



KERN HIGH SCHOOL DISTRICT

SPECIAL EDUCATION LOCAL PLAN AREA

Parental Rights and Procedural Safeguards for Special Education

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PLEASE KEEP THIS EXPANDED VERSION OF THE RIGHTS FOR FUTURE REFERENCE

OVERVIEW

The notice of Parental Rights and procedural Safeguard (LEA) and other public agencies has an obligation to seek out children with disabilities between birth and age 21. A child with a disability is one who has been identified by an Individualized Education Program (IEP) Team as having one of thirteen disabling conditions which are defined in federal regulation, who because of the disability needs special education and related services to benefit from education and who meets state eligibility criteria. A child with a disability has a right to participate in a free appropriate public education. Children with disabilities are offered programs that provide for maximum interaction with children who are not disabled in a manner that is appropriate to the needs of both. When a child no longer requires special education services to benefit from education, an assessment and (IEP) Team meeting will be conducted prior to discontinuing special education services.

No child is required to participate in special education and related services unless the parent is first informed in writing of the facts making participation necessary or desirable and of the contents of the Individualized Education Program (IEP) and gives written approval for all or part of the IEP

DEFINITIONS

- § "Consent" means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in the primary language, or other mode of communication of the parent. The parent understands and agrees in writing to the carrying out of the activity for which the consent is sought and the consent describes that activity including lists of the records (if any) that will be released and to whom. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
- § "Personally identifiable" means information that includes the name of the child, the child's parent or other family members, address of the child, a personal identifier such as the child's social security number or student number, or a list of personal characteristics or other information that could make it possible to identify the child with reasonable certainty.
- § "Evaluation" (also called assessment) means procedures used to determine whether a child has disabilities and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and do not include basic tests administered or procedures used with all children in a school grade or class.
- § "Independent educational evaluation" means an evaluation (assessment) conducted by a qualified examiner who is not employed by the Local Educational Agency (LEA) responsible for the education of the child in question.
- § "Public expense" means that the LEA either pays for the full cost of the evaluation or ensures that it is otherwise provided at no cost to the parent.

PARENT CONSENT

Written parent consent is required before the child is assessed, placed in a special education program, and for the implementation of all or part of the Individualized Education Program (IEP). A LEA may not require parental consent as a condition of any benefit to the parent or child except for the service or activity for which consent is required. The LEA can file for a due process hearing to override a parent's refusal to consent to the assessment or placement of their child for special education and related services.

When a child with a disability reaches age 18 (unless determined to be incompetent by appropriate authorities), the school district must provide any required notices to both the individual with disabilities and the parents. All rights transfer to the child at the age of majority. The school district must notify the individual and the parents of this transfer at least one year before. If a child with a disability has reached age 18 and has not been determined to be incompetent, but is determined not to have the ability to provide informed consent, the school district shall follow the state procedures for appointing an appropriate individual to represent the educational interest of the child. All rights of youth incarcerated in adult or juvenile federal, state, or local correctional institutions transfer to the youth.

A parent or student aged 18 or older may revoke consent for special education services by providing a written request to the school or site where services are provided. The district will respond with a "Prior Written Notice" form and then halt services. At that time the student is fully considered a general education student.

PRIOR NOTICE TO PARENTS

The LEA must provide prior written notice to parents of a child with disabilities a reasonable time before they propose or refuse to initiate or change, the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education which includes:

- § Full explanation of all the procedural safeguards available to parents which is included in this notice;
- § Description of the action proposed or refused by the LEA with an explanation of why the agency proposes or refuses to take the action, and a description of other actions considered and why those options were rejected;
- § Description of each assessment procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and
- § Description of any other factors which are relevant to the agency's proposal or refusal.
- § Parents can obtain assistance in understanding their rights and procedural safeguards from the Program Specialist of their child's school attendance, the SELPA Director at (661) 827-4529, or the California Department of Education in Sacramento.

The notice is written in a language understandable to the general public, and is provided in the primary language of the parent or other mode of communication used by the parent (i.e., sign language or Braille), unless it is not feasible to do so. If the primary language is not a written language, the state or local agency (LEA) will translate the notice orally or by other means of communication to ensure that the parent understands the content of the notice. The LEA will keep written evidence that they have met these requirements.

