

STATE SPECIAL SCHOOLS & SERVICES DIVISION CALIFORNIA SCHOOLS FOR THE DEAF AND CALIFORNIA SCHOOL FOR THE BLIND PARENT RIGHTS AND RESPONSIBILITIES/PROCEDURAL SAFEGUARDS

Parent rights, responsibilities and procedural safeguards are provided to parents and guardians of children who receive special education services. They are often referred to as "Parent Rights" and are fully codified in the California Education Code (Ed Code), the California Code of Regulations (CCR), the US Education Code, the Code of Federal Regulations (CFR), the Individuals with Disabilities Education Act of 2004 (IDEA 2004), the Family Educational Rights and Privacy Act of 1974 (FERPA) and in the No Child Left Behind Act of 2001 (NCLB).

A copy of the procedural safeguards notice shall be given to the parents of a child with a disability only one time a school year, except that a copy must be given to the parents: (1) upon initial referral or parent request for evaluation; (2) upon receipt of the first State complaint under 34 CFR §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year; (3) when a decision is made to take a disciplinary action that constitutes a change of placement; and (4) upon parent request. [34 CFR §300.504(a)]

YOU HAVE THE RIGHT:

To receive notice:

- in writing, as required by Family Educational Rights and Privacy Act of 1974 (FERPA)
- in your native language if your English is limited, or if you do not speak English
- in your principle mode of communication such as sign language
- in language easily understood by the general public
- sent within a specified, or at least a reasonable number of days before or following the activity involved
- a school must regularly inform parents of their child's progress, at least as often as parents of non-disabled children
- the parent has the right to an interpreter provided by the agency

If your native language or other mode of communication is not a written language, your school district must ensure that:

- The notice is translated for you orally by other means in your native language or other mode of communication;
- You understand the content of the notice; and
- There is written evidence that 1 and 2 have been met.

The school must send you notices:

- before proposed assessments are conducted
- before all Individualized Education Program (IEP) meetings
- Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child;
- Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.
- if it plans to use the services of an attorney for making presentations at:
 - a mediation conference (three days prior)
 - a state hearing (10 days prior)

The notice shall include

- a description of the action proposed or refused by the local education agency,
- an explanation of why the agency proposed or refuses to take the action,
- a description of any other options that the agency considered

and the reasons why those options were rejected,

- a description of each evaluation procedure, test record, or report the agency used as a basis for the proposed or refused action, a description of any other factors that are relevant to the agency's proposal or refusal,
- a statement that the parents of a child with a disability have protection under the procedural safeguards of the IDEA and,
- if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained, and sources for parents to contact to obtain assistance in understanding the provisions of IDEA

YOU HAVE RIGHTS CONCERNING THE ISSUE OF CONFIDENTIALITY

All information regarding school children is, by law, confidential. Your child's records can be made available only to:

- you
- school staff
- persons who have your written consent
- a pupil who is age 16, or who has completed the 10th grade
- personnel from agencies specified by law
- records of proceeding are maintained confidentially for 1 year unless the parent initiates legal proceedings

YOU HAVE RIGHTS CONCERNING YOUR CHILD'S RECORDS

Parents have the right to receive notice in their native language which includes a summary of the policies, procedures, and rights related to personally identifiable information, including the rights under the Family Educational Rights and Privacy Act of 1974 (FERPA). The following information meets this requirement.

Parents have the right to:

- upon request, to obtain a list of types and locations of education records collected, maintained, or used by the agency
- request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an individualized education program (IEP),
- impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.
- to receive an explanation of their content
- to be notified and give consent before any personally identifiable information in your child's file is destroyed or removed
- to a hearing if you and the school disagree on correction or removal of information from your child's record.

The local education agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

The parent of a pupil may file a written request with the Superintendent of the local education agency to correct or remove any information recorded in the written records concerning his or her child, which the parent alleges to be any of the following:

- inaccurate
- an unsubstantiated personal conclusion or inference
- a conclusion or inference outside of the observer's area of competence
- not based on the personal observation of a named person with the time and place of the observation noted
- misleading
- in violation of the privacy or other rights of the pupil

If the final decision of the Superintendent is unfavorable to the parent, or if the parent accepts an unfavorable decision by the district superintendent, the parent shall have the right to submit a written statement of his or her objections to the information. This statement shall become a part of the pupil's school record until the information objected to is corrected or removed.

