



**Long Beach Unified School District/Special
Education Local Plan Area (SELPA)**

**Parents' Rights and
Procedural Safeguards**

**OFFICE OF SCHOOL SUPPORT SERVICES
DIVISION OF SPECIAL EDUCATION**

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The Long Beach Unified School District/SELPA Parents' Rights and Procedural Safeguards

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Dear Parent(s)/Guardian(s)/Pupil:

This notice is provided to you because your child is being considered for possible placement, or is currently enrolled in a special education program. This notice is also provided for children who are entitled to these rights at age 18. If your child is being referred for special education and all options of the general education program have been considered, and where appropriate utilized, for your child, you have the right to initiate a referral for special education.

In California, special education is provided to children with disabilities between birth and twenty- one years of age. Federal and state laws protect you and your child throughout the procedures for evaluation and identification of special education placement and services. Parents of children with disabilities have the right to participate in the individual education program process and be informed of the availability of a free appropriate public education and of all available alternative programs, including public and nonpublic programs.

You have the right to receive this notice in your primary/native language or other mode of communication (i.e., sign language or Braille), unless it is clearly not feasible to do so. These rights may also be translated orally to you if your primary/native language is not a written language. This notice will be given to you only one time a year or upon: (1) your request; (2) the initial referral of your child for a special education evaluation; (3) reevaluation of your child; (4) removal of your child for violating a school code of conduct that constitutes a change in placement; (5) filing of a state complaint; and (6) receipt of a request for a due process hearing. A copy of these procedural safeguards is also accessible on the district's website.

The definitions below will help you understand the statement of rights. Should you need further information regarding the contents or use of this guide, you may contact the Special Education Director, whose telephone number is on the second page of this document.

Definitions

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

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

1. Speech and Language pathology services and audiology
2. Interpretation Services
3. Psychological Services
4. Physical and Occupational Therapy
5. Counseling services, including rehabilitation counseling
6. Orientation and mobility services
7. School health services and school nursing services
8. Social work services
9. Counseling and training for parents

Children with Disabilities: The Individuals with Disabilities Education Act ("IDEA") defines "children with disabilities" as including children with intellectual disabilities, hearing impairments

including deafness, speech or language impairments, visual impairments including blindness, disability/disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities, and who by reason thereof, need special education and related services.

Consent: Consent means that: (1) parents have been given all information, in their native language or other mode of communication, that is relevant to any activity for which their consent is sought; (2) parents understand and agree in writing to that activity, and the consent form they sign contains a description of the activity and a list of records that will be released and to whom the records will be released in order to initiate or implement the activity; and (3) parents understand that their consent is voluntary and may be revoked at any time; however, their withdrawal of consent does not negate an action that has already occurred.

Evaluation: An assessment of your child using various tests and measures per Education Code section 56320-56339 and 20 U.S.C. section 1414 (a), (b) and (c) to determine whether your child has a disability and the nature and extent of special and related services needed by your child for his/her educational benefit. The assessment tools are individually selected for your child and are administered by competent professionals employed by the local education agency. Testing and evaluation materials and procedures will be selected and administered so as not to be racially, culturally, or sexually discriminatory. The materials or procedures will be provided and administered in your child's native language or mode of **communication**, unless it clearly is not feasible to do so. No single procedure shall be the sole criterion for determining an appropriate educational program for a child.

Free Appropriate Public Education (FAPE): An education that: (1) is provided at public expense under public supervision and direction, and without charge to you; (2) meets the standards of the California Department of Education; and (3) is provided in conformity with a written individualized education program developed for your child to confer an educational benefit and to be implemented in a preschool, elementary or secondary school program.

Individual Education Program (IEP): A written document developed by your child's IEP team that includes at least all of the following: (1) present levels of academic achievement and functional performance; (2) measurable annual goals; (3) a statement of the special educational and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child; (4) an explanation of the extent to which the child will not participate with non-disabled children in the general education programs; (5) the projected date for initiation and the anticipated duration, frequency and location of the programs and services included in the IEP; and (6) appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the child is achieving his or her goals.

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

Local Educational Agency (LEA): This term includes a school district, County office of Education ("COE"), a Special Education Local Plan Area ("SELPA"), or a charter school participating as a member of a SELPA.

Notification of Majority Rights: Your child has the right to receive all information about his/her educational program and to make all decisions when he/she reaches the age of eighteen unless determined incompetent by state law and procedures. Non-conserved adults are presumed, under the laws of the State of California, to be competent.