SURROGATE PARENTS

Each LEA will ensure that an individual is assigned to act as a surrogate parent for the parents of a child when no parent can be identified, and the LEA, after reasonable efforts, cannot discover the whereabouts of a parent, or the child is an adjudicated dependent or ward of the court under the Welfare and Institutions Code and the child is referred to special education or already has an IEP. A surrogate parent is not appointed for a child who is dependent or ward of the court unless the court specifically limits the right of the parent or guardian to make educational decisions for the child or the child has reached the age of majority. The LEA has procedures for determining whether a child needs a surrogate parent, and for assigning a surrogate parent for the child. The LEA may select a surrogate parent in any way permitted under State law but must ensure that a person selected as a surrogate is not an employee of a LEA which is involved in the education or care of the child, has no interest that conflicts with the interest of the child he or she represents, and has knowledge and skills that ensure adequate representation of the child. (Payment by the agency to serve as a surrogate parent does not make the surrogate an agency employee). A surrogate parent serves as the child's parent and has the same rights regarding educational decisions as a parent—specifically in matters regarding identification, assessment, instructional planning and development, educational placement, reviewing and revising the IEP, and the provision of a free, appropriate public education.

EVALUATIONS

Participation In General Education Assessments

Children with disabilities must be included in general state and district wide assessments with accommodations as needed.

Individual Assessment

A child is assessed in all areas related to the suspected disability to determine the need for special education instruction and related services. Whenever an assessment for the development of the IEP is to be conducted, the parent is given a proposed assessment plan in writing within 15 days of the referral. Assessment of the child occurs only after the parent gives permission. Parents have 15 days from the receipt of the proposed assessment plan to give consent to the assessment. An IEP Team meeting will be held to discuss the assessment and the educational recommendations.

When an assessment determines that a child is emotionally disturbed and residential placement is recommended, the IEP Team expands to include a representative of the County Mental Health Department. The IEP will be reviewed by the IEP Team, including the Mental Health representative, at least every six months.

An evaluation will be conducted before determining a child is no longer eligible for special education.

Parents have the right to:

- § Initiate for educational assessment (referral) and give or withhold written consent for any proposed assessment activities (unless the LEA is successful in a due process hearing).
- § Receive an assessment plan explaining the types of assessments to be conducted in language easily understood by the general public and have 15 calendar days in which to give or withhold consent for assessment.
- § An assessment plan in the primary language of the parent or other mode of communication unless clearly not feasible.
- § Obtain information regarding availability of independent assessments.
- § Obtain an independent outside assessment at public expense under certain conditions. Procedures for obtaining such assessments are outlined in Independent Education Assessment (Evaluation) section.

- \$ Present information including the results of independent assessments for consideration by the LEA.
- \$ An assessment that is designed to be free of racial, cultural, or sexual discrimination and in the child's primary language.
- \$ Tests and other assessment materials that have been validated for the specific purpose for which they are used, are administered by trained personnel, and are tailored to assess specific areas of educational need.
- \$ Have a description of the procedures and assessments to be used and to be fully informed of the assessment results. Parents will be provided with a copy of assessment results. No placement or services will commence without the parent's consent.
- \$ Give written consent for the release of any confidential information.

No single procedure is used as the sole criterion for determining an appropriate educational program.

Parents will be informed of their child's progress at least as often as parents of non-disabled children.

Three-Year Reevaluations

A child with disabilities will be reevaluated if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, or at least once every three years. The IEP Team shall review existing data on the child, including evaluations and information provided by the parent to determine what additional data, if any, is needed to determine: 1) whether child continues to have a disability, 2) the present levels of performance, 3) whether child continues to need special education services, and 4) whether any additions or modifications to the special education services are needed to enable the child to meet the measurable annual goals in the IEP and to appropriately participate in the general curriculum. Parents will be notified if staff believes existing data only can be used to make the required determinations. If parents disagree with the use of existing data, only they have a right to request further assessment.

A reevaluation can be conducted without parent consent if the school district has taken reasonable measures to obtain such consent, and the parents have failed to respond.

Independent Education Assessment (Evaluation)

Parents have the right to:

- \$ Information, upon request, about where an independent educational evaluation may be obtained.
- \$ Obtain an independent educational assessment (evaluation) of their child at public expense if the parent disagrees with an assessment (evaluation) obtained by the LEA. However, the LEA may initiate due process to show its assessment was proper. If the final decision is that the LEA assessment is appropriate, the parent still has the right to an independent educational assessment, but not at public expense. If the parent obtains an independent educational assessment at private expense, the results of the assessment must be considered by the LEA in any decision made with respect to the provision of a free, appropriate public education to the child, and may be presented as evidence at a due process hearing regarding the child.
- \$ If a hearing officer requests an independent educational assessment as part of a hearing, the cost of the assessment must be at public expense. Each LEA will provide to parents, on request, information about where an independent educational assessment may be obtained. Whenever an independent assessment is at public expense, the criteria under which the assessment is obtained, including the location of the assessment and the qualifications of the examiner, must be the same criteria which the LEA uses when it initiates and conducts an assessment.
- \$ District assessment procedures allow in-class observation of students. If 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.

