SOUTHWEST SPECIAL EDUCATION LOCAL PLAN AREA
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(310) 263-3700 Tel.
(323) 330-4210 Fax
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Notice to Parent/Guardian/Surrogate of Procedural Safeguards

Special Education Rights of Parents and Children Under the Individuals with Disabilities Education Act (IDEA), Part B

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

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

In California, special education is provided to children with disabilities between birth and the student's twenty-second (22nd) birthday. Federal and state laws protect you and your child throughout the procedures for evaluation and identification of special education placement and services. Parents of children with disabilities have the right to participate in the individual education program process, including development of the IEP, and be informed of the availability of a free appropriate public education and of all available alternative programs, including public and nonpublic programs.

A copy of this Notice will be given to you only one time a school year; except that a copy must also be given to you upon (1) initial referral or your request for evaluation; (2) reevaluation of your child; (3) upon the receipt of the first filing of a state complaint or due process complaint in a school year; (4) when a decision is made to make a disciplinary change of placement; or (5) upon your request. You have a right to receive this notice in your primary/native language or other mode of communication, unless to do so is clearly not feasible. This Notice may also be translated orally to you if your primary/ native language or other mode of communication is not a written language.

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

Definitions

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

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

1. Speech-Language pathology and audiology services
2. Interpreting services
3. Psychological Services
4. Physical and occupational therapy
5. Recreation, including therapeutic recreation
6. Counseling services, including rehabilitation counseling
7. Orientation and mobility services
8. School health services and school nurse services
9. Medical services for diagnostic or evaluation purposes only
10. Social work services
11. Parent counseling and training

Children with Disabilities: The Individuals with Disabilities Education Act ("IDEA") defines "children with disabilities" as including children with intellectual disabilities, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities, and who by reason thereof, need special education and related services.

Evaluation: An assessment of your child using various tests and measures per Education Code sections 56320-56339 and 20 U.S.C. section 1414(a), (b) and (c) to determine whether your child has a disability and the nature and extent of special and related services needed by your child for his/her educational benefit. The assessment tools are individually selected for your child and are administered by competent professionals employed by the local education agency. Testing and evaluation materials and procedures will be selected and administered so as not to be racially, culturally, or sexually discriminatory. The materials or procedures will be provided and administered in your child's native language or mode of communication, unless it clearly is not feasible to do so.

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

Individual Education Program ("IEP"): A written document developed by your child's IEP team that includes at least all of the following: (1) present levels of academic

achievement and functional performance; (2) measurable annual goals; (3) a statement of the special educational and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child; (4) an explanation of the extent to which the child will not participate with nondisabled children in the general education programs; (5) the projected date for initiation and the anticipated duration, frequency and location of the programs and services included in the IEP; and (6) appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the child is achieving his or her goals.

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

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

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

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

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

All parents or guardians of children enrolled in California public schools have the right to inspect records under the Family Educational Rights and Privacy Act ("FERPA") and the California Education Code. Educational records are those records that are directly related to your child and maintained by a school district, agency, or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained. Both federal and state laws further define an educational record as any item of information directly related to an identifiable pupil, other than directory information, which is maintained by a school LEA, or required to be maintained by an employee in the performance of his duties whether recorded by handwriting, print, tapes, film, microfilm, computer or by other means. Educational records do not include informal personal notes prepared and kept by a school employee for his/her own use or the use of a substitute. If

records contain information about more than one child, you have access only to that portion of the record pertaining to your child.

Personally identifiable information may include: (1) the name of the child, the child's parent or other family member; (2) the address of the child; (3) a personal identifier such as the child's social security number, student number, or court file number; (4) a list of personal characteristics or other information that would make it possible to identify the child with a reasonable certainty.