YOUR INFORMED WRITTEN CONSENT IS NECESSARY

- before any formal assessment (evaluation) of your child is undertaken
- before placement of your child in a special education program
- before removal of your child from a special education program
- You may rescind your consent at any time.

Consent

Consent means that you have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent.

34 CFR §300.9

Other consent requirements

Your consent is not required before your school district may:

Review existing data as part of your child's evaluation or a reevaluation; or

Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from all parents of all children.

YOU HAVE RIGHTS REGARDING A FULL AND INDIVIDUAL ASSESSMENT OF YOUR CHILD WHICH:

- is selected and administered so as not to be racially, culturally, or sexually discriminatory,
- administered in the child's native language or mode of communication unless clearly not feasible to do so

Additionally, tests and other assessment materials must meet all of the following requirements:

- are provided and administered in the language and form most likely to yield accurate information on what the pupil knows and can do,
- are used for the purposes for which the assessment or measures are valid and reliable,
- are administered by trained and knowledgeable personnel in accordance with instructions provided by the producer of the assessments, except that individually administered tests of

intellectual or emotional functioning shall be administered by a credentialed school psychologist,

- must include those tailored to assess specific areas of educational needs,
- are selected and administered to best ensure that when a test administered to a pupil with impaired sensory, manual, or speaking skills, produces test results that accurately reflect the pupil's aptitude, achievement level, etc.
- no single measure or assessment is used as the sole criterion for determining whether a pupil is a pupil with exceptional needs or determining an appropriate educational program,
- assess in all areas related to the suspected disability,
- assessments, including assessments of pupils with suspected low incidence disabilities, shall be conducted by persons knowledgeable of that disability,

The local education agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

The parent shall be given, in writing, a proposed assessment plan within 15 calendar days of the referral for assessment, not counting days between school sessions or days of school vacations in excess of 5 school days, from the date of receipt of the referral unless there is written parental agreement to an extension. Assessment plans shall be developed within 10 days after the start of the new regular school year when a referral was made 10 days or less prior to the end of the regular school year. For pupil school vacations, the 15 days time starts again when the regular school year reconvenes.

The assessment team has 60 days of receiving signed parental consent, to complete the evaluation and determine the educational needs of the student.

The school must reevaluate your child at least every three years unless the parents and the local educational agency agree that a reevaluation is unnecessary.

The local education agency shall conduct a reevaluation before determining that the child no longer meets the eligibility criteria as a child with a disability.

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, the local education agency shall notify the child's parent of that determination and the reasons for it, and the right of the parent to request an assessment to determine whether the child continues to be a child with a disability.

Upon request from you, your local educational agency, and/or teachers and staff, re-evaluation may take place more often if conditions have changed.

A school district must conduct an evaluation before determining the child is no longer eligible.

Before any formal assessment of your child may take place, you must:

- be given all relevant information about why the school is requesting to assess your child
- be informed as to the proposed manner of the assessment
- give your written consent

Following the assessment, a written copy of the final report will be made available at your request.

If you disagree with the assessment, you have the right to obtain an independent educational assessment from qualified specialist, at public expense. If you request an independent assessment, your local educational agency must:

- inform you of where and how to obtain an independent assessment for your child
- consider the information from the independent assessment in developing the IEP
- pay for the independent assessment unless the school initiates a fair hearing which determines that the school's assessment was appropriate.

YOU HAVE THE RIGHT TO HAVE YOUR CHILD PLACED IN THE LEAST RESTRICTIVE ENVIRONMENT

- to participate in the development of the IEP which meets the needs of your child as identified in the assessment
- to have your child educated with non-disabled children to the maximum extent appropriate to both
- to have your child participate with non-disabled students in non-academic and extracurricular services and activities as appropriate to the needs of your child.
- to have the full continuum of program options provided by the school so that an appropriate environment will be available for your child commensurate with his/her needs.

