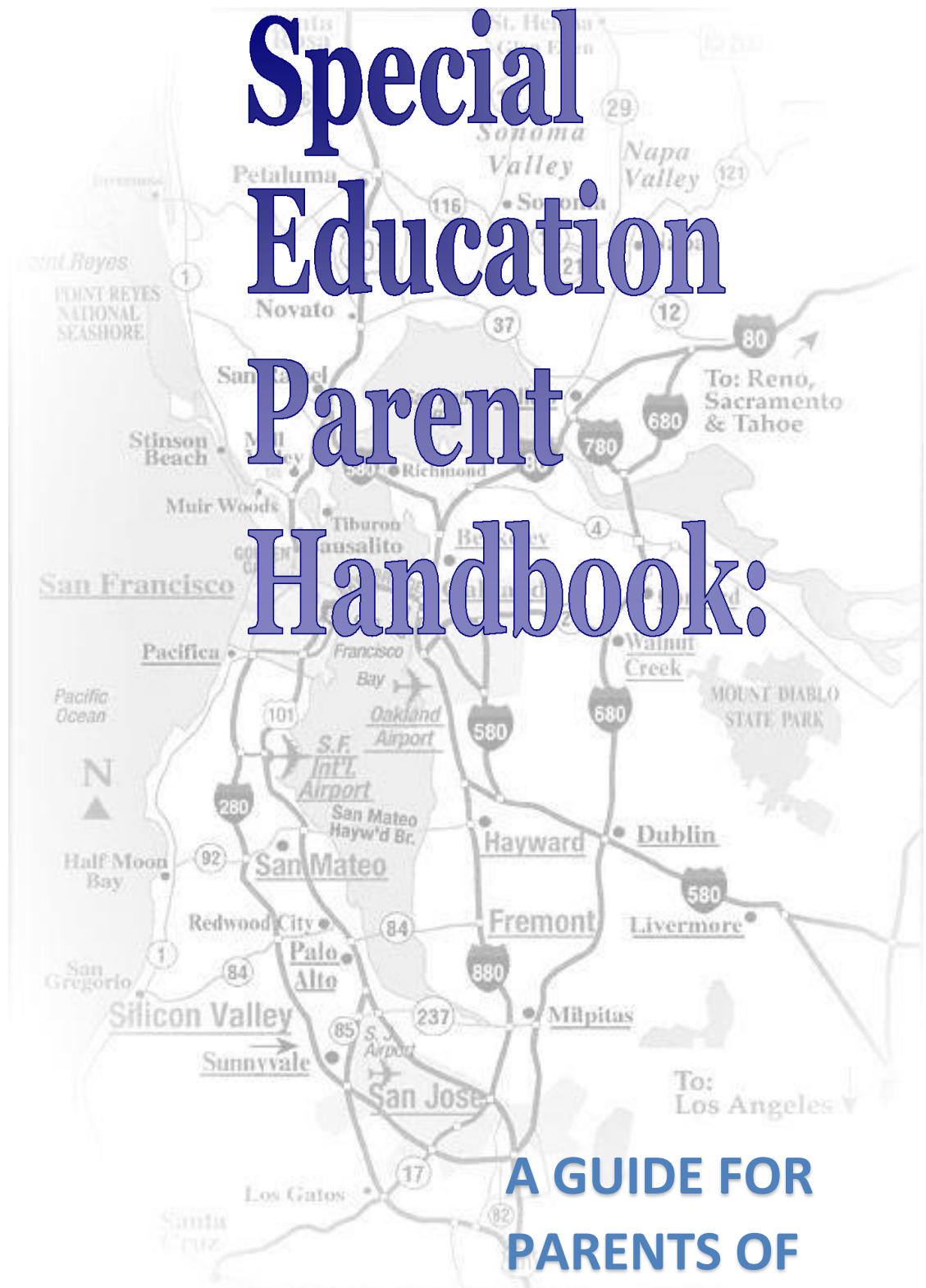


# Special Education Parent Handbook:



**A GUIDE FOR  
PARENTS OF  
STUDENTS  
AGES 3 TO 22**



Tri-Valley SELPA  
4665 Bernal Avenue  
Pleasanton, CA 94566  
925/ 426-9144  
Fax: 925/ 426.9142  
[tri-valleyselpa.org](http://tri-valleyselpa.org)

# Introduction

We hope this handbook will be a useful resource for families who are seeking quality education for their children with special needs. It is our goal to work with families in the education of students with special needs. This handbook is an attempt to do that.

When parents become aware that their child may need special education, they step into a system of laws and procedures with an unfamiliar vocabulary. This handbook begins with the parents' role in the education of their children and why it is important that they become knowledgeable about special education. The laws that drive the delivery of special education are described, as are child and parent rights under these laws. This handbook walks you through the entire special education process from identification of needs to delivery of services. Due process procedures and how to deal with disagreements and complaints are addressed.

Finally, the book ends with a listing of local resources and a dictionary of special education terms.

## **What is Special Education?**

Special Education is specially designed instruction provided for children from birth to age 22 who qualify according to the laws and regulations outlined by the state and federal government. A student may qualify for special education services as an individual with a disability in one of thirteen areas identified by the California Education Code.

These are:

- Intellectual Disability (ID)
- Emotional Disturbance (ED)
- Deafness (DEAF)
- Speech or Language Impairment (SLI)
- Visual Impairment (VI)
- Specific Learning Disability (SLD)
- Hard of Hearing (HH)
- Orthopedic Impairment (OI)
- Autism (AUT)
- Deaf-Blindness (DB)
- Traumatic Brain Injury (TBI)
- Multiple Disability (MD)
- Other Health Impairment (OHI)

# Table of Contents

## Chapter 1

<b>PARENT RESPONSIBILITIES and PARENT/CHILD RIGHTS</b>	5
Parent Responsibilities	6
Parent/Child Rights	6
Notices in writing	7
Confidentiality	7
Access to records	7
Informed written consent	8
Surrogate Parents	8
Parent/Child rights regarding assessment	8

## Chapter 2

<b>INDIVIDUALIZED EDUCATION PROGRAM</b>	10
The IEP: An Overview	11
Referral	11
Assessment Plan	12
Assessment	12
Composition of the IEP team	13
Development of the IEP/ITP	13
Designated Instruction and Services (related services)	14
Signing the IEP	14-15
Placement	14-15
Implementation	14-15
Parental Change of Residence	14-15
IEP Review	15

## Chapter 3

<b>DISCIPLINARY ACTION AND THE SPECIAL NEEDS STUDENT</b>	16
Suspension	17
Expulsion	17
Manifestation Determination	18
Interim Alternative Educational Setting (IAES)	18
Placement Pending Administrative or Judicial Review	18
Children Not Yet Eligible For Special Education Services	18

## Chapter 4

<b>DUE PROCESS</b>	20
Informal Conference	21
Mediation	21
Complaints	21

Due Process Hearing Rights .....	21
Compliance & Complaint Procedures .....	23
Due Process .....	24
Civil Rights Issues .....	24

## **Chapter 5**

<b>OVERVIEW OF LAWS &amp; REGULATIONS .....</b>	<b>25</b>
PL 94-142 .....	26
IDEA and Transition.....	26
IDEA Reauthorization '97 .....	26
IDEA Reauthorization 2004 and AB 1662 2005 (California's Conformity Legislation) .....	27
PL 99-457 .....	28
Ed Code Section 56425.5 – Early Interventions Part H.....	29
Americans with Disabilities Act of 1990 .....	29
PL 99-372 .....	29
PL 98-524 .....	29
PL 93-112 .....	29
The Lanterman Act.....	30
Public Law 93-380 – The Family Educational Rights and Privacy Act .....	30
504 Eligibility .....	30
504 and HDHD.....	31
The 504 Plan.....	31
California Code of Regulation-Title 5 (Hughes Bill).....	31

## **Chapter 6**

<b>DICTIONARY OF SPECIAL EDUCATION TERMS.....</b>	<b>33</b>
---	-----------

## **Chapter 7**

<b>RESOURCES FOR PARENTS .....</b>	<b>41</b>
------------------------------------	-----------

## **Chapter 8**

<b>NOTICE OF PROCEDURAL SAFEGUARDS .....</b>	<b>46</b>
--	-----------

# Chapter 1

## **PARENT RESPONSIBILITIES and PARENT/CHILD RIGHTS**



## I. PARENT RESPONSIBILITIES

Educational law recognizes the value of parental input when decisions are made about the educational needs of a child. Decisions are to be made and educational plans developed cooperatively with parents, school personnel and other persons with special knowledge of the child.

Educational law grants specific legal rights and responsibilities to parents to ensure their participation in the process. To ensure that a child receives the education to which he or she is entitled, it is imperative that parents are involved and informed.

Be confident and active in the entire educational planning process, remembering to:

- be aware of your rights;
- be knowledgeable about services and programs for your child;
- be a confident advocate for your child's education; and
- ask questions.

As a parent, you are an "expert." It is important to keep accurate, up-to-date records that include:

- background information;
- developmental history;
- medical history and medical reports;
- family health history;
- educational, psychological and therapy reports;
- copies of IEPs and school progress reports;
- samples of the past and present school work;
- copies of records from outside agencies (such as regional centers)
- copies of letters you have written and received; and
- a record of contacts with school agencies (personal visits and phonecalls).



