



1 (20 U.S.C. section 1402(9); 34 C.F.R. section 300.17; Education Code section 56040.)

2  
3 **Least Restrictive Environment (LRE)** means that to the maximum extent appropriate, children with  
4 disabilities will be educated with children who are not disabled, and that special classes, separate  
5 schooling, or other removal of children with disabilities from the regular education environment will  
6 occur only when the nature or severity of the disability is such that education in regular classes with  
7 the use of supplementary aids and services cannot be achieved satisfactorily.

8 (20 U.S.C. section 1412(a)(5); 34 C.F.R. section 300.114; Education Code section 56040.1.)

9  
10 **Related Services** means transportation and such developmental, corrective and supportive services  
11 that may be required to assist a child with a disability to benefit from special education, including the  
12 early identification and assessment of disabling conditions. Related services may also include:

- 13 1. Speech-language pathology and audiology services.
- 14 2. Interpreting services.
- 15 3. Psychological services.
- 16 4. Physical and occupational therapy.
- 17 5. Recreation, including therapeutic recreation.
- 18 6. Counseling services, including rehabilitation counseling.
- 19 7. Orientation and mobility services.
- 20 8. School nurse services.
- 21 9. Medical services for diagnostic or evaluation purposes only.
- 22 10. Social work services.
- 23 11. Parent counseling and training.

24 (20 U.S.C. section 1402(26); 34 C.F.R. section 300.34; Education Code section 56363.)

25  
26 **Special Education** means specially designed instruction, at no cost to parents, to meet the unique  
27 needs of a child with a disability, including instruction conducted in the classroom, in the home, in  
28 hospitals and institutions, and in other settings, and instruction in physical education.

29 (20 U.S.C. section 1402(29); 34 C.F.R. section 300.39; Education Code section 56031.)

### 30 31 **ACCESS TO EDUCATIONAL RECORDS**

32 All parents of a child enrolled in the school district have the right to inspect records under the federal  
33 Family Educational Rights and Privacy Act (FERPA), which has been implemented in the California  
34 Education Code. Under the federal and state law, parents of a child with disabilities (including  
35 noncustodial parents whose rights have not been limited) are presumed to and have the right to  
36 inspect and review all educational records regarding your child, the provision of a FAPE and to  
37 receive an explanation and interpretation of the records without unnecessary delay, including prior to  
38 a meeting regarding your child's IEP or before a resolution session or due process hearing. Under  
39 California statutes, parents have the right to review and to receive copies of educational records.  
40 These rights transfer to a pupil who is eighteen (18) years old unless the pupil has had a conservator  
41 appointed by a court to assume the educational rights of the pupil.

42  
43 The custodian of records at each school site is the principal of the school. The district custodian of  
44 records is the Director of Special Education. Pupil records may be kept at the school site or the  
45 district office, but a written request for records at either site will be treated as a request for records  
46 from all sites. The custodian of records will provide you with a list of the types and locations of pupil

1 records (if requested). A request for a copy of your child's special education records may be made to  
2 the District's Director of Special Education.

3  
4 A review and/or copies of educational records will be provided to the parent within five (5) business  
5 days after the request is made by the parent, either orally or in writing. A fee for copies, but not the  
6 cost to search and retrieve, is determined by local policy and will be charged unless charging the fee  
7 would effectively deny access to the parent. Once a complete copy of the records has been provided,  
8 a fee will be charged for additional copies of the same records.

9 (20 U.S.C. section 1232g; 34 C.F.R. section 99.1-99.67; 34 C.F.R. section 300.613; Education Code  
10 sections 49060-49079; Education Code sections 56041.5, 56043(n) and 56504.)

### 11 12 **PRIOR WRITTEN NOTICE**

13 The IDEA requires school districts to provide prior written notice to you as the parent of a child with  
14 disabilities when the school district proposes or refuses to initiate or change the identification,  
15 evaluation or educational placement of your child or the provision of a FAPE to your child or if you  
16 revoke consent in writing for the continued provision of special education and related services. The  
17 notice will be provided in your native language, unless it is clearly not feasible to do so.

18 The prior written notice must include:

- 19 1. A description of the action proposed or refused by the school district.
- 20 2. An explanation of why the school district proposes or refuses to take the action.
- 21 3. A description of each evaluation procedure, assessment, record, or report the school district  
22 used as a basis for the proposed or refused action.
- 23 4. A description of other options that the IEP team considered and the reasons why those options  
24 were rejected.
- 25 5. A description of other factors that are relevant to the school district's proposal or refusal.
- 26 6. A statement that the parents of a child with a disability have protection under the procedural  
27 safeguards, and if this notice is not an initial referral for evaluation, the means by which a copy  
28 of a description of the procedural safeguards can be obtained.
- 29 7. Sources for parents to contact to obtain assistance in understanding the provisions of this part.  
30 (20 U.S.C. section 1415(c); 34 C.F.R. sections 300.503 and 300.300(b)(4); Education Code section  
31 56500.4.)