Each special education local plan area shall ensure that a continuum of program options is available to meet the needs of individuals with exceptional needs for special education and related services, as required by the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and federal regulations relating thereto. (Ed Code section 56360)

The continuum of program options shall include, but not necessarily be limited to, all of the following or any combination of the following:

- (a) Regular education programs
 - (b) A resource specialist program
 - (c) Designated instruction and services
 - (d) Special classes
 - (e) Nonpublic, nonsectarian school services
 - (f) State special schools
 - (g) Instruction in settings other than classrooms where specially designed instruction may occur.
 - (h) Itinerant instruction in classrooms, resource rooms, and settings other than classrooms where specially designed instruction may occur
 - (i) Instruction using telecommunication, and instruction in the home, in hospitals, and in other institutions
- (Ed Code section 56361)

PARENTS WITH DEAF, HARD OF HEARING, DEAF-BLIND, BLIND and VISUALLY IMPAIRED CHILDREN HAVE THE RIGHT TO BE INFORMED ABOUT THE FREE APPROPRIATE PUBLIC EDUCATION PROGRAMS OFFERED BY THE STATE OF CALIFORNIA.

California Schools for the Deaf, in Fremont and Riverside, provide comprehensive day and residential educational services as well as assessment services to eligible deaf and hard of hearing students from birth to age 21. The schools adhere to the California Department of Education's Curriculum Standards. Each school has highly qualified and credentialed teachers who possess the specialized skills necessary to effectively instruct deaf and hard of hearing students. The schools serve students whose needs are related primarily to their deafness. They are not intended to serve students whose needs are primarily addressed in a home or hospital setting in a residential treatment facility, or those whose ongoing needs are related to a severe or profound emotional, behavioral, or cognitive disability.

Students are placed at the California Schools for the Deaf by their

Local Educational Agency through an IEP process. If placement at the School for the Deaf is recommended by the IEP Team, students are referred by the LEA to the School for the Deaf for a (60-day) assessment and possible admission.

The California School for the Blind provides comprehensive day and residential educational services as well as assessment services to eligible visually impaired, blind, and deaf blind students from birth through age 21. The school for the blind has highly qualified and credentialed teachers, who possess the specialized skills necessary to effectively instruct visually impaired, blind, and/or deaf blind students.

The school serves students whose primary educational needs are related to a severe sensory loss (i.e., a loss of vision or a loss of vision and hearing combined) that adversely affects the student's ability to access the general education or alternative curriculum.

YOU HAVE RIGHTS REGARDING IEP PROCESS

- to be part of the team that develops the IEP of your child
- to meet at least annually with the IEP team for the purpose of reviewing pupil progress, the individualized education program, the appropriateness of placement and to make any necessary revisions
- to be accompanied by another person(s) at all meetings
- to have your concerns regarding enhancing the education of their child discussed at the IEP meeting
- to discuss the communication needs of your child, if he or she is deaf or hard of hearing, including the following:

(1) the pupil's primary language mode and language, which may include the use of spoken language with or without visual cues, or the use of sign language, or a combination of both.

(2) the availability of a sufficient number of age, cognitive, and language peers of similar abilities (which may be met by consolidating services into a local plan area-wide program or providing placement pursuant to Section 56361).

(3) appropriate, direct, and ongoing language access to special education teachers and other specialists who are proficient in the pupil's primary language mode and language consistent with existing law regarding teacher training requirements.

(4) services necessary to ensure communication-accessible academic instructions, school services, non-academic and extra-curricular activities consistent with California Ed Code

Each meeting to develop, review, or revise the individualized education program of an individual with exceptional needs shall be conducted by an individualized education program team. 56341(a)

The IEP team includes:

- one or both of the pupil's parents or a representative chosen by the parent, or both
 - at least one special education teacher, or where appropriate, at least one special education provider
 - a representative of the local educational agency who is qualified to provide, or supervise the provision of specially designed instruction to meet the needs of children with disabilities; is knowledgeable about the general curriculum, and the availability of resources of the local agency
 - an individual who can interpret the instructional implications of evaluation results

- other individuals at the discretion of the parent or agency who have knowledge or special expertise regarding the child, including related services personnel, as appropriate
- at least one regular education teacher of the child if the child is, or may, participate in the general education environment
- whenever appropriate, the child with a disability

When appropriate, the IEP team will also include:

- other persons who possess expertise or knowledge necessary for the development of the IEP
- when the child has been assessed for purposes of developing, reviewing, or revising the IEP, a person who conducted an evaluation of the child or who is knowledgeable about the evaluation procedures used to test the child and is familiar with the results of the evaluation
- when the child is suspected to have a specific learning disability, at least one member of the individualized education program team shall be qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. At least one member of the IEP team will be a person who has observed the child's academic performance and behavior in the areas of difficulty in the child's learning environment including the regular classroom setting. If the child is younger than five years or is not enrolled in a school, a team member will observe the child in an environment appropriate for a child that age.