## II. PARENT/CHILD RIGHTS

**Child's Basic Rights:** State and federal laws entitle students with exceptional needs to a free and appropriate public education (FAPE) in the least restrictive environment (LRE) in which the student can meaningfully engage with the curriculum. An Individualized Education Program (IEP) is developed to determine a child's needs and how they can be met. 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.

**Parental Rights and Responsibilities:** Parents or guardians of children with exceptional needs have specific rights and responsibilities regarding access to information, providing information and making decisions about their children's education.

#### **A. NOTICES IN WRITING**

Parents should receive notices in writing:

- before proposed assessments are conducted;
- before IEP meetings;
- before any action is taken that may change your child's educational program or IEP;
- in their native language if they are non-English speaking or have limited proficiency with English, unless to do so is clearly not feasible;
- that are easily understood; and
- within a specified, or at least reasonable, number of days before or following the activity involved.

A copy of the procedural safeguards must be given to parents one time a year, except that a copy must also be given to parents upon initial referral or parent request for evaluation; upon receipt of the first state complaint and due process complaint in that school year; and upon request by a parent.

#### **B. CONFIDENTIALITY**

All information regarding school children is considered confidential by law. A child's records can only be made available to a parent, school staff with specific knowledge of a child, persons who have written parental consent, a child at age 16 or after completion of tenth grade, and personnel of agencies specified by law.

#### **C. ACCESS TO RECORDS**

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 any meeting regarding an IEP, or hearing or resolution session and in no case more than 45 days after the request has been made;
- 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;
- request that agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect & review the records;
- receive, upon request, 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 are required to inform the parent of the refusal and of the right to a hearing.

#### **D. INFORMED WRITTEN CONSENT**

Parents must be provided informed written consent

- before any formal assessment of a child is completed;
- before placement of a child in a special education program;
- before removal of a child from a special education program; and
- before any changes are made in the services received by a child in special education.

Informed 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.

#### ***PARENTS MAY REVOKE THEIR CONSENT AT ANY TIME***

#### **E. SURROGATE PARENTS**

Each district 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 district 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 a 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.

#### **F. PARENT/CHILD RIGHTS REGARDING ASSESSMENT**

A parent has the right to:

- initiate a request for educational assessment (referral) and give or withhold written consent for any proposed assessment activities (unless the district 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 fifteen (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) sections;
- present information including the results of independent assessment for consideration by the district;



- 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 material 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 procedure 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; and
- receive a plan that covers all areas related to a child's disability.

**No single procedure will be 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. The school district should provide opportunity to fully discuss concerns related to assessment findings.

# Chapter 2

## Individualized Education Program (IEP)





## **II. INDIVIDUALIZED EDUCATION PROGRAM (IEP)**

### **A. THE IEP: AN OVERVIEW**

The IEP is:

- a legal, written document describing a child's unique educational needs;
- a written individualized plan that determines whether a child is eligible to receive special education services;
- developed by a team including the parents who give their input about their child's strengths and needs, as well as participate in the development of annual goals and short term objectives;
- a description of services to be delivered;
- for all children who are eligible for special education based on assessment need; and
- a document written with information for students 16 and older oriented towards pre-vocational/vocational issues and life skills training considered essential for transition planning (ITP).

### ***PARENTS ARE AN INTEGRAL PART OF THE TEAM***

An IEP is not a binding contract that guarantees that goals and objectives will be accomplished and is open to revision by the IEP team. Revision requires parent consent.

### **B. REFERRAL**

A school site Student Study Team will be held to preview a referral request and make recommendations regarding the student. The parent may elect to make a direct request for assessment apart from the Student Study Team process.

The county (for students ages 0-2) or district of residence is responsible for processing all referrals from birth through age twenty-one.

Parents should be a part of the Student Study Team to review the effectiveness of pre-referral activities to help their child.

### ***PARENTS MAY MAKE A DIRECT REFERRAL IN WRITING AT ANY TIME***

An Assessment Plan must be developed within FIFTEEN (15) DAYS of the referral date, unless the district informs with family within 15 days, via a Prior Written Notice, of its decision not to assess the student.

A parent has fifteen (15) days to decide whether or not to sign the assessment plan. If a child is already enrolled in special education and a written request for a re-evaluation is submitted, the school district has fifteen (15) days from receipt of the request for assessment to develop an assessment plan.

### **C. ASSESSMENT PLAN**

An assessment plan:

- is simply a list of areas to be tested to determine a child's educational needs and assist in determining eligibility for special education services;
- will include a description of what areas each test is designed to cover and who will conduct the assessments;
- must be designed to assess a child in all areas related to a suspected disability (e.g., health and development, vision, hearing, language function, motor skills, self-help, social and emotional development, behavior, and pre-vocational/ vocational skills, etc.);
- makes provision for parents to request that additional areas of concern be assessed before approving the plan; and
- makes provision for parents to consult with other specialists before signing the assessment plan.

### **D. ASSESSMENT**

The assessment must be conducted and the IEP meeting scheduled and held within SIXTY (60) DAYS of the district's receipt of the signed assessment plan.

Depending on the complexity of the assessment, one or more meetings may be held for a child with a variety of assessment personnel.

The assessment should provide an accurate and thorough understanding of a child's strengths and needs. All assessments, when feasible, should be provided in the primary language in which a child is most proficient and comfortable. The assessor must be knowledgeable of a child's disability and should be fluent in both the oral and written skills of a child's primary language or mode of communication. Translators and interpreters may be utilized as needed unless clearly not feasible.

Parents may receive copies of the assessment report prior to the IEP meeting. Parents may elect to meet with persons completing assessments prior to IEP meetings for explanation and clarification. If parents disagree with the result of the assessment or have concerns about its thoroughness, they may request that an independent assessment be completed. The district may elect to reimburse for the independent assessment. If the district elects not to reimburse for the independent assessment, the district must initiate due process procedures to defend its assessment.

As part of the IEP team, parents have valuable information to share about their child. Participation of parents is encouraged throughout a child's IEP meeting. Special Education is specially designed instruction provided to meet the unique needs of a child who may require some adaptations of the learning environment or adapted instruction in order to learn. It can mean individualized or small group instruction, alternate curriculum or extra supportive services and is for students from birth to twenty-two with physical, learning, communicative, and/or developmental needs.

To receive special education services, an IEP must be written describing a child's educational needs. Developing the IEP is a step-by-step process consisting of a referral, assessment, IEP meeting and placement. These steps must progress according to federal and state timelines.

#### **E. COMPOSITION OF THE IEP TEAM**

Legally required members are:

- a school administrator or designee, who is a person with knowledge of program options appropriate for the student and who is qualified to provide, or supervise the special education program implementation;
- the student'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.
- one or both of the student's parents, a representative selected by the parent, or both; and
- the student at age 18 who may sign the IEP; and
- a general education teacher.



When appropriate, the IEP team shall include:

- the student;
- other individuals, at the discretion of the parent, district, special education local plan area, or county office who possess expertise or knowledge necessary for the development of the individual education program;
- evaluation personnel who performed the evaluation(s) or representative(s) knowledgeable about the evaluation(s); and
- when the child is suspected to have a learning disability, a team member will observe the child in an environment appropriate for a child that age; if the child is younger than five years or is not enrolled in a school; and
- Under certain circumstances an IEP team member may be excused from attending with written mutual agreement & input provided.

#### **F. DEVELOPMENT OF THE IEP**

The IEP meeting should begin with introductions and include discussion of:

- purpose of meeting;
- parent/child rights;
- educational history;
- present levels of functioning (strengths and areas of needs);
- evaluation procedures;
- consideration of eligibility;
- annual goals and short-term instructional objectives;

- recommended placement within the concept of the Least Restrictive Environment;
- recommended related services (i.e., speech therapy);
- other placement and program options;
- dates for services to begin and end and how often they are provided;
- transportation;
- whether or not the student requires extended school year (ESY) and
- signatures of team members.

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

- prevocational 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 skills training for children in grades 7 to 12;
- for children in grades 7 to 12, any alternative means and modes necessary for the child to complete the district's prescribed course of study and to meet or exceed proficiency standards for graduation;
- for children whose primary language is other than English, linguistically appropriate goals, objectives, programs and services;
- 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 schoolday; and
- appropriate specialized services, materials, and equipment for students with low incidence disabilities.

#### **G. RELATED SERVICES**

Related Services are supportive services provided to help a student benefit from a special education program and are based on assessed need.

The educational need is determined through an assessment during the IEP process. Students may be in general education classes and receive a related service (i.e., speech therapy only.)

Related Services may be provided by the general education classroom teacher, the special education teacher, a resource specialist or other specialist credentialed to provide the service (e.g. speech, occupational, or vision therapist). The district must provide related services as deemed appropriate by the IEP team. Related services may be provided by district personnel or through contracted services.

Federal law is broader than the state law in some instances; therefore, a child's entitlement to special education and related services is a right established under federal law. Students who are found eligible by the IEP team may receive other services based on need.

**Related Services may include:**

- Speech and language development and remediation
- Audiological services
- Orientation and mobility instruction
- Instruction in home or hospital
- Adapted physical education
- Physical therapy
- Occupational therapy
- Counseling & guidance
- Specialized driver training
- Health & nursing services
- Mental health services
- Vocational education
- Social worker services
- Parent training and counseling
- Recreation services
- Transportation services
- Specialized services for low-incidence disabilities

**H. SIGNING THE IEP**

Parents have a choice whether to sign or not to sign the IEP based on whether they are in agreement with the content. If they are not in agreement, they need to continue negotiations until there is an agreement or seek resolution through due process; most issues can be resolved without going through due process procedures. Alternate dispute resolution strategies are also available.

