



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

NOTICE OF PROCEDURAL SAFEGUARDS AND PARENTS' RIGHTS

What is the Notice of Procedural Safeguards?

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

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

- 1. When you ask for a copy;*
- 2. The first time your child is referred for a special education assessment;*
- 3. Each time you are given an assessment plan to evaluate your child;*
- 4. Upon receipt of the first state or due process complaint in a school year; and*
- 5. When the decision is made to make a removal that constitutes a change of placement. (20 USC 1415[d]; 34 CFR 300.504; EC 56301[d][2], EC 56321, and 56341.1[g][1])*

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

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

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

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 about the identification

(eligibility), assessment, educational placement of your child and other matters relating to your child's FAPE. (20 USC 1414[d] [1]B - [d][1][D]; 34 CFR 300.321; EC 56341[b], 56343[c])

You also have the right to participate in the development of the IEP and to be informed of the availability of FAPE, including all program options, and of all available alternative programs, both public and nonpublic. (EC 56321, 56301, 56506, and 56341)

Additionally, you have the right to electronically record the meeting on an audio tape recorder. The law requires that you notify the district 24 hours prior to meeting if you intend to record the proceedings. (EC 56321, 56301, 56506, and 56341)

Where can I get more help?

When you have a concern about your child's education it is important that you call or contact your child's teacher or administrators to talk about your child and any problems you see. Staff in 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.

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

NOTICE, CONSENT, ASSESSMENT AND ACCESS

Prior Written Notice

When is notice needed?

The school district must fully inform you about proposed evaluations of your child in a written notice that is understandable and in your native language or other mode of communication, unless it is clearly not feasible to do so. This notice must be given when the school district proposes or refuses to initiate a change in the identification, assessment, or educational placement of your child with special needs or the provision of a free appropriate public education.

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

What will the notice tell me?

The Prior Written Notice must include the following:

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

If the notice is not in regard to an initial referral for assessment, the notice must provide a statement that you have protection under procedural safeguards; information on how you can obtain a copy of described procedural safeguards; and sources of additional assistance in understanding the procedural safeguards.

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

Parent Consent

When is my approval required for assessment?

You have the right to refer your child for special education services. You must give informed, written consent before your child's first special education assessment can proceed. You have at least fifteen (15) days from the receipt of the proposed assessment plan to arrive at a decision. The assessment may begin immediately upon receipt of the consent and must be completed and an IEP developed within sixty (60) days of your consent.

What are the procedures when a parent does not provide consent?

If you do not provide consent for an initial assessment or fail to respond to a request to provide the consent, the school district may pursue the initial assessment by utilizing due process procedures. If you refuse to consent to the initiation of services, the school district must not provide special education and related services and shall not seek to provide services through due process procedures.

If you wish to revoke your consent to placement in special education, after having consented in the past, you must do so in writing. Once you have revoked consent, the District will provide you with prior written notice and will then cease all special education services. If, following your child's withdrawal from special education, your child violates a code of student conduct, the District will not be required to convene an IEP meeting to determine if the behavior was a manifestation of a disability. If, following your child's withdrawal from special education, you elect to seek re-enrollment in special education, the request will be treated as an initial referral and may, therefore, require a new assessment.

If you consent in writing to the special education and related services for your child but do not consent to all of the components of the IEP, those components of the program to which you have consented must be implemented without delay. If the school district determines that the proposed special education program component to which you do not consent is necessary to provide a free appropriate public education to your child, a due process hearing must be initiated. If a due process hearing is held, the hearing decision shall be final and binding. In the case of reevaluations, the school district must document reasonable measures to obtain your consent. If you fail to respond, the school district may proceed with the reevaluation without your consent. *(20 USC 1414[a][1][D] and 1414[c]; 34 CFR 300.300; EC 56506[e], 56321[c] and [d], and 56346)*

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 also be appointed if the child is an unaccompanied homeless youth, an adjudicated dependent or ward of the court under the state Welfare and Institution Code, and is referred to special education or already has an IEP. *(20 USC 1415[b][2]; 34 CFR 300.519; EC 56050; GC 7579.5 and 7579.6)*

NOTICE, CONSENT, ASSESSMENT AND ACCESS (continued)

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)

Independent Educational Evaluation

If you disagree with the results of the assessment conducted by the school district, you have the right to ask for and obtain an independent education evaluation (IEE) for your child, from a person qualified to conduct the assessment, at public expense. The parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. The school district must respond to your request for independent educational evaluation and provide you information, upon request, about where to obtain an independent educational evaluation.