If the pupil is 16 years of age or will be 16 by the time of their next Annual Review IEP meeting, they will be invited to attend the IEP if postsecondary goals and transition services for reaching those goals are being considered. If the individual with exceptional needs does not attend the individualized education program meeting, the local educational agency shall take steps to ensure that the child's preferences and interests are considered

An Individualized Education Program required as a result of an assessment of a child shall be developed within a total time not to exceed 60 days, not counting days between the child's regular school sessions, terms, or days of school vacation in excess of five school days, from the date of receipt of the parent's written consent for assessment, unless the parent agrees, in writing, to an extension. However, such an Individualized Education Program (IEP) shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each district's school calendar for each pupil for whom a referral has been made 20 days or less prior to the end of the regular school year. In the case of pupil school vacations, the 60-day time shall recommence on the date that pupil school days reconvene.

IEP TEAM MEMBERS AND RESPONSIBILITIES

- the IEP Team meeting shall be arranged at times and places mutually agreeable to the parent and the State Special Schools
- in developing each child's IEP, the IEP Team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child
- parents have the right to be members of any group that makes decisions on the educational placement of their child
- for children with disabilities aged 3 through 5, an Individualized Family Service Plan may serve as the IEP of the child if agreed to by State Special Schools and the child's parents
- parents have the right to request they be provided with a copy of the IEP in the primary language of the home
- parents shall be given a copy of the IEP at no cost
- parents have the right to request a review by the IEP Team. A meeting of the IEP Team requested by a parent shall be held within 30 days, not counting days in July and August, from the date of receipt of the parent's written request.
- If a parent makes an oral request, the local education agency shall notify the parent of the need for a written request and the procedure for filing a written request.

- parents and the local education agency have a right to make an audio tape recording of the proceedings of the IEP Team meeting by giving 24 hours notice to the IEP Team of the intent to tape the meeting. If the local education agency gives notice of the intent to audiotape the meeting and the parent objects or refuses to attend because it will be tape recorded, then the meeting shall not be recorded

If the local education agency determines that the part of the proposed special education program to which the parent does not consent is necessary to provide a free and appropriate public education to the child, a due process hearing shall be initiated unless a pre-hearing mediation conference is held.

During the pendency of the due process hearing, the local education agency may choose to meet informally with the parent. While a pre-hearing mediation conference or due process hearing is pending, the pupil shall remain in his or her then-current placement unless the parent and the local education agency agree otherwise.

PROCEDURES FOR APPOINTMENT OF SURROGATE PARENTS

Appointment of surrogate parents is the responsibility of the local education agency. The local education agency shall ensure that procedures are established and maintained for the assignment of an individual to act as a surrogate for the parents upon referral of the child to a local education agency for special education and related services or, in cases where the child already has a valid IEP, under the following circumstances whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State.

The individual appointed to act as a surrogate shall not be an employee of the State education agency, the local education agency, or any other public or private agency that is involved in the education or care of the child. The surrogate shall have no interest that conflict with the interest of the child he or she represents and shall have knowledge and skills that ensure adequate representation of the child. An individual who would have a conflict of interest means a person having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure a free appropriate public education for a child with a disability.

As far as practical, a surrogate parent should be culturally sensitive to his or her assigned child.

When appointing a surrogate parent, the local education agency shall, as a first preference, select a relative caretaker, foster parent, or court appointed special advocate, if any of these individuals exist and is willing and able to serve. If none of these individuals is willing or able to act as a surrogate parent, the local education agency shall select the surrogate parent of its choice. If the child is moved from the home of the relative caretaker or foster parent who has been appointed as surrogate parent, the local education agency shall appoint another surrogate parent.

Except for individuals who have a conflict of interest in representing the child, individuals who may serve as surrogate parents include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers who are not employees of a public agency involved in the education or care of the child. If a conflict of interest arises subsequent to the appointment of the surrogate parent, the

local education agency shall terminate the appointment and appoint another surrogate parent.

The surrogate parent shall serve as the child's parent and share the rights relative to the child's education that a parent has as specified in the IDEA. A surrogate parent may represent a child with a disability in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the Individualized Education Program (IEP), and in other matters relating to the provision of a free appropriate education to the individual. This representation shall include the provision of written consent to the IEP including non-emergency medical services, mental health treatment services and occupational or physical therapy services. The surrogate parent may sign any consent relating to IEP purposes.

