

West End SELPA • San Bernardino County Superintendent of Schools

Notice of Procedural Safeguards

The Individuals with Disabilities Education Act (IDEA), Part B

2004 Reauthorization (H.R. 1350)

INTRODUCTION: This information provides parents, legal guardians, and surrogate parents of children with disabilities from 3 years of age through age 21 an overview of their educational rights, sometimes called procedural safeguards. This information is your Notice of Procedural Safeguards as required under the Individuals with Disabilities Education Act (IDEA). This notice is also provided for students who are entitled to these rights at age 18. (20 USC 1415; EC 56028, 56321)

A copy of these safeguards will be given to you once a year. Copies will also be given to you upon an initial referral or parent request for evaluation, upon the first occurrence of the filing of a complaint and at your request. (20 U.S.C. 1415(d))

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

Parent Participation: You have the right to refer your child for special education services. You must be given opportunities to participate in any decision-making meeting regarding your child's special education program. You have the right to participate in IEP meetings about the identification (eligibility), assessment, and educational placement of your child and other matters relating to your child's free appropriate public education. You also have the right to bring individuals who have knowledge or special expertise regarding your child to an IEP meeting. (20 USC 1414(b)(c)(d) and (f); EC 56341(b), 56343(c))

You have the right to participate in the development of the IEP and to be informed of the availability of free appropriate public education, including all program options and of all available alternative programs, both public and nonpublic. Interpreters are provided for all phases of IEP development or due process procedures, as needed at no cost to parents. (EC 56321, 56343, 56301, and 56506 [b] and [d])

Additionally under state law, you have the right to electronically record the IEP meeting on an audio recorder. The law requires that you notify the district 24 hours prior to the meeting, if you intend to record the proceedings. (EC 563221, 56301, 56506, and 56341)

When you have a concern about your child's education, it is important that you call or contact your child's teacher or administrators to talk about your child and any problems you see. Staff in your school district or special education local plan area (SELPA) can answer questions about your child's education, your rights and procedural safeguards. When you have a concern, this informal conversation often solves the problem and helps maintain open communication. Resources are listed at the end of this document to help you understand the procedural safeguards.

Prior Written Notice: The school district must inform parents about proposed evaluations of their child in a prior written notice that is understandable and in their native language or other mode of communication unless it is clearly not feasible to do so. This notice must be given when the school district proposes action or refuses to initiate a change in the identification, assessment, or educational placement of a child with special needs or the provision of a free appropriate public education. (20 USC 1415[b][c][3][A] and [B][4]; EC 56506[a])

The prior written notice must include the following: A written description of the actions proposed or refused by the school district; an explanation of why the action is proposed or refused; a description of any other options considered and the reasons those options were rejected; a description of each assessment procedure, test, record or report used as a basis for the action proposed or refused; a description of any other factors relevant to the action proposed or refused; and a statement that parents of a child with a disability are protected by the procedural safeguards. If the notice is not in regard to an initial referral for assessment, the notice must provide a statement that you have protection under procedural safeguards; information on how you can obtain a copy of described procedural safeguards; and sources of additional assistance in understanding the procedural safeguards. (20 USC 1415[c])

Parent Consent: Parents must give informed, written consent before a child's first special education assessment can proceed. Parent consent for the initial evaluation does not imply or grant consent for placement and receipt of special education and related services. If you refuse to provide consent, the school district may request mediation and/or a due process hearing in an effort to resolve this disagreement. In the case of reevaluations, the school district must document reasonable attempts to obtain parental consent. If the parents do not respond to these attempts, the school district may proceed with the reevaluation without consent.