If the school district disagrees that an independent evaluation is necessary, the school district must request a due process hearing to prove that its assessment was appropriate. If the district prevails, you still have the right to an independent assessment but not a public expense. The IEP Team must consider independent assessments. District assessment procedures allow in-class observation of students. If the school district observes your child in his or her classroom during an assessment, or if the school district would have been allowed to observe your child, an individual conducting an independent educational assessment must also be allowed to observe your child in the classroom. If the school district proposes a new school setting for your child and an independent educational assessment is being conducted, the independent assessor must be allowed to first observe the proposed new setting. (20 USC 1415[b][1] and [d][2][A]; 34 CFR 300.502; EC 56329[b] and [c])

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[b][1] - [3], 1412[a][6][B]; 34 CFR 300.304; EC 56001[j] and 56320)

Access to Educational Records

You have a right to inspect and review all of your child's educational records without unnecessary delay, including prior to a meeting about your child's IEP or before a due process hearing. The school district must provide you access to records and copies, if requested, within five business 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. (EC 49060, 56043[n], 56501[b][3], and 56504)

HOW DISPUTES ARE RESOLVED

Informal Dispute Resolution (IDR)

Informal Dispute Resolution or “IDR” is a voluntary, optional dispute resolution process available to parents. IDR is a District process that is designed to be faster, less formal and less adversarial than mediation and due process proceedings. In the IDR process, parents identify their issues and concerns and the District attempts to work with the parent to quickly resolve the issues identified.

If you want to use the IDR process to resolve a disagreement regarding your child’s IEP, ask for a meeting with the IEP administrator/designee to discuss your issues and concerns in more detail.

The meeting with the IEP administrator/designee should take place after the IEP team meeting is completed. During the meeting you will work with the IEP administrator/designee to complete the form entitled “A Request for Informal Dispute Resolution (IDR)– IDR Form A.” After IDR Form A is completed, it is submitted to the District’s Special Education Department. Within a few business days you will be contacted by a District administrator to schedule a meeting to discuss a resolution of the disagreement.

You will be provided with documentation of the resolution activity during the IDR process. If an agreement is reached during the IDR process, the terms of the agreement may be put into writing. If an agreement is not reached, you may initiate due process proceedings.

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 USC 1415[b][6]; 34 CFR 300.507; EC 56501 and 56505[1])

Mediation

A request for mediation may be made either before or after a request for a due process hearing is made. You may ask the school district to resolve disputes through mediation, which is less adversarial than a due process hearing. Mediation is a voluntary method of resolving a dispute and may not be used to delay your right to a due process hearing. The parents and the school district must agree to try mediation before mediation is attempted. A mediator is a person who is trained in strategies that help people come to agreement over difficult issues.

Pre-hearing mediation conference

You may seek resolution through mediation prior to filing a request for a due process hearing. The conference is an informal proceeding conducted in a nonadversarial manner to resolve issues relating to the identification, assessment, or educational placement of a child or to a FAPE. At the prehearing mediation conference, the parent or the school district may be accompanied and advised by nonattorney representatives and may consult with an attorney prior to or following the conference. However, requesting or participating in a prehearing mediation conference is not a prerequisite to requesting a due process hearing. All requests for a prehearing mediation conference shall be filed with the Superintendent. The party initiating a prehearing mediation conference by filing a written request with the Superintendent shall provide the other party to the mediation with a copy of the request at the same time the request is filed. The prehearing mediation conference shall be scheduled within fifteen (15) days of receipt by the Superintendent of the request for mediation and shall be completed within thirty (30) days after receipt of the request for mediation unless both parties agree to extend the time. If a resolution is reached, the parties shall execute a legally binding written agreement that sets forth the resolution. All discussions during the mediation process shall be confidential. All prehearing mediation conferences shall be scheduled in a timely manner and held at a time and place reasonably convenient to the parties. If the issues fail to be resolved to the satisfaction of all parties, the party who requested the mediation conference has the option of filing for a due process hearing. (EC 56500.3 and 56503)