Additionally, parents of a child with disabilities have the right to: (1) inspect and review all educational records regarding the identification, evaluation, and educational placement of the child and the provision of a FAPE to the child; and (2) receive a response from the LEA to reasonable requests for explanations and interpretations of the records. A parent also has the right to have his or her representative inspect and review the child's records, subject to the requirements of FERPA. The LEA may presume that a parent has authority to inspect and review records relating to his or her child unless the LEA has been advised that the parent does not have the authority to do so under applicable state laws governing such matters as guardianship, separation, and divorce. These rights transfer to a non-conserved pupil who is eighteen years old or attending an institution of post-secondary education. The custodian of records at each school site is the principal of the school. The custodian of records for the school district is listed on the last page of this document. Educational records may be kept at the school site or the district office, but a written request for records at either site will be treated as a request for records from all sites. The custodian of records will provide you with a list of the types and locations of pupil records (if requested). Three years after a student exits a program, the special education records will be destroyed.

Each LEA must protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages. One official at each LEA must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instructing regarding the state's policies and procedures under the IDEA and FERPA. Each LEA must maintain, for public inspecting, a current listing of the names and positions of those employees who may have access to personally identifiable information.

The custodian of the records will limit access to your child's educational records to those persons authorized to review the educational record, including you, your child who is at least sixteen years old or who has completed the 10th grade, individuals who have been authorized by you to inspect the records, school employees who have a legitimate educational interest in the records, postsecondary institutions designated by your child, and employees of federal, state, and local education agencies. In all other instances, access will be denied unless you have provided written consent to release the records or the records are released pursuant to a court order or other applicable law. The LEA must keep a log indicating the time, name and purpose for access by individuals other than school district employees and parents.

Parent consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of the IDEA, except under the following circumstances: (1) before identifiable information is released to officials of participating agencies providing or paying for transition services; and (2) if the child is in, or is going to go to, a private school that is not located in the same school district in which parents reside, parent consent must be obtained before any personally identifiable information about the child is released between officials in the school district where the private school is located and officials in the school district in which parents reside.

A review and/or copies of educational records will be provided five (5) business days after a request is made.

A fee for copies, but not the cost to search and retrieve, is determined by LEA policy and will be charged, unless charging the fee would effectively deny you access to your child's educational records. Once a complete copy of the records has been provided, a fee will be charged for additional copies of the same records.

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

Should the LEA refuse to make the amendment requested within 30 days, the LEA will notify you of the right to a hearing to determine whether the challenged information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child. If you request a hearing, the LEA will provide a hearing, within a reasonable time, which must be conducted according to the procedures for such hearings under FERPA.

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

May I audio record an IEP Meeting?

The parents, guardian or LEA has the right to audio record the proceedings of the IEP team meetings. The IEP team must be notified of the desire to record the IEP at least 24 hours prior to the meeting. If the intent to audio record the meeting is initiated by the LEA, and the parent objects or refuses to attend the IEP meeting because of the audio record, the meeting shall not be audio recorded. Parents have the right to inspect, review and, at times, amend the audio recordings.

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

An independent educational evaluation (“IEE”) is an assessment conducted by a qualified examiner who is not employed by the LEA providing an education to your child, but satisfies the same requirements of the California Department of Education (“CDE”) and the LEA. If

you disagree with the results of a recent assessment conducted by the LEA, and make that disagreement known to the LEA, you have the right to request and possibly obtain an IEE for your child at public expense from a qualified person.

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

Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you. Your LEA has information available for you about where such an IEE may be obtained and the LEA's criteria for IEEs, which must be provided to you upon request for an IEE. You may be entitled to only one IEE at public expense each time the LEA conducts an assessment with which you disagree.

If an IEE is at public expense, the criteria under which the IEE is obtained, including the location of the IEE and the qualifications of the examiner, must be the same as the criteria that the LEA uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an IEE. Except for the criteria the LEA uses when it initiates an evaluation, the LEA may not impose conditions or timelines related to obtaining an IEE at public expense.

If a hearing officer requests an IEE as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

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

If the school district observes your child in his or her classroom during an assessment, or if the school district procedures provide for in-class observations, an equivalent opportunity must be provided for any independent educational evaluation in the current and any proposed educational placement.