Signing for partial acceptance keeps the child's plan and program active while final issues are being negotiated. If placement cannot be agreed upon and due process has been filed, the child remains in the present placement through "stay-put" regulations, unless the parent has a reason to believe the placement is unsafe or is unhealthy.

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). The IEP team must consider the concerns of the parents for enhancing the education of their child.

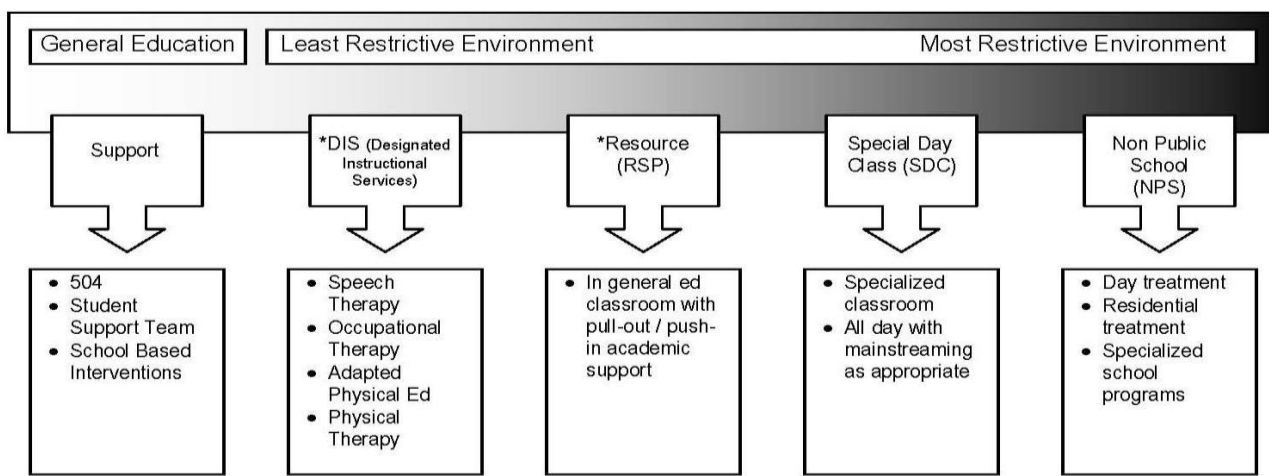
**I. PLACEMENT**

Specific classroom assignments may be discussed at the IEP meeting. Parents may want to discuss placement and program options and visit classrooms suggested before agreeing with a placement so they can be decision-makers on an equal basis with other participants at the meeting. Placement:

- is determined when the IEP has been developed and agreed upon;
- is based on goals and objectives of the IEP;
- is as close to home as possible;
- will not take place without prior approval and written consent of parents;

- will include Related Services as appropriate and stated on the IEP; and
- may be in a non-public school (NPS) setting when the IEP team has determined that appropriate local educational resources may not be available based on assessed need and has determined that goals and objectives and service needs can be met in a non-public school setting appropriately certified by State Department of Education, and when the district and NPS have signed a contract for the NPS to provide the specific services in the IEP..

## J. IMPLEMENTATION



*\*offered at all schools.*

**GOAL:** To offer FAPE (Free Appropriate Public Education) in least restrictive environment.

Implementation refers to the fulfillment of the intent of the IEP with a focus on how goals and objectives are achieved. It is to occur without any undue delay after FAPE is offered and the parent has consented to implementation of the IEP.

Parents are encouraged to visit and monitor their child's program to know if the program is in place and meeting the intent of the IEP.

## K. PARENTAL CHANGE OF RESIDENCE

When a child transfers from one district to another within a SELPA, the new district shall continue without delay to provide comparable services unless parent & district adopt and implement a new IEP.

When a child transfers from a district outside one SELPA into a different SELPA, the new district shall provide comparable services in consultation with the parents for a period not to exceed 30 days, by which time the district shall adopt the previously approved IEP or shall develop, adopt and implement a new IEP.

When a child transfers from out of state, the district shall provide FAPE including comparable services to those described in the previously approved IEP in consultation with parents for a



period not to exceed 30 days, by which time the district shall adopt the previously approved IEP or shall develop, adopt and implement a new IEP. Districts may ask to reassess students whose IEP has been developed in another state or SELPA.

When a child is placed in a nonpublic school or agency, the district and the nonpublic school or agency must notify the parents of their responsibility to report each change in residence. The notice by the district is in writing and is given at the time that a nonpublic school (NPS) or agency (NPA) placement is recommended.

**L. IEP REVIEW**

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;
- at least annually to review the child's progress, the IEP, and the appropriateness of placement, and to make any necessary revisions; and
- a triennial assessment is conducted.

## **Chapter 3**

# **DISCIPLINARY ACTION AND THE SPECIAL NEEDS STUDENT**

### **III. DISCIPLINARY ACTION AND THE SPECIAL NEEDS STUDENT**

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, the team may develop a functional assessment plan and will develop a behavioral intervention plan, determine if the misconduct is a manifestation of the disability, and determine appropriate action based on the outcome of the manifestation determination. For suspensions over ten (10) days, the setting can be an 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 behavior intervention plan if none 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 recommendation to expel the pupil, the pupil or parent or guardian may file an appeal with the county board of education.

## **Manifestation Determination**

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 determine whether

- 1) the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or
- 2) 2) the conduct in question was the direct result of the LEA's failure to implement the IEP.

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. If a child carries or possesses a weapon at school or at a school function or if the child possesses or uses illegal drugs, or sells or solicits the sale of controlled substances at school or at a school function or if a child inflicts serious bodily injury upon another person while at school or at a school function, school personnel may place a child in an IAES for not more than forty-five (45) days without the need for manifestation determination.

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 until expiration of the forty-five (45) days. On the 46th day, the child returns to the placement at the time of the behavior subject to the disciplinary action. A hearing officer may order a child into an IAES for no more than forty-five (45) calendar days if the school demonstrates that the current placement is substantially likely to result in an injury to himself/herself or others. The hearing officer will consider the appropriateness of the placement at the time of the misconduct, and 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 proceedings, the child remains in the current placement unless both parties agree otherwise. This is called "stay put".

## **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 before the behavior occurred. 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 prevents 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 IEP services to which the parent has consented.

# **Chapter 4**

## **DUE PROCESS**



## **IV. DUE PROCESS**

### **Informal Conference or Alternative Dispute Resolution (ADR)**

A meeting may be held between the district, SELPA, or county office personnel and parent to informally discuss and resolve the disputed issue.

### **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 district 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.

### **Complaints**

- Any individual, district, or organization may file a written complaint with the superintendent of a local educational agency or with the 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 California Department of Education, Special Education Division, Procedural Safeguards Referral Service (PSRS), 1430 N Street, Suite 2401, Sacramento, CA 95814-5901, Fax: 916-327-3704
- 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 district within thirty (30) calendar days. Both parties will receive copies of the review shortly thereafter.

### **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.

Prior to a due process hearing, the district must convene a meeting of parents and relevant member(s) of the IEP team for a Resolution Session within 15 days of reviewing notice of the parents' due process hearing request. Attendees shall include a district representative who has decision-making authority on behalf of the agency. District legal counsel shall not attend the Resolution Session unless parent is accompanied by an attorney. At the meeting, parents may discuss their concern/issue and district shall be provided an opportunity to resolve the matter. Resolution sessions may be waived if both parents & district agree, or agree to mediation instead. If issue is resolved through resolution session, a legally binding agreement is developed and signed by parents & district. If issue is not resolved to parents satisfaction within 30 days of district receipt of the due process hearing request notice, the due processing hearing may occur. Discussions and decisions made in Resolution Sessions are not confidential.

The due process hearing rights under State law include but are not limited to the right to: mediation conference; examination of 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.

**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 district'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; and
- 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 by the 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 five (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;
- 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; and
- have a mediation conference at any point during the hearing process;

Each hearing must be conducted at a time and place which is reasonably convenient to the parents and child involved.

#### **COMPLIANCE & COMPLAINT PROCEDURES**

Consistent with federal and state law, California Department of Education (CDE) is responsible for establishing and maintaining a system for receiving and assisting in the resolution of disputes involving special education. Complaints alleging violations of state law are handled by CDE's Complaint Management and Mediation Unit (CMM), while due process hearings and/or mediations are handled by the Office of Administrative Hearings.

The Procedural Safeguards Referral Service (PSRS) will provide technical assistance for parents and others, informing them about options for dispute resolution including, but not limited to, the compliance complaint process and fair hearing. The California Department of Education Special Education Division will encourage the amicable resolution of disputes by promptly informing SELPAs and district of contacts made to PSRS.

You may contact the Procedural Safeguards Referral Service at the address and phone numbers listed below:

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

Or you may file a complaint with the superintendent of the local agency and within five days, the State Department of Education must review the complaint to decide if it is a matter for State or local investigation. If the State investigates the complaint, a determination must be made within thirty (30) days.

## **DUE PROCESS**

A mediation conference and/or hearing may be requested in writing when there is a dispute between a parent and a public agency providing special education services regarding a child's eligibility for special education, need for assessment, and/or the child's program and services

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

## **CIVIL RIGHTS ISSUES**

It is the responsibility of the Office For Civil Rights in the Department of Education and the Office For Civil Rights in the Department of Health and Human Services to enforce federal laws prohibiting discrimination against persons on the basis of race, color, national origin, sex, age or mental and physical handicaps and to investigate discrimination complaints brought by individuals.