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. These meetings are conducted by the Individualized Education Program (IEP) Team.

When a parent requests a meeting of the IEP Team to review the IEP, the meeting will be held within 30 days from the date of receipt of the parent's written request, not counting school breaks of more than five days. An IEP developed as a result of assessment is developed within 60 days of the consent for assessment, unless the parent agrees in writing to an extension. The person who conducted the assessment or who is knowledgeable about assessment procedures and the results of the assessment given to the child for the purpose of developing, reviewing, or revising the IEP must be present at the meeting. When the IEP, has been completed, it is implemented as soon as possible following the IEP Team meeting. A copy of the IEP is provided to the parents at no cost, and if necessary, a copy of the IEP will be provided in the primary language of the parent(s), at the request of the parent(s).

An Individualized Family Service Plan (IFSP) a child aged three through five may serve as the IEP after a full explanation of the difference and parent written consent. The IEP Team must consider the concerns of the parents for enhancing the education of their child.

IEP Team Members And Responsibilities

The IEP Team includes:

- \$ An administrator or a representative (other than the child's teacher) 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;
- \$ The child's present teacher. If the child does not have a teacher, this representative will be a teacher with the most recent and complete knowledge of the child who has also observed the child's educational performance in an appropriate setting. If no such teacher is available, the representative will be a regular classroom teacher referring the child, or a special education teacher qualified to teach a child of his or her age; 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;
- \$ 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 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.

Each LEA must take steps to make sure that parents have an opportunity to participate in meetings about the IEP including ensuring that: There is early enough notification to parents so that they can attend; and scheduling occurs at a mutually agreed on time and place. The notice will indicate the purpose, time, and location of meeting and who will attend. The LEA will arrange for an interpreter as necessary.

The IEP Team:

- \$ Reviews assessment results;
- \$ Determines eligibility;
- \$ Determines the content of the IEP;
- \$ Considers local transportation policies and criteria; and
- \$ Makes a program placement decision;
- \$ Reviews the provision of a free, appropriate public education;
- \$ Can modify the IEP of a youth convicted and incarcerated as an adult.

The IEP Team meets whenever:

- \$ The child has received an initial formal assessment and may meet whenever he or she receives any subsequent formal assessment;
- \$ The child demonstrates a lack of anticipated progress;
- \$ The parent or teacher requests a meeting to develop, review, or revise the IEP; and
- \$ At least annually to review the child's progress, the IEP and the appropriateness of placement, and to make any necessary revisions.

Individualized Education Program (IEP)

Parents have the right to:

- \$ Receive notice of the IEP meeting in the parent's primary language or other mode of communication unless it is clearly not possible to do so.
- \$ Participate in the development of the IEP and to be informed of the availability of free and appropriate public education.
- \$ Be informed of the purpose of the IEP meeting, assessment results, recommendations, and rationale for the recommendations.
- \$ Be notified prior to, and to participate in and/or be represented at meeting(s), and to present information at the meeting. The student has the right to participate in the meeting(s) as appropriate.
- \$ Have the meeting and Individualized Education Program within 50 calendar days from date of receipt of signed consent for assessment (not counting school breaks of more than five days, and the days between school sessions or term days as specified on the district calendar).
- \$ Be informed of program options.
- \$ Have the meeting conducted with an interpreter in the parent's primary language/communication mode and to request and receive a copy of the IEP in the parent's language unless it is clearly not feasible to do so.
- \$ Give written consent for the initial special education placement and Individualized Education Program or revoke consent at any time.
- \$ Have a review of the Individualized Education Program at least annually; or within 30 days of a written request by the parent or teacher to develop, review, or revise the IEP, or when the student demonstrates a lack of anticipated progress, or when a student receives any subsequent formal reassessment/reevaluation or prior to any change of placement including suspension of more than 10 days in any school year.
- \$ Appeal the decision of the IEP by the due process hearing procedure concerning the identification, evaluation, educational placement, or provision for a free, appropriate educational program.

- \$ Be informed that parental permission is required for initial placement in special education and that all parent consents are voluntary and may be withdrawn at any time.
- \$ Participation in an IEP meeting preceding the commencement of expulsion proceedings.
- \$ Have their child considered for education programs other than on state hospital grounds.
- \$ Electronically record the proceedings of an IEP meeting with an audio tape recorder with 24 hours notice to IEP Team members.