What if I Propose that the LEA Fund my Child's Nonpublic School Placement?

If you propose a publicly-financed placement of your child in a nonpublic school, the LEA will have an opportunity to observe the proposed placement and your child in the proposed placement, if your child has already been unilaterally placed in the nonpublic school by you. The observation shall be of your child only and shall not include the observation or assessment of any other pupil in the proposed placement. Any observation by the LEA of another pupil may be conducted, if at all, only with the consent of that pupil's parent of guardian. The results of an observation or assessment of another pupil that is conducted in

violation of California Education Code section 56329(d) shall be inadmissible in a due process proceeding regarding the FAPE of that pupil.

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

An LEA is responsible for informing you, in writing, whenever it proposes or refuses to initiate a change in the identification, assessment, or educational placement of your child or the provision of a free appropriate public education to the child. The LEA must provide written notice to parents of this proposal or refusal within a reasonable time. This notice, if not previously provided to the parent, will also be provided upon the LEA's receipt of a parent's request for a due process hearing. The notice must be written in understandable language and be provided in your native language or other mode of communication, unless it is clearly not feasible to do so. If your native language or mode of communication is not a written language, the LEA must ensure that the notice is translated orally or by other means, that you understand the notice, and that there is written evidence that these requirements have been met. You may elect to receive this notice by electronic mail communication, if your LEA makes that option available.

The written notice will include:

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

What constitutes Parental Consent and when is it required?

The LEA must get informed parental consent, as described above, before assessing and/or providing special education and related services to your child. The LEA must make reasonable efforts to obtain a parent's informed consent before an initial assessment or reassessment of a child. If you refuse to consent to an initial assessment or a reassessment, the LEA may, but is not required to, use due process procedures to obtain your consent for the assessment. The LEA must also make reasonable efforts to obtain parent consent before the initial provision of special education and related services to your child. If you refuse to consent to, or fail to respond to, a request for the initial IEP placement and services, the LEA may not use the due process procedures described below to challenge your refusal to consent. However, when the LEA requests consent to the initial placement and services, and

you do not provide it, the LEA will not be considered to be in violation of the requirement to make available a FAPE to your child. The LEA will also not be required to convene an IEP team meeting or develop an IEP when such consent is not provided after the LEA's request.

Parental consent is not required before reviewing existing data as part of an assessment, or administering a test or other assessment that is administered to all children (unless consent is required of parents of all children before that test or assessment). If your child is home schooled or placed in private school at your own expense, and you do not provide consent to, or fail to respond to a request to provide consent to an initial assessment or reassessment, the LEA may not use due process procedures to override your consent. In that case, the LEA is not required to consider the child as eligible for services.

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

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

Am I allowed to change my mind later and revoke consent?

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

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

If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the school district or charter school is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent. This provision applies when a parent refuses all special education

services. If a parent disagrees with some services, but not all, the issues need to be resolved through the due process procedures.

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.

Upon completion of a special education assessment of your child, an individualized education program (known as an IEP) team meeting, including you as the parent or guardian and your representatives, shall be scheduled to determine whether your child is an individual with exceptional needs as defined in California Education Code section 56026, and to discuss the assessment, the educational recommendations, and the reasons for these recommendations. A copy of the assessment report and the documentation of determination of eligibility must be given to the parent or guardian.

In making a determination of eligibility for special education and related services, a pupil shall not be determined to be an individual with exceptional needs if the determinant factor for the determination is one of the following:

1. Lack of appropriate instruction in reading, including the essential components of reading instruction as defined in Section 6368(3) of Title 20 of the United States Code.
2. Lack of appropriate instruction in mathematics.
3. Limited-English proficiency.
4. If the pupil does not otherwise meet the eligibility criteria under Section 300.8(a) of Title 34 of the Code of Federal Regulations.

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

When you have a concern about your child's education, it is important that you contact your child's teacher, school administrator or district administrator to talk about your child and any problems you see. Staff in your school district or 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.