The district will obtain parent consent for special education placement and related services separately. Written parent consent must be provided before the school district can provide special education services. If the parent refuses consent for the initial or continued receipt of all special education and related services, the district is not required to develop an IEP and will not be considered to be in violation of the requirement to make available a free and appropriate public education. If you refuse consent the district may not use mediation or due process to obtain agreement or a ruling for special education services. Parent revocation of consent must be in writing and cannot be retroactive. Upon receipt of your written request revoking consent for special education and related services, the district will provide prior written notice acknowledging your revocation of special education and related services, including the date on which services will cease. Upon cessation of special education, your child will be considered a general education student for all purposes, including discipline, graduation, and state testing requirements. You or the district may re-refer your child for special education at any time; this referral will be treated as an initial request for assessment. Parent consent may be revoked, but this action cannot be retroactive. (EC 56321[c], 56346, 56506[e]; 20 USC 1414[a] [1] [C] and [c] [3]; 34 CFR 300.300(b)(4))

Surrogate Parents: School districts must ensure that an individual is assigned to act as a surrogate parent for the parents of a child with a disability when a parent cannot be identified and the school district cannot discover the whereabouts of a parent. This provision also applies to unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act. A surrogate parent may also be appointed if the child is an adjudicated dependent or ward of the court under the state Welfare and Institution Code and the child is referred to special education or already has an IEP. (20 USC 1415[b] [2], EC 56050)

Age of Majority: When a child reaches the age of 18, all rights under Part B of the Individuals with Disabilities Education Act will transfer to the child. The only exception is if the child is determined to be incompetent under state law and a conservator has been appointed by the court. (34 CFR 300.517, EC56041.5)

Assessment: You have the right to have your child assessed in all areas of suspected disability. Materials and procedures used for assessment and placement must not be racially, culturally, or sexually discriminatory. Assessment materials must be provided and the test administered in the language and form most likely to yield accurate information on what the child knows and can do

academically, developmentally, and functionally, unless it is clearly not feasible to do so. No single procedure can be the sole criteria for determining an appropriate educational program for your child. (20 USC 1414[a]-[c], EC 56001[j] and 56320)

The school district must provide you with a written assessment plan within fifteen (15) days after a referral for special education has been received. You have fifteen (15) days to review the assessment plan and consent to the assessment. Upon receipt of the signed assessment plan, the school district has sixty (60) days to complete an assessment. This timeline is extended by periods of school holidays and breaks that are in excess of five schooldays, from the date of receipt of the referral, unless the parent or guardian agrees in writing to an extension. (EC 56321 and 56344)

Generally, a reevaluation is required every three years. However if the IEP team determines that no additional data is needed to determine whether your child continues to be a child with a disability, the school district will notify you as to the reasons the school district believes a reevaluation is not necessary. After receiving this notice, you may request a reevaluation of our child. If the school district does not receive a reevaluation request from you, the school district will not conduct a reevaluation of your child. A child's parent or teacher may request a reevaluation, however a reevaluation may not occurred more frequently that once a year, unless the parent and the district agree otherwise. (20 USC 1414, 1415, 34 CFR 300.530-300.543)

Before determining that your child is no longer a child with a disability, the district must conduct an evaluation. If the child continues to be eligible for special education the district may not exit the student from special education. The exception to the requirement for an evaluation before a change in eligibility is when a child's eligibility for special education ends due to graduation with a regular high school diploma; or because the child exceeds the age of eligibility for a free appropriate public education. In these cases the district must provide the child with a summary of their academic achievement and functional performance including recommendations on meeting post secondary goals. (20 USC 1414, 1415, 34 CFR 300.530-300.543, EC 56321, EC 56381, HR 1350 614 (c))

Independent Educational Assessments: If you disagree with the results of the assessment conducted by the school district, you have the right to ask for and obtain an independent educational assessment for your child from a person qualified to conduct the assessment at public expense. The school district must respond to your request for an independent educational assessment and provide you information upon request about where to obtain an independent educational assessment. If the school district disagrees that an independent assessment is necessary, the school district must request a due process hearing to prove that its assessment was appropriate. If the district prevails, you still have the right to an independent assessment but not at public expense. The IEP team must consider independent assessments. (20 USC 1415; EC 56506[c], and 56329[b])

In cases where the parent obtains an independent assessment, either at public or private expense, the independent assessor may observe the child in their present placement and observe the district's proposed placement, if the district's assessment includes in-class observation or the district's assessment procedures allow such observation. If a parent is proposing public funding of a non-public placement, the school district may observe the non-public placement and the child in this placement. (EC 56329)

