00 a.m.–5:00 p.m.) or by email at SEDCO@cde.ca.gov

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. The district 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.

DISTRICT CONTACT INFORMATION

Please contact the Special Education Director 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 a translation orally, by other means, in a different language or other mode of communication

Colton Joint Unified School District, Educational Services Center	(909) 580-5002
Redlands Unified School District, Special Services	(909) 307-5300
Rialto Unified School District, Student Services	(909) 820-7700 x2371
Rim of the World Unified School District, Special Services	(909) 336-4100 x131
San Bernardino County Schools, East Valley Operations	(909) 386-2770
Yucaipa-Calimesa Joint Unified School District, Student Services	(909) 790-8550 x5301

If you need additional assistance beyond your Local District/County Office or wish general information regarding Special Education within the East Valley Special Education Local Plan Area (SELPA) you may contact the SELPA, at (909) 252-4507, or visit our website at www.eastvalleyselpa.org.