If the School or District is not able to resolve your concerns, you are encouraged to seek resolution of any special education disputes by using other forms of resolving disputes. **If you are interested in Alternative Dispute Resolution ("ADR") services, please contact the Southwest SELPA at (310) 263-3700, or swselpa1@gmail.com.**

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

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

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

State Level Compliance Complaint: Any individual or organization may also file a compliance complaint with the California Department of Education ("CDE") alleging that the LEA has not complied with state laws or regulations. You may contact the following to file a compliance complaint.

California Department of Education
Special Education Division
Procedural Safeguards Referral Service
1430 N Street, Suite 2401
Sacramento, CA 95814
www.cde.ca.gov
Phone (800) 926-0648
FAX (916) 327-3704
CDE Constituent Support Phone: 800-926-0648
CDE Constituent Support Email: SEDCO@cde.ca.gov

This office at CDE is also able to assist you in preparing your complaint in writing and to provide the information required by law.

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

forward a copy of the complaint to the LEA at the same time that you file the complaint with the CDE.

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

What is a "mediation-only" request submitted to OAH?

In California, mediation is voluntary. You may request a "mediation only" meeting with the Office of Administrative Hearings ("OAH"). "Mediation only" means you are asking for mediation without asking for a due process hearing. Mediation is an informal proceeding conducted in a non-adversarial manner. If you request a mediation-only meeting, you and the LEA will receive a notice that mediation has been scheduled and the notice will contain the time, date, and location of the mediation as well as the name, address, and phone number of a knowledgeable and impartial mediator assigned to the case.

The mediation must be scheduled within 15 days of the OAH receipt of the request. Attorneys cannot attend mediation-only. However, you or the school district may be accompanied and advised by non-attorney representatives. Statements made by you and the LEA during the mediation are confidential and may not be used in a due process hearing or court action. Any agreement reached during the mediation must be in writing and signed by all parties.

Requests for "Mediation Only" should be sent to:

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

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

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

dispute over the availability of an appropriate program for your child. Requests for a due process hearing should be sent to:

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

The request for a due process hearing must be filed within ***two*** years from the date you knew or had reason to know of the facts that were the basis for the hearing request. This timeline does not apply to you if you were prevented from requesting a due process hearing earlier because the LEA:
(1) misrepresented that it had resolved the problem which is the basis of your request; or (2) withheld information from you relating to the information contained in this notice. The LEA must inform you of any free or low-cost legal or other relevant services available in the area if you request that information, or if either you or the LEA files a due process complaint.

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

The complaint will be deemed sufficient to meet the above requirements unless the party who received the complaint, within fifteen days of receipt, notifies the hearing officer and the other party that it believes the complaint does not meet the requirements listed above. Within five days of receiving notice that the receiving party believes the complaint is insufficient, OAH must decide if the due process complaint meets the requirements listed above, and OAH will notify you and the LEA in writing if the due process complaint is insufficient. If OAH determines that a due process complaint is insufficient, the party may have the opportunity to file a new complaint that meets the requirements listed above. If you file a request for a due process hearing, within 10 days of receiving the complaint, the LEA must send you a response that specifically addresses the issues raised in your complaint. Within 15 days of receiving your request for due process, the LEA must convene a meeting with you, the relevant member(s) of your child's IEP team who have specific knowledge of the facts identified in the due process hearing request, and a LEA representative who has decision-making authority, to discuss a resolution to the issues raised. The meeting will not include the LEA's attorney, unless you are accompanied by an attorney.

Except where you and the LEA have both agreed, in writing, to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting. If the LEA fails to hold the resolution meeting within 15 days of receiving notice of your complaint or fails to participate in the resolution meeting, you may seek the intervention of a hearing officer to begin the due process hearing timeline described below.