Contents Of The Individualized Education Program

The IEP shows a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. The Individualized Education Program (IEP) includes, but is not limited to, all of the following:

- \$ The present levels of the child's educational performance;
- \$ The annual goals, including short-term instructional objectives;
- \$ The specific educational instruction and related services required by the child;
- \$ The extent to which the child will be able to participate in regular education programs;
- \$ The projected date for initiation and the anticipated duration of such programs and services;
- \$ Appropriate objective criteria, assessment procedures, and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved; and
- \$ A statement of the needed transition services for children beginning no later than age 16 and annually thereafter (and, when determined appropriate for the child, beginning at age 14 or younger), including, when appropriate, a statement of the interagency responsibilities or linkages (or both) before the child leaves the school setting.

When appropriate, the IEP will also include, but not be limited to, all of the following:

- \$ Pre-vocational career education for children in kindergarten and grades 1 to 6;
- \$ Vocational education, career education or work experience education, or any combination of these, in preparation for paid employment, including independent living skill training for children in grades 7 to 12;
- \$ For children whose primary language is other than English, linguistically appropriate goals, objectives, programs and services;
- \$ Extended school year services when needed, as determined by the IEP Team;
- \$ Provision for the transition into the regular class program if the child is to be transferred from a special class or center, or nonpublic, nonsectarian school into a regular class in a public school for any part of the school day; and
- \$ Appropriate specialized services, materials, and equipment for students with low incidence disabilities.

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 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.

CONFIDENTIAL RECORDS

Access To Records

The LEA will not permit access to any child's records without written parental permission except as follows:

- \$ Local school officials and employees who have a legitimate educational interest including a school system where the child intends to enroll;
- \$ Certain state and federal officials for audit purposes;
- \$ To certain law enforcement agencies for purpose listed in Education Code and Federal law; and
- \$ A pupil 16 years of age or older, or having completed the 10th grade, who requests access.

The LEA may release information from the student's records for the following:

- \$ In cases of emergency when the knowledge of such information is necessary to protect the health or safety of the child and/or others;
- \$ To determine the child's eligibility for financial aid;
- \$ To accrediting organizations to the extent necessary to their function;
- \$ In cooperation with organizations conducting studies and research that does not permit the personal identification of children or their parents by persons not connected with the research and provided that their personally identifiable information is destroyed when no longer needed;
- \$ To officials and employees of private schools or school systems in which the child is enrolled or intends to enroll.

Parents have the opportunity to inspect and review all education records that relate to their child with respect to the identification, assessment, and educational placement of the child and the provision of a free, appropriate public education, which are collected, maintained, or used by the agency. Each agency permits parents access to records without unnecessary delay no more than 5 days

after the request has been made. This includes access to and confidentiality of public records, including LEAs educating pupils with disabilities in state hospitals, developmental centers, and youth and adult facilities. The LEA may not charge a fee for retrieval of information.

Parents have a right to:

- § Receive notice regarding records in their native language on policies, procedures, and rights related to record-keeping including the family Educational Rights and Privacy Act of 1974 (FERPA).
- § Review records without unnecessary delay before a meeting for hearing, and within five (5) days of the request for records.
- § A response from the participating agency to reasonable requests for explanations and interpretations of the records.
- § Have a representative of the parent inspect and review the records, and
- § Receive copies of records within five (5) days of an oral or written request.
- § A school district may charge no more than actual cost of reproducing such records but only if such cost does not prevent the parent from exercising the right to receive the records.

An agency may charge a fee for copies of records that are made for parents if the fee does not prevent the parents from exercising their right to inspect and review these records. An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable state laws. Each LEA keeps a record of parties who obtain access to education records collected, maintained, or used including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. If any education record includes information on more than one child, the parents shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

Amendment Of Records At Parent Request

Parents have the right, on request, to receive a list of the types and locations of education records collected, maintained, or used by the agency. A parent or eligible child who believes that information in education records collected, maintained, or used is inaccurate, misleading, or in violation of the privacy or other rights of the child, may request, in writing, that the participating agency that maintains the information amend the record. The agency will decide whether to amend the record as requested within 30 days upon receipt of the request. If the agency decides to refuse to amend the record, they inform the parent of the refusal and of the right to a hearing. Under State law, a parent of a pupil may file a written request with superintendent of the district to correct or remove any information in the written records that the parent alleges to be inaccurate. Within 30 days of receiving the written request, the district superintendent or designee meets with the parent and the employee who wrote the information. If the superintendent agrees with the parent, the records are corrected or the information in question removed and destroyed. If the superintendent disagrees with the parent, the parent has 30 days to appeal the decision in writing to the local school board. Within 30 days, the school board meets with the parent and employee and decides whether they agree or disagree with the parent. The school board can order the superintendent to correct the records or remove and destroy the information in question. The decision of the school board is final. The records of the governing board proceedings shall be maintained in a confidential manner for one year after which they will be destroyed, unless the parent initiates legal proceedings within the prescribed period relative to the disputed information.