Parent: The definition of parent includes: (1) person having legal custody of a child; (2) an adult student for whom no guardian or conservator has been appointed; (3) a person acting in place of a natural or adoptive parent, including a grandparent, stepparent, or other relative with whom the child lives; (4) a parent surrogate; and (5) a foster parent, if the authority of a natural parent to make education decision on the child's behalf has been specifically limited by court order.

When may I access Educational Records, and how do I do so?

All parents or guardians of children enrolled in California public schools have the right to inspect records under the Family Educational Rights and Privacy Act ("FERPA"), which has been implemented in the California Education Code.

Educational records are those records that are directly related to your child and maintained by a school district, agency, or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained. Both federal and state laws further define an educational record as any item of information directly related to an identifiable pupil, other than directory information, which is maintained by a school LEA, or required to be maintained by an employee in the performance of his duties whether recorded by handwriting, print, tapes, film, microfiche, computer or by other means. Educational 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 child, you have access only to that portion of the record pertaining to your child.

Personally identifiable information 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.

Additionally, parents of a child with disabilities, including non-custodial parent whose educational rights have not been limited, are presumed to have the right to: (1) review all educational records regarding the identification, evaluation, and education placement of the child and the provision of a FAPE to the child; and (2) receive an explanation and interpretation of the records. These rights transfer to a non-conserved pupil who is eighteen years old or attending an institution of post-secondary education.

The custodian of records at each school site is the principal of the school. The custodian of records for each school district located in the SELPA is listed on the second page of this document. Educational records may be kept at the school site or the district office, but a written request for records at either site will be treated as a request for records from all sites. The custodian of records will provide you with a list of the types and location of pupil records (if requested). Three years after a student exits a program, the special education records will be destroyed.

The custodian of the records will limit access to your child's educational records to those persons authorized to review the educational records, including you, your child who is at least sixteen years old, individuals who have been authorized by you to inspect the records, school employees who have a legitimate educational interest in the records, post-secondary institutions designated by your child, and employees of federal, state, and local agencies. In all other instances, access will be denied unless you have provided written consent to release the records or the records are released pursuant to a court order or other applicable law. The LEA must keep a log indicating the time, name and purpose for access of those individuals who are not employed by the school district.

Parent consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of the IDEA. Informed parent consent is **needed to share information under the following circumstances:**

1. If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, informed consent must be obtained before any personally identifiable information about the child is released between official in the LEA where the private school is located and officials in the LEA of the parent's residence. 20 USC 1412(a)(8); 20 USC 1417(c); 34 CFR 300.622(b)(3)
2. Before identifiable information is released to officials of participating agencies providing or **paying for transition services**.

A review and/or copies of educational records will be provided to you within, five (5) business days of a request. A fee for copies, but not the cost to search and retrieve, is determined by LEA policy and will be charged, unless charging the fee would effectively deny you access to your child's educational records. Once a complete copy of the records has been provided, a fee will be charged for additional copies of the **same records**.

Upon receiving notice that the records are no longer necessary to the LEA, you may request destruction of the records, which will take place either by physical destruction or by removing personal identifiers from the records so that the information is no longer personally identifiable. However, the LEA is obligated to keep a permanent record for each child, which includes: (1) the child's name, address, and phone number; and (2) the child's grades, attendance records, classes attended, grade level completed, and year completed.

This shall serve as notification in accordance with 34 CFR § 300.611 that beginning July 1, 2014, Long Beach Unified School District maintains all educational records electronically. Any personally identifiable information collected, maintained, or used to develop this or a previous IEPs is no longer needed. All non-mandatory permanent records that are not required to implement the current IEP will not be maintained and therefore will be destroyed. This includes observation notes, protocols, work samples, therapy logs, correspondence, etc. Any non-mandatory permanent records previously maintained physically by the District will be destroyed on or before June 30, 2016.

If you believe that information in the education records collected, maintained or used by the LEA is inaccurate, misleading or violates the privacy or other rights of the child, you may request in writing that the LEA amend the information. If the LEA agrees with your request, the record will be amended and you will be informed.

Should the LEA refuse to make the amendment requested within 30 days, the LEA will notify you of the right to a hearing to determine whether the challenged information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child. If you request a hearing, the LEA will provide a hearing, within a reasonable time, which meets the following requirements: (1) the LEA must provide you with notice of the date, time, and place, reasonably in advance of the hearing; (2) the hearing may be conducted by any individual, including an official of the LEA, who does not have a direct interest in the outcome of the hearing; (3) the LEA shall give you a full and fair opportunity to present evidence relevant to the issues; (4) the LEA shall make its decision in writing within a reasonable period of time after the hearing; and (5) the decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision. You may, at your own expense, be assisted or represented by one or more individuals of your own choice, including an attorney.

If it is decided by the governing board after the hearing that the record will not be amended, you have a right to provide what you believe is a corrective written statement, which will be permanently attached to the contested record. This statement will be attached if the contested record is disclosed.

Can I audio record an IEP meeting?

Parents, guardians, or LEA agencies have the right to audio record the procedures of the IEP team meetings. The IEP team must be notified of the desire to record the IEP session at least 24 hours before the meeting. If the attempted audio-recording of the meeting is initiated by the LEA, and the parent objects or refuses to attend the IEP meeting because of the audio-recording, the meeting will not be audio-recorded. Parents have the right to inspect, review, and sometimes modify audio recordings.

What is, and how may I obtain an Independent Educational Evaluation?

An independent educational evaluation ("IEE") is an assessment conducted by a qualified examiner who is not employed by the LEA providing an education to your child, but satisfies the same requirements of the California Department of Education ("CDE") and the LEA. If you disagree with the results of a recent assessment conducted by LEA, and make that disagreement known to the LEA, you have the right to request and possibly obtain an IEE for your child at public expense from a qualified person. Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you. Your LEA has information available for you about where such an IEE may be obtained and what the LEA's criteria is for determining qualification.

If you request an IEE at public expense, the LEA must either: (1) file a complaint for due process against you to prove that its assessment is appropriate; or (2) ensure that the IEE is provided to you at public expense. If the LEA proves at a due process hearing that its assessment is appropriate, you still have the right to an IEE, but not at public expense.

If you obtain an assessment at private expense and provide a copy of it to the LEA, the results of the assessment will be **considered** by the IEP team with respect to the provision of a FAPE to your child. The privately funded assessment may also be introduced at a due process hearing regarding your child.

If the LEA observed your child in conducting its assessment, or if the LEA's assessment procedures allow in-class observations of students, an individual conducting an IEE must also be allowed to observe your child in the classroom, or observe in an educational setting proposed by the IEP team.

If you propose a publicly-financed placement of your child in a nonpublic school, the LEA will have an opportunity to observe the proposed placement and the pupil in the proposed placement, if the pupil has already been unilaterally placed in the non-public school by the parent or guardian.

What is Prior Written Notice and when will I receive it?

An LEA is responsible for informing you, in writing, whenever it proposes or refuses to initiate a change in the identification assessment, or educational placement of your child. The LEA must provide written notice to parent of this proposal or refusal within a reasonable time. This notice, if not previously provided to the parent, will also be provided upon the LEA's receipt of a parent's request for a due process hearing.

The written notice will include:

- A description of the actions proposed for refused by the LEA with an explanation of why the agency proposed or refused to take the action and a description of other actions considered and why those options were rejected.
- A description of each assessment procedure, test, record, or report the LEA used as a basis for the proposal or refusal.
- A description of other options considered by the IEP team and the reason why those options were rejected.
- A description of any other factors, which are relevant to the LEA's proposal or refusal.
- Notice that parents can obtain copies or assistance in understanding their rights and procedural

safeguards from the Special Education Director, or the CDE in Sacramento.

What constitutes Parental Consent and when is it required?

The LEA must get parental consent, as described above, before assessing and/or providing special education and related services to your child. The LEA must make reasonable efforts to obtain a parent's informed consent before an initial assessment or reassessment of a child. If you refuse to consent to an **initial assessment or a reassessment, the LEA may, but is not required to, use due process procedures to** obtain your consent for the assessment. If you refuse to consent to the **initial IEP** placement and services, the LEA may not use the due process procedures described below to challenge your refusal to consent. However, when the LEA requests consent to the initial placement and services, and you do not provide it, the LEA will not be considered to be in violation of the requirement to make available a FAPE to your child. The LEA will also not be required to convene an IEP team meeting or develop an IEP when such consent is not provided after the LEA's request.

You may consent in writing to the receipt of some components of your child's IEP, and those components of the IEP must be implemented by the LEA. If the LEA determines that the remaining component(s) of your child's IEP to which you do not consent is/are necessary to provide a FAPE to the child, the LEA must initiate a due process hearing.

Finally, your informed consent need not be obtained in the case of a reassessment of your child, if the LEA can demonstrate through a due process hearing that it has taken reasonable measures to obtain your consent and you have failed to respond.

Am I Allowed to Change My Mind Later and Revoke Consent?

If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consents in writing for the continued provision of special education and related services, the school district or charter school:

- May not continue to provide special education and relate services to the child, but must provide prior written notice before ceasing the provision of special education and related services;
- May not use the mediation or the due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;
- Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
- Is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of special education and related services.

If the parent revokes consent in writing for his/her child's receipt of special education services after the child is initially provided special education and related services, the school district or charter school is not required to amend the child's education records to remove any references to the child's receipt of special education and related services. This provision applies when a parent refuses all special education services. If a parent disagrees with some services, but not all, the issues need to be resolved through the Due Process procedure.

What is Facilitated IEP?

A facilitated IEP is one developed by a collaborative team whose members share responsibility for the meeting process and results. Decision making is managed through the use of facilitation skills. This allow the IEP team to build and improve strong team relationships and to reach a true consensus with the meeting's focus on

student needs.

If I have a complaint about my child's educational program, how do I raise it?

You have the right to present and resolve any complaint you have regarding your child's education. If you have any concerns relating to your child's educational program, the SELPA encourages you to bring your concerns to the attention of the teacher, school administrator, or your child's IEP team.

Parties are encouraged to seek resolution of special education disputes through less adversarial processes available such as **Alternate dispute Resolution ("ADR")** prior to filing for due process. Options accessed through the ADR process are conducted in a non-adversarial atmosphere to resolve issues relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child, to the satisfaction of both parties. Therefore, attorneys or other independent contractors used to provide legal advocacy services often do not attend or otherwise participate in these conferences. This does not prevent either party from consulting an attorney either prior to or following any ADR conference nor does this bar the parent of the child in question from participating if the parent is an attorney.

If the LEA is not able to resolve your concerns through informal means, you may file a compliance complaint with either the LEA, or CDE.

If your concern is related to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, the provision of a FAPE to the child, or a dispute over the availability of an appropriate program for your child, you may file a due process hearing complaint (described below). The LEA also has the right to file a due process hearing complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or a dispute over the availability of an appropriate program for your child.

What is a compliance complaint and what are my rights related to a compliance complaint?

All compliance complaints, which allege a violation of the law under the EDIA or California special education law, must: (1) be in writing; (2) contain a statement that the LEA has violated a law or regulation under the IDEA or California Education Code counterparts; (3) contain the facts which support the allegation; (4) contain a signature and contact information of the complainant; and (5) if alleging a violation against a single child, must contain: (a) the name and address of the child (or available contact information for a homeless child); (b) the name of the school the child is attending; (c) a description of the nature of the problem and the facts relating to the problem; and (d) a proposed resolution to the extent known.

District/LEA Level Compliance Complaint: The SELPA encourages you to file any complaint regarding special education issues directly with LBUSD in order for the District to quickly address your concerns in an informal and efficient manner. The District has established confidential procedures for the filing of these complaints and will meet with you to investigate your complaint in a timely manner and attempt to resolve any concerns. The Compliance Officer will assist you in resolving any complaints of discrimination against the district, its employees or contractors, and students. The Compliance Officer is also 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 responsible for the investigation and resolution of complaints when appropriate.

State Level Compliance Complaint: Any individual or organization may file a compliance complaint alleging a violation of any IDEA or state law requirement by the LEA, CDE, or any other public agency. The Compliance Officer is also 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 responsible for the

investigation and resolution of complaints when appropriate. Complaints should be filed with the CDE Compliance Unit: **California Department of Education, Special Education Division, Procedural Safeguards Referral Service, 1430 N Street, Suite 2401, Sacramento, CA 95814. Phone (800) 926-0648; FAX (916) 327-3704.**

Compliance complaints filed with the CDE must be filed within **one** year from the date you know or had reason to know of the facts that were the basis for the complaint.

Within sixty (60) days after your complaint is filed, the CDE will: (1) carry out an independent on-site investigation, if necessary; (2) give you the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; (3) provide the LEA with the opportunity to respond to the complaint, including a proposal to resolve the complaint; (4) provide an opportunity for you and the LEA to agree voluntarily to engage in mediation; (5) review all relevant information and make an independent determination as to whether the LEA is violating a requirement of the IDEA and/or related State law; and (6) issue a written decision to you and the LEA that addresses each allegation in the complaint and contains findings of fact and conclusions, and the reasons for the final decision.

What is mediation and when can I request it?

Parties are encouraged to seek resolution of special education disputes through less adversarial processes such as mediation or Alternative Dispute Resolution (“ADR”) prior to filing for a due process hearing. While you are urged to try ADR or mediation, this may not be used to delay your right to a due process hearing.

These voluntary prehearing mediation conferences are to be conducted in a non-adversarial atmosphere to resolve issues relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child, to the satisfaction of both parties. Therefore, attorneys or other independent contractors used to provide legal advocacy services may not attend or otherwise participate in the prehearing mediation conferences. This does not prevent either party from consulting an attorney either prior to or following the mediation process nor does this bar a parent of the child in question from participating if the parent is an attorney. The parties may be accompanied and advised by non-attorney **representatives at their discretion.**

This mediation conference will be scheduled within 15 days and completed within 30 days of the CDE’s receipt of your request for mediation unless both parties agree to an extension. The mediation will be conducted by a qualified and impartial mediator who is trained effective mediation techniques.

If you and the LEA resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that: (1) states that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and (2) is signed by both you and a representative who has the authority to bind the LEA.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States. Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal or State court.

What is a due process hearing and what are my rights related to it?

A due process hearing is a formal proceeding presided over by an administrative law judge, which is similar to a court action. You or the LEA/District can initiate the hearing when there is a disagreement over a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, the

provision of a FAPE to your child, or a dispute over the availability of an appropriate program for your child. Requests should be sent to: **Office of Administrative Hearings ("OAH"), at the following address: Office of Administrative Hearings, Attn: Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833-4231. Phone (916) 263-0880; FAX (916) 263-0890.**

The request for a due process hearing must be filed within *two* years from the date you know or had reason to know the facts that were the basis for the hearing request. This timeline does not apply to you if you were prevented from requesting a due process hearing earlier because the LEA: (1) misrepresented that it had resolved the problem which is the basis for your request; or (2) withheld information from you relating to the information contained in this notice.

Your due process hearing complaint will include the following information: (1) your child's name; (2) your child's address (or, in the case of a homeless child, the available contact information); (3) the name of the school your child attends; (4) a description of the problem relating to the proposed initiation or change, including specific facts about the problem; and (5) proposed resolution to the problem to the extent it is known to you. You must provide the LEA with a copy of your request for due process. You (or the LEA) may not have a due process hearing until a due process hearing complaint that contains all of the information is outlined above is filed.

Within five days, OAH must decide if the due process complaint meets the requirements listed above and they will notify you and the LEA in writing if it is insufficient. If OAH determines that a due process complaint is insufficient, the party will have the opportunity to file a new complaint that meets the requirements listed above.

If you request a due process hearing, within 15 days of receiving your request for due process, the LEA must convene a meeting with you, the relevant member(s) of your child's IEP team who have specific knowledge of the facts identified in the due process hearing request, and an LEA representative who has decision-making authority, to discuss a resolution to the issues raised. The meeting will not include the LEA's attorney, unless you are accompanied by an attorney.

Except where you and the LEA have both agreed, in writing, to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

If an agreement is reached at the resolution session, the agreement must be memorialized in writing and signed by both you and the LEA representative. After signing, both you and the LEA have 3 business days to void the agreement. If the LEA has not resolved the due process complaint to your satisfaction within 30 days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur, and the applicable timeline for issuing a final decision begins.

You and the LEA may agree, at any time prior to the commencement of the due process hearing to participate in a mediation of the dispute. An impartial mediator will be appointed by OAH at no cost to either party. Mediation extends OAH's time to render its decision; however, mediation is not intended to deny or delay your right to a hearing, or any other rights.

Any party to a due process hearing has the right to: (1) a fair and impartial administrative hearing before a person knowledgeable in laws governing special education and administrative hearings; (2) be represented by an attorney or an advocate with knowledge and training related to the problems of children and youth with disabilities; (3) present evidence, written arguments, and oral arguments; (4) confront, cross-examine, and require witnesses to be present; (5) obtain a written or at your option, electronic verbatim record of the hearing; (6) obtain written or at your option, electronic findings of fact and decisions, within 45 days after the expiration of the resolution session time period; (7) receive notice from the other party, at least ten days prior to

the hearing, that it intends to be represented by an attorney; (8) be informed by the other party, at least ten days prior to the hearing, of their issues and their proposed resolutions; (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 at least five business days before the hearing; (10) have your child present at the hearing; (11) have the hearing open or closed to the public; (12) have an interpreter provided; (13) request an extension of the hearing timeline for good cause; and (14) request that your child's school district, the SELPA or OAH provide you with a list of individuals providing legal services or advocacy for children with disabilities.

What if I disagree with the results of a due process hearing?

The hearing decision is final and binding on both parties. Either party may appeal the decision by filing an appeal in the appropriate court. In a civil action, the records and transcription of the administrative proceedings will be filed with the court. The court may hear additional evidence at the request of either party and must base its decision on the preponderance of the evidence. This appeal must be made within ninety (90) days after the date of the decision of the Administrative Law Judge.

Where will my child be placed during the pendency of a due process hearing?

Once a request for due process is received by the LEA, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, the child must remain in his or her current educational placement, unless the parent and the LEA agree otherwise.

If your request for due process involves an application for initial admission to public school, your child, with your consent, must be placed in the general public-school program until the completion of all such proceedings.

If your request for due process involves an application for initial services for a child who received services pursuant to an individual family services plan ("IFSP"), and had turned three, the LEA is not required to provide the IFSP services that your child had been receiving. If your child is found eligible for special education services from the LEA, and you consent for your child to receive special education services for the first time, the, pending the outcome of the due process proceedings, the LEA must provide those special education and related services that are not in dispute (those which you and the LEA both agree upon).

If your child has been placed in an interim alternative educational setting ("IAES"), he or she will remain in the IAES for a maximum of 45 school days pending the due process hearing, or until the expiration of the time period for the IAES, whichever occurs first.

Under what circumstances could my attorneys' fees be reimbursed to me?

A court, in its discretion, may order that an LEA pay reasonable attorneys' fees to the parent of a child with disabilities if the parent prevails at a due process hearing. Additionally, the LEA may be awarded attorneys' fees against the attorney of a parent, or against a parent, who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation. The LEA may also be entitled to attorneys' fees against the attorney of a parent, or against the parent, if the parent's complaint **or subsequent cause of action was presented for any improper purposes, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.**

A court may reduce the amount of attorney's fee if (1) the parent has unreasonable delayed the proceedings (unless the LEA also delayed the proceedings or violated due process procedures; (2) the fees unreasonably exceed the prevailing hourly rate in the community; (3) the time spent and legal services were excessive; (4) or

the parent's attorney did not provide the LEA with an appropriate due process complaint.

Attorney's fees may be denied if you reject a reasonable settlement offer made by the district/public agency ten (10) days before the hearing begins and the hearing decision is not more favorable than the offer of settlement. (20 USC 1415 [i] [3] [B]-[G]; 34 CFR 300.517). Despite these restrictions, an award of attorneys' fees and related costs may be made if you the parent prevail and the court determines you were substantially justified in rejecting the settlement offer.

Attorney's fees may not be awarded to an attorney for attendance at an IEP team meeting unless the meeting has been convened as a result of an administrative proceeding, or a judicial action. A resolution **meeting is not considered a meeting convened as a result of an administrative hearing or court action**, and also is not considered an administrative hearing or court action for purposes of the attorney's fees provisions.

What are my child's rights when the LEA is contemplating disciplining him/her?

Before a child with disabilities may be suspended from school for a period in excess of 10 days, or 10 cumulative days when such suspensions constitute a change in placement, the LEA must hold an IEP team meeting to determine whether the behavior subject to discipline was a manifestation of your child's disability. The IEP team will determine whether the conduct in question was: (1) caused by, or had a direct and substantial relationship to your child's disability; or (2) the direct result of the LEA's failure to implement the child's IEP. Under special circumstances, your child may be removed from his/her placement to an IAES for a period not to exceed 45 school days. School officials are not prohibited by special education laws from reporting a crime committed by your child to appropriate authorities.

Parents have the right to appeal a decision to suspend or expel special education students. When an appeal has been requested by either the parent or the LEA relating to the disciplinary placement of a child or the results of the manifestation determination meeting, the State shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing. Your child is entitled to a stay put placement during appeals, however, if your child is placed in IAES for 45 school days, placement will remain in that setting pending the decision by the hearing officer or until the expiration of the time period of the suspension, whichever occurs first.

If an evaluation of the child is requested when disciplinary action is pending, the evaluation shall be conducted in an expedited manner. Pending such an evaluation, the child shall remain in an educational setting determined by school authorities.

A child who has not previously been determined to be eligible for special education and related services may assert any of the protections provided under the IDEA if the LEA had knowledge that the child was a child with a disability before the occurrence of the behavior that caused disciplinary action. Knowledge shall be deemed if: (1) the parent expressed in writing to supervisory or administrative personnel of the school district, or the teacher of the child, that the child was in need of special education and related services; (2) the parent had requested an evaluation of the child; or (3) school personnel had expressed to the Special Education Director of the LEA or to other supervisory personnel specific concerns about a pattern of behavior demonstrated by the child. The LEA is not deemed to have knowledge if the parent has not allowed an evaluation of the child or has refused special education services or the child has been evaluated and it was determined that the child was not eligible for services. If the LEA did not have knowledge of the disability, the child will not receive the due process protections of the IDEA.

What are the procedures when my child is subject to placement in an interim alternative educational setting (IAES)?

An IAES is an educational placement or other setting or suspension that may be ordered by school personnel for a period not to exceed 10 school days (to the extent the alternative would be applied to children without disabilities). A decision to place a child in an IAES may be made by the IEP team when disciplinary action is contemplated by an LEA.

Under special circumstances, the IAES may be ordered for a period not to exceed 45 school days when a child has committed one of the following offenses at school, on school premises or at a school function under the jurisdiction of a State or LEA: (1) carried or possesses a weapon; (2) knowingly possessed or used illegal drugs, or sold or solicited the sale of controlled substances; (3) inflicted serious bodily injury upon another person. If the LEA has not already done so, after placing the child in a forty-five-school day IAES, the LEA shall conduct a functional behavioral assessment and implement a behavioral intervention plan (if one has not already been implemented). If such a plan is already in place, the IEP team shall consider its modification. The IAES shall be affirmed by the IEP team if it will enable the child **to continue to participate in the general curriculum and to receive those services and modifications**, including those described in the child's current IEP, to meet the goals set out in the IEP and provide the modifications to address the offending behavior.

Under federal law, a hearing officer may return a child with a disability to the placement from which the child was removed or order a change of placement for a child with a disability to an appropriate IAES for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

At the time the decision is made to place a child in IAES, the parents of the child have the right to be notified of the decision and provided written notice of all procedural safeguards under the disciplinary section of the IDEA. If a placement in an IAES is in excess of 10 school day, the IEP team must determine the appropriate setting and necessary services that will allow your child to continue to receive an educational benefit.

What are the rules relating to my decision to unilaterally place my child in a private school?

The reimbursement to a parent for placement of a child in a private school or agency may be ordered by a hearing officer or court when it is determined that the LEA did not provide a FAPE to the child in a timely manner prior to the enrollment and that the private placement is appropriate. Reimbursement may be reduced if the parent failed to inform the LEA that they were rejecting the proposed placement and of their intent to place their child in a private school at public expense at the most recent IEP, or at least 10 business days prior to the removal of the child from public school. Reimbursement may also be reduced if, prior to the removal of the child from public school, the LEA informed the parent of its intent to evaluate the child, and parent refused to permit or did not make the child available for the evaluation.

Reimbursement cannot be reduced if the LEA prevented the parent from giving notice; the parent had not **received notice of the "written notice" requirement; or if compliance with the notice requirement would** likely result in the physical harm to the child. The cost of reimbursement may or may not be reduced if **the parent is not literate or cannot write in English, or compliance with the notice requirement would** likely result in serious emotional harm to the child.

What are the 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/>, ask for more information from the members of your child's IEP team or contact the SELPA Office.

Under what circumstances will a surrogate parent be appointed/or a child?

Within 30 days of the local educational agency's determination that a child is in need of a surrogate parent, the LEA will appoint a surrogate parent for a child if:

1. The child has been made a dependent or ward of the court, the court has specifically limited the right of the parent or guardian to make educational decisions for the child, **and** the child has no responsible parent or guardian to represent him or her; or
2. The child is not a ward or dependent of the court **and** no parent or guardian can be located, **or** there is no caretaker of the child **or** the child is an unaccompanied homeless youth.

In determining who will act as a surrogate for a child, the LEA will consider a relative caretaker, foster parent, or court appointed special advocate, if any of the individuals exist, otherwise it will appoint a person of its choice.

The surrogate parent will be an individual with knowledge and skills to adequately represent the child. The surrogate must meet the child at least once and, unless such a person is unavailable, should be culturally sensitive to the child. The surrogate parent shall represent the child in matters relating to **identification, assessment, instructional planning and development, educational placement, reviewing and** revising the IEP, and in all other matters relating to the provision of a FAPE to the child, including the provision of written consent to the IEP for non-emergency medical services, mental health treatment services and occupational or physical therapy services.

Persons with a conflict of interest in representing the child shall not be appointed as a surrogate parent. Conflicts exist if the surrogate parent is an employee of the LEA involved in the education or care of the child, or a foster care provider who derives his/her primary source of income from the care of this child or other children. When no such conflict exists, foster care providers, retired teachers, social workers, and probation officers may all serve as surrogates. In the case of an unaccompanied homeless youth, staff from emergency and transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates without regard to the conflicts described above, only until such time as another surrogate parent who meets the requirements described above can be found.

Alternatively, the surrogate parent can be appointed by the judge overseeing the child's care (as opposed to the LEA), provided that the surrogate parent meets the requirements described above.

Why am I being asked to give my consent to bill California Medi-Cal and disclosure or exchange of information for Special Education and Health Related Services?

Through the Medi-Cal Local Education Agency (LEA) billing option, the LEA can submit bills to California Medi-Cal for services provided to Medi-Cal eligible children enrolled in special education programs. The Medi-Cal LEA program is a way for school districts and / or Education Office Counties (COEs) to receive federal funds to help pay for special health-related education and related services, but only if you choose to provide your written consent.

The following information describes certain rights and protections available to you under IDEA. This notice must be given to you before an LEA agency asks you to consent to access your child's Medi-Cal benefits the first time, and annually thereafter.

You need to know that:

- You can refuse to sign the section of the IEP document regarding Medi-Cal consent
- Information about your child and family is strictly confidential
- Your rights are preserved under Title 34 of the Code of Federal Regulations 300.154; Family Education Rights Privacy Act of 1974, Title 20 of the United States Code, Section 1232 (g), Title 34 of the Code of Federal Regulations, Section 99
- This consent is valid for one year unless you withdraw your consent before that time. It can be renewed annually at the IEP meeting

Your consent is voluntary and can be revoked at any time. If you revoke consent, the revocation is not retroactive (that is, it does not deny any billing that occurred after consent was given and before it was revoked).

Your consent must specify personally identifiable information (for example, records or information about the services that may be provided to your child), the purpose of the disclosure (for example, billing for special education and related services) and the agency to Your LEA agency may disclose the information (for example, Medi-Cal). Your consent must also include a statement specifying that you understand and agree that your child's LEA agency may use your or your child's public benefits, for example Medi-Cal, to pay for special education and related services under IDEA law. The LEA will obtain this consent by obtaining your signature on the Medi-Cal billing statement section of the IEP.

Your consent will not result in denial or limitation of community services provided outside of school. If you refuse to consent to the LEA agency accessing California Medi-Cal to pay for health-related special education and / or related services, the LEA must still ensure that all required special education and related services are provided at no cost to you.

Additionally, as a public agency, and LEA agency may access public benefits or parental insurance to pay for related services required in Part B of IDEA, for a FAPE education. For related services required to provide a FAPE education to an eligible student, the LEA agency:

- **May not** require parent to enroll or enroll in public benefits or insurance programs (Medi-Cal) in order for their child to receive a FAPE education under Part B of the IDEA (34 CFR 300.154 [d] [2] [i])
- **May not** require parents to incur out-of-pocket expenses, such as paying a deductible or copayment amount incurred in filing a claim for services and reimbursement through Medi-Cal. However, the LEA may pay the cost, as a copayment, that it would otherwise be required to pay (34 CFR 300.154 [d] [2] [ii])
- **May not** use the student's benefits under Medi-Cal if that use:
 - Decrease available lifetime coverage or any other insured benefits
 - Resulting in the family paying for services that would otherwise be covered by public benefits or the insurance program (Medi-Cal) and that are required for the child outside of the time the child is in the school
- Increase charges or lead to suspension of public benefits or insurance (Medi-Cal)
- Risk loss of eligibility for home and community-based exemptions, based on aggregate health-related expenses (34 CFR 300.154 [d] [2] [iii] [A-D]).

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