If an agreement is reached at the resolution session, the agreement must be memorialized in writing and signed by both you and the LEA representative. After signing, both you and the LEA have 3 business days to void the agreement. If the LEA has not resolved the due process complaint to your satisfaction within 30 days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur, and the applicable timeline for issuing a final decision begins. If the LEA is unable to obtain your participation in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the conclusion of the 30-day period, request that the hearing officer dismiss your complaint. You and the LEA may agree, at any time prior to or during the due process hearing to participate in a mediation of the dispute. An impartial mediator will be appointed by OAH at no cost to either party. Mediation extends OAH's timeline to render its decision; however, mediation is not intended to deny or delay your right to a hearing, or any other rights.

If the issues which gave rise to the request for due process are not resolved by the resolution session or mediation, OAH must hold a hearing, reach a final decision on the issues in the case, and send a copy of the decision to the parties within 45 days of the expiration of the 30-day resolution period. The 45-day timeline for the decision may also start the day after one of the following events: (1) both parties agree in writing to waive the resolution meeting; (2) after either the mediation or resolution meeting starts, but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or (3) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or LEA withdraws from the mediation process.

The hearing must be held at a time and place that is reasonably convenient to the parties. The party requesting the hearing may not raise issues at the hearing that were not addressed in the due process complaint, unless the other party agrees.

Any party to a due process hearing has the right to: (1) a fair and impartial administrative hearing before a person knowledgeable in laws governing special education and administrative hearings; (2) be represented by an attorney or an individual with knowledge and training related to the problems of children and youth with disabilities; (3) present evidence, written arguments, and oral arguments; (4) confront, cross-examine, and require witnesses to be present; (5) obtain a written or at your option, electronic verbatim record of the hearing; (6) obtain written or at your option, electronic findings of fact and decisions, within 45 days after the expiration of the resolution session time period; (7) receive notice from the other party, at least ten days prior to the hearing, that it intends to be represented by an attorney; (8) be informed by the other party, at least ten days prior to the hearing, of

their issues and their proposed resolutions; (9) receive a copy of all documents, including assessments completed by that date and recommendations, and a list of witnesses and their general area of testimony at least five business days before the hearing; and (10) prohibit the introduction of any evidence, including assessments and recommendations based on the assessment(s), at the hearing that has not been disclosed to that party at least five business days before the hearing; (11) have an interpreter provided; and (12) request an extension of the hearing timeline for good cause.

Parents involved in hearings must be given the right to: (1) have his/her child present at the hearing; (2) have the hearing open to the public; and (3) have the record of the hearing and findings of fact and decisions provided at no cost.

What if the due process complaint raises a procedural violation of the IDEA?

A hearing officer's decision on whether your child received a FAPE must be based on substantive grounds.

In matters alleging a procedural violation (such as "an incomplete IEP Team"), a hearing officer may find that your child did not receive FAPE only if the procedural violations:

1. Impeded your child's right to a FAPE;
2. Significantly impeded your opportunity to participate in the decision-making process regarding the provision of a FAPE to your child; or
3. Caused your child to be deprived of an educational benefit.

The provisions described above do not prevent a hearing officer from ordering a school district to comply with the requirements in the procedural requirements of the IDEA, or preclude you from filing another due process complaint on an issue separate from a due process complaint already filed.

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

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

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

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

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

such proceedings.

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

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

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

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

A court may reduce the amount of attorneys' fees if: (1) the parent, or the parent's attorney, has unreasonably delayed the final resolution of the case; (2) the fees unreasonably exceed the prevailing hourly rate in the community; (3) the time spent and legal services were excessive; (4) or the parent's attorney did not provide the LEA with an appropriate information in the due process complaint. However, the court may not reduce fees if the court finds that the LEA unreasonably delayed the final resolution of the action or proceeding, or there was a violation under the procedural safeguards' provisions of the IDEA.

A parent may not obtain additional attorneys' fees or costs incurred after the rejection or failure to respond within 10 days to an offer of settlement that is made by the LEA, at any time more than 10 days before the hearing or court action, if the hearing officer or court finds that the relief finally obtained by the parents is not more favorable to the parents than the LEA's offer of settlement. Despite these restrictions, an award of attorneys' fees and related costs may be made to a parent if you prevail and the court determines you were substantially justified in rejecting the settlement offer.