Access to Educational Records and Other Rights Related to Records: You have a right to inspect and review all of your child's education records without unnecessary delay before any meeting about your child's IEP or before any due process hearing. Furthermore, a legal representative may review records and files of the named student. The school district must provide you access to records and copies if requested, within 5 days after the request has been made orally or in writing. A fee for copies, but not the cost to search and retrieve, is determined by local policy and will be charged unless

charging the fee would effectively deny access to the parent. Once a complete copy of the records has been provided, a fee will be charged for additional copies of the same records. (20 USC 1415[b][1][2][D], EC 56501, 56504, and 49069)

Parents who believe that information in the education records collected, maintained or used by the school district is inaccurate, misleading or violates the privacy or other rights of the pupil may request in writing that the school district amend the information. If the district concurs, the record will be amended and the parent will be informed. Should the district refuse to make the amendment requested within thirty (30) days, the district shall notify the parent of the right to and provide a hearing, if requested, to determine whether the challenged information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the pupil. If, after the hearing, it is decided by the governing board that the record will not be amended, the parent shall have a right to provide what the parent believes is a corrective written statement to be permanently attached to the record. The parent's statement will be attached if the consented record is disclosed. (20 USC 1232(g), 34 CFR 99.1-99.67, EC 49060-49079)

Student records are maintained in confidential files. When students leave the district or when the records' "usefulness ceases", records are considered Class 3 and are stored until after the third year following school exit. During the third year after the school year in which they are originated records may be destroyed (CCR 16027). The local educational agency must inform you that records will be destroyed. This notification is sent at the time of graduation or completion of study. The notice lists the items and gives a timeline for destruction. You may claim the records or request that they be destroyed at any time. Permanent records that are maintained without time limitations include: student name, address, phone number, grades, attendance records, classes attended, grade level completed and year completed.

Dispute Resolution: The IDEA requires states to establish procedures for mediation and due process hearings. The purpose of mediation is to encourage negotiations and voluntary settlement of disputes through the use of a third party that is knowledgeable and impartial and is appointed by the state. In California, there is a voluntary mediation process which you may waive. If an agreement is reached during mediation it will be set forth in writing, signed by both the parent and the district representative and is a legally binding agreement. Any discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process or civil hearing.

You have the right to request an impartial due process hearing regarding the identification, assessment, educational placement of your child or the provision of a free, appropriate public education for your child. At least five (5) business days prior to a hearing, you and the school district must disclose all evaluations to the other party or the evaluation cannot be introduced as evidence at the hearing. The request for a due process hearing must be filed within two years from the date you knew, or had reason to know of the facts that are the basis for the hearing request. There is an exception to this timeline, if you were prevented from requesting the hearing earlier because the district misrepresented that it had resolved the problem, or the district withheld information that should have been provided to you. (20 USC 1415[a][6]; EC 56501,56505[j], and 56043[p])

Within fifteen (15) days of receiving your request for a due process hearing, the district is required to convene a resolution meeting to discuss the specific issues in the complaint. The district must have a representative present with authority to resolve the complaint. The district and the parent may agree in writing to waive the resolution meeting or agree to use the mediation process. If an agreement is reached you and/or the district have three (3) business days to void the agreement. If agreement is not reached within 30 days, the due process hearing may proceed and the applicable timelines will begin. (HR 1350 § 615(f), and EC56501.5)

During a due process hearing you have a right to:

- A fair and impartial administrative hearing at the state level before a person who is knowledgeable of the laws governing special education and administrative hearings, and has completed the training mandated by the Superintendent of Public Instruction. (EC 56501[a][4])
- Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities (EC 56505 [e][1]; 20 USC 1415[h][1])
- Present evidence, written arguments, and oral arguments (EC 56505[e][2])
- Confront, cross-examine, and require witnesses to be present (EC 56505[e][3])
- Hearing Officers may set reasonable limits on the length of hearings based on issues, complexity of facts, the ability of the parties to present their cases, and the estimate of the parties as to the time needed. (EC 56505.1)
- Exclude items or witnesses if you have not been informed of them at least five days prior to the hearing.
- Receive a written or, at the option of the parent, an electronic verbatim record of the hearing including findings of fact and decisions for each allegation. (EC 56505[e][4][5], 20 USC 1415 [h][3] and [4])
- Have your child present at the hearing (EC 56501[c][2])
- Have the hearing be open or closed to the public (EC 56.501[c] [2])
- Be informed by the other parties of the issues and their proposed resolution of the issues at least ten calendar days prior to the hearing (EC 56505[1][6], 56043[s]; 20 USC 1415[b][7])
- Within five business days before a hearing, receive and provide a copy of all documents, including assessments completed by that date and recommendations, and a list of witnesses and their general area of testimony (EC 56505[1][7] and 56043[t])
- Have an interpreter provided (CCR 3082[d])
- Request an extension of the hearing timeline (EC 56505[f])
- Have a mediation conference at any point during the due process hearing (EC 56501[b][1] and [2])
- Receive notice from the other party at least ten days prior to the hearing that it intends to be represented by an attorney (EC 56507[a])

