



## WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT SPECIAL EDUCATION LOCAL PLAN AREA

### NOTICE OF PROCEDURAL SAFEGUARDS AND PARENTS' RIGHTS

Special Education Rights of Parents and Children  
Under the Individuals with Disabilities Education Act, Part B  
2004 Reauthorization (H.R. 1350)

#### INTRODUCTION

This information provides you as parents, legal guardians, persons authorized to make educational decisions, and surrogate parents of children with disabilities from three (3) years of age through age twenty-one (21) with an overview of your educational rights, sometimes called procedural safeguards. This notice is also provided for children who are entitled to these rights at age 18. The Individuals with Disabilities Education Improvement Act of 2004 ("IDEA") requires that a copy of these safeguards be given to you once a year. An additional copy must be given to you upon an initial referral for special education, the first time you file a state or due complaint in a school year, each time you are provided with an assessment plan, when the decision is made to make a disciplinary removal that constitutes a change in placement, and when you ask for a copy. A copy of these procedural safeguards may also be accessed through the West Contra Costa Unified School District's ("District") website. (20 U.S.C. § 1415(d), (k); 34 C.F.R. § 300.504; Education Code § 56301(d)(2); § 56341.1(g)(1).)

#### Participation in making decision about your child's education

You have the right to refer your child for special education services. You must be given opportunities to participate in any decision-making meeting regarding your child's special education program. You have the right to participate in individualized education program ("IEP") team meetings about the identification (eligibility), assessment, educational placement of your child, and other matters relating to your child's receipt of a free appropriate public education ("FAPE"). (20 U.S.C. § 1414(b), (c), (d); 34 C.F.R. § 300.321; Education Code § 56341(b), § 56343(e).)

You also have the right to participate in the development of your child's IEP, to be informed of the availability of a FAPE, including all program options, and all available alternative programs, both public and nonpublic. You have the right to electronically record an IEP team meeting with an audio tape recorder if you notify the District at least 24 hours prior to meeting that you intend to record the meeting. (20 U.S.C. § 1401(3); § 1412(a)(3); 34 C.F.R. § 300.111; Education Code § 56301, § 56341.1, § 56506.)

#### Additional Assistance

When you have a concern about your child's education, it is important that you call or contact your child's teacher or school-site administrators to talk about your child and any problems you see. Staff in the Special Education Department of the District can also answer questions about your child's education as well as your rights and procedural safeguards. When you have a concern, this informal conversation often solves the problem and helps maintain open communication. Additional resources are listed at the end of this document to help you understand the procedural safeguards.

### NOTICE, CONSENT, ASSESSMENT, AND ACCESS

#### Prior Written Notice

You have the right to receive prior written notice from the District before decisions are made affecting your child's special education program. These include decisions to:

- identify your child as a child with a disability, or change your child's eligibility from one disability to another;
- evaluate or reevaluate your child;
- provide a free appropriate public education to your child, or change a component of your child's free appropriate public education;
- place your child in a special education program;
- change your child's special education placement; or,

- withdraw or exit your child from continuing to receive his/her special education program after you give written notice revoking your consent to your child's IEP.

(20 U.S.C. § 1415 (b), § 1415(b), (c); 34 C.F.R. § 300.503; 34 C.F.R. § 300.300 (4) (i); Education Code § 56329, § 56500.4, § 56506(a).)

You also have the right to prior written notice from the District if the District refuses your request to take these actions. The District cannot refuse your request to revoke your consent to your child's IEP.

Prior Written Notice must include the following:

- a description of the actions proposed or refused by the District;
- an explanation of why the action was proposed or refused;
- a description of other options considered and the reasons those options were rejected;
- a description of each assessment procedure, test, record or report used as a basis for the action proposed or refused;
- a description of any other factors relevant to the action proposed or refused; and,
- a statement that parents of a child with a disability are protected by the procedural safeguards.

If prior written notice is not being provided in regard to an initial referral for assessment, it must provide a statement that you have protection under procedural safeguards, information on how you can obtain a copy of described procedural safeguards, and sources of additional assistance in understanding the procedural safeguards. (20 U.S.C § 1414(b); 1415(b), (c); 34 C.F.R. § 300.503.)