### 32 33 **INFORMED PARENTAL CONSENT**

34 The IDEA requires that school districts obtain informed consent from you before the commencement  
35 of an initial evaluation of your child to determine if your child qualifies as a child with disabilities.  
36 Informed consent means you have been fully informed in your native language or other mode of  
37 communication, of all information about the action for which you are giving consent and that you  
38 understand and agree in writing to the evaluation and educational placement decision for your child.  
39 Your consent is voluntary and may be withdrawn at any time. Your consent for the initial evaluation  
40 does not imply or grant consent for placement and receipt of special education and related services.  
41 The school district will request your consent for special education and related services separately and  
42 at a later date. The school district will also obtain your informed consent for reevaluations of your  
43 child and will not conduct a reevaluation unless you fail to respond to requests for your consent.

44  
45 If you do not provide consent for an initial assessment or fail to respond to a request to provide the  
46 consent, the school district may pursue the initial assessment by utilizing due process procedures.

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

4  
5 If at any time after the initial provision of special education and related services, you revoke consent in  
6 writing for the continued provision of special education and related services after having consented to  
7 those services in the past, the school district must provide you prior written notice before ceasing the  
8 provision of special education and related services to your child and shall not seek to provide services  
9 through due process procedures.

10  
11 If you consent in writing to the receipt of special education and related services for your child but do  
12 not consent to all of the components of the IEP, those components of the program to which you have  
13 consented must be implemented so as not to delay providing instruction and services. If the school  
14 district determines that the proposed special education program component to which you do not  
15 consent is necessary to provide a free appropriate public education to your child, the school district  
16 must file a request for a due process hearing. If a due process hearing is held, the hearing decision  
17 shall be final and binding.

18  
19 In the case of reevaluations, the school district must document reasonable measures to obtain your  
20 consent. If you fail to respond, the school district may proceed with the reevaluation without your  
21 consent.

22 (20 U.S.C. sections 1414(a)(1)(D), 1414(c) and 1415; 34 C.F.R. sections 300.9 and 300.300;  
23 Education Code sections 56021.1, 56321(c) and (d), 56346, 56381(f) and 56506(e).)

24  
25 When a parent cannot be identified and the school district cannot locate the whereabouts of a parent,  
26 the school district must ensure that an individual is assigned to act as a surrogate for the parents of a  
27 child with a disability. A surrogate parent may also be appointed for unaccompanied homeless youth  
28 or a child who is a dependent or ward in which an educational representative has not been appointed  
29 by the Court.

30 (20 U.S.C. section 1415(b)(2); 34 C.F.R. section 300.519; Education Code section 56050; CA Rules  
31 of Court Rule 5.650.)

### 32 33 **PROTECTION IN EVALUATION PROCEDURES**

34 Federal law refers to “evaluation” and California law refers to “assessment.” Therefore, these words  
35 may be used interchangeably by employees of the school district and in this Notice. The school  
36 district must provide you with a written assessment plan or prior written notice within fifteen (15) days  
37 after a referral for special education has been received, including your written request for evaluation.  
38 You will have a minimum of fifteen (15) days in which to review the assessment plan and to provide  
39 consent to the school district to conduct the written assessment. You may request assessment in  
40 additional areas of suspected disability. Thereafter, the school district has sixty (60) days after receipt  
41 of your written consent to complete the assessment and to develop an IEP to determine the  
42 educational needs of your child. However, this timeline is extended by periods of school holiday or  
43 vacation, if you refuse to make your child available for assessment, or if your child transfers to another  
44 school district and you and the receiving school district agree to a specific time when the assessment  
45 will be completed.