A surrogate parent shall not be 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 for a child who has reached the age of majority unless the child has been declared incompetent by a court of law.

A surrogate parent shall be held harmless by the State of California when acting in his or her official capacity except for acts or omissions which are found to have been wanton, reckless, or malicious.

The parent or guardian of a child with a disability may designate another adult individual to represent the interests of the child for education and related services.

YOU HAVE A RIGHT TO MEDIATION

Either the parent or the local education agency may request a voluntary prehearing mediation by filing a written request with the Superintendent of Public Instruction with a copy provided to the other party at the same time. The prehearing mediation shall be scheduled within 15 days of receipt of the request by the state Superintendent. The mediation conference shall be completed within 30 days after receipt of the mediation request unless both parties agree to a time extension. Attorneys or other independent contractors who provide legal advocacy shall not participate in prehearing request mediation conferences.

- the parent has a right to the opportunity for a mediation conference requested.
- the mediation process is voluntary; may not be used to delay a parent's right to a hearing or other rights; and will be conducted by a qualified, impartial, and trained mediator.
- a parent who chooses not to use mediation may be required to meet (at a time and location convenient to the parent) with a disinterested party who is under contract with a parent training center or an appropriate alternative dispute resolution entity, to explain the use and benefits of mediation.
- each mediation session is to be scheduled in a timely manner and held in a location convenient to the parties.
 - any agreement reached in mediation must be put in a written mediation agreement.
- discussions in mediation must be confidential, cannot be used in any subsequent hearings or civil proceedings, and parties may be required to sign a confidentiality pledge prior to the start of the process.

YOU HAVE A RIGHT TO DUE PROCESS

Parents shall have the opportunity for an impartial due process hearing involving a proposal or a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child and when a dispute arises involving any such matter, either the parent or

the local education agency may request a due process hearing to resolve the dispute.

The due process hearing rights include the right to examine pupil records and to receive copies within 5 days after such request is made by the parent either orally or in writing.

All requests for a due process hearing shall be submitted to the State Superintendent of Public Instruction with a copy provided to the other party at the same time.

Upon receipt by the State Superintendent or designee of the hearing request, all parties to the hearing shall immediately be notified of the request for the hearing and the scheduled hearing date. The notice shall advise all parties of all their rights relating to procedural safeguards and shall include a list of persons and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing.

The hearing decision shall be final and binding on all parties except that any party involved in such hearing may appeal the decision to a court of competent jurisdiction. An appeal shall be made within 90 days of receipt of the hearing decision.

- the parent has a right to a fair and impartial hearing at the state level before a person knowledgeable in laws governing education and administrative hearings, who is not an employee of the state or local education agency in the education or care of the child.
 - the parent has a right to due process hearing based on matters regarding examination of records; participation in meetings with respect to identification, evaluation, and placement of their child including a placement in an alternative educational setting; and obtaining an independent educational evaluation.
 - any party to the hearing has a right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.
 - the school must inform the parent of free or reduced cost legal aid upon receipt of request for a hearing.
 - the parent and the school district have the right to be informed by other parties to the hearing, at least 10 days prior to hearing, as to the issues.
- The parent who is not represented by an attorney has, the right to have the school district provide a mediator to assist the parent.
- each party is required to disclose all evaluations and recommendations at least 5 business days prior to a hearing.
 - any party to the hearing has a right to prohibit introduction of any evidence not disclosed at least five days prior to the hearing.
 - any party to the hearing has a right to request a mediation conference at any point during the hearing process.
 - any party to the hearing has a right to present evidence, written arguments, and oral arguments.
 - any party to the hearing has a right to confront, cross-examine, and compel attendance of witnesses.
 - any party to the hearing has a right to a written or an electronic verbatim record of the hearing.
 - any party to the hearing has a right to a written or an

electronic finding of facts and decisions.