If prior written notice is being provided to you because you gave the District written notice revoking your consent to your child's IEP, the District must provide you with prior written notice before the District can withdraw or exit your child from continuing to receive his/her special education program. After providing you with a prior written notice because you revoked your consent to your child's IEP, the District cannot continue to provide your child with his/her special education program and related services. (34 C.F.R. § 300.300 (b) (4) (i).)

Prior written notice can be provided to you in your child's IEP, a letter, and/or other written format.

### **Parent Consent**

#### **Parents' written approval is required for:**

- **First Evaluation:** The District must have your informed written consent before it can evaluate your child. You will be informed of the types of evaluations to be used with your child. The District must make reasonable efforts to obtain your informed consent for a first evaluation. If you refuse to consent or fail to respond to the District's request, the District may proceed to due process in order to obtain the right to conduct this evaluation without your consent. (Education Code § 56321(c).)
- **Re-evaluation:** The District must have your informed written consent before reevaluating your child. To avoid confusion, you should inform the school in writing if you want to refuse consent to a reevaluation. The District may reevaluate your child without your written consent if the District has taken reasonable measures to get your consent and you have not responded. (34 C.F.R. § 300.300 (c) (2) (i) (ii).)
- **Initial and Continued Placement in Special Education:** You must give informed written consent before the District can place your child in a special education program. You have the right to refuse to consent to the initial provision of special education services to your child. If you refuse to give your consent to the initial provision of special education services to your child, the District must make reasonable efforts to obtain your informed consent. After making reasonable efforts, if you still refuse to give consent to the initial provision of special education services to your child, the District may not pursue the due process hearing procedures to obtain a ruling that initial special education services can be provided to your child. (34 C.F.R. § 300.300 (b) (1) (2) (3).) **Withdrawal or Exit from Continued Placement in Special Education:** You have the right to revoke your consent to your child's IEP any time after your child is initially provided with his/her special education program and related services. Your revocation of consent to your child's IEP withdraws, or exits, your child from continuing in his/her special education program and from continuing to receive related services. Your revocation of consent must be in writing to be effective. (34 C.F.R. § 300.300 (b) (4).) The District cannot utilize mediation and/or due

process procedures to continue to provide your child with his/her special education program if you give written notice revoking your consent to your child's IEP. (34 C.F.R. § 300.300 (b) (4); 34 C.F.R. § 300.300 (b) (4) (ii).)

You can refuse consent for an evaluation, a reevaluation, the initial placement of your child in special education, or a change in your child's special education placement. If you do not provide consent for an initial assessment or fail to respond to a request to provide consent, the District may pursue the initial assessment by utilizing the due process procedures described below. However, if you refuse to consent to initial eligibility for special education, the District cannot provide special education and related services to your child and cannot seek to provide these services through due process procedures. If you refuse services because you disagree with them after having consented to them in the past or if you do not consent to all components of your child's IEP, the District may utilize the due process procedures if it believes that the components of your child's IEP to which you disagree are required for the provision of a FAPE. You and the District may agree to first utilize alternative dispute resolution ("ADR") or mediation to attempt to resolve your disagreements. (20 U.S.C. § 1414(a), (c); 34 C.F.R. § 300.300; Education Code § 56321(c), (d), § 56346, § 56506(e).) Consent forms must describe the activity for which consent is sought and list the records (if any) that will be released and to whom. You can revoke consent at any time, except that revocation is not retroactive (does not negate actions that occurred after consent was given and before consent was revoked). (34 C.F.R. § 300.300.)

### **Surrogate Parent Appointment**

In order to protect the rights of the child, the District must ensure that an individual is assigned to act as a surrogate parent for the parents of a child with a disability when a parent cannot be identified and the District cannot discover the whereabouts of a parent. A surrogate parent may also be appointed if the child is an unaccompanied homeless youth, an adjudicated dependent or ward of the court under the state Welfare and Institutions Code, and is referred to special education or already has an IEP. The District must make reasonable efforts to appoint a surrogate within 30 days after determining that a surrogate is needed. (20 U.S.C. § 1415(b); 34 C.F.R. § 300.519; Education Code § 56050; Government Code § 7579.5, § 7579.6.)