46  
47 The IDEA states that in conducting the evaluation the school district will:

- 1
- 2 1. Use a variety of assessment tools and strategies to gather relevant functional,
- 3 developmental and academic information, including information provided by the parent,
- 4 that may assist in determining whether the child is a child with a disability and the
- 5 content of the child's IEP, including information related to enabling the child to be
- 6 involved in and progress in the general curriculum or, for preschool children, to
- 7 participate in appropriate activities;
- 8 2. Not use any single procedure as the sole criterion for determining whether a child is a
- 9 child with a disability or determining an appropriate educational program for the child;
- 10 and
- 11 3. Use technically sound instruments that may assess the relative contribution of cognitive
- 12 and behavioral factors, in addition to physical or developmental factors.
- 13

14 The school district will also make sure that tests and other evaluation materials used to assess your  
15 child are selected and administered so as not to be racially, culturally or sexually discriminatory and  
16 are provided and administered in the child's native language or other mode of communication, unless  
17 it is clearly not feasible to do so. Any standardized tests that are given to the child will have been  
18 validated for the specific purpose for which they are used, administered by trained and knowledgeable  
19 personnel, and administered in accordance with any instructions provided by the producer of such  
20 tests. Your child will be assessed in all areas of suspected disability and the school district will use  
21 assessment tools and strategies that provide relevant information that will directly assist the school  
22 district in determining the educational needs of your child. Upon completion of the administration of  
23 evaluation materials, the determination of whether the child is a child with a disability will be made by  
24 you and qualified professionals comprising the IEP team. A copy of the evaluation report and  
25 documentation of the determination of eligibility will be given to you.

26

27 In making a determination of eligibility, your child will not be determined to be a child with a disability  
28 due to a lack of instruction in reading or math or as a result of limited English proficiency.

29

30 As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the  
31 IEP Team and other qualified professionals, as appropriate, will:

- 32
- 33 1. Review existing evaluation data on the child, including evaluations and information
- 34 provided by you, current classroom-based assessments and observations, and teacher
- 35 observation; and
- 36 2. On the basis of that review, and input from you, identify what additional data, if any, are
- 37 needed to determine:
  - 38 a. Whether the child has a particular disability, or, in case of reevaluation of a child,
  - 39 whether the child continues to have such a disability and such educational needs;
  - 40 b. The present levels of performance and related developmental needs of the child;
  - 41 c. Whether the child needs special education and related services, or in the case of a
  - 42 reevaluation of a child, whether the child continues to need special education and
  - 43 related services; and
  - 44 d. Whether any additions or modifications to the special education and related
  - 45 services are needed to enable the child to meet the measurable annual goals set
  - 46 out in the IEP of the child and to participate, as appropriate, in the general
  - 47 curriculum.

1  
2 Generally, a reevaluation is required every three (3) years. However, if the IEP Team determines that  
3 no additional data is needed to determine whether your child continues to be a child with a disability  
4 and to determine the child's educational needs the school district will notify you as to the reasons the  
5 school district believes a reevaluation is not necessary. After receiving this notice, you may request a  
6 reevaluation of your child. If the school district does not receive a reevaluation request from you, the  
7 school district will not conduct a reevaluation of your child.

8  
9 Before determining that your child is no longer a child with a disability, the school district must conduct  
10 an assessment in accordance with the procedures discussed above.

11 (20 U.S.C. sections 1414, 1415; 34 C.F.R. sections 300.301 – 300.306; Education Code sections  
12 56320, 56321, 56329, and 56381.)  
13

### 14 **INDEPENDENT EDUCATIONAL EVALUATION**

15 After the school district has completed its evaluation and if you disagree with the school district's  
16 evaluation of your child, you have the right to request an independent educational evaluation at school  
17 district expense. Upon your request for an independent educational evaluation, the school district will  
18 provide you with information about where to obtain an independent educational evaluation and the  
19 district's criteria applicable for independent educational evaluations. A parent is entitled to only one  
20 (1) independent educational evaluation at public expense each time the district conducts an  
21 evaluation with which the parent disagrees. However, if the school district disagrees that an  
22 independent educational evaluation is necessary, the school district must request a hearing before a  
23 due process hearing officer to dispute your request for an independent educational evaluation and to  
24 show that the school district's assessment is appropriate. If the school district prevails, you still have  
25 the right to an independent evaluation but not at public expense. If you choose to obtain an  
26 independent educational evaluation at your own expense, the results of the assessment must be  
27 considered by the district.

28  
29 The independent educational evaluation must comply with all of the requirements that apply to school  
30 district evaluations.

31  
32 If the school district observes your child in his or her classroom during an assessment, or if the school  
33 district procedures provide for in-class observations, an equivalent opportunity must be provided for  
34 any independent educational evaluation in the current and any proposed educational placement.  
35

36 If you unilaterally place your child in a nonpublic school and you propose the placement in the  
37 nonpublic school to be publicly financed, the school district must be given the opportunity to first  
38 observe the proposed placement and your child in the proposed placement.