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

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

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. School personnel may remove a child with a disability who violates a code of student conduct from his or her placement to an appropriate interim alternative educational setting (IAES), another setting, or suspension, for up to 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in one school year for separate incidents of misconduct, so long as those removals do not constitute a change in placement.

A "change in placement" occurs if: the removal is for more than 10 consecutive school days, or the child has been subjected to a series of removals that constitute a pattern because: (1) the series of removals total more than 10 school days in a school year; (2) the child's behavior is substantially similar to the child's behavior in previous incidents resulting in the series of removals; and (3) additional factors such as the length of each removal, total amount of time the child is removed, and the proximity of the removals to one another. The LEA determines on a case-by-case basis whether a pattern of removals is a change in placement.

If a child with disabilities is removed from his/her placement due to a violation of the code of student conduct for a period in excess of 10 consecutive school days, or 10 cumulative days when such removals constitute a change in placement, the LEA must hold an IEP team meeting to determine whether the behavior subject to discipline was a manifestation of your child's disability. This meeting will be held within 10 school days of the decision to change the child's placement. The IEP team will determine whether the conduct in question was: (1) caused by, or had a direct and substantial relationship to, your child's disability; or (2) the direct result of the LEA's failure to implement the child's IEP.

If the LEA, parent, and relevant members of the IEP team determine that the conduct was a manifestation of the child's disability, the IEP team must either: (1) conduct a functional behavioral assessment, unless one had been conducted prior to the child's behavior that resulted in a change of placement, and implement a behavior intervention plan; or (2) review any existing behavioral intervention plan and modify it as necessary to address the behavior. In addition to one of the above options, the IEP team must also return the child to the placement from which he or she was removed, unless the parent and LEA agree to a change of placement at part of the modification of the behavior intervention plan.

If the team determines that the conduct was not a manifestation of the child's disability, the school personnel may apply the disciplinary procedures in the same manner and for the same duration as the procedures would be applied to children without disabilities. A child with a disability must continue to receive educational services so as to enable him or her to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting his or her IEP goals. The child's IEP team will determine the appropriate services and setting for those services. As appropriate, the child must also

receive a functional behavioral assessment and behavior intervention services and modifications designed to ensure the behavior violation does not recur.

Parents have the right to appeal a decision to suspend or expel special education students, or the decision of whether the child's conduct was a manifestation of his or her disability, by filing a due process complaint. An LEA may file for due process when it believes that maintaining the current placement of a child is substantially likely to results in injury to the child or others. When an appeal has been requested by either the parent or the LEA relating to the disciplinary placement of a child or the results of the manifestation determination meeting, OAH shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested, and shall result in a determination within 10 school days after the hearing. Unless the parents and LEA agree, in writing, to waive the resolution meeting, a resolution meeting must occur within fifteen days of the LEA receiving the due process complaint. The due process hearing may then proceed unless the matter has been resolved to the satisfaction of both parents and LEA within 30 days of the LEA receiving the due process complaint.

Your child is entitled to a stay put placement during appeals; however, if your child is placed in an IAES for 45 school days, placement will remain in that setting pending the decision by the hearing officer or until the expiration of the time period of the suspension, whichever occurs first.

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

If an evaluation of the child is requested when disciplinary action is pending, the evaluation shall be conducted in an expedited manner. Pending such an evaluation, the child shall remain in an educational setting determined by school authorities, which can include suspension or expulsion without educational services. School officials are not prohibited by special education laws from reporting a crime committed by your child to appropriate authorities. An LEA reporting a crime committed by a child with a disability must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the appropriate authorities, but only to the extent permitted by FERPA.