Filing a Written Due Process Complaint: You may ask the school district to resolve disputes through mediation or alternative dispute resolution (ADR), which is less adversarial than a due process hearing. ADR and mediation are voluntary methods of resolving a dispute and may not be used to delay your right to a due process hearing. The parents and the school district must agree to try mediation before mediation is attempted. A mediator is a person who is trained in strategies that help people come to agreement over difficult issues. (20 USC 1415[e]; EC 56500. 3)

You need to file a written request for a mediation or due process hearing. State law requires that either party filing for a due process hearing must provide a copy of the written request to the other party. You or your representative need to submit the following information in your request: the name of the child; the address of the residence of the child; and the name of the school the child is attending; a description of the nature of the problem, including facts relating to the problem(s) and a proposed resolution of the problem(s). The written notice of complaint and other documents prepared in relationship to mediation or due process proceedings are confidential information and are treated as such by the local education agency. (20 USC 1415[h][7]; EC 56502)

After a written request is filed, a due process hearing is immediately scheduled including any mediation conference and must be completed within 45 days of the request, with a written, final decision provided. Parents receive a copy in writing of the final decision that includes proposed action/s. (EC 56505[f])

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

The hearing decision is final and binding on both parties. Either party can appeal the hearing decision by filing a civil action in state or federal court within 90 days of the final decision. (20 USC 1415[i][I][B] and [2][A] and [B]; EC 56505[g] and [i]; EC 56043[u])

The United States District Court or the San Bernardino County Superior Court has the authority to award you attorney fees if you are the prevailing party in a due process hearing or civil action. Reasonable attorney fees may also be made following the conclusion of the administrative hearing with the agreement of the parties. Fees may be reduced if any of the following conditions prevail: (1) the court finds that you unreasonably delayed the final resolution of the controversy; (2) the hourly attorney fees exceed the prevailing rate in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; (3) the time spent and legal services provided were excessive; (4) your attorney did not provide to the school district the appropriate information in the due process complaint. Attorney fees will not be reduced, however, if the court finds that the state or the school district unreasonably delayed the final resolution of the action or proceeding or there was a violation of this section of law. (20 USC 1415 (i) (3))

Attorney's fees may be awarded against the parent or their attorney if the school district is the prevailing party and it is found that the parent or their attorney filed a frivolous claim, acted unreasonably or with foundation or for an improper purpose such as to harass, unnecessarily delay or needlessly increase the cost of litigation (HR 1350§615 (i) (3)), and EC56507 (A)

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

School Discipline and Placement Procedures for Students with Disabilities: Children with disabilities may be suspended or placed in other alternative interim settings or other settings to the same extent these options would be used for children without disabilities. If a child exceeds ten days in such a placement, an IEP meeting must be held to determine whether the child's misconduct is caused by the disability. This IEP meeting must take place immediately, if possible, or within ten days of the school district's decision to take this type of disciplinary action. (20 USC 1415[k][1][A][I][B][I][ii] and [k][4][A][6][A] and [k][7])

As a parent, you will be invited to participate as a member of this IEP team. If the IEP team determines that the child's misconduct was a manifestation of his disability, the IEP team will conduct a functional behavioral assessment and implement a behavior intervention plan, or if a behavior intervention plan has been developed, review the existing plan and modify it as necessary to address the misconduct. If the IEP team concludes that the misconduct was not a manifestation of your child's disability, the school district may take disciplinary action, such as expulsion, in the same manner as it would for a child without disabilities. If you disagree with the IEP team's decision, you may request an expedited due process hearing from the California Department of Education's Special Education Hearing Office. (20 USC 415[k][5][A][6][A][I])