### **Age of Majority**

When your child reaches the age of 18, all rights under the IDEA will transfer to your child. The only exception will be if your child is determined to be incompetent under State Law. (34 C.F.R. § 300.520 ; Education Code § 56041.5.)

### **Assessment**

#### **Nondiscriminatory Assessment**

You have the right to have your child assessed in all areas related to suspected areas of educational need and 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(s) administered in your child's native language or mode of communication, unless it is clearly not feasible to do so. No single procedure can be the sole criterion for determining eligibility and developing an appropriate education program for your child. (20 U.S.C. § 1412 (a), § 1414(a), (b); 34 C.F.R. § 300.304; Education Code § 56001(j), § 56320.)

#### **Assessment Plan**

When the District is seeking to assess your child, you will be given a written, proposed assessment plan. Along with that plan, you will receive a copy of this procedural safeguards document. When the assessment is completed, an IEP team meeting, which includes you (and/or your representatives), will be scheduled to consider the results of the assessment, the educational recommendations, and the reasons for these recommendations. A copy of the assessment report and any related documentation of a determination of eligibility will be given to you. (Education Code § 56329(a).)

#### **Independent Educational Evaluation**

If you disagree with the results of the assessment conducted by the District, you have the right to request one independent education evaluation ("IEE") per evaluation conducted by the District. If the District agrees to provide the IEE, the District must provide you with information about where you can obtain an IEE as well as provide you with the District's criteria applicable to IEEs. This information is contained in the District's SELPA policy regarding IEEs. If the District agrees to provide the IEE, it will be provided at public expense and will be conducted by a qualified examiner. Alternatively, if the District does not agree to provide the IEE at public expense, it must utilize the due process hearing procedures to show that its assessment with which you disagree is appropriate. If the District prevails, you still can obtain the IEE but not at public expense. The IEP Team must consider any IEEs provided to the District. (34 C.F.R. § 300.502; 20 U.S.C. § 1415 (b) (1) and (d) (2) (A).)

District assessment procedures may allow in-class observation of children as part of an assessment. If the District observed your child in his or her classroom during an assessment, or if the District would have been allowed to observe your child, an individual conducting an IEE must be allowed an equivalent opportunity to observe your child in the classroom. If the District proposes a new school setting for your child, an independent educational assessor must be allowed to observe the proposed new setting. If you have unilaterally placed your child in a private or nonpublic school and you request that the District fund that placement, the District has the right to observe your child in that placement. (20 U.S.C. § 1415(b), (d); 34 C.F.R. § 300.502; Education Code § 56329(b), (c) (d).)

### **Access to Educational Records**

All parents of a child enrolled in the District have the right to inspect records under the federal Family Educational Rights and Privacy Act ("FERPA"), which has been implemented in California under Education Code sections 49060-49079. Under the IDEA, parents of a child with disabilities (including noncustodial parents whose rights have not been limited) have the right to review all educational records regarding the identification, evaluation and educational placement of the child and the provision of a free appropriate public education and to receive an explanation and interpretation of the records. You have the right to review your child's educational records without unnecessary delay, including prior to a meeting about your child's IEP or before a due process hearing, and to receive copies of educational records within five (5) business days after the request has been made orally or in writing. A fee for copies, but not the cost to search and retrieve, may be charged unless charging the fee would effectively deny access to the parent. These rights transfer to a nonconserved pupil who is eighteen years old or attending an institution of post secondary education. (20 U.S.C. § 1415(b), Education Code § 49060, § 49069, § 56043(n), § 56501(b), § 56504.)

Parental consent, or the consent of an adult student, is required before personally identifiable information is released to officials of participating agencies providing or paying for transition services related to post secondary goals.

**"Education record"** means those records that are directly related to a pupil and that are required to be maintained by an educational agency or a party acting for the agency or institutions, and 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. Both federal and state laws further define a pupil record as any item of information directly related to an identifiable pupil, other than directory information, which is maintained by the District 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. Pupil 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, a parent can have access only to that portion of the record pertaining to his/her child.

Pupil records may be kept at the school site or District office, but a written request for records at either site will be treated as a request for records from all sites. The District custodian of records will provide you with a list of the types and locations of pupil records (if requested).