39 (20 U.S.C. section 1415(b)(1); 34 C.F.R. section 300.502; Education Code section 56329.)  
40

### 41 **IEP MEETINGS**

42 As the parent or legal guardian of a special education student, you have the right to be a part of the  
43 IEP Team and participate in any meeting regarding the identification, assessment and educational  
44 placement of your child. The term IEP or Individualized Education Program means a written  
45 document for each child with a disability that is developed, reviewed and revised in accordance with  
46 federal and state law. The IEP includes the child's present levels of academic achievement and  
47 functional performance and must consider your concerns as a parent for improving the education of

1 your child. As a parent or legal guardian, you have the right to be a member of any group that makes  
2 decisions with respect to the educational placement of your child. You also have the right to bring  
3 individuals who have knowledge or special expertise regarding your child to an IEP meeting. If you  
4 are a parent of a child age three through five years, the individualized family service plan (IFSP) may  
5 serve as the IEP if agreed to by the parent and the school district.  
6

7 Federal and state law requires that the first IEP to be in effect beginning at age sixteen include a  
8 statement of the transition service needs of the child and that the IEP be updated annually thereafter.  
9 Beginning at age sixteen or younger, if determined appropriate by the IEP Team, appropriate  
10 measurable postsecondary goals related to training, education, employment, and where appropriate,  
11 independent living skills, a statement of needed transition services for the child, including, when  
12 appropriate, a statement of the interagency responsibilities or linkages between the agencies is  
13 required. Beginning at least one year before the child reaches age eighteen (18), a statement must  
14 be included in the IEP that the child has been informed of his or her rights that will transfer to the child  
15 on reaching the age of majority. Under California law, when a child turns age eighteen (18), he or she  
16 is considered an adult and unless the parent obtains a conservatorship or guardianship over the child  
17 through court proceedings, the child may make decisions regarding his or her education.  
18

19 In developing an IEP for your child, the IEP Team must include positive behavioral intervention  
20 strategies and supports in cases where the child's behavior prevents the child from learning and  
21 consider, when appropriate, strategies, including positive behavioral intervention strategies and  
22 supports to address the child's behavior. The regular education teacher of your child, as a member of  
23 the IEP Team, must to the extent appropriate, participate in the development of the IEP of your child,  
24 including the determination of appropriate, positive behavioral intervention strategies and the  
25 determination of supplementary agency services, program modifications and support for the school  
26 personnel.  
27

28 The IEP will be reviewed by the IEP Team at least annually in order to determine whether the annual  
29 goals for your child are being achieved and revise the IEP as appropriate to: (1) address any lack of  
30 anticipated progress toward the annual goals and in the general curriculum, where appropriate, (2) to  
31 address the results of any reevaluation conducted, (3) to address information about your child  
32 provided by you, and 4) to address your child's anticipated needs, if necessary. Your child will also  
33 receive report cards in the same manner as regular education students. You and the school district  
34 may agree in writing that the attendance of an IEP Team member is not necessary because the  
35 member's area of curriculum or related service is not being modified or discussed at the meeting. In  
36 addition, if you and the school district agree in writing to excuse a member of the IEP team from the  
37 IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of  
38 the member's area or the curriculum or related service, the member must submit in writing to you and  
39 the IEP Team, input into the development of the IEP prior to the meeting. Under state law, you have  
40 the right to electronically record IEP meetings by audio tape if you give 24 hours notice to other  
41 members of the IEP Team. After the annual IEP meeting for a school year, you and the school district  
42 may agree in writing not to convene an IEP meeting to make changes to the annual IEP, and instead  
43 may develop a written document to amend or modify the current IEP.

44 (20 U.S.C. section 1414(d); 34 C.F.R. sections 300.320-300.324; Education Code sections 56032,  
45 56304, 56341, 56341.1, 56341.5, 56342.5 and 56345.)  
46  
47

1 **PLACEMENT (“STAY-PUT”) DURING THE PENDENCY OF**  
2 **DUE PROCESS PROCEDURES**

3 As a parent of a child with disabilities, should you get involved in a disagreement with the school  
4 district over the identification, evaluation or placement of your child and you file a request for a due  
5 process hearing, your child will remain (“stay-put”) in the current educational placement during the  
6 pendency of the proceedings. Unless you and the school district agree to a change in placement, or  
7 the school district obtains a court order or an order from a hearing officer, your child will remain in his  
8 or her current educational placement during the pendency of the proceedings. For initial admission to  
9 school, your child will be placed in a public school program, with parental consent, until the  
10 proceedings have been completed. There are exceptions to this general rule which allow the school  
11 district to place your child in an alternative educational setting for a limited period of time. These  
12 exceptions will be discussed in the next section on interim alternative educational settings.  
13 (20 U.S.C. section 1415(j); 34 C.F.R. section 300.518; Education Code section 56505(d).)  
14