Due Process Rights

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 (20 USC 1415[f][1][A], 1415[f][3][A] - [D]; 34 CFR 300.511; EC 56501[b][4];
2. Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities (EC 56505[e][1];
3. Present evidence, written arguments, and oral arguments (EC 56505[e][2];
4. Confront, cross-examine, and require witnesses to be present (EC 56505[e][3];
5. Receive a written or, at the option of the parent, an electronic verbatim record of the hearing, including findings of fact and decisions (EC 56505[e][4];
6. Have your child present at the hearing (EC 56501[c][1]);

HOW DISPUTES ARE RESOLVED (continued)

7. Have the hearing be open or closed to the public (*EC 56501[c][2]*);
8. Receive a copy of all documents, including assessments completed by that date and recommendations, and a list of witnesses and their general area of testimony within five (5) business days before a hearing (*EC 56505[e][7]* and *56043[v]*);
9. Be informed by the other parties of the issues and their proposed resolution of the issues at least ten (10) calendar days prior to the hearing (*EC 56505[e][6]*);
10. Have an interpreter provided at the expense of the California Dept. of Education (*CCR 3082[d]*);
11. Request an extension of the hearing timeline (*EC 56505[f][3]*);
12. Have a mediation conference at any point during the due process hearing (*EC 56501[b][2]*); and
13. Receive notice from the other party, at least ten days prior to the hearing that it intends to be represented by an attorney (*EC 56507[a]*). (*20 USC 1415[e]*; *34 CFR 300.506, 300.508, 300.512 and 300.515*)

Filing a Written Due Process Complaint

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

Office of Administrative Hearings
Attention: Special Education Division
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833-4231

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

State law requires that either party filing for a due process hearing must provide a copy of the written request to the other party. (*20 USC 1415[b][7]*, *1415[c][2]*; *34 CFR 300.508*; *EC 56502[c][1]*)

Prior to filing for a due process hearing, the school district shall be provided the opportunity to resolve the matter by convening a resolution session, which is a meeting between the parents and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process hearing request. (*20 USC 1415[f][1][B]*; *34 CFR 300.510*)

Resolution sessions shall be convened within fifteen (15) days of receiving notice of the parents' due process hearing request. The sessions shall include a representative of the school district who has decision-making authority and not include an attorney of the school district unless the parent is accompanied by an attorney. The parent of the child may discuss the due process hearing issue and the facts that form the basis of the due process hearing request. The resolution session is not required if the parent and the school district agree in writing to waive the meeting. If the school district has not resolved the due process hearing within thirty (30) days, the due process hearing may occur. If a resolution is reached, the parties shall execute a legally binding agreement. (*20 USC 1415[f][1][B]*; *34 CFR 300.510*)

The child involved in any administrative or judicial proceeding must remain in the current educational placement unless you and the school district agree on another arrangement. If you are applying for initial admission of your child to a public school, your child will be placed in a public school program with your consent until all proceedings are completed. (*20 USC 1415[j]*; *34 CFR 300.518*; *EC 56505[d]*)

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]*; *34 CFR 300.518*; *EC 56505[d]*)

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][2]* and *[3][A]*, *1415[i]*; *34 CFR 300.516*; *EC 56505[h]* and *[k]*, *EC 56043[w]*)

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 made following the conclusion of the administrative hearing with the agreement of the parties. (*20 USC 1415[i][3][B]* - *[G]*; *34 CFR 300.517*; *EC 56507[b]*)

SCHOOL DISCIPLINE AND PLACEMENT PROCEDURES FOR STUDENTS WITH DISABILITIES

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 notice.

Attorneys' fees will not be reduced, however, if the court finds that the state or the school district unreasonably delayed the final resolution of the action or proceeding or that there was a violation of this section of law.

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

Attorneys' fees 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 ten days before the hearing begins and the hearing decision is not more favorable than the settlement offer. *(20 USC 1415[i][3][B] - [G]; 34 CFR 300.517)*

School Discipline and Alternative Interim Educational Settings

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct from his or her setting to:

1. An appropriate interim alternative education setting, another setting, or suspension for not more than ten (10) consecutive school days; and
2. Additional removals of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct

After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal the public agency must provide services to enable the child to continue to participate in the general education curriculum and progress toward meeting the goals set out in the child's IEP.

Also, a child will receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not recur.

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

As a parent you will be invited to participate as a member of this IEP team. The school district may be required to develop an assessment plan to address the misconduct or, if your child has a behavior intervention plan, review and modify the plan as necessary.