U.S. Department of Education  
Office For Civil Rights, Region IX Office  
Old Federal Building  
50 United Nations Plaza, Room 239  
San Francisco, CA 94102  
Telephone: (800) 872-5327

## **Chapter 5**

# **OVERVIEW OF LAWS & REGULATIONS**



## **V. OVERVIEW OF LAWS & REGULATIONS**

For more information on laws and regulations contact your district Special Education Office.

### **Public Law 94-142, The Education for all Handicapped Children Act, 1975**

This law guarantees:

- a FREE and appropriate education for all children with disabilities;
- education to occur in the least restrictive environment;
- an individualized education program (IEP) prepared by a team which includes the parents;
- necessary related services to be provided from special education;
- fair assessment procedures will be used to determine a student's abilities and educational requirements; and
- due process and complaint procedures to ensure that the student's rights are met.

### **IDEA and Transition**

P.L. 100-476 - Individuals With Disabilities Education Act (formerly P.L. 94-142, Education of the Handicapped Act) made some important changes in special education. One area was the expansion of transition services and their relationship with the IEP.

IDEA states: Transition services means a coordinated set of activities for a student, designed with an outcome oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. Activities shall be based upon the individual student's needs, taking into account the student's preferences and interests and shall include instruction, community experiences, the development of employment and other post-school adult living objectives and when appropriate, acquisitions of daily living skills and a functional vocational evaluation.

A statement of needed transition services for students shall be included in the IEP beginning no later than age 16 and annually thereafter (and when determined appropriate for the individual, beginning at age 14 or younger).

This statement can include information regarding the interagency responsibilities and linkages that need to take place before the student leaves school. Per IDEA Reauthorization 1997, an Individual Transition Plan (ITP) needs to be completed for each special education student no later than age 16.

### **IDEA Reauthorization 1997**

IDEA's purpose is to ensure that students with disabilities receive special education and related services tailored to their unique needs and prepare them "for employment and independent living." The IDEA Reauthorization included revisions or changes to: discipline; inmate services; funding; early childhood programs for disabled children; the IEP; mediation; transition (see IDEA);

attorney's fees; parental rights and requirements; and private schools and charter schools. For more information on IDEA Reauthorization please contact your school district's special education office.

### **IDEA Reauthorization 2004 and AB 1662 2005 (California's Conformity Legislation)**

The major amendments are as follows:

#### **Parental Consent**

Required before conducting an individual evaluation or before providing special education and related service. Not required for "screening" (example: vision, hearing screening conducted with all children) or curriculum based assessments.

#### **Evaluation Timelines**

Sixty (60) day timeline for completion of assessments from receipt of signed assessment plan to IEP meeting to discuss results.

#### **Eligibility**

In determining whether a child has a Specific Learning Disability, a district MAY use a response to scientific, research-based intervention as part of the evaluation process. Additionally, a child may not be determined to be a child with a disability if the determinant factor is lack of appropriate instruction in reading, including the essential components of reading instruction as defined in No Child Left Behind (federal).

#### **Summary of Performance**

Summary of Performance is provided to the student by the District upon graduation with a diploma or before aging out of special education. This is a summary of the student's academic and functional performance, including recommendations on how to assist the student to meet postsecondary goals.

#### **IEP-related changes**

Benchmarks or Short-Term Objectives are only required for students who take alternate assessments aligned to alternate achievement standards (California Alternate Performance Assessment/ CAPA & English Language Learners/ELL). They continue to be permissive for all.

Transition: Statement of transition services must be in place beginning now at age 16 or earlier as appropriate.

IEP team attendance: Team member excusal is permissible under certain conditions and must be agreed to by parent. Parents and District may agree to alternative means of meeting participation, such as video conferences and conference calls.

IEP Amendments: IEP amendments without convening an IEP team is permissible under certain circumstances.

### **Children in Private Schools**

Children unilaterally enrolled by their parents in a private school have no individual entitlement to a FAPE. Districts have search and serve and evaluation requirements as well as the responsibility to offer FAPE in the public schools if parent has any intention of enrolling in public school. Some special education services are available to private schools from the district utilizing the required "proportional share of federal funds." Consultation with private school helps determine special education service available/needed in the private school. Student's special education services are identified through a ISP "Individualized Service Plan" which is reviewed annually.

### **Miscellaneous**

Definition of parent expanded to now include relatives or anyone providing care in the home.

Prohibition on Mandatory Medication: A student may not be required to obtain a prescription for medication as a condition of attending school, receiving an evaluation or receiving services under IDEA.

Procedural Safeguards Notice: Copy to be given to parents only one time a year except must be given upon initial referral or parental request for evaluation, upon the first filing of a due process complaint or upon parent request for a copy of procedural safeguards notice.

Due Process Complaints: two-year statute of limitations for due process hearing request or filing of complaint. Prior to a due process hearing filed by parent, the District must convene a meeting of parents and relevant member(s) of the IEP team for a Resolution Session.

### **Discipline**

Discipline: If school personnel seek to change placement beyond 10 school days (suspension) and the violation is NOT a manifestation of the disability, the same disciplinary procedures for non-disabled students may be used as long as Free Appropriate Public Education (FAPE) is provided.

Beyond the 10 day removal within a school year, a student must receive education services which enable him/her to participate in the general curriculum and to progress toward meeting IEP goals and student must receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications.

Under the following special circumstances school personnel may remove a student to an Individual Alternate Educational Setting without the need for a manifestation determination for no more than 45 days: carrying or possessing a weapon to or at school, or to or at a school function, possessing or using illegal drugs, or selling or soliciting the sale of a controlled substance while at school or at a school function, or inflicting serious bodily injury upon another person while at school or at a school function.

The manifestation determination process will determine if 1) If the conduct in question was caused by, or had a direct and substantial relationship to the student's disability or 2) The conduct in question was the direct result of the LEA's failure to implement the IEP.

**Public Law 99-457 (An Amendment to P.L. 94-142)**

The major amendments are as follows. All rights and protection of P.L. 94-142 are extended to disabled children ages three through five years in school year 1990-91. To support the achievement of this objective, the prior Preschool Incentive Grant Program (P.L. 94-42, Section 619) is revised to reflect authorization of a dramatic increase in the federal fiscal contribution for this age group.

**Ed Code Section 56425.5 - Early Interventions (Part H)**

The Legislature hereby finds and declares that early education programs for infants identified as individuals with exceptional needs, which provide educational services with active parent involvement, can significantly reduce the potential impact of many disabling conditions and positively influence later development when the child reaches school age.

Early education programs funded pursuant to Sections 56427, 56428, and 56728.8 shall provide a continuum of program options provided by a transdisciplinary team to meet the multiple and varied needs of infants and their families. Recognizing the parent as the infant's primary teacher, it is the legislature's intent that early education programs shall include opportunities for the family to receive home visits and to participate in family involvement activities pursuant to sections 56426.1 and 56426.4. It is the intent of the legislature that, as an infant grows older, program emphasis would shift from home-based services to a combination of home-based and group services.

It is further the intent of the legislature that services rendered by state and local agencies serving infants with exceptional needs and their families be coordinated and maximized.

**Americans With Disabilities Act of 1990**

The purpose of the Americans With Disabilities Act is to establish a clear and comprehensive mandate to end discrimination against people with disabilities.

**Public Law 99-372, Handicapped Children's Protection Act**

This law provides that in any action or proceeding brought under the Education Handicapped Act (EHA), a court may award reasonable attorney's fees to the parents or guardian of a disabled child or youth who is the prevailing party. Fees are based on the rates prevailing in the party's community for the kind and quality of services performed.

**Public Law 98-524, Carl D. Perkins Vocational Education Act**

Public Law 98-524 has two broad themes. First, the Act is intended to make vocational programs accessible to all persons including disabled and disadvantaged persons, single parents and homemakers, adults in need of training and retraining, persons participating in programs designed to eliminate sex bias and stereotyping in vocational education, and incarcerated persons. Second, the Act is intended to improve the quality of vocational education programs in order to give the nation's workforce the marketable skills needed to improve productivity and promote economic growth.

**Public Law 93-112, The Vocational Rehabilitation Act Section 504**

Section 504 guarantees that people with disabilities may not be discriminated against because of their disability.

While P.L. 94-142 protects children in the area of education, Section 504 protects for life those with disabilities and encompasses the right to vote, to an education, accessibility, employment, etc., and is accessed through general education.

The Rehabilitation Act of 1973 is known as the first federal Civil Rights Law protecting the rights of the disabled. It states that "No...qualified disabled individual...shall, solely by reason of the handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

### **The Lanterman Act**

The Lanterman Developmental Disabilities Services Act established the Regional Center system which purchases services for persons who are developmentally disabled.

The legislation lists specific rights:

- to treatment and rehabilitation;
- to live a normal, productive and independent life;
- to be provided a full measure of dignity, privacy and human care; and
- to participate in an appropriate, free educational program.

### **Public Law 93-380, The Family Educational Rights and Privacy Act (FERPA)**

FERPA helps protect the privacy of students' education records. The Act provides students the right to inspect and review their education records, the right to seek to amend those records, and the right to limit disclosure of information from those records.

### **The Rehabilitation Act of 1973**

**Section 504** is the section of the Rehabilitation Act of 1973, Public Law 93-112, which applies to persons with disabilities. It is a civil rights act which prohibits organizations that receive federal funds from discriminating against otherwise qualified individuals solely on the basis of a disability. Section 504 is enforced by the Office for Civil Rights (OCR). Its regulations are in 34 Code of Federal Regulations 104. The statute provides: No otherwise qualified individual with disabilities in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

### **504 Eligibility:**

For students, eligibility under 504 means a student of school age who has a physical or mental impairment which substantially limits one or more major life activities such as caring for one's self, performing a manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Schools generally need to concern themselves with the major life activity of learning. Eligible students may include those with learning disorders, communicable diseases, temporary disabling conditions, ADD/ADHD, chronic illness, or physical disabilities. Section 504 is not an aspect of "special education." Rather, it is a responsibility of the comprehensive general public education system.

All students who are enrolled in special education are automatically covered by 504 regulations. Normally, a 504 plan is not necessary for special education students, as the Individual Education



Plan (IEP) provides a higher level of service than a 504 plan. In regard to the possibility of special education placement for a 504 student, it must be kept in mind that Section 504, along with the Individuals with Disabilities Act (IDEA), and the Americans with Disabilities Act (ADA) were enacted by Congress to end the practice of automatically segregating persons with disabilities on the basis of their labels. A Joint Policy Memorandum, issued by the Assistant Secretaries for the Office of Special Education and Rehabilitative Services; the Office for Civil Rights; and Office of Elementary and Secondary Education, states that the proper placement of a 504 student is in the regular classroom, with a regular educator who has been trained in making necessary adaptations. The child's education must be provided in the general education classroom unless it is demonstrated that education in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. (34 CFR 104.34)

#### **504 and ADD/ADHD:**

Section 504 can provide an ideal mechanism for addressing ADD/ADHD through reasonable adaptations and interventions in the regular classroom. If a student who is diagnosed as having ADD/ADHD does not meet legal criteria for special education placement, the district may evaluate the child to determine whether he or she is disabled as defined by Section 504. Evaluation may include consideration of information from outside resource(s).

If the school accepts the outside agency determination of ADD/ADHD, it is still the school personnel's responsibility to determine whether or not the disability "substantially limits a major life activity." Please note that an ADD/ADHD diagnosis alone is not sufficient for 504 eligibility.

#### **The 504 Plan:**

Once eligibility is determined, "reasonable accommodations" must be provided, as agreed to by the team, or it may be agreed and documented that no accommodations are necessary at that time. The 504 plan is an individualized determination of the child's educational needs, including related aids and services, which are based upon information taken from a variety of sources. This determination is made by a group of persons knowledgeable about the student. The team should review the nature of the disability, how it affects the student's education, whether specialized interventions or services are needed, and, if so what those services should be. All information must be considered and documented. The parent must be an integral part of the 504 planning process.

# **Chapter 6**

## **DICTIONARY OF SPECIAL EDUCATION TERMS**

## VI. DICTIONARY OF SPECIAL EDUCATION TERMS

**Accommodations:** Techniques and materials that do not change the basic curriculum but do aid in learning and/or communication skills.

**Advocacy:** Recognition and communication of needs, rights, and interests on behalf of a child; making informed choices.

**Age of Majority:** When a child turns eighteen, he/she is legally considered an adult and is afforded all rights of being so.

**Assessment:** A collecting and bringing together of information about a child's needs, which may include social, psychological, and educational evaluations used to determine services; a process using observation, testing, and test analysis to determine an individual's strengths and weaknesses in order to plan his or her educational services.

**Assistive Technology:** Any item, piece of equipment, or system that helps kids with disabilities bypasses, work around, or compensates for specific learning deficits.

**Attention-Deficit/Hyperactivity Disorder (AD/HD):** A neurobehavioral disorder that causes an individual to be inattentive or hyperactive/impulsive, or to display a combination of those symptoms.

**Auditory Processing:** The ability to understand and use information that is heard, both words as well as nonverbal sounds.

**Autism:** A disability—characterized by severe language and communication deficits, lack of normal relatedness, unusual movement and self-stimulatory patterns, lack of normal handling of toys and other objects, and a lack of most normal functional skills.

**Behavioral Emergency:** The demonstration of a serious behavior problem (1) which has not previously been observed and for which a behavioral intervention plan has not been developed; or (2) for which a previously designed behavioral intervention is not effective. Approved behavioral emergency procedures must be outlined in the special education local planning area (SELPA) local plan.

**Behavioral Intervention:** The systematic implementation of procedures that result in lasting positive changes in the individual's behavior.

**Behavioral Intervention Case Manager:** A designated certificated school/district/county staff member(s) or other qualified personnel contracted by the school district or county office who has been trained in behavior analysis with an emphasis on positive behavioral interventions.

**Behavioral Intervention Plan:** A written document which is developed when an individual exhibits a serious behavior problem that significantly interferes with the implementation of the goals and

objectives of the individual's IEP. The behavioral intervention plan shall become part of the IEP, and requires a functional analysis assessment.

**Behavior Support Plan:** Developed by IEP team as needed. Does not require a functional analysis assessment.

**CAHSEE:** California High School Exit Exam - State law passed in 1999. Implementation timeline pending. Passing required for diploma issuance. Individual school board waivers may apply.

**CAPA: California Alternate Performance Assessment:** The alternate assessment to STAR (California Standardized Testing & Reporting) Program for children who cannot take part in general statewide assessment.

**Cerebral Palsy (CP):** A disorder, not a disease, caused by damage to the brain, usually at birth. May result in neurologically related conditions: seizures, mental retardation, abnormal sensation and perception, impairment of sight, hearing or speech.

**Certificate of Achievement:** Awarded to students per individual district policy. Do not pass CAHSEE.

**Certificate of Completion:** Awarded to students per individual district policy. Do not pass CAHSEE

**Chronologically Age-Appropriate:** Making the activities, behaviors, or settings of a disabled child as similar as possible to those of a non-disabled child of the same age.

**Cognitive Abilities:** The mental process of knowing, including aspects such as awareness, perception, reasoning and judgment.

**Collaboration:** Working in partnership on behalf of a child (e.g., parent and teacher, or special education teacher and general education teacher.)

**Community Advisory Committee (CAC):** A legally mandated group formed to advise local governing bodies about issues which affect our children in special education. The members of CAC are primarily composed of parents of special needs children. In addition, our membership includes representatives from public and private agencies concerned with individuals with exceptional needs.

**Community Based Instruction (CBI):** A model for delivery of instruction in which the IEP goals are met in a “natural” age-appropriate setting. For example, math, sequencing, travel, and social skills may all be developed in the setting of a trip to the grocery store.

**Consent:** Parent(s) have 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.

**Deaf-Blind (DB):** A disability - a loss of both hearing and vision abilities requiring special education to achieve full potential.

**Developmental Disability:** A disability originating in the developmental period (before 18) which is due to mental retardation, cerebral palsy, epilepsy, autism, or other conditions found to be closely related to retardation. Constitutes a substantial handicap to the person in three or more areas of major life activity.

**Developmentally Delayed (DD):** A term used to describe the development of children who are not able to perform the skills other children of the same age are usually able to perform.

**Diploma:** Issued upon completion of all district requirements including CAHSEE. (If required)

**Designated Instruction Services (D.I.S.):** Those services as defined by Federal and State laws which may be needed by students to make adequate progress per IEP expectations.

**Disability Code:** Areas of student eligibility for special education (mental retardation, hard of hearing, deafness, speech or language impairment, visual impairment, emotional disturbance, orthopedic impairment, other health impairment, specific learning disability, deaf-blindness, multiple disability, autism, traumatic brain injury).

**Discrepancy:** A difference between two tests, such as intellectual ability and achievement.

**Down's Syndrome:** Also known as trisomy 21, the condition is characterized by mental deficiency, physical abnormalities, and a higher than usual susceptibility to infection.

**Due Process:** Procedural safeguard to protect the rights of the parent/guardian and the child under federal and state laws and regulations for special education; includes voluntary mediation or a due process hearing to resolve differences with the school.

**Early Intervention Program:** A program in which problems that have been discovered in a child's development are remediated before the child's later development and learning are seriously affected.

**Educational Specialist (Program Specialist):** SELPA staff who work in a supporting role to district personnel, parents, and others in the community providing consultation and curriculum assistance.

**Emergency Interventions:** May be used by school personnel to control unpredictable, spontaneous behavior which poses clear and present danger of serious physical harm to the individual or others or serious property damage.

**Emotionally Disturbed (E.D.):** a particular category of exceptionality as defined by Federal and State laws oriented towards students considered emotionally or behaviorally exceptional. After formal assessment, services may be provided through the IEP process.

**English Language Learner (ELL):** Students for whom parents indicate a language other than English as primary for student on home language survey.

**Epilepsy:** A chronic disorder of the central nervous system which causes seizures characterized by sudden, brief attacks of altered consciousness and motor activity (movement).

**Evaluation:** 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 does not include basic tests administered or procedures used with all children in a school, grade or class.

**Extended School Year (ESY):** Additional instruction beyond the normal school year, normally conducted during the summer months. IEP team determines need related to regression, recoupment patterns and need to endure FAPE.

**Free Appropriate Public Education (FAPE):** Entitles a public school child with a disability to an educational program and related services to meet her unique educational needs at no cost to the parents; based on IEP; under public supervision and meets State standards.

**Functional Analysis Assessment:** Assessment conducted by a person who has documented training in behavior analysis with an emphasis on positive behavioral interventions.