15 **INTERIM ALTERNATIVE EDUCATIONAL SETTINGS**  
16 **DISCIPLINE PROCEDURES**

17 School personnel may change the placement of your child if he or she violates a code of student  
18 conduct to (1) an appropriate interim alternative educational setting; (2) another educational setting, or  
19 (3) suspend your child for not more than ten (10) consecutive school days (to the extent such  
20 alternatives would be applied to children without disabilities) and for additional removals of not more  
21 than ten (10) consecutive school days in that same school year for separate incidents of misconduct.  
22 If school personnel seek a change in placement that exceeds more than ten (10) school days in the  
23 same school year, school personnel must determine if the behavior that gave rise to the violation of  
24 the code of student conduct is a manifestation of your child’s disability. If a determination is made that  
25 the behavior is not a manifestation of your child’s disability, school personnel may discipline your child  
26 under the same procedures applicable to children without disabilities.  
27

28 In order to determine if the behavior that gave rise to the violation of the code of student conduct is a  
29 manifestation of your child’s disability, the school district, you and relevant members of the IEP Team  
30 must review all relevant information in your child’s file, including the IEP, any teacher observations,  
31 and any relevant information provided by you to determine if the conduct in question was caused by,  
32 or had a direct and substantial relationship to your child’s disability. This meeting must take place  
33 within ten (10) school days of any decision to take disciplinary action. If the IEP Team determines  
34 that the conduct is a manifestation of your child’s disability, the IEP Team must either conduct a  
35 functional behavioral assessment, and implement a behavioral intervention plan for your child, or  
36 review and modify as necessary the existing behavioral intervention plan.  
37

38 School personnel may also place your child in an interim alternative educational setting for up to  
39 forty-five (45) school days without regard to whether the behavior is determined to be a manifestation  
40 of your child’s disability, in cases where: (1) your child carries or possesses a weapon to or at school,  
41 on school premises, or to or at a school function or activity; (2) your child knowingly possesses or  
42 uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school  
43 premises, or a school function or activity; or (3) your child inflicts serious bodily injury upon another  
44 person while at school, on school premises, or at a school function or activity. The IEP team  
45 determines the interim alternative education setting for services. After a child with a disability has  
46 been removed from his or her current placement for ten (10) school days in the same school year,  
47 during any subsequent days of removal the school district must provide services to enable the child to

1 continue to participate in the general education curriculum, although in another setting, and to  
2 progress toward meeting the IEP goals. If appropriate, the child may receive a functional behavioral  
3 assessment and behavior intervention services and modifications designed to address the behavior  
4 violation so that it does not recur.

5  
6 No later than the date on which the decision to take disciplinary action against your child is made, the  
7 school district must notify you of that decision and notify you of your procedural safeguards. If you  
8 disagree with any decision regarding placement, or the manifestation determination of your child, you  
9 may request an expedited due process hearing which must occur within twenty (20) school days of  
10 the date of the hearing request. During the pendency of the due process hearing, your child will  
11 remain in the interim alternative education setting pending the decision of the hearing officer or for  
12 forty-five (45) school days, whichever occurs first, unless you and the school district agree otherwise.  
13 If the school district believes it is dangerous for your child or others, for your child to return to the  
14 current educational placement, the school district may request an expedited hearing.

15  
16 A hearing officer may order a change in the placement of your child to an appropriate interim  
17 alternative educational setting for not more than forty-five (45) days, if the hearing officer determines  
18 that maintaining your child in his or her current placement is substantially likely to result in injury to  
19 your child or to others.  
20 (20 U.S.C. section 1415(k); 34 C.F.R section 300.530; Education Code section 48915.5.)

21  
22 **CHILDREN WITH DISABILITIES**  
23 **ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS**

24 A school district's obligation to children with disabilities enrolled in private schools is limited. Under  
25 the IDEA "*no parentally- placed private school child with a disability has an individual right to receive*  
26 *some or all of the special education and related services that the child would receive if enrolled in a*  
27 *public school.*" School districts must locate, identify and assess all private school children with  
28 disabilities, including religiously affiliated school age children, who have disabilities and are in need of  
29 special education and related services, referred to as "child find." The school district in which the  
30 private school is located, also referred to as the "District of Location" is responsible for conducting  
31 child find activities for children enrolled by their parents in private schools. If the District of Location is  
32 not the same school district in which the parents of the private school student reside, then the District  
33 of Location may contract with the school district of residence to assess the child.

34  
35 Children with disabilities enrolled in private school may receive equitable special education services  
36 as determined through consultation with private schools and parents. In order to receive such  
37 equitable services, a "Service Plan" must be developed for the private school student and consented  
38 to by the parents. The school district in which the private school is located, the District of Location, is  
39 responsible for developing and implementing the Service Plan.

40  
41 A parent of a child enrolled by that parent in a private school has the right to file a due process  
42 complaint only regarding the school district's child find activities. A due process complaint must be  
43 filed with the school district in which the private school is located, the District of Location, and the  
44 California Department of Education (CDE). However, because there is no individual right to services  
45 for children enrolled by their parents in private school, any complaints regarding a Service Plan can  
46 only be filed in accordance with the CDE's compliance complaint procedures.

1 (20 U.S.C. section 1412(a)(10)(A); 34 C.F.R. section 300.130–300.144; Education Code sections  
2 56170–56177.)  
3

#### 4 **UNILATERAL PLACEMENT BY PARENTS IN PRIVATE SCHOOL**

5 If you decide to unilaterally enroll your child in a private school after the school district made a free  
6 appropriate public education available to your child, the school district is not required to pay for the  
7 cost of your child’s education. In order to obtain reimbursement for the cost of the private school from  
8 the school district, including special education and related services, you must first attempt to obtain  
9 the consent of the school district, and establish that the school district does not have an appropriate  
10 program for your child. Reimbursement may be denied or reduced if: 1) at the most recent IEP  
11 meeting that you attended prior to removal of your child from the public school, you did not inform the  
12 IEP Team that you were rejecting the placement proposed by the school district to provide a free  
13 appropriate public education to your child, including a statement of your concerns and your intent to  
14 enroll your child in a private school at public expense; or 2) at least 10 business days prior to the  
15 removal of your child from the public school, you did not give written notice to the school district of  
16 your concerns regarding the school district’s proposed placement and your intent to enroll your child  
17 in a private school at public expense.  
18

19 If the school district notifies you prior to the removal of your child from the public school that the  
20 school district wishes to evaluate your child and indicates the purpose of the evaluation, you should  
21 make your child available for the evaluation. If you have not complied with these requirements, a  
22 court or hearing officer may find that you acted unreasonably in unilaterally removing your child from  
23 the public school and in placing your child in a private school. The court or hearing officer may deny  
24 you reimbursement unless you can show one or more of the following: 1) you are illiterate and cannot  
25 write in English, or 2) the school district’s placement would result in physical or serious emotional  
26 harm to your child.

27 (20 U.S.C. section 1412(a)(10)(C); 34 C.F.R. section 300.148; Education Code sections 56175-  
28 56177.)  
29

#### 30 **OPPORTUNITY TO PRESENT AND RESOLVE COMPLAINTS**

##### 31 **A. STATE COMPLAINT PROCEDURES**

32  
33 The IDEA grants parents an opportunity to present and resolve complaints with respect to any matter  
34 relating to the identification, evaluation or educational placement of your child or the provision of a  
35 free appropriate public education to your child. Written complaints may be filed with the school district  
36 or the state or federal agencies at the addresses listed below. Compliance complaints must allege a  
37 violation that occurred not more than one (1) year prior to the date the complaint is received. A copy  
38 of the written complaint must also be provided to the school district serving the child at the same time  
39 it is filed with the state agency. The school district, state or federal agency has sixty (60) days from  
40 the date of receipt of the complaint to render a decision in the matter. For complaints filed with the  
41 school district, within fifteen (15) days of receiving the school district’s decision, you may appeal the  
42 school district’s decision to the California Department of Education (CDE). Complaints may also be  
43 filed directly with the CDE.  
44

45 Mary Bevernick, Director  
46 Special Education  
47 Irvine Unified School District

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2 Irvine, CA 92604  
3 Phone: (949) 936-5230  
4 Fax: (949) 936-5239  
5

6 California Department of Education  
7 Special Education Division  
8 Procedural Safeguards Referral Service  
9 1430 N Street, Suite 2401  
10 Sacramento, California 95814  
11 Phone: 1-800-926-0648  
12 Fax: (916) 327-3704  
13

14 United States Department of Education  
15 Office for Civil Rights  
16 50 Beale Street, Suite 7200  
17 San Francisco, CA 94105  
18 Phone: (415) 486-5555  
19 Fax: (415) 486-5570  
20 TDD: (877) 521-2172  
21

22 The school district encourages you to file your complaint with the school district. We will meet with  
23 you and investigate your complaint in a timely manner and attempt to resolve any concerns. The  
24 school district has established confidential procedures for the filing of complaints. A complaint form is  
25 available from the school district. (20 U.S.C. Section 1415(b)(6); 34 C.F.R. section 300.153;  
26 Education Code section 56500.2; 5 CCR section 4600.)  
27

## 28 **B. MEDIATION AND DUE PROCESS HEARING PROCEDURES**

29 The IDEA requires states to establish procedures for mediation and impartial due process hearings  
30 regarding the identification, assessment, and educational placement of your child or the provision of a  
31 free appropriate public education (FAPE). You or the school district may file a request for mediation-  
32 only or a due process hearing complaint.  
33

34 Your request for mediation-only or a due process hearing must include the name and address of the  
35 child, date of birth, grade level and name of the school the child is attending, parent information,  
36 parties to the mediation, a description of the nature of the problem, including facts relating to such  
37 problem, and a proposed resolution of the problem. The CDE has developed model forms to assist  
38 you in filing a request for mediation-only or a due process hearing. You may access these model  
39 forms at: <http://www.oah.dgs.ca.gov/Special+Education/default.htm>  
40

41 You must serve the mediation-only or due process hearing complaint on the school district and file a  
42 copy with the Office of Administrative Hearings at the address listed below:  
43

44 Office of Administrative Hearings  
45 Attn: Special Education Division  
46 2349 Gateway Oaks Drive, Suite 200  
47 Sacramento, CA 95833-4231

1 Phone: (916) 263-0880

2 Fax: (916) 376-6319

3  
4 In California, mediation is voluntary. You may request a due process hearing or mediation-only.  
5 Mediation-only means you are asking for mediation without asking for a due process hearing.  
6 Mediation is an informal proceeding conducted in a nonadversarial manner. If you request mediation-  
7 only you and the school district will receive a notice that mediation has been scheduled, and the  
8 notice will contain the time, date and location of the mediation as well as the name, address, and  
9 phone number of a knowledgeable and impartial mediator assigned to the case. The mediation must  
10 be scheduled within 15 days of the Office of Administrative Hearing's receipt of the request. Attorneys  
11 cannot attend mediation-only. However, you or the school district may be accompanied and advised  
12 by non-attorney representatives. Statements made by you and the school district during mediation  
13 are confidential and may not be used in a due process hearing or court action. Any agreement  
14 reached during mediation must be in writing and signed by all parties. You may also ask the school  
15 district to resolve disputes through alternative dispute resolution (ADR), which is also less adversarial  
16 than a due process hearing. ADR and mediation are voluntary methods of resolving a dispute. If the  
17 dispute is not resolved during mediation or through ADR, you may proceed to a due process hearing.  
18 Mediation or ADR are not prerequisites to requesting a due process hearing.

19  
20 A due process hearing is a formal proceeding where you and the school district are given the  
21 opportunity to present witnesses, documentary evidence, and oral and written argument in support of  
22 your respective positions on disputed special education issues. You may request a mediation  
23 conference at any point during the due process hearing. A request for a due process hearing must  
24 be filed within (2) years from the date you or the school district knew or should have known about the  
25 alleged action that forms the basis of the due process hearing complaint. Upon receiving a request  
26 for a due process hearing, you and the school district will receive a notice from the Office of  
27 Administrative Hearings with the time, date and location of the due process hearing.

28  
29 Prior to the opportunity for an impartial due process hearing, within fifteen (15) days of receiving your  
30 due process hearing complaint, the school district is required to convene a mandatory resolution  
31 meeting with you and the relevant members of the IEP Team who have specific knowledge of the  
32 facts raised in your complaint, where you can discuss your complaint and the facts that form the basis  
33 of your complaint, and the school district is provided the opportunity to resolve the complaint. The  
34 resolution meeting must include a representative from the school district who has decision making  
35 authority on behalf of the school district, but may not include an attorney for the school district unless  
36 the parent is also accompanied by an attorney. Attorneys' fees may not be awarded relating to a  
37 resolution meeting. Unless the school district agrees, you may not waive the mandatory resolution  
38 meeting. If resolution is reached to resolve the complaint at the mandatory resolution meeting, the  
39 parties must sign a legally binding agreement. If the school district has not resolved the complaint to  
40 your satisfaction within thirty (30) days of the receipt of the complaint, the due process hearing may  
41 move forward and all applicable timelines for a due process hearing shall commence.

42  
43 The due process hearing is limited to those issues raised in your due process hearing complaint. An  
44 impartial hearing officer presides over the due process hearing. You have the right to be  
45 accompanied and advised by an attorney and by individuals with special knowledge or training related  
46 to the problems of children with exceptional needs; the right to present evidence, written and oral  
47 arguments; the right to confront, cross-examine and compel attendance of witnesses; the right to a

1 written or electronic verbatim record of the hearing; and the right to written findings of fact and  
2 decision.

3  
4 At least ten (10) days prior to the hearing you and the school district must inform each other of the  
5 issues to be decided at the hearing and the proposed resolution of those issues as well as whether  
6 the parties will be represented by an attorney at the hearing. At least five (5) business days prior to  
7 the hearing you and the school district must disclose all your witnesses and evidence you intend to  
8 introduce at the hearing including evaluations completed to the other party, or the witnesses, evidence  
9 or evaluations cannot be introduced as evidence at the hearing.

10  
11 In general, a hearing officer's decision should be made on substantive grounds based on a  
12 determination of whether your child received FAPE. The hearing officer must reach a final decision  
13 and mail a copy of the written decision to you and the school district within forty-five (45) days of the  
14 receipt of the request for a hearing by the Office of Administrative Hearings or State Superintendent of  
15 Public Instruction, unless a continuance has been granted for good cause. The decision made in a  
16 due process hearing is final, except that any party involved in the hearing may appeal the decision by  
17 filing a civil action with respect to the findings and decision in the due process complaint.

18 (20 U.S.C. sections 1415(b)(7)(a)–1415(j); 34 C.F.R. sections 300.506–300.518; Education Code  
19 sections 56500.3, 56502–56507; 5 CCR section 3082.)

#### 20 21 **CIVIL ACTIONS**

22 Either you or the school district may appeal the hearing officer's decision by filing a civil action. In a  
23 civil action, the records and transcription of the administrative proceedings shall be filed with the court.  
24 The court may hear additional evidence at the request of either party and must base its decision on  
25 the preponderance of the evidence. The action may be filed in the United States District Court or in  
26 Orange County Superior Court. The action must be filed within ninety (90) days of the receipt of the  
27 hearing officer's decision.

28 (20 U.S.C. section 1415(i); 34 C.F.R. sections 300.514, 300.516; Education Code section 56505(k).)

#### 29 30 **ATTORNEYS' FEES**

31 The United States District Court or the Orange County Superior Court has the authority to award you  
32 reasonable attorneys' fees if you are the prevailing party in a due process hearing or civil action; or to  
33 award the school district reasonable attorneys' fees if your attorney files a complaint or subsequent  
34 cause of action that is frivolous, unreasonable, or without foundation, or the complaint or subsequent  
35 action was filed to harass, cause unnecessary delay, or to needlessly increase the cost of litigation.  
36 The fees awarded are based on rates prevailing in the community in which the action or proceeding  
37 arose. No attorneys' fees may be awarded to you following a written offer of settlement from the  
38 school district made at least ten (10) days prior to hearing, if the court or hearing officer finds that the  
39 relief you ultimately obtained is not more favorable than the written offer of settlement. However,  
40 attorneys' fees will not be reduced if you were substantially justified in rejecting the settlement offer, or  
41 the school district unreasonably prolonged the proceedings.

42  
43 You may not be awarded attorneys' fees and related costs if you unreasonably prolonged the final  
44 resolution of the controversy or the amount of the fees requested is unreasonable. In addition,  
45 attorneys' fees or related costs may not be awarded for attorney time spent attending resolution  
46 meetings or IEP Team meetings, unless the IEP team meeting is convened as a result of an  
47 administrative proceeding or judicial action.

1 (20 U.S.C. section 1415(i)(3); 34 C.F.R. section 300.517; Education Code section 56507(b).)

2  
3 **STATE SPECIAL SCHOOLS**

4 The State Special Schools operated by CDE provide services to students who are deaf, hard of  
5 hearing, blind, visually impaired, or deaf-blind at each of its three facilities: the California Schools for  
6 the Deaf in Fremont and Riverside and at the California School for the Blind in Fremont. Residential  
7 and day school programs are offered to students from infancy to age 21 at both State Schools for the  
8 Deaf and from ages five through 21 at the California School for the Blind. The State Special Schools  
9 also offer assessment services and technical assistance. For more information about the State  
10 Special Schools, please visit the California Department of Education Web site at  
11 <http://www.cde.ca.gov/sp/ss/> or ask for more information from the members of your child's IEP team.  
12 (Education Code section 56321.6.)