The custodian of the records shall limit access to those persons authorized to review the pupil record, which includes the parents of the pupil, a pupil who is at least sixteen years old, individuals who have been authorized by the parent to inspect the records, school employees who have a legitimate educational interest in the records, post secondary institutions designated by the pupil, and employees of federal, state and local education agencies. Unauthorized access will be denied unless the parent has provided written consent to release the records or the records are released pursuant to a subpoena or court order. The District shall keep a log indicating the time, name and purpose for access of those individuals who are not employed by the District.

Parents who believe that information in the education records collected, maintained or used by the District is (among other things) inaccurate, misleading or violates the privacy or other rights of the pupil may request in writing that the District amend the information. If the District concurs, the record will be amended and the parent will be informed. Should the District refuse to make the amendment requested, the District shall notify the parent of the right to and provide a hearing, if required, to determine whether the challenged information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the pupil. If it is decided by the governing board after the hearing that a record will not be amended, the parent shall have the right to provide what he/she believes is a corrective written statement to be permanently attached to the record. The District has policies and procedures governing the retention and destruction of records. Parents wishing to request the destruction of records, which are no longer necessary to the District, may contact the District's Custodian of Records. However, the District is required to maintain certain information in perpetuity.

(34 C.F.R. § 300.561-573; 20 U.S.C. § 1415 (b) ; Education Code § 49070.)

If you give the District written notice revoking your consent to your child's IEP, the District is not required to amend your child's education records to remove references to your child's past receipt of a special education program or related services because of your revocation of consent. (34 C.F.R. § 300.9 (c) (3).)

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

The District initiates and conducts IEP team meetings at least annually for the purpose of developing, reviewing and revising the IEP of each child with a disability. The IEP document describes your child's eligibility for special education services and the IEP team's recommended special education program and related services. Parents receive a copy of each IEP for their child.

The IEP will be implemented as soon as possible following the IEP team meeting and the receipt of written parental consent to the implementation of the IEP. A copy of the IEP will be provided to the parents at no cost and, if requested, a copy of the IEP will be provided in the primary language of the parent(s) to the extent feasible. An individualized family service plan ("IFSP") for a child aged three through five may serve as the IEP after a full explanation of the difference and written parent consent. The IEP team must consider the concerns of the parents for providing for the education of their child.

(Education Code § 56043(d), (i), (j), §§ 56340 *et seq.*)

### **IEP Team Members and Responsibilities**

The IEP team includes:

- One or both of the child's parents, a representative selected by a parent, or both;
- Not less than one regular education teacher of the child if the child is, or may be, participating in the regular education environment. If more than one regular education teacher is providing instructional services to the child, one regular education teacher may be designated by the District to represent the others. If the child is suspected of having a learning disability, not less than one regular education teacher of the child must attend the IEP team meeting unless the child does not have a regular education teacher and then a regular education teacher qualified to teach a child of his or her age shall attend. For a child of less than school age, an individual qualified to teach a child of his or her age shall attend;
- Not less than one special education teacher of the child, or if appropriate, not less than one special education provider of the child;
- A representative of the District who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of the child; is knowledgeable about the general education curriculum; and, is knowledgeable about the availability of the resources of the District. The District may designate another member of the IEP team to fill this role;
- An individual who can interpret the instructional implications of assessment results. This individual may be another one of the described members of the IEP team;
- At the discretion of the child's parent(s) or the District, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. The determination of whether the individual has knowledge or special expertise regarding the child shall be made by the party who invites the individual to be a member of the IEP team;
- The child, whenever appropriate and at the parent's discretion. The child shall be invited if the purpose of the meeting will be the consideration of the postsecondary goals for the child and the needed transition services for the child to assist the child in reaching those goals. If the child does not attend and transition planning is discussed at the meeting, the District must ensure that the child's preferences and interests are considered;
- For a child suspected of having a specific learning disability, at least one member of the IEP team shall be qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. In addition, at least one team member shall observe the child's academic performance and behavior in the areas of difficulty in the child's learning environment, including the regular classroom setting. In the case of a child who is less than schoolage or out of school, a team member shall observe the child in an environment appropriate for a child of that age;
- If the child is transitioning from Part C to Part B services, at the request of the parent, the Part C service coordinator or other representatives shall be invited; and,
- To the extent appropriate, with the consent of the parents or a child who has reached the age of majority (18), the District shall invite a representative of an agency assisting with transition to post-secondary life and/or are responsible for transition services.