If, as a result of the hearing or meetings with district superintendent or local school board, the agency does not agree with the parent and decides that the information in the record is not inaccurate, misleading, or otherwise a violation of the privacy or other rights of the child, it will inform the parent of the right to place in the child's record a statement commenting on the record or explaining any reasons they disagree with the decision of the agency. Any explanation placed in the records of the child, as long as this is the record or contested portion, is maintained by the agency. If the records of the child or the contested portion are given by the agency to any party, the explanation must also be given to the party. If, as a result of the hearing, the agency agrees with the parent, they amend the record and inform the parent in writing.

PARENTAL CHANGE OF RESIDENCE

When a child transfers into a district from another SELPA, interim placement is provided for the child to continue the existing IEP, to the extent possible, unless the parent or guardian agrees otherwise. Before the end of 30 days, the IEP Team reviews the interim placement and makes a final recommendation. In deciding the placement, the IEP Team may use information, records, and reports from the school district or county program from which the child transferred.

When a child is placed in a nonpublic school or agency, the LEA and the nonpublic school or agency must notify the parents of their responsibility to report each change in residence. The notice by the LEA is in writing and is given at the time that nonpublic school (NPS) or agency (NPA) placement is recommended. The notice will include an explanation that the contract for services is between the contracting party and the NPS or NPA and obligates no other in the event of a residence change. When an individual receiving services in a NPS or NPA changes residence, and this change constitutes a change of local education agencies, the parent should immediately report the change of residence to the administrator of both the former and new public school and the NPS or NPA.

DISCIPLINARY ACTION

The parents have the right to be notified on the day that the decision to take disciplinary action is made of that disciplinary action if it involves a change of placement for more than ten (10) days. The school district ensures that special education and disciplinary records

of the child are transmitted to the person(s) making the final decision about the disciplinary action. The school district will report any crime committed by a child with a disability to the appropriate authorities and transmit copies of special education and disciplinary records to such authorities.

Suspension

A child with a disability can be suspended for not more than ten (10) consecutive days for violation of school conduct codes using the same procedures as a child without a disability. For a suspension of ten (10) days or under, educational services do not need to be provided. If the suspension is for more than ten (10) days in a school year, certain procedural safeguards must be followed. They include a meeting of the IEP Team not later than ten (10) days after deciding to take disciplinary action to review the child's behavior intervention plan; if there is none, develop a functional assessment plan and develop a behavioral intervention plan; determine if the misconduct is a manifestation of the disability; determine appropriate action based on the outcome of the manifestation determination. For suspensions over ten (10) days, the setting can be appropriate interim educational setting or another setting.

Expulsion

A child with a disability can be expelled for violation of school conduct codes only when certain procedural safeguards are followed. Within ten (10) days of the school's decision to propose a specific disciplinary action that includes a change in placement of more than ten (10) days, the IEP Team must meet to review the behavior intervention plan; if there is one, determine if the misconduct is a manifestation of the disability; determine an appropriate interim alternative setting for the child's educational placement, develop a functional behavioral assessment plan if no behavioral intervention plan exists; consider a need for change, by the end of the planned placement in alternative educational setting, from the placement the child was in at the time of the misconduct. If the parents disagree with the IEP Team's findings that the expulsion process can proceed because the behavior subject to the disciplinary action was not a manifestation of the child's disability, they can file for a due process hearing. Even if the district can and does expel the child, they must provide a free, appropriate public education during the time of expulsion. Additionally, the pupil is entitled to a hearing by the school board. If the school board agrees with the decision to expel the pupil, the pupil or parent or guardian may file an appeal with the county board of education.

Manifestation Determination

A parent has the right to participate in the Manifestation Determination IEP Team meeting through actual participation, representation, or a telephone conference call. The meeting may be held without parent participation unless parent requests a postponement for up to three (3) additional school days. The IEP Team may determine that the misconduct was not a manifestation of the disability only if they first consider all relevant information relating to the behavior subject to disciplinary action. This includes evaluation and diagnostic results supplied by the parent, observation of the child, the child's IEP and placement. Then they must find that the child's IEP and placement were appropriate, the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement, that the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to the disciplinary action. If the IEP Team determines the child's disability was not a manifestation of the disability, the school may proceed with the proposed disciplinary actions. If the parents disagree with the IEP Team's finding on manifestation, they may file a due process hearing.