If the IEP team concludes that the misconduct was not a manifestation of the child's disability, the school district may take disciplinary action, such as expulsion, in the same manner as it would for a child without a disability. *(20 USC 1415[k][1] and [7]; 34 CFR 300.530)*

If you disagree with the IEP team's decision, you may request an expedited due process hearing, which must occur within twenty (20) school days of the date on which you requested the hearing. *(20 USC 1415[k][2]; 34 CFR 300.531[c])*

Regardless of the setting the school district must continue to provide FAPE for your child. Alternative educational settings must allow the child to continue to participate in the general curriculum and ensure continuation of services and modifications detailed in the IEP. *(34 CFR 300.530; EC 48915.5[b])*

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 has carried a weapon or has knowingly possessed or used illegal drugs or sold or solicited sale of controlled substances at school or a school function or has inflicted serious bodily injury upon another person. Although the interim alternative placement does not require parent consent, the IEP Team must review the placement in order to assure that the child will receive appropriate services in the alternative setting. *(20 USC 1415[k])*

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 school days is reached, another time frame is established by a hearing officer, or the parents and school district agree to another placement. *(34 CFR 300.526)*

CHILDREN ATTENDING PRIVATE SCHOOL

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

When the parent unilaterally places the student in a private or nonpublic, nonsectarian school without district consent or referral of a court or hearing officer, the district may only be required to reimburse the parent if their child received special education and related services under the authority of a public agency before enrolling in the private school and the court or hearing officer finds that the school district did not make a free and appropriate education available in a timely manner. *(20 USC 1412[a][10][C]; 34 CFR 300.148; EC 56175)*

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.

You must give notice to the district either:

- 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]; 34 CFR 300.148; EC 56176)

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]; 34 CFR 300.148; EC 56177)

State Special Schools

The California Schools for the Deaf and the Blind are State Special Schools of the California Department of Education. The Schools for the Deaf are established regionally in Riverside and Fremont. The Schools for the Deaf are intended to serve students who require specialized or intensive educational or related services related to their hearing loss. The School for the Blind provides intensive, disability specific, educational services for students who are blind, visually impaired, deaf/blind, and visually impaired/multi-disabled, for students whose primary learning needs are related to their visual impairment. Each school provides a comprehensive residential and non-residential educational program composed of academic, non-academic and extracurricular activities. The purpose of the residential programs is to permit enrollment by students who live too far away to attend as day students. In addition, the schools provide assessment, consultation and technical assistance, professional development, advocacy, and outreach. The California Education Code requires that parents must be referred by their local school district. When considering placements in State Special Schools, this referral occurs as part of the IEP process. *(EC 56321.6)*

COMPLAINT PROCEDURES

The District Compliance Officer will assist you in resolving any complaint involving possible violations of IDEA and Section 504 of the Rehabilitation Act of 1973. The Compliance Officer also is able to assist you in preparing your complaint in writing and to provide the information required by law. The Compliance Officer will refer you to other agencies responsibility for the investigation and resolution of complaints when appropriate.

District Compliance Officer

Mr. Timothy R. Walker, M.Ed., Ed.S.

Assistant Superintendent
Pupil Services/SELPA

Riverside Unified School District
5700 Arlington Ave.
Riverside, California 92541

Phone: 951-352-1200 Ext. 83056
FAX: 951-328-2511

Custodian of Records

Gary McGuire, Ed. D.

Director
Pupil Services/SELPA

Riverside Unified School District
5700 Arlington Ave.
Riverside, California 92504

Phone: 951-352-1200
FAX: 951-274-4202

You may file a state compliance complaint when you believe that a school district has violated federal or state special education laws or regulations. Your written complaint must specify at least one alleged violation of federal and state special education laws. The violation must have occurred not more than one year prior to the date the complaint is received by the California Department of Education (CDE) When filing a complaint, you must forward a copy of the complaint to the school district at the same time you file a state compliance complaint with the CDE. Within sixty days after a complaint is filed, the CDE will carry out an independent investigation. (*34 CFR 300.151–153; 5 CCR 4600; 34 CFR 300.152 (a)(1)*)

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

Complaints of discrimination under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act may be initiated by filing a complaint with the school district or these complaints may be filed directly with the Regional Director for Civil Rights, Region IX, 50 United Nations Plaza, San Francisco, CA 94102-4987.

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 compliance officer and attempt to resolve your complaint informally before a complaint is filed. He will maintain confidentiality as permitted by law. If your complaint cannot be resolved, a formal investigation will be initiated or you will be referred to the appropriate agency for assistance.