A member of the IEP team may be excused from an IEP team meeting, in whole or in part, when the District and the parent agree that the attendance of the member is not necessary because the member's area of curriculum or related services is not being modified or discussed at the meeting. When the member's area of curriculum or related services is being modified or discussed at the meeting, a required member of the IEP team may be excused, but only when the District and the parent consent to the excusal in writing, and the member submits in writing input into the development of the IEP prior to the meeting. The excusal provisions do not apply to parents, the child, or persons with special knowledge or expertise.

(34 C.F.R. § 300.308; §300.321; Education Code § 56341.)

## **HOW DISPUTES ARE RESOLVED**

### **Due Process Hearing**

You have the right to request an impartial due process hearing with the Office of Administrative Hearings ("OAH") regarding:

- The identification of your child for special education eligibility;
- The assessment of your child;
- The educational placement of your child; and/or
- The provision of a FAPE for your child.

The request for a due process hearing must be filed within two years from the date you knew, or should have known, of the facts that form the basis for your due process complaint. (20 U.S.C. § 1415(b); 34 C.F.R. § 300.507; Education Code § 56501, 56505(l).)

There is an exception to this timeline if you were prevented from requesting the hearing earlier because:

- a) the District misrepresented that it had resolved the problem; or,
- b) the District withheld information that should have been provided to you.

(20 U.S.C. § 1415(f).)

### **Mediation and Alternative Dispute Resolution (ADR)**

You may also ask OAH to resolve your dispute with the District through mediation, which is less adversarial than a due process hearing. Alternative Dispute Resolution ("ADR") is also available in the District. Mediation and ADR are voluntary methods of resolving a dispute and may not be used to delay your right to a due process hearing. If a resolution is reached through either of these processes, a legally binding written agreement that sets forth the resolution will be written and signed by all of the parties. If the parties fail to reach a resolution through ADR, mediation may still be requested through OAH. If the parties fail to reach a resolution through mediation, a due process complaint may still be filed with OAH.

If mediation is requested, it will be scheduled within fifteen (15) days of the request and will be completed within thirty (30) days of the request unless the parties agree to extend the timeline. Parents and the District must both agree to try mediation before mediation is attempted. OAH will appoint a mediator who is a person who is trained in strategies that help people come to agreement over difficult issues. The mediation will be held at a time and place that is reasonably convenient to the parties.

(20 U.S.C. § 1415(e); Education Code § 56500.3, § 56503.)

### **Due Process Rights**

You have a right to:

1. Have a fair and impartial administrative hearing at the state level with a person who is knowledgeable of the laws governing special education and administrative hearings (20 U.S.C. § 1415(f); 34 C.F.R. § 300.511; Education Code § 56501(b).);
2. Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities (Education Code § 56505(e).);
3. Present evidence, written arguments, and oral arguments (Education Code § 56505 (e).);
4. Confront, cross-examine, and require witnesses to be present (Education Code § 56505 (e).);

5. Receive a written or, at the option of the parent, an electronic verbatim record of the hearing, including findings of fact and decisions (Education Code § 56505 (e).);
6. Have your child present at the hearing (Education Code § 56501(c).);
7. Have the hearing be open or closed to the public (Education Code § 56501(c).);
8. Be informed by the other parties of the issues and their proposed resolution of the issues at least ten (10) calendar days prior to the hearing (Education Code § 5604356505(e).);
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 within five business days before a hearing. (Education Code § 56505(e).);
10. Have an interpreter provided at the expense of the California Department of Education (5 C.C.R. § 3082(d).);
11. Request an extension of the due process hearing timeline (Education Code § 56501(b).);
12. Have a mediation conference at any point during the due process hearing (Education Code § 56501(b).); and,
13. Receive notice from the other party, at least ten days prior to the hearing that it intends to be represented by an attorney. (Education Code § 56507(a).)