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

Under special circumstances, regardless of whether the child's behavior was a manifestation of his or her disability, school personnel may remove a student to an IAES for a period not to exceed 45 school days when a child has committed one of the following offenses at school, on school premises or at a school function under the jurisdiction of a state or LEA:

(1) carried or possesses a weapon;

(2) knowingly possessed or used illegal drugs, or sold or solicited the sale of controlled substances;

(3) inflicted serious bodily injury upon another person. If the LEA has not already done so, after placing the child in a 45-school day IAES, the LEA shall conduct a functional behavioral assessment and implement a behavioral intervention plan (if one has not already been implemented). If such a plan is already in place, the IEP team shall consider its modification. The IAES shall be affirmed by the IEP team if it will enable the child to continue to participate in the general curriculum and to receive those services and modifications, including those described in the child's current IEP, to meet the goals set out in the IEP and provide the modifications to address the offending behavior.

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

What are the State Special Schools?

The State Special Schools provide services to students who are deaf, hard of hearing, blind, visually impaired, or deaf-blind at each of its three facilities: The California Schools for the Deaf in Fremont and Riverside and at the California School for the Blind in Fremont. Residential and day school programs are offered to students from infancy to age 21 at both State Schools for the Deaf and from ages five through 21 at the California School for the Blind. The State Special Schools also offer assessment services and technical assistance. For more information about the State Special Schools, please visit the California Department of Education Website at: http://www.cde.ca.gov/sp/ss/, ask for more information from the members of your child's IEP team or contact the SELPA Director.

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

The IDEA does not require an LEA to pay for the cost of education, including special education and related services, for your child with a disability at a private school or facility if the LEA made a FAPE available to your child and you choose to place the child in a private

school or facility. However, the school district where the private school is located must include your child in the population whose needs are addressed under the IDEA provisions regarding children who have been placed by their parents in a private school under 34 CFR §§300.131 through 300.144.

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

Reimbursement cannot be reduced if the LEA prevented the parent from giving notice; the parent had not received notice of the requirements to provide notice to the LEA as described above; or if compliance with the notice requirement would likely result in the physical harm to the child. The cost of reimbursement may or may not be reduced, at the discretion of the court or hearing officer, if the parent is not literate or cannot write in English, or compliance with the notice requirement would likely result in serious emotional harm to the child.

Under what circumstances will a surrogate parent be appointed for a child?

In order to protect the rights of a child, within 30 days of the LEA's determination that a child is in need of a surrogate parent, the LEA will appoint a surrogate parent for a child if:

1. The child has been made a dependent or ward of the court, the court has specifically limited the right of the parent or guardian to make educational decisions for the child, ***and*** the child has no responsible parent or guardian to represent him or her; or

2. The child is not a ward or dependent of the court ***and*** no parent or guardian can be located, ***or*** there is no caretaker of the child ***or*** the child is an unaccompanied homeless youth.

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

The surrogate parent will be an individual with knowledge and skills to adequately represent the child. The surrogate must meet the child at least once and, unless such a person is unavailable, should be culturally sensitive to the child. The surrogate parent shall represent

the child in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the IEP, and in all other matters relating to the provision of a FAPE to the child, including the provision of written consent to the IEP for non-emergency medical services, mental health treatment services and occupational or physical therapy services.

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

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

Why am I asked to provide consent to bill California Medi-Cal & release or exchange information for health-related special education and related services?

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

The information below describes certain rights and protections available to you under IDEA. This notification must be provided to you before an LEA may ask you to provide your consent to access your child’s Medi-Cal benefits for the first time, and on an annual basis thereafter.

You need to know that:

- You may refuse to sign the section of the IEP regarding Medi-Cal consent.
- Information about your child and family is strictly confidential.
- Your rights are preserved under Title 34 Code of Federal Regulations 300.154; Family Education Rights Privacy Act of 1974, Title 20 of the United States Code, Section 1232 (g), Title 34 Code of Federal Regulations, Section 99.

- This consent is good for one year unless you withdraw your consent before that time. It can be renewed annually at the IEP meeting.

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

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

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

Furthermore, as a public agency, an LEA may access parents' public benefits or insurance to pay for related services required under Part B of the IDEA, for a FAPE. For related services required to provide FAPE to an eligible student, the LEA:

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

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