Interim Alternative Educational Setting (IAES)

A child can be placed in an interim appropriate alternative educational setting as a disciplinary action and without parental consent in specific circumstances. School personnel may order placement in an IAES for not more than ten (10) days. If a child carries a weapon to school or a school function or if the child knowingly possesses or uses illegal drugs, or sells or solicits the sale of controlled substances at school or a school activity, school personnel may place a child in an IAES for not more than forty-five (45) school days. Placement in an IAES for more than ten (10) days must be determined by the IEP Team. The IAES must enable the child to continue to participate in the general curriculum, receive IEP services and modifications designed to address and prevent recurrence of the behavior for which the child is being disciplined. The parents have the right to an expedited hearing in any case involving IAES. The child remains in the IAES pending a hearing decision or until expiration of the 45 school days. On the 46th day, the child returns to the placement at the time of the behavior subject of the disciplinary action. A hearing officer may order a child into an IAES for no more than forty-five (45) School days if the school demonstrates that the current placement is substantially likely to result in an injury to a child or others. The hearing officer will consider the appropriateness of the placement at the time of the misconduct; whether the school made reasonable attempts to minimize the harm in the placement including use of supplementary aids and services. The hearing officer will also determine if the IAES meets the standards listed above.

PLACEMENT PENDING ADMINISTRATIVE OR JUDICIAL REVIEW

Pending administrative or judicial proceeding, the child remains in the current placement unless both parties agree otherwise.

Children Not Yet Eligible for Special Education Services

A child who has not been determined to be eligible for special education services and has violated school rules or codes of conduct may assert protections if the school district had knowledge that the child had a disability. The school is deemed to have knowledge if the parent expressed concerns in writing to the school district (unless the parent is illiterate or has a disability that prevent compliance)

that the child needs special education; or the behavior or performance of the child demonstrates the needs for special education; or parent requested an evaluation, or the teacher or other school personnel expressed concern to the special education director or other school personnel. If the school district does not have knowledge that the child has a disability, the child may be subject to regular disciplinary procedures. If an evaluation request for a child not yet eligible is made during the period of the disciplinary procedures, the evaluation is expedited. The child remains in the placement determined by the school authorities pending the evaluation. If the child is determined to be eligible, the school district must provide the services.

DISPUTE RESOLUTION PROCESS

Local Intervention

The public education agency and parent can meet informally to resolve issues. Parents are encouraged to utilize local systems to resolve concerns. Each district in this Special Education Local Plan Area (SELPA) has a Resource Parent Program that provides parent-to-parent assistance. Contact the LEA Special Education Director for information about and access to this program. Each district has access to a neutral party that assists in developing solutions that meet the interests of both parties of a dispute (alternate dispute resolution). Contact your LEA Special Education Director for information and access to this service.

Alternative Mediation

Prior to filing a request for a due process hearing, parents are encouraged to seek resolution through an informal pre-hearing mediation conference. This is intended to be a non-adversarial attempt at resolving issues related to identification, assessment, placement, or provision of free, appropriate education absent attorneys or advocates [E.C. 56500.3(a)]. This can be requested through Office of Administrative Hearings Special Education Unit, 2349 Gateway Oaks, Suite #200, Sacramento, CA 95833, (916) 263-0880, FAX: (916) 376-6319, TDD/TYY (800) 735-2929, WEB: www.oah.dgs.ca.gov.

Mediation Conference

Upon receipt of the written request for a hearing that includes a statement of concerns and proposed remedies, the state superintendent or designee informs the public education agency and parents, in writing, of a proposed mediation and all rights of both parties regarding procedural safeguards, including the right to waive the mediation conference. The parent may be accompanied by any representative(s) the parent chooses. If mediation fails, the parties proceed to a state-level hearing at any reasonably convenient time to the parent and child in a local school facility

Mediation

The mediation process is voluntary and may not be used to delay a parent's right to a hearing or other due process. It will be conducted by a qualified, impartial, and trained mediator. The mediation is scheduled in a timely manner and held in a location convenient to the parties. Any agreement reached in mediation must be in a written mediation agreement. The LEA has established procedures which may require parents who refuse mediation to meet with a neutral party who will explain the benefits of mediation. Mediation discussions are confidential and cannot be used in a subsequent hearing or civil proceeding when confidentiality requirements are stipulated.