(20 U.S.C. § 1415(e); 34 C.F.R. § 300.506, § 300.508, § 300.512, § 300.515.)

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

To file for mediation or a due process hearing, contact:

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

You need to file a written request for a due process hearing, also known as a due process complaint. The written notice shall be kept confidential. You or your representative need to submit the following information in your request:

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

State law requires that either party filing for a due process hearing must provide a copy of the written request to the other party. (20 U.S.C. § 1415(h); Education Code § 56502(c).)

### **Child's Placement While Due Process Proceedings are Pending**

Except in the case of a disciplinary appeal, according to the "stay put" provision of the law, a child involved in any administrative or judicial proceeding must remain in the current educational placement unless you and the District agree on another arrangement. If you are applying for initial admission to a public school, your child will be placed in a public school program with your consent until all proceedings are completed. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518; Education Code § 56505(d), (i).)

### **Opportunity for District to Resolve the Complaint**

If you choose to file a due process complaint, a resolution meeting must be scheduled by the District within fifteen (15) days of receiving a copy of your due process complaint. The purpose of the meeting is to give you the opportunity to discuss your due process complaint and the facts on which you based your complaint so that the District has a chance to address your concerns and work with you to reach a resolution. This meeting must be held before the initiation of a due process hearing unless you and the District agree in writing to waive the meeting and use the mediation process. The meeting must include the parents and a representative of the District who has decision-making authority. Other members of the IEP team who have specific knowledge of the facts may also attend. An attorney for the District cannot attend unless you are accompanied by an attorney. The District has thirty (30) days from the receipt of the due process complaint to resolve the due process complaint or the due process hearing may occur. These timelines are expedited if you request a hearing regarding pending disciplinary action.

If you fail to participate in the resolution session, the District may (after 30 days) seek dismissal of your complaint. If the District fails to convene or participate in a resolution session meeting within fifteen (15) days of receiving your complaint, you may ask OAH to begin the due process hearing timeline.

If the parties are unable to resolve the issue(s) contained in the due process complaint and it goes to hearing, the hearing decision is final and binding on both parties. Either party can appeal the hearing decision by filing a civil action in state or federal court within 90 days of the final decision.

(20 U.S.C. § 1415; 34 C.F.R. § 300.510, § 300.516; § 300.518; Education Code § 56043(w), § 56505.)

### **Attorneys' Fees**

In any action or proceeding regarding the due process hearing, a court, in its discretion, may award reasonable attorneys' fees as a part of the costs to you as the parent of a child with a disability if you are the prevailing party in the hearing. Reasonable attorneys' fees may also be awarded following the conclusion of the administrative hearing with the agreement of the parties. (20 U.S.C. § 1415(i); 34 C.F.R. § 300.517; Education Code § 56507(b).)

Fees may be reduced for any of the following reasons:

1. The court finds that you unreasonably delayed the final resolution of the controversy;
2. The hourly attorneys' fees exceed the prevailing rate in the community for similar services by attorneys of reasonable comparable skill, reputation and experience;
3. The time spent and legal services provided were excessive; or,
4. Your attorney did not provide to the District the appropriate information in the due process complaint.

Attorneys' fees will not be reduced, however, if the court finds that the state or the District unreasonably delayed the final resolution of the action or proceeding or there was a procedural safeguards violation. (20 U.S.C. § 1415(i); 34 C.F.R. § 300.517.)

Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the IEP team meeting is convened as a result of a due process hearing proceeding or judicial action. Attorney fees may also be denied if you reject a reasonable settlement offer made by the District more than ten (10) days before the hearing begins and the hearing decision is not more favorable than the settlement offer. (20 U.S.C. § 1415(d).)

## **SCHOOL DISCIPLINE AND PLACEMENT PROCEDURES FOR STUDENTS WITH DISABILITIES**

Children with disabilities may be suspended or placed in other alternative interim settings or other settings to the same extent these options would be used for children without disabilities. School personnel may also consider any unique circumstances on a case-by-case basis when determining whether a change in placement (in this context a disciplinary removal) is appropriate for a child with a disability who violates a code of student conduct. This change of placement may be to an appropriate interim alternative education setting, another setting, or suspension for not more than ten (10) consecutive school days. Additionally, removals of not more than ten (10) non-consecutive school days in the same school year for separate incidents of misconduct may be made.

After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal (e.g. beginning the eleventh day of removal), the District must provide services to enable the child to: (1) continue to participate in the general curriculum although in another setting, and (2) progress toward meeting the goals set out in the child's IEP. The child is also entitled to a manifestation determination meeting within ten (10) school days of the District's decision to take disciplinary action. As a parent, you will be invited to participate as a member of this manifestation determination meeting. At this meeting, the team will determine whether your child's alleged behavior was a manifestation of his or her disability by answering:

- Whether the conduct in question was caused by, or had a direct and substantial relationship to your child's disability; or,
- Whether the conduct in question was the direct result of District's failure to implement your child's current IEP.



If the team answers yes to either question, the alleged misconduct shall be determined to be a manifestation of your child's disability. If the team answers yes to the second question, the District must take immediate steps to remedy the failure to implement. If your child's behavior is determined to be a manifestation of his or her disability, the District must conduct a functional behavior assessment, and implement a behavioral intervention plan for your child. In this situation, if a behavioral intervention plan has already been developed, the District must review the plan and modify it as necessary to address the behavior in question. Finally, if your child's behavior is determined to be a manifestation of his or her disability, he or she may return to his or her placement unless you and the District agree to another placement.

If the team answers no to both questions, the alleged misconduct shall be determined not to be a manifestation of your child's disability and the District may take disciplinary action against your child, such as expulsion, in the same manner as it would for a child without disabilities.

If you disagree with the team's manifestation determination, you may request an expedited due process hearing from OAH.

(20 U.S.C. § 1415(k); 34 C.F.R. §300.530.)

### **Placement in an Interim Alternative Educational Setting**

The District may place your child in an appropriate interim alternative placement for up to forty-five school days regardless of whether his or her behavior is a manifestation of his or her disability if your child:

- carries or possess a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the District;
- knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the District; or,
- has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the District.

The interim alternative educational placement must be determined by your child's IEP team to allow your child to (1) continue to participate in the general curriculum although in another setting, and (2) progress toward meeting the goals set out in the child's IEP.

If you request a hearing or an appeal regarding disciplinary action or manifestation determination, your child will stay in the interim alternative setting or disciplinary setting pending the decision of the hearing officer or until the expiration of the time period for the interim alternative setting or disciplinary placement, unless you and the District agree to another placement.

(20 U.S.C. § 1415(k); 34 C.F.R. §§ 300.530-300.537.)

### **Discipline Procedures for Children Not Eligible for Special Education Services**

If your child engaged in behavior that violated a code of student conduct resulting in disciplinary action, such as expulsion, but your child is not eligible for special education, you may assert the protections provided by the IDEA if the District had prior knowledge that your child was a child with a disability before your child engaged in the behavior that resulted in the disciplinary action.

The District only has prior knowledge that your child was a child with a disability before he/she engaged in the behavior resulting in disciplinary action if the following occurred:

1. You expressed concern in writing to supervisory or administrative personnel of the District, or to your child's teacher, that your child was in need of special education and related services;
2. You requested an evaluation of your child; or,
3. Your child's teacher, or other District personnel, expressed specific concerns about a pattern of behavior demonstrated by your child directly to the District's director of special education or to other supervisory personnel of the District.

The District will not be determined to have prior knowledge that your child was a child with a disability if:

1. You refused to give consent to an evaluation of your child for special education eligibility; or,
2. You refused special education services; or,
3. You revoked consent to your child's IEP and your child was withdrawn or exited from continuing to receive his/her special education program because you revoked your consent; or,

4. Your child has been evaluated but was not found to be a child with a disability.

If the District did not have knowledge that your child was a child with a disability prior to taking disciplinary action, your child may be subject to the same disciplinary measures that apply to children without disabilities.

If you request an evaluation of your child to determine if your child is a child with a disability during the time your child is subject to disciplinary action, the District must complete the evaluation in an expedited manner. Your child will remain in the educational placement that was determined by the District during this evaluation. (34 C.F.R. § 300.534; 20 U.S.C. § 1415(k) (5).)

## **CHILDREN ATTENDING PRIVATE SCHOOL**

Children who are enrolled by their parents in private schools may participate in publicly funded special education programs. The District must consult with private schools and with parents to determine the services that will be offered to private school students. Although the District has a clear responsibility to offer FAPE to students with disabilities, those children, when placed by their parent in private schools, do not have the right to receive some or all of the special education and related services necessary to receive a FAPE. (20 U.S.C. § 1415(a); 34 C.F.R. § 300.137, § 300.138, Education Code § 56173.)

The District is responsible for the full cost of special education in a nonpublic, nonsectarian school, when the District, together with the IEP Team, recommends that this would be the appropriate placement for the student. (20 U.S.C. § 1415(a); 34 C.F.R. § 300.349(c), § 300.401; Education Code § 56361.)

### **Observation of Your Child at a Nonpublic School**

If you unilaterally place your child in a nonpublic school and you propose the placement in the nonpublic school to be publicly funded, the District must be given the opportunity to first observe the proposed placement and your child in the proposed placement. The District may not observe or assess any other child at the nonpublic school without permission from the other child's parent or guardian. (Education Code § 56329(d).)

### **Unilateral Parent Placement in Nonpublic or Private School**

If you unilaterally place your child in a private or nonpublic, nonsectarian school without the District's consent or referral of a court or hearing officer, the District may only be required to reimburse you if your child received special education and related services under the authority of a public agency before enrolling in the private school and the court or hearing officer finds that the District did not make a free and appropriate education available in a timely manner.

A court or hearing officer may not reduce or deny reimbursement to you if you failed to notify the District for any of the following reasons:

- You are illiterate or cannot write in English;
- Giving notice would likely result in physical or serious emotional harm to the child;
- The school prevented you from giving notice; or,
- You had not received a copy of this notice or otherwise been informed of this notice requirement.

The court or OAH may reduce or deny reimbursement if you did not make your child available for an assessment upon written notice from the District. You may also be denied reimbursement if you did not inform the District that you were rejecting the special education placement proposed by the District and did not give notice at your child's most recent IEP team meeting or at least ten (10) business days in advance of your unilateral placement that you had concerns about the District's offered placement and intend to enroll your child in a private school at public expense.

(20 U.S.C. § 1412(a); 34 C.F.R. § 300.148; Education Code § 56176, § 56177.)

## **PLACEMENT IN STATE SPECIAL SCHOOLS**

State Special Schools provide services to children 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 the California School for the Blind in Fremont. The Schools for the Deaf offer residential and day school programs for children from infancy to age 22; the School for the Blind offers residential and day school programs for children between the ages of five and 22. The State Special Schools also offer assessment services and technical assistance. For more information on the State

Special Schools, you can visit the California Department of Education's website at <http://www.cde.ca.gov/sp/ss/> or you can speak to a member of your child's IEP team.

## **STATE COMPLAINT PROCEDURES**

**Note:** Complaint procedures in this section are related specifically to the California State Appeal Process and are not the same as the due process complaint procedures covered earlier in this document.

If you wish to file a complaint with the California Department of Education, you should submit your complaint in writing to:

**California Department of Education  
Special Education Division  
Procedural Safeguards Referral Service  
1430 N Street Suite 2401  
Sacramento, California 95814  
Attn: PSRS Intake**

Within 60 days after a complaint is filed, the California Department of Education will carry out an independent investigation, give the complainant an opportunity to provide additional information, review all information and make a determination as to whether the District has violated laws or regulations, and issue a written decision that addresses each allegation.

For complaints involving issues not covered by IDEA, consult the District's Uniform Complaint Procedures. A copy of these procedures and the District's complaint form can be found in the annual District Basic Commitment booklet or on the District's website under "Board Policies."

**The District would like to work with you to resolve all complaints at the local level whenever possible. We invite you to meet with a special education administrator or program specialist to attempt to resolve your concern(s) informally before a complaint is filed. He or she will maintain confidentiality as permitted by law. If your complaint cannot be resolved, a formal investigation will be initiated or you will be referred to the appropriate agency for assistance.**