

North Coastal Consortium for Special Education

Special Education Rights of Parents and Children

Under the Individuals with Disabilities Education Act, Part B

Notice of Procedural Safeguards

Revised May 2006

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

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

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

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

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

The Notice of Procedural Safeguards: A copy of the Notice of Procedural Safeguards will be given to you once a year, upon initial referral, upon parent request for evaluation, upon the first occurrence of the filing of a complaint, and at your request. (20 USC 1415[d]) (Ed. Code section 56321(a) continues to require providing a copy of procedural safeguards with every assessment plan.

Parent Participation: You have the right to refer your child for special education services. You must be given opportunities to participate in any decision-making meeting regarding your child's special education program. You have the right to participate in IEP meetings about the identification (eligibility), assessment, and educational placement of your child and other matters relating to your child's free appropriate public education. (20 USC 1414[b][a], [c][1][d][1][B][i] and [f]; EC 56341[b][1])

You also have the right to participate in the development of the IEP and to be informed of the availability of free appropriate public education including all program options and of all available alternative programs, both public and nonpublic. (EC 56506 [b] and [d])

Surrogate Parents: School districts must ensure that an individual is assigned to act as a surrogate parent for the parents of a child with a disability when a parent cannot be identified and the school district cannot discover the whereabouts of a parent. A surrogate parent may also be appointed if the child is an adjudicated dependent

or ward of the court under the state Welfare and Institution Code and the child is referred to special education or already has an IEP. (20 USC 1415[b][2], EC 56050)

Parent Consent: You must give informed, written consent before your child's special education assessment can proceed and before the school district can provide your child's special education program. (EC 56321[c], 56346, 56506[e]; 20 USC 1414[a][1][D] and [c][3])

Nondiscriminatory Assessment: You have the right to have your child assessed in all areas of suspected disability. Assessments are conducted prior to an initial placement, triennially, and whenever requested by parents or staff. Materials and procedures used for assessment and placement must not be racially, culturally, or sexually discriminatory. Assessment materials must be provided and the test administered in the language or mode of communication most likely to yield accurate information unless it is clearly not feasible to do so. No single procedure can be the sole criteria for determining an appropriate educational program for your child. (20 USC 1414[a]-[c], EC 56001[j] and 56320)

Access to Educational Records and Other Rights Related to Records: You have a right to inspect and review all of your child's education records. The school district must provide you access to records and copies at cost if requested, within 5 days after the request has been made orally or in writing. (20 USC 1415[b][1], EC 56501B[3], 56504, and 49069)

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

Alternative Dispute Resolution: Resolutions for Student Success (RSS) is the local alternative dispute resolution process within the North Coastal Consortium for Special Education. This process is available to parents and school districts. The RSS process was created in partnership with the Exceptional Family Resource center (EFRC), a local, independent family resource center that is staffed by families who have children with disabilities and special needs. The EFRC administers the program and requests for this service are made directly to the program coordinator, who is an Exceptional Family Resource Center employee. Information concerning the EFRC is located at the end of this document.

Opportunity to Present and Resolve Complaint: You may file a complaint against the school district if you believe that the school district is not complying with the requirements of federal or state special education laws, regulations, or orders. The school district will conduct an investigation of the allegations of noncompliance and work to resolve it with you – either through a resolution meeting, mediation or due process hearing.

Compliance Complaints: If you believe that your child's school district has violated the law, you may file a complaint with the California Department of Education (CDE). The CDE must investigate the complaint and issue a written report of finding within 60 days. (EC 56043[p])

Due Process Hearing: You have the right to request an impartial due process hearing regarding the identification, assessment, educational placement of your child or the provision of a free, appropriate public education for your child. The request for a due process hearing must be filed within two years from the date you knew, or had reason to know of the facts that are the basis for the hearing request. A parent may extend that request for a period within 3 years of the date they knew or should have known of the facts that are the basis of the complaint if they participate in mediation of the complaint. (20 USC 1415[b][6][B]; EC 56501,56505[1], and 56043[R])

Due Process Rights: You have a right to:

- A fair and impartial administrative hearing at the state level before a person who is knowledgeable of the laws governing special education and administrative hearings (EC 56501[b][4])
- Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities (EC 56505 [e][1]; 20 USC 1415[h][1])
- Present evidence, written arguments, and oral arguments (EC 56505[e][2])
- Confront, cross-examine, and require witnesses to be present (EC 56505[e][3])
- 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][5], 20 USC 1415 [h][3] and [4])
- Have your child present at the hearing (EC 56501[C][1])
- Have the hearing be open or closed to the public (EC 56.501[c] [2])

- Be informed by the other parties of the issues and their proposed resolution of the issues at least ten calendar days prior to the hearing (EC 56505[e][6], 56043[u]; 20 USC 1415[b][7])
- Within five business days before a hearing, 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 (EC 56505[e][7], and 56043[v])
- Have an interpreter provided (CCR 3082[d])
- Request an extension of the hearing timeline (EC 56505[f] [3])
- Have a mediation conference at any point during the due process hearing (EC 56501[b][i] and [2])
- Receive notice from the other party at least ten days prior to the hearing that it intends to be represented by an attorney (EC 56507[a] and 56034[t].)