- any party to the hearing has a right to request an extension of the hearing timeline upon good cause.
- a final decision should be reached and a copy of the decision be mailed to parents 45 days after receipt of request for hearing.
- the hearing decision is final unless the parties appeal.
- the parent has a right to have the child present at the hearing.
- the parent has a right to open the hearing to the public.
- a court of law may award reasonable attorney fees to the parent who is the prevailing party.
- no attorney fees may be awarded and related costs may not be reimbursed subsequent to the time of a written offer of settlement to a parent if: offer is made more than 10 days prior to start of the proceedings; the offer is not accepted within 10 days; and the court or hearing officer finds that relief obtained by parents is not more favorable than the offer.
- attorney fees and related costs may be awarded to parents who prevail and substantially justified in rejecting settlement offer.
- attorney fees will be reduced if the parent unreasonably protracted the final resolution during the course of the action or proceeding; if fees unreasonably exceed the prevailing hourly rate in the community; the time spent and legal services were excessive; and the parent's attorney did not provide the school district with the appropriate information when providing a notice to the school district of a complaint.
- attorney fees will not be reduced if the state or local educational agency unreasonably protracted the resolution, or proceeding, or violated due process procedures.
- no attorney fees may be awarded related to any meeting of the IEP team unless convened as a result of a proceeding, judicial action, or mediation prior to filing of a complaint related to matters regarding examination of records; participating in meetings with respect to identification, evaluation, and placement of their child including a placement in an alternative educational setting; and obtaining an independent educational evaluation.
- pending administrative or judicial proceedings, the child remains in present placement unless parties agree otherwise.
- if placement involves the initial admission to school and the parent agrees, the child is placed in a public school program until proceedings are completed.
- reimbursement for the cost of private school placement by the parent may be provided if a court or hearing officer finds the school district failed to provide a free appropriate public education in a timely manner to that enrollment.
- reimbursement for tuition of unilateral placement in a private school by the parent may be limited if:
 - 1) the parent did not inform the school district at the most recent IEP of the intent to remove the child from the public school and concerns about the public education program;
 - 2) the parent failed to notify the school district 10 business days prior to the child's removal;
 - 3) the school district, prior to the parent's removal of the child, notified the parent of its intent to evaluate the child and the parent failed to make the child available; and
 - 4) a court finds the actions of the parent to be unreasonable.
- reimbursement for tuition of unilateral placement in a private school by the parent may not be reduced or denied if:
 - 1) the parent cannot read or write English;
 - 2) continued placement in the public education program would likely result in physical or serious emotional harm to the child;
 - 3) the school prevented the parent from providing notice; and
 - 4) the parent did not receive notice of an obligation to inform the school of the parent's intent and concerns.

COMPLAINTS

An individual may file a written complaint with the superintendent of the local education agency or the State Superintendent of Public

Instruction with a copy to the district regarding the local education agency's alleged violation of federal or state law involving special education and related services.

YOU HAVE RIGHTS REGARDING DISCIPLINARY ACTION

- school personnel may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting, another setting, or suspension for not more than 10 school days. In the case of a truly dangerous child, a suspension may exceed 10 consecutive school days, or the pupil's placement may be changed, or both, if the pupil's parent or guardian agrees or if a court order so provides.
- school personnel may order a change in placement to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if a child carries a weapon to school or to a school function or the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function. The interim alternative educational setting shall be determined by the IEP Team.
- either before or not later than 10 days after taking a disciplinary action involving a change of placement as described in either of the two preceding paragraphs, if the local education agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension, the agency shall convene an IEP meeting to develop an assessment plan to address that behavior or, if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior.
- a hearing officer may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer determines that the local education agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others, considers the appropriateness of the child's current placement, considers whether the local education agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the using of supplementary aids and services, and determines that the interim alternative educational setting meets the requirements set forth in the following paragraph.
- any interim alternative educational setting in which a child is placed shall be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable to child to meet the goals set out in that IEP, and include services and modifications designed to address the behavior described above as that it does not recur.
- if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability, the parents shall be notified of that decision of all procedural safeguards not later than the date on which the decision to take that action is made.
- immediately, if possible, but in no case later than 10 school days after the date on which the decision to take disciplinary action is made, a review shall be conducted of the

relationship between the child's disability and the behavior subject to the disciplinary action.

- in determining whether a pupil shall be expelled, the IEP Team shall base its decision on the results of a pre-expulsion educational assessment which shall include a review of the appropriateness of the pupil's placement at the time of the alleged misconduct, and a determination of the relationship, if any, between the pupil's behavior and his or her disability. The parent is entitled to written notice of the local education agency's intent to conduct a pre-expulsion assessment. Parental consent is not required prior to conducting a pre-expulsion educational assessment. The parent shall make the pupil available for the assessment at a site designated by the local education agency without delay. The parent's right to an independent assessment applies despite the fact that the pupil has been referred for expulsion.
- the child's parent share the right to participate in the IEP Team meeting preceding the commencement of expulsion proceedings following the completion of the pre-expulsion assessment through actual participation, representation, or telephone conference call. The meeting shall be held at a time and place mutually convenient to the parent and the local education agency within the period, if any, of the pupil's pre-expulsion suspension. A telephone conference call may be substituted for the meeting. Each parent shall be notified on his or her right to participate in the meeting at least 48 hours prior to the meeting. Unless a parent has requested a postponement, the meeting may be conducted without the parent's participation, if the required notice of the meeting was provided.
- the notice shall specify that the meeting may be held without the parent's participation, unless the parent requests a postponement for up to three additional school days. If a postponement has been granted, the local education agency may extend any suspension of a pupil for the period of postponement if the pupil continues to pose an immediate threat to the safety of himself, herself, or others and the local education agency notifies the parent that the suspension will be continued during the postponement. However, the suspension shall not be extended beyond 10 consecutive school days unless agreed to by the parent, or by a court order, with educational services recommencing as of the 11th day of any suspension. If a parent who has received proper notice of the meeting refuses to consent to an extension beyond 10 consecutive school days and chooses not to participate, the meeting may be conducted without the parent's participation.
- in conducting a review, the IEP Team may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP Team first considers, in terms of the behavior subject to disciplinary action, all relevant information including evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child, observations of the child, and the child's IEP and placement and then determines that, in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement, the disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action, and the disability did not impair the ability of the child to control the behavior subject to disciplinary action. In addition to the pre-expulsion educational assessment results, the IEP Team shall also review and consider the pupil's health records and school discipline records.
- the result of the IEP Team review is a determination that the behavior of the child was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they

would be applied to children without disabilities except that provision a free appropriate public education must continue.

- if the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.
- when a parent requests a hearing regarding a disciplinary action to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until expiration of the 45 day limit for interim alternative placements, whichever occurs first, unless the parent and the State or local education agency agree otherwise.
- if a child is placed in an interim alternative educational setting and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (the child's placement prior to the interim alternative educational setting).
- no expulsion hearing shall be conducted for a child with a disability until a pre-expulsion assessment is conducted, the IEP Team meets to consider the relationship (if any) of the behavior to the disability, and due process hearings and appeals, if initiated, are completed. The statutory time prescribed in the California Education Code for expulsion proceedings for children with disabilities shall commence after the completion of the steps listed in this paragraph.
- if the local education agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.
- a child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated any rule or code of conduct of the local education agency may assert all due process protections included in the IDEA if the local education agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. A local educational agency shall be deemed to have knowledge that a child is a child with a disability if the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with this requirement) to personnel of the appropriate local education agency that the child is in need of special education and related services, the behavior or performance of the child demonstrates the need for such services, the parent of the child has requested an evaluation of the child for special education, or the child's teacher or other personnel of the local educational agency has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel of the agency. If the local education agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subject to the same disciplinary measures as applied to children without disabilities. If a parent requests an evaluation of a child during the time period in which disciplinary measures are being taken, the evaluation shall be conducted in an expedited manner. If the child

is determined to be a child with a disability, taking into consideration information from the agency's evaluation and information provided by the parents, the agency shall provide special education and related services. Pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

- the local education agency has a right to report a crime committed by a child with a disability to appropriate authorities and State law enforcement and judicial authorities have the right to exercise their responsibilities in applying Federal and State law to crimes committed by a child with a disability.
- an agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.
- a local education agency is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.
- if the parents of a child with a disability who previously received special education and related services through the local education agency enroll the child in a private school without the consent of or referral by the local education agency, a court or hearing officers may require the parent to be reimbursed for the costs of the placement if the court or hearing officer finds that a free appropriate public education had not been made available to the child in a timely manner prior to that enrollment.
- the cost of reimbursement may be reduced or denied if - (a) at the most recent IEP meeting the parents attended prior to removing the child from public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the local education agency and did not state their concerns and their intent to enroll their child in a private school at public expense or (b) 10 business days (including holidays that occur on a business day) prior to removing a child from public school, the parents did not give written notice to the local education agency of the information described in (a), or (c) if prior to the parents' removal of the child from public school, the local education agency informed the parents of its intent to evaluate the child (with notice including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation, or (d) if there is a judicial finding that the actions taken by the parents were unreasonable. The cost of reimbursement may not be reduced or denied if the parent failed to provide the notice as required in (a) and (b) above as a result of being illiterate and unable to write in English, or because providing such required notice would likely result in physical or serious emotional harm to the child, or the school prevented the parent from providing such notice, or the parents had not received notice of the requirement to provide the information in (a) and (b) above.
- the school ensures that special education and disciplinary records of the child are transmitted to person(s) making final determination of disciplinary procedures.
- the parent has a right to an expedited hearing in any case involving suspension/expulsion.
- a child who has not been determined to be eligible and has violated rules or codes of conduct may assert these protections if the school district had knowledge the child had a disability.
- the school is deemed to have knowledge if the parent expressed concerns in writing (unless the parent is illiterate or has a disability

that prevents compliance) to the school that the child has additional disabilities; the behavior or performance of the child demonstrates the need for services; the parent requested an evaluation; or the teacher or other school personnel expressed concern to the superintendent or designee.

- if the school does not have knowledge that the child has additional disabilities, the child may be subject to regular disciplinary procedures.
- if the evaluation request is made during the period of disciplinary procedures, the evaluation is expedited. If the child is determined to have additional disabilities, the school must provide services, except that the child remains in the placement determined by school authorities pending results of the evaluation.

YOU HAVE RESPONSIBILITIES AS A PARENT OR GUARDIAN

Along with your rights to be involved in the decisions concerning your child's education and with the legal safeguards to protect your child, you also have some basic responsibilities.

- Be informed! Ask for clear, correct information about your child. Ask to have it written down in layman's terms. Bring it home to share with your family.
- Become involved! Serve as a sponsor or a coach, volunteer, join APTC and FAA, help with field trips, assist with school social activities.
- Share specific information about your child to show his/her growth and experiences.
- Keep a notebook or file of all your child's history.
- Learn what you need to know to help your child. Become your child's advocate, ally, and a champion for his/her needs.
- Ask teachers how you can use your knowledge to help both your child and them in their efforts to provide an appropriate education
- Find out about laws that protect and help your children.
- Meet and talk with the school personnel who serve your child.
- When meeting with the IEP team, ask questions and make sure you understand the information shared at the meeting.
- Set regular times for reading and support school literacy activities by following through at home.
- Have a regular time for homework, ask your child questions about their work and their classes. Contact teachers for clarification when needed.
- Your input and participation in meeting and IEPs is vital. If a meeting is called, try to be on time. If the time is not convenient to you, make other arrangements. Consider an alternate manner of participating such as by VP or conference call.
- Get to really know each other as parent and child.

DEFINITIONS:

• Special Education

Specially designed instruction, at no cost to the parents, to meet the unique needs of individuals with exceptional needs whose educational needs cannot be met with modification of the regular instruction program, and related services, at no cost to the parent, that may be needed to assist these individuals to benefit from specially designed instruction
CCR 3001

• Consent

The parent has been fully informed of all information relevant to the activity for which consent is sought, in the primary language, or other mode of communication of the parent. The

parent understands and agrees in writing to the carrying out of the activity for which the consent is sought, and the consent describes that activity including lists of the records (if any) that will be released and to whom. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

- **Personally identifiable**

Information that includes the name of the child, the child's parent or other family members, address of the child, a personal identifier such as the child's social security number or student number, or a list of personal characteristics, or other information that could make it possible to identify the child with reasonable certainty.

- **Evaluation (also called Assessment)**

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 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.

- **Independent educational evaluation**

Evaluation (assessment) conducted by a qualified examiner who is not employed by the local educational agency (LEA) responsible for the education of the child in question.

- **Public expense**

The local educational agency either pays for the full cost of the evaluation or ensures that it is otherwise provided at no cost to the parent.

- **Native language**

If used with reference to an individual of limited English proficiency, *native language* means:

(1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.

(2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication that is normally used by the individual (such as sign language, Braille, or oral communication).

US Ed Code § 300.19 Native language. (Authority: 20 U.S.C. 1401(16))

- **Free appropriate public education (FAPE)**

Special education and related services that:

(1) have been provided at public expense, under public supervision and direction and without charge;

(2) meets any of the standards established by state or federal law;

(3) include an appropriate preschool, elementary, or secondary school education in California; and

(4) are provided in conformity with the individualized education program required under state and federal law.