**Gifted and Talented Education (GATE):** A program designed to meet the educational needs of students with above average intelligence in specific learning areas. A student may be eligible for both special education and GATE.

**Hearing Disabled/Hearing Impaired (DHOH):** A disability—a hearing loss that interferes with the ability to understand or use language and that affects learning in school.

**Inclusion:** Bringing the services to the child rather than bringing the child to the services. Involvement in mainstream activities comparable to those provided for general education students is the focus.

**Independent Educational Evaluation (IEE):** 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.

**Individual Transition Plan (ITP):** An educational plan designed to facilitate a student's move from one setting to another (e.g., from one class room or school to another or from school to work.)

**Individuals with Disabilities Education Act (IDEA 2004):** Federal law that provides for special education and related services to eligible children with disabilities.

**Individualized Education Program (IEP):** A written document, mandated by law, that defines a child's disability, states current levels of educational performance, describes educational needs, and specifies annual goals and short-term objectives.

**Individual Program Plan (IPP):** An annually-reviewed record of program and service needs provided by the Regional Center (e.g., respite care, behavior management training, etc.)

**Individual Transition Plan (ITP) Life/Career Planning:** A written plan of life and career goals to help the student plan his/her future through school and into adult life. Under IDEA Reauthorization, this plan is required to begin no later than the student's 16th birthday.

**Individualized Family Service Plan (IFSP):** See Early Intervention Program. Also includes services the family will receive. Birth through 3 years of age.

**Individual with Exceptional Needs (IWEN):** Legislative term for students with special needs.

**Intellectual Disability (ID):** Until Rosa's Law was signed into law by President Obama in October 2010, IDEA used the term "mental retardation" instead of "intellectual disability." Rosa's Law changed the term to be used in future to "intellectual disability." The definition itself, however, did not change. Accordingly, "intellectual disability" is defined as...

Significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance." [34 CFR §300.8(c)(6)]

**Local Educational Agency (LEA):** A school district, a county office of education, or a charter school participating as a member of a special education local plan area, or a special education local plan area.

**Least Restrictive Environment (LRE):** A term referring to a Federal mandate that students with special education needs are offered programs to promote maximum interaction with general education students as close to home as possible.

**Low Incidence:** Students with more involved disabilities in the areas of hearing, vision, and orthopedic disabilities.

**Mainstreaming:** A term which refers to the time a special education student participates in chronologically age-appropriate general education activities, either academic or nonacademic (e.g., math and reading or lunch, recess, and art).

**Modification:** Changes in the delivery, content, or instructional level of a subject or test. They result in altered expectations and create a different standard for children with disabilities than for those without disabilities.

**Multidisciplinary Team:** Professionals with different training and expertise; may include, but not limited to, any combination of the following public school personnel – general education teacher, special education teacher, administrator, school psychologist, speech and language therapist, counselor – and the parent.

**Muscular Dystrophy:** A progressive muscle deterioration that usually starts between the ages of three and five years, beginning with leg weakness and progressing to generalized muscle weakness.

**Non-Public Agency:** A private establishment or individual that provides related services necessary for an individual with exceptional needs to benefit educationally from the pupils' educational program pursuant to an individualized education program and that is certified by the department. The nonpublic agency shall also meet standards as prescribed by the superintendent and board.

**Non-Public School (NPS):** A private placement of a child whose needs cannot be served within the special education programs offered within the SELPA.

**Other Health Impaired (OHI):** A disability—having a chronic health problem which affects learning in school.

**Orientation and Mobility (O & M):** A related service—a child with visual impairments is trained to know where his or her body is in space and to move through space.

**Orthopedically Handicapped (OH):** A disability involving the neuromuscular skeletal system that affects the ability to move, as in paralysis or cerebral palsy.

**Perceptual Motor Skills:** The ability to perceive a situation, evaluate it and make a judgment on what action to take (e.g., copying shapes or crossing a street).

**Primary Language:** Language other than English, or other mode of communication such as sign language, that the child first learned, or the language that is spoken in the home that parent indicates on form.

**Psycho educational Assessment:** Information gathered through formal assessment/observation/interviews obtained by a certified school psychologist presented to the IEP team for review and consideration. Information is used to determine eligibility for special education services oriented toward instructional placement.

**Referral:** A written request for assessment to see if the child is a “child with disability” who needs special review by legal guardians and others directly involved in his/her education.



**Resource Specialist Program (RSP):** Oriented towards student eligibility through IEP procedures for remedial services based on needs within the general education program.

**Response to Intervention (RTI):** IDEA 2004. Districts may use RTI as part of eligibility determination process for special education.

**Severely Handicapped (SH):** Designation of students considered severely disabled according to State and Federal eligibility criteria.

**Special Day Class (SDC):** For identified special education students who need services over half of the instructional day as defined within the IEP process.

**Special Education Local Plan Area (SELPA):** An area within San Joaquin County's 10 school districts that works as a separate entity in complying with State and Federal laws related to services for disabled children. The focus is on a regionalized service delivery model.

**Short Term Objectives/Benchmarks:** Specific, measurable goals listed on the Individualized Education Program (IEP)

**Specific Learning Disabled (SLD):** A disability - a child's general education classroom performance is significantly below expected levels; also a disability category containing the often used labels of severely learning disabled, mentally disabled, and mildly mentally disabled.

**Star Testing:** STAR Testing (State Testing and Reporting) CAT 6, Standards Test, CAPA

**Student Study Team - (Student Success Team) - SST:** Students often need a variety of services. SST's are in place at each school site to consider students who may need support or services prior to formal referral to special education.

**Triennial:** Federal and State laws mandate special education students be assessed no later than every 3 years to determine current needs and continued eligibility. This information is provided by a multidisciplinary team and is presented to the IEP team including parents and student for consideration.

**Visually Impaired:** An individual with diminished eyesight capabilities.

**Visual Processing:** The ability to interpret and understand and use information that is seen.

# **Chapter 7**

## **RESOURCES FOR PARENTS**

## Who can help me?

If you have concerns about your child's education, you should first speak with your child's teacher(s). Other personnel at the site may also be helpful, such as the school counselor and the principal. If these individuals are not able to resolve your concerns, support staff in **your district of residence /district office** are available to assist you.

**Alameda County Office of Education**

313 West Winton Avenue  
Hayward, CA 94540  
510.670.7736

**Dublin Unified School District**

7174 Larkdale Avenue  
Dublin, CA 94568  
925.828.2551 x8034

**Livermore Valley Joint Unified School District**

685 East Jack London Boulevard  
Livermore, CA 94550  
925.606.3225

**Mountain House Elementary School District**

Rt. 1, Box 32F  
Byron, CA 94514  
209.835.2283

**Pleasanton Unified School District**

4661 Bernal Avenue  
Pleasanton, CA 94566  
925.426.4293

**Sunol Glen Unified School District**

P.O. Box 568  
Sunol, CA 94586  
925.862.2026

## **RESOURCES FOR PARENTS**

### ***ALAMEDA COUNTY MENTAL HEALTH***

Children's Behavioral Health Care Services  
520 Third Street, #107  
**Oakland CA 94607**  
Phone: (510) 468-2385  
Fax: (510) 763-2647

### ***CALIFORNIA CHILDREN SERVICES (CCS)***

Valley Medical Therapy Unit  
1040 Florence Rd.  
Livermore CA 94550  
Phone: (925) 449-4163  
Fax: (925) 449-4169  
Web Address: <http://www.acphd.org>  
Email Address: [MTU.Program@acgov.org](mailto:MTU.Program@acgov.org)  
This State agency provides specialized medical care and rehabilitation for physically disabled children, whose families are partially or wholly unable to provide for such services.

### ***CA COMMISSION ON TEACHER CREDENTIALING***

P.O. Box 944270  
Sacramento, CA 94244-2700  
Phone: (888) 921-2682  
Fax: (916) 327-3166  
Web Address: <http://teachercred.ctc.ca.gov/>  
Email: [credentials@ctc.ca.gov](mailto:credentials@ctc.ca.gov)  
Information on teacher credentials.

### ***CALIFORNIA DEPARTMENT OF EDUCATION***

1430 N. Street, Suite 2401  
Sacramento, CA 95814  
Phone: (800) 926-0648 (916) 319-0800  
Fax: (916) 327-3704  
Web Address: [www.cde.ca.gov/sp/se](http://www.cde.ca.gov/sp/se)  
Help Line – Special Ed. Division, Procedural Safeguards & Referral Service

### ***CEREBRAL PALSY CENTER FOR THE BAY AREA INC.***

4500 Lincoln Avenue  
Oakland CA, 94602  
Phone: (510) 531-3323  
Fax: (510) 531-2990  
Email: [cpcoak@cpcoak.org](mailto:cpcoak@cpcoak.org)

To identify the needs of and provide services for persons with cerebral palsy and other developmental disabilities and help them to achieve their individual goals and aspirations.

### ***EASTER SEAL SOCIETY***

#### **Corporate Office**

180 Grand Avenue,  
Suite 300  
Oakland, CA 94612  
(510) 835-2131

#### **Early Intervention**

180 Grand Avenue  
Suite 300  
Oakland, CA 94612  
(510) 835-2131

#### **After School Programs**

7425 Larkdale Avenue  
Dublin, CA 94568  
(925) 828-8857

Web Address: [www.bayarea.easterseals.com](http://www.bayarea.easterseals.com)

Easter Seal Society is a nonprofit rehabilitation center providing physical therapy, water therapy, occupational therapy, speech therapy, outdoor camping experiences and has a loan closet for assistive devices.

### ***EPILEPSY FOUNDATION OF AMERICA***

5700 Stoneridge Mall Rd., Suite 295  
Pleasanton, CA 94588-2852  
Phone: (800) 632-3532 or (925) 224-7760  
Fax: (925) 224-7770

Web Address: [www.epilepsyfoundation.org](http://www.epilepsyfoundation.org)

Email Address: [esnca@epilepsynorcal.org](mailto:esnca@epilepsynorcal.org)

The Epilepsy Foundation helps people with epilepsy and their families deal with the practical consequences of seizures, offering advocacy, professional training, support groups, and educational programs.

### ***FAMILY RESOURCE NETWORK (FRN)***

5232 Claremont Avenue  
Oakland, CA 94618  
Phone: (510) 547-7322  
Fax: (510) 658-8354

Email: [info@frnoakland.org](mailto:info@frnoakland.org)

Parent run organization that offers support and resources for families of special needs children.

***REGIONAL CENTER OF THE EAST BAY***

500 Davis Street, Suite 100

San Leandro, CA 94577

(510) 618-6100

[http://www.rceb.org/directory/w\\_RCEBDirectory.pdf](http://www.rceb.org/directory/w_RCEBDirectory.pdf)

Email Address: [writetous@rceb.org](mailto:writetous@rceb.org)

This center provides clinical assessment, case management, individual program planning, prevention services and coordination of community services.

***SOCIAL SECURITY ADMINISTRATION (SSA)***

Regional Public Affairs Office

P.O. Box 4201

Richmond, CA 94804

Bay Area Office

Phone: 10-637-4020

fax 510-637-4027

Email: [Linda.Zamfino@ssa.gov](mailto:Linda.Zamfino@ssa.gov)

Web Address: [www.socialsecurity.gov](http://www.socialsecurity.gov)

***UNITED CEREBRAL PALSY ASSOCIATION***

**UCP of the Golden Gate**

1970 Broadway, Suite 115

Oakland, CA 94612

Phone: (510) 832-7430

Fax: (510) 839-1329

E-mail: [info@ucpgg.org](mailto:info@ucpgg.org)

Web site: <http://www.ucpgg.org>

This agency provides information, advocacy, family support network and out-of-home child care in an integrated environment.

## **Chapter 8**

# **NOTICE OF PROCEDURAL SAFEGUARDS**



Additional copies can be obtained from the Tri-Valley SELPA Web site: <http://Tri-ValleySELPA.org>

Tri-Valley SELPA office email address: [acardenas@pleasantonusd.net](mailto:acardenas@pleasantonusd.net)

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

## Notice of Procedural Safeguards

Revised October 2016

Note: The term school district is used throughout this document to describe any public education agency responsible for providing your child's special education program. The term assessment is used to mean evaluation or testing. Federal and state laws are cited throughout this notice using English abbreviations, which are explained in a glossary on the last page of this notification.

### **What is the Notice of Procedural Safeguards?**

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

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

- When you ask for a copy
- The first time your child is referred for a special education assessment
- Each time you are given an assessment plan to evaluate your child
- Upon receipt of the first state or due process complaint in a school year, and
- When the decision is made to make a removal that constitutes a change of placement

*(20 USC 1415[d]; 34 CFR 300.504; EC 56301[d] [2], EC 56321, and 56341.1[g] [1])*

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

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

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



You must be given opportunities to participate in any decision-making meeting regarding your child's special education program. You have the right to participate in IEP team meetings about the identification (eligibility), assessment, or educational placement of your child and other matters relating to your child's FAPE. (20 USC 1414[d] [1]B–[d][1][D]; 34 CFR 300.321; EC 56341[b], 56343[c])

The parent or guardian, or the local educational agency (LEA), has the right to participate in the development of the IEP and to initiate their intent to electronically audiotape the proceedings of the IEP team meetings. At least 24 hours prior to the meeting, the parent or guardian shall notify the members of the IEP team of their intent to record a meeting. If the parent or guardian does not consent to the LEA audiotape recording an IEP meeting, the meeting shall not be recorded on an audiotape recorder.

Your rights include information about the availability of FAPE, including all program options, and all available alternative programs, both public and nonpublic. (20 USC 1401[3], 1412[a][3]; 34 CFR 300.111; EC 56301, 56341.1[g][1], and 56506)

### **Where can I get more help?**

When you have a concern about your child's education, it is important that you contact your child's teacher or administrator to talk about your child and any problems you see. Staff in your school district or special education local plan area (SELPA) may answer questions about your child's education, your rights, and procedural safeguards. Also, when you have a concern, this informal conversation often solves the problem and helps to maintain open communication.

You may also want to contact one of the California parent organizations (Family Empowerment Centers and Parent Training Institutes), which were developed to increase collaboration between parents and educators to improve the educational system. Contact information for these organizations is found on the CDE special education California Parent Organizations Web page at <http://www.cde.ca.gov/sp/se/qa/caprntorg.asp>.

Additional resources are listed at the end of this document to help you understand the procedural safeguards.

### **What if my child is deaf, hard of hearing, blind, visually impaired, or deaf-blind?**

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. Such programs are offered to students aged 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 (CDE) Web site at <http://www.cde.ca.gov/sp/ss/> or ask for more information from the members of your child's IEP team.

Notice, Consent, Assessment, Surrogate Parent Appointment, and Access to Records

## **Prior Written Notice**

### **When is a notice needed?**

This notice must be given when the school district proposes or refuses to initiate a change in the identification, assessment, or educational placement of your child with special needs or the provision of a free appropriate public education. (20 USC 1415[b][3] and (4), 1415[c][1], 1414[b][1]; 34 CFR 300.503; EC 56329 and 56506[a])

The school district must inform you about proposed evaluations of your child in a written notice or an assessment plan within fifteen (15) days of your written request for evaluation. The notice must be understandable and in your native language or other mode of communication, unless it is clearly not feasible to do so. (34 CFR 300.304; EC 56321)

### **What will the notice tell me?**

The Prior Written Notice must include the following:

1. A description of the actions proposed or refused by the school district
2. An explanation of why the action was proposed or refused
3. A description of each assessment procedure, record, or report the agency used as a basis for the action proposed or refused
4. A statement that parents of a child with a disability have protection under the procedural safeguards
5. Sources for parents to contact to obtain assistance in understanding the provisions of this part
6. A description of other options that the IEP team considered and the reasons those options were rejected; and
7. A description of any other factors relevant to the action proposed or refused. (20 USC 1415[b][3] and [4], 1415[c][1], 1414[b][1]; 34 CFR 300.503)

### ***Parental Consent***

#### **When is my approval required for assessment?**

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

#### **When is my approval required for services?**

You must give informed, written consent before your school district can provide your child with special education and related services.

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

If you do not provide consent for an initial assessment or fail to respond to a request to provide the consent, the school district may pursue the initial assessment by utilizing due process procedures.

If you refuse to consent to the initiation of services, the school district must not provide special education and related services and shall not seek to provide services through due process procedures.

If you consent in writing to the special education and related services for your child but do not consent to all of the components of the IEP, those components of the program to which you have consented must be implemented without delay.

If the school district determines that the proposed special education program component to which you do not consent is necessary to provide a free appropriate public education to your child, a due process hearing must be initiated. If a due process hearing is held, the hearing decision shall be final and binding.

In the case of reevaluations, the school district must document reasonable measures to obtain your consent. If you fail to respond, the school district may proceed with the reevaluation without your consent. (20 *USC* 1414[a][1][D] and 1414[c]; 34 *CFR* 300.300; *EC* 56506[e], 56321[c] and [d], and 56346).

### **When may I revoke consent?**

If at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency:

1. May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 34 *CFR* Section 300.503 before ceasing such services
2. May not use the procedures in subpart E of Part 300 34 *CFR* (including the mediation procedures under 34 *CFR* Section 300.506 or the due process procedures under 34 *CFR* Sections 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child
3. Will not be considered to be in violation of the requirement to make a free appropriate public education (FAPE) available to the child because of the failure to provide the child with further special education and related services
4. Is not required to convene an IEP team meeting or develop an IEP under 34 *CFR* Sections 300.320 and 300.324 for the child for further provision of special education and related services

Please note, in accordance with 34 *CFR* Section 300.9 (c)(3), that if the parents revoke consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency 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 because of the revocation of consent.

### **Surrogate Parent Appointment**

**What if a parent cannot be identified or located?**

School districts must ensure that an individual is assigned to act as a surrogate parent for the parents of a child with a disability when a parent cannot be identified and the school district cannot discover the whereabouts of a parent.

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

Nondiscriminatory Assessment

### **How is my child assessed for special education services?**

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 your child's native language or mode of communication and in the 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 so provide or administer.

No single procedure can be the sole criterion for determining eligibility and developing FAPE for your child. (20 *USC* 1414[b][1]–[3], 1412[a][6][B]; 34 *CFR* 300.304; *EC* 56001[j] and 56320)

## **Independent Educational Assessments**

### **May my child be tested independently at the district's expense?**

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 parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

The school district must respond to your request for an independent educational assessment and provide you information about where to obtain an independent educational assessment.

If the school district believes that the district's assessment is appropriate and 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.

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

your child in the classroom.