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

You need to file a written request for a due process hearing. You or your representative need to submit the following information in your request: the name of the child; the address of the residence of the child; and the name of the school the child is attending; a description of the nature of the problem, including facts relating to the problem(s) and a proposed resolution of the problem(s). State law requires 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]; EC 56502) The hearing decision is final and binding on both parties. Either party can appeal the hearing decision by filing a civil action in state or federal court within 90 days of the final decision. (20 USC 1415 [i][2][B] ; EC 56505[k]; EC 56043)

After a written request is filed, if within 30 days of receipt of the complaint, the matter is not resolved to the satisfaction of the parents, the due process hearing may occur including any mediation conference and must be completed within 45 days of the request, with a written, final decision provided. (20 USC 1415 [f][1][B]; EC 56505[f])

Opportunity to Resolve Complaint: Within fifteen days after the school district receives notice of your request for due process, the school district is required to schedule a meeting with you and other members of your child's IEP team who have specific knowledge of the facts identified in your complaint. You will have the opportunity to discuss the facts and issues of your complaint. The school district will have the opportunity to address your concerns and must have a representative present with authority to resolve the complaint. Both parties will have the opportunity to work to reach a resolution at that meeting. If an agreement is reached, either you or the school district will have three business days to void the agreement. If an agreement is not reached within thirty days, the due process hearing may proceed and the applicable timelines will begin. You and the school district may agree in writing to waive this meeting or use a mediation or alternative dispute resolution process. (20 USC 1415[f][1][B] and EC 56501.5)

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

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 attorney fees may also be made following the conclusion of the administrative hearing with the agreement of the parties. (20 USC 1415[i][3][B]; 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 hourly attorney fees exceed the prevailing rate in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; (3) the time spent and legal services provided were excessive; (4) your attorney did not provide to the school district the appropriate information in the due process complaint. Attorney fees will not be reduced, however, if the court finds that the state or the school district unreasonably delayed the final resolution of the action or proceeding or there was a violation of this section of law. (20 USC 1415[i][3][F]) Attorney fees may be awarded to the district where the district prevails and it is determined that the complaint was frivolous, unreasonable or without foundation or if litigation became frivolous, unreasonable, or without merit. (20 USC 1415[3][B][ii] EC 56507[a][2]) Attorney fees may not be awarded relating to any meeting of the IEP team unless an IEP meeting is convened as a result of a due process hearing proceeding or judicial action. Attorney fees may also be denied if you reject a reasonable settlement offer made by the district/public agency ten days before the hearing begins and the hearing decision is not more favorable than the settlement offer. (20 USC 1415[i][3][D][i])

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

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. If the IEP team concludes that the misconduct was not a manifestation of your child's disability, the school district may take disciplinary action, such as expulsion, in the same manner as it would for a child without disabilities. If you disagree with the IEP team's decision, you may request due process hearing which shall occur within 20 school days of the request. (20 USC 1415[k][3])

Alternative Interim Educational Settings: Federal law allows the use of alternative educational placements (for up to 45 school days) under certain disciplinary circumstances. (20 USC 1415[k])

Regardless of the setting, the school district must continue to provide a free, appropriate public education for your child. Alternative educational settings, when permissible, must allow the child to continue to participate in the general curriculum and ensure continuation of services and modifications detailed in the IEP. (20 USC 1415[k][8][B][i][ii])

Parentally Placed Private School Students: Children who are enrolled by their parents in private schools may participate in publicly funded special education programs. While school districts have the responsibility to offer a free and appropriate public education to students with disabilities, recent changes to federal law have significantly limited the school district's responsibility to provide service to students whose parents have chosen to attend private schools. Federal law limits the amount that school districts may spend for these services to a proportionate share of federal IDEA funds. Parents are entitled to reimbursement for costs associated with the private school placement only if a court or hearing officer determines that the public agency had not made a free and appropriate public education available to the child. (20 USC- 1412[a][10]; EC 56175 and EC 56176)

Observation of your child at a Non-Public School: If you unilaterally place your child in a nonpublic school and you propose the placement in the nonpublic school to be publicly financed, the school district must be given the opportunity to observe the proposed placement and your child in the proposed placement. The school district may not observe or assess any other child at the nonpublic school without permission from the other child's parent or guardian. (ED56329[d])

When Reimbursement May 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 the 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 and gave notice of 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 meeting you attended before removing your child from the public school or
- In writing to the school district at least ten business days (including holidays) before removing your child from the public school. (20 USC 1412[a][10], EC 56176)

A court or hearing officer may not reduce or deny reimbursement to you if you failed to give this notice for any of the following reasons: illiteracy and inability to write in English; giving notice would likely result in physical or serious emotional harm to the child; the school prevented you from giving notice; or you were not informed of this notice requirement. (20 USC 1412[a][10][C]; EC 56177)

Additional Information:

To request NCCSE's Resolution for Student Success process:

Call toll free number: 1-800-977-7008

To file for mediation or due process hearing, contact:

Office of Administrative Hearings
Special Education Unit
1102 Q Street, 4th floor
Sacramento, California 95814
916-323-6876
Fax: 916-322-8014

To file complaints alleging violation of IDEA mail to:

California Department of Education
Special Education Division
Procedural Safeguards Referral Service
1430 N Street, Ste. 2401
Sacramento, CA 95814
Attention: PSRS Intake