Due Process Hearing Rights

Due process hearing procedure rights extend to the pupil, parent, and public education agency. Any of these may initiate a due process hearing whenever there is a proposal to initiate or change, or a refusal to initiate or change, the identification, assessment, or educational placement of the pupil or the provision of a free, appropriate public education, or when the parent refuses to consent to an assessment. The due process hearing rights under State law include but are not limited to the right to: mediation conference; examine pupil records, and a fair and impartial administrative hearing at the state level, before a person knowledgeable in the laws regarding special education and administrative hearings. The hearings will be completed within forty-five (45) calendar days following receipt of written requests. Requests for hearing must be filed within three years from the date the parent knew or had reason to know of the facts that are the basis for the hearing request.

Parents have the right to:

- § Open the state hearing to the public.
- § Be informed of all rights and procedures related to the due process hearing.
- § Receive notice immediately of mediations and hearing dates; the notice to include date, time, and place of both mediation and hearing.
- § Information regarding available free or low cost legal or appropriate other services upon the LEA's receipt of written notification of a request for a due process hearing.
- § If the parent does not have an attorney, the district upon request by the parent will provide a mediator to assist the parent in identifying issues and proposed resolution of issues.
- § Present evidence, written arguments, and oral arguments.

- § Be accompanied and advised by counsel and individuals with special knowledge or training relating to the problems of children and youth with disabilities.
- § Confront, cross-examine, and compel the attendance of witnesses and present evidence.
- § Receive a written or electronic verbatim record of the hearing.
- § Receive a written finding of the facts and the decision within forty-five (45) calendar days from the receipt by the State Superintendent of the request for hearing.
- § Have the child who is the subject of the hearing present at the hearing.

Any party to a hearing has the right to:

- § Be accompanied and advised by counsel (not necessarily at public expense) and by individuals with special knowledge or training with respect to problems of children with disabilities.
- § Be informed other parties of the issues and their proposed resolution of the issues at least ten (10) calendar days prior to the hearing.
- § Exclude witnesses from the hearing.
- § At least five (5) business days before the hearing, each party shall disclose to all other parties all evaluations completed to that date, and recommendations based on the evaluations that the offering party intends to use at the hearing.
- § Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least (5) business days before the hearing. Obtain written or electronic verbatim record of the hearing.
- § Obtain written or electronic findings of fact and decisions.
- § Have an interpreter that is paid for by the State education agency; and
- § Have an attorney present as an observer (information regarding the use of attorney services are covered in a section entitled "Award of Attorney's Fees").
- § Have an extension of hearing time line upon good cause.
- § Have a mediation conference at any point during the hearing process.

Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved. When Mental Health or California Children's Services are involved in the IEP process, all the same due process requirements apply. Mental Health and California Children's Services are obligated to participate in due process procedures.

All requests for due process hearings are filed with the State Superintendent of Public Instruction, in writing. The request should provide as complete information as possible. The statement must include the student's name, address, school of attendance; a description of the nature of the problem relating to such proposed initiation or change including facts related to such problem; and a proposed resolution to the problem to the extent known and available to the parents at the time.

A list of hearing officers, including their qualifications, is available. Hearings are not conducted by anyone who is an employee of a LEA involved in the education or care of a pupil or who has a personal or professional interest that would conflict with their objectivity. A hearing officer is not considered an employee just because the hearing officer is paid for their services. Requests for hearings or a list of officers should be sent to: **Office of Administrative Hearings Special Education Unit, 2349 Gateway Oaks, Suite #200, Sacramento, CA 95833, (916) 263-0880, FAX: (916) 376-6319, TDD/TTY (800) 735-2929, WEB: www.oah.dgs.ca.gov**. The person filing for due process hearing provides the other party with a copy of the request at the same time that they file with the Superintendent or McGeorge School of Law. Within three days after receiving a copy of a parents' hearing request, the school district or county office is required to advise the parent of free or low-cost legal services and other relevant services available in the geographic area. The Superintendent makes sure that within 45 days of the receipt of a written hearing request; the hearing is started and completed, including any mediation and final administrative decision, unless the hearing officer grants a specific extension at the request of either party. The hearing decision is final and is binding on both parties unless one party appeals to a court. Either party can appeal the decision to a state or federal court of competent jurisdiction. A party may bring a civil action in court within 90 days of the final decision.

Student Placement During Pendency Of A Due Process Hearing

During the pendency of any administrative or judicial proceeding unless the LEA and the parents of the child agree otherwise, the child involved must remain in his or her present educational placement. If a hearing involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

PLACEMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OR A REFERRAL BY THE SCHOOL DISTRICT

Reimbursement for the cost of a private school placement by the parent may be granted if the court or hearing officer finds that the LEA failed to provide a free, appropriate public education to the student in a timely manner prior to the enrollment in the private school. 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 observe the proposed placement and your child in the proposed placement. The school district may not observe or assess any other child at the nonpublic school without permission from the other child's parent or guardian.