If the school district proposes a new school setting for your child and an independent educational assessment is being conducted, the independent assessor must be allowed to first observe the proposed new setting. (20 *USC* 1415[b][1] and [d][2][A]; 34 *CFR* 300.502; *EC* 56329[b] and [c])

Access to Educational Records

### **May I examine my child's educational records?**

You have a right to inspect and review all of your child's education records without unnecessary delay, including prior to a meeting about your child's IEP or before a due process hearing. The school district must provide you access to records and copies, if requested, within five (5) **business** days after the request has been made orally or in writing. (*EC* 49060, 56043[n], 56501[b][3], and 56504)

## **How Disputes Are Resolved**

### **Due Process Hearing**

#### **When is a due process hearing available?**

You have the right to request an impartial due process hearing regarding the identification, assessment, and educational placement of your child or the provision of FAPE. The request for a due process hearing must be filed within two years from the date you knew or should have known about the alleged action that forms the basis of the due process complaint. (20 *USC* 1415[b][6]; 34 *CFR* 300.507; *EC* 56501 and 56505[1])

### **Mediation and Alternative Dispute Resolution**

#### **May I request mediation or an alternative way to resolve the dispute?**

A request for mediation may be made either before or after a request for a due process hearing is made.

You may ask the school district to resolve disputes through mediation or alternative dispute resolution (ADR), which is less adversarial than a due process hearing. The ADR and mediation are voluntary methods of resolving a dispute and may not be used to delay your right to a due process hearing.

#### **What is a pre-hearing mediation conference?**

You may seek resolution through mediation prior to filing a request for a due process hearing. The conference is an informal proceeding conducted in a nonadversarial manner to resolve issues relating to the identification, assessment, or educational placement of a child or to a FAPE.

At the prehearing mediation conference, the parent or the school district may be accompanied and advised by

nonattorney representatives and may consult with an attorney prior to or following the conference. However, requesting or participating in a prehearing mediation conference is not a prerequisite to requesting a due process hearing.

All requests for a prehearing mediation conference shall be filed with the Superintendent. The party initiating a prehearing mediation conference by filing a written request with the Superintendent shall provide the other party to the mediation with a copy of the request at the same time the request is filed.

The prehearing mediation conference shall be scheduled within fifteen (15) days of receipt by the Superintendent of the request for mediation and shall be completed within thirty (30) days after receipt of the request for mediation unless both parties agree to extend the time. If a resolution is reached, the parties shall execute a legally binding written agreement that sets forth the resolution. All discussions during the mediation process shall be confidential. All prehearing mediation conferences shall be scheduled in a timely manner and held at a time and place reasonably convenient to the parties. If the issues fail to be resolved to the satisfaction of all parties, the party who requested the mediation conference has the option of filing for a due process hearing. (EC 56500.3 and 56503)

## **Due Process Rights**

### **What are my due process rights?**

You have a right to:

1. Have 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 (20 *USC* 1415[f][1][A], 1415[f][3][A]-[D]; 34 *CFR* 300.511; EC 56501[b][4])
2. Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities (EC 56505 [e][1])
3. Present evidence, written arguments, and oral arguments (EC 56505[e][2])
4. Confront, cross-examine, and require witnesses to be present (EC 56505[e][3])
5. Receive a written or, at the option of the parent, an electronic verbatim record of the hearing, including findings of fact and decisions (EC 56505[e][4])
6. Have your child present at the hearing (EC 56501[c][1])
7. Have the hearing be open or closed to the public (EC 56501[c][2])
8. Receive a copy of all documents, including assessments completed by that date and recommendations, and a list of witnesses and their general area of testimony within five (5) business days before a hearing (EC 56505[e][7] and 56043[v])
9. Be informed by the other parties of the issues and their proposed resolution of the issues at least ten (10) calendar days prior to the hearing (EC 56505[e][6])
10. Have an interpreter provided (CCR 3082[d])
11. Request an extension of the hearing timeline (EC 56505[f][3])
12. Have a mediation conference at any point during the due process hearing (EC 56501[b][2]), and
13. Receive notice from the other party at least ten days prior to the hearing that the other party intends to be represented by an attorney (EC 56507[a]). (20 *USC* 1415[e]; 34 *CFR* 300.506, 300.508, 300.512 and 300.515)

## **Filing a Written Due Process Complaint**

### **How do I request a due process hearing?**

You need to file a written request for a due process hearing. You or your representative needs to submit the following information in your request:

1. Name of the child
2. Address of the residence of the child
3. Name of the school the child is attending
4. In the case of a homeless child, available contact information for the child and the name of the school the child is attending, and
5. A description of the nature of the problem, including facts relating to the problem(s) and a proposed resolution of the problem(s)

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

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

### **What does a resolution session include?**

Resolution sessions shall be convened within fifteen (15) days of receiving notice of the parents' due process hearing request. The sessions shall include a representative of the school district who has decision-making authority and not include an attorney of the school district unless the parent is accompanied by an attorney. The parent of the child may discuss the due process hearing issue and the facts that form the basis of the due process hearing request.

The resolution session is not required if the parent and the school district agree in writing to waive the meeting. If the school district has not resolved the due process hearing issue within thirty (30) days, the due process hearing may occur. If a resolution is reached, the parties shall execute a legally binding agreement. (20 *USC* 1415[f][1][B]; 34 *CFR* 300.510)

### **Does my child's placement change during the proceedings?**

The child involved in any administrative or judicial proceeding must remain in the current educational placement unless you and the school district agree on another arrangement.

If you are applying for initial admission of your child to a public school, your child will be placed in a public school program with your consent until all proceedings are completed. (20 *USC* 1415[j]; 34 *CFR* 300.518; *EC* 56505[d])

### **May the decision be appealed?**

The hearing decision is final and binding on both parties. Either party may appeal the hearing decision by filing a civil action in state or federal court within 90 days of the final decision. (20 *USC* 1415[i][2] and [3][A], 1415[l]; 34 *CFR* 300.516; *EC* 56505[h] and [k], *EC* 56043[w])

### **Who pays for my attorneys' fees?**

In any action or proceeding regarding the due process hearing, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you as parent of a child with a disability if you are the prevailing party in the hearing. Reasonable attorneys' fees may also be made following the conclusion of the administrative hearing, with the agreement of the parties. (20 *USC* 1415[i][3][B]–[G]; 34 *CFR* 300.517; *EC* 56507[b])

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 attorneys' hourly 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, or
4. Your attorney did not provide to the school district the appropriate information in the due process request notice.

Attorneys' fees will not be reduced, however, if the court finds that the State or the school district unreasonably delayed the final resolution of the action or proceeding or that there was a violation of this section of law. (20 *USC* 1415[i][3][B]–[G]; 34 *CFR* 300.517)

Attorneys' fees relating to any meeting of the IEP team may not be awarded unless an IEP team meeting is convened as a result of a due process hearing proceeding or judicial action. Attorneys' fees may also 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)

**To obtain more information or to file for mediation or a due process hearing, contact:**

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



# **School Discipline and Placement Procedures for Students with Disabilities**

## **School Discipline and Alternative Interim Educational Settings**

### **May my child be suspended or expelled?**

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

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

### **What occurs after a removal of more than ten (10) days?**

After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal the public agency must provide services to enable the child to continue to participate in the general education curriculum and progress toward meeting the goals set out in the child's IEP. Also, a child will receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not recur.

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

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

### **What happens if the IEP team determines that the misconduct is not caused by the disability?**

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

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

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

## Children Attending Private School

### **May students who are parentally placed in private schools participate in publicly funded special education programs?**

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

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

### **When may reimbursement be reduced or denied?**

The court or hearing officer may reduce or deny reimbursement if you did not make your child available for an assessment upon notice from the school district before removing your child from public school. 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, including stating your concerns and intent to enroll your child in a private school at public expense.

Your notice to the school district must be given either:

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

### **When may reimbursement not be reduced or denied?**

A court or hearing officer must not reduce or deny reimbursement to you if you failed to provide written notice to the school district for any of the following reasons:

- The school prevented you from providing notice
  - You had not received a copy of this Notice of Procedural Safeguards or otherwise been informed of the requirement to notify the district
  - Providing notice would likely have resulted in physical harm to your child
  - Illiteracy and inability to write in English prevented you from providing notice, or
  - Providing notice would likely have resulted in serious emotional harm to your child
- (20 *USC* 1412[a] [10] [C]; 34 *CFR* 300.148; *EC* 56177)

## **State Complaint Procedures**

### **When may I file a state compliance complaint?**

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

Complaints alleging violations of federal and state special education laws or regulations may be mailed to:

California Department of Education  
Special Education Division  
Procedural Safeguards Referral Service  
1430 N Street, Suite 2401  
Sacramento, CA 95814

For complaints involving issues **not** covered by federal or state special education laws or regulations, consult your district's uniform complaint procedures.

To obtain more information about dispute resolution, including how to file a complaint, contact the CDE, Special Education Division, Procedural Safeguards Referral Service, by telephone at (800) 926-0648; by fax at 916-327-3704; or by visiting the CDE Web site at <http://www.cde.ca.gov/sp/se>.

## **Glossary of Abbreviations Used in This Notification**

ADR	Alternative Dispute Resolution
CFR:	<i>Code of Federal Regulations</i>
EC	California <i>Education Code</i>
FAPE	Free Appropriate Public Education
LRE	Least Restrictive Environment
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Program
OAH:	Office of Administrative Hearings
SELPA:	Special Education Local Plan Area
USC:	<i>United States Code</i>