Alternative Interim Educational Settings: School officials can unilaterally remove a student from his current placement to an interim alternative educational setting for up to 45 school days if the student

has brought a weapon to school or to a school function, or knowingly possessed or used illegal drugs, or sold or solicited the sale of controlled substances while at school or a school function, or has inflicted serious bodily injury. 20 USC 1415 (k) (1)

In addition, if school officials believe that a student with a disability is likely to injure himself or others in their current placement, they can ask a state hearing officer to order that the student be removed to an interim alternative educational setting for up to 45 school days. 20 USC 1415(k)(2)

The interim alternative educational setting must enable the student to continue to participate in the general curriculum, progress toward his IEP goals and to receive those supports and services identified in the IEP. Within 10 days of placing a child in an interim alternative educational setting the school district must conduct a functional behavioral assessment and implement a behavioral intervention plan, if one has not already been implemented. If a behavioral intervention plan already exists, the IEP team shall review it and make any necessary modifications. 20 USC 1415 (K) (3)

Should the parent or the school district request a due process hearing, the student shall remain in the interim alternative educational setting pending the decision of the state hearing officer, unless the parties agree to another setting. 20 USC 1415(k) (7)

Children Attending Private School: If a parent unilaterally places their child in a private or nonpublic, nonsectarian school without district consent or referral of a court or hearing officer, the district may only be required to reimburse the parent if their child received special education and related services under the authority of a public agency before enrolling in the private school and the court or hearing officer finds that the school district did not make a free and appropriate education available in a timely manner. The court or hearing office may reduce or deny reimbursement if you did not make your child available for an assessment upon written notice from the school district. You may also be denied reimbursement if you did not inform the school district that you were rejecting the special education placement proposed by the school district and did not give notice of your concerns and intent to enroll your child in a private school at public expense. You must notify the district of your intent to place your child in a private school at the most recent IEP meeting you attended before removing our child from the public school, or in writing to the school district at least ten (10) business days before removing your child from the public school. A court or hearing officer may not reduce or deny reimbursement to you if failed to give this notice for any of the following reasons: illiteracy and inability to write in English; giving notice would likely result in physical or serious emotional harm to the child; the school prevented you from giving notice; or you had not received a copy of this Notice of Procedural Safeguards or otherwise been informed of this notice requirement 20 USC 1412 (a), 34 CFR 300.453, EC 56174-5

If you unilaterally place your child in a nonpublic school and you propose the placement in the nonpublic school to be publicly financed, the school district must be given the opportunity to first observe the proposed placement and your child in the proposed placement. (EC 56329(d))

The district and SELPA will pay the full cost of special education services in a private or non-public, nonsectarian school, if the district and IEP team recommend this setting as the appropriate placement. (CFR 300.401, CFR 300.349 (c), EC 56361

The district is not obligated to offer a free and appropriate public education to a child whose parents have voluntarily enrolled that child in a private school. In such cases, the district within which the private school is located will propose an Individual Services Plan for private school students. Federal law limits the amount that school districts must spend for these services to a proportionate share of federal IDEA funds. (20 USC 1412 (a) (10) (A)(I)

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. The California Education Code requires that parents must be referred by their local school district when considering placements in State Special Schools, this referral occurs as part of the IEP process. (EC 56321.6)

If you have any questions regarding these rights contact:

Due Process Program Manager
West End SELPA
8265 Aspen Avenue, Suite 200
Rancho Cucamonga, California 91730
(909) 481-4547 ext. 262

To obtain more information or file for mediation or due process hearing contact:

Office of Administrative Hearings
Special Education Unit
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833-4231
Phone: (916) 263-0880
Fax: (916) 263-0890

To obtain more information about parental rights or dispute resolutions, including how to file a complaint or mail complaints alleging violations of law (CDE will investigate all such complaints within 60 days), use the following contact information:

California Department of Education
Special Education Division
Procedural Safeguards Referral Service
Attention: PSRS Intake
1430 N Street, Suite 2401
Sacramento, CA 95814
Telephone: (800) 926-0648
FAX: (916) 327-3704