Parents seeking reimbursement for unilaterally placed private school students based on the allegation that the public school failed to provide free, appropriate public education may have those reimbursements reduced or denied if they do not provide the school district at the most recent IEP meeting with information describing the nature of their concerns relating to the public placement and a proposed resolution to the problem; their intent to reject the public school placement and enroll their child in a private school. Parents must give written notice to the school district containing the above information at least ten (10) business days prior to the child's removal from a public school placement; they must make their child available if the LEA notifies of their intent to evaluate the student. Reimbursement for private school placement by a parent may also be denied or reduced if a judge finds the parent's actions unreasonable.

Exceptions to this are: 1) parent cannot write English; 2) compliance is likely to result in physical or serious emotional harm to the child; 3) the school district prevented the parent from providing such notice; and 4) the parents did not receive the notice regarding the assessment.

AWARD OF ATTORNEY FEES

If the LEA is first to initiate the use of an attorney, it is responsible for the costs of the services of an attorney for the parent. In no case will these costs to the agency be greater than the cost to the agency for its own attorney services, including the cost of preparation and advice.

The public education agency may use the services of an attorney presentation of written argument, evidence, or any combination, during a mediation conference, IEP meeting, or state hearing, if the parent is first to initiate the use of the services of an attorney. The parent will notify the agency, in writing, of the use of such services at least three days prior to the mediation conference or IEP meeting or at least 10 days prior to the state hearing. Failure of the parent to notify the agency may delay the start of the hearing until the agency can obtain an attorney. If the parent is first to initiate the use of an attorney, the parent and agency are responsible for their own attorney fees. Reasonable attorney fees may also be awarded following the conclusion of the administrative hearing with the agreement of the parties.

Attorney fees are not allowed to parents if they are related to an IEP meeting unless the meeting is convened as a result of any administrative hearing or judicial action or at the discretion of the State. Attorney fees may be reduced if the parents' attorney fails to give the district notice of the nature of the problem and proposed solutions.

In any action or proceeding brought under Part B of the Individuals With Disabilities Education Act, the court may award reasonable attorney fees to the parents or guardians of a child with disabilities who is the prevailing party.

No attorney's fees may be awarded and related costs may not be reimbursed subsequent at the time of a written offer of settlement is made to a parent if offer is made more than ten (10) days prior to start of the proceedings; if the offer is not accepted within ten (10) days; and if the court or hearing officer finds that relief obtained by parents is not more favorable than the offer. Attorneys' fees and related costs may be awarded to parents who prevail and substantially justified in rejecting settlement offer.

Attorneys' fees will be reduced if the parent unreasonably protracted final resolution during the course of the action or proceeding; if fees unreasonably exceed prevailing hourly rate in the community; the time spent and legal services were excessive; and the parent's attorney did not provide the school district the appropriate information (name and address of the child, name of the school the child attends, a description of the nature of the problem, including facts related to the problem, and a proposed resolution of the problem to the extent known and available to the parents at the time). Attorneys' fees will not be reduced if the state or local educational agency unreasonably protracted the resolution or proceeding or violated due process procedures.

COMPLAINTS

- § Any individual, LEA, or organization may file a written complaint with the superintendent of a local educational agency or with State Superintendent of Public Instruction alleging a violation of federal or state law or regulation governing special education or related services for an individual student.
- § To file a state complaint, contact the Complaints Management and Mediation Unit, Special Education Division, 515 L Street, Suite 270, Sacramento, CA 95814.
- § An immediate decision upon receipt will be made by the State Superintendent of Public Instruction whether the state or the local agency has jurisdiction over the complaint.
- § If the state has jurisdiction, an investigation and written decision will be completed within sixty (60) calendar days of the receipt of the complaint and both parties will receive a copy of the decision shortly thereafter.
- § If the local educational agency has jurisdiction, the superintendent of that agency shall: (1) Investigate the complaint and prepare a written report, (2) Provide the complainant with a copy of the report.
- § Parents may appeal the local decision to the State Superintendent within fifteen (15) calendar days of the receipt of the local decision; while waiting for the State Department reconsideration, the local decision remains in effect.
- § The State Superintendent of Public Instruction/designee will review and write reasoned findings of any state decision appealed by the parent or LEA within thirty (30) calendar days. Both parties will receive copies of the review shortly thereafter.
- § Parents or the LEA may submit a written request for a review of the State decision to the Assistant Secretary of Education, Office of Special Education and Rehabilitative Services, United States Department of Education, Office of Special Education Programs, Switzer Building, 330 C Street, SW Washington, DC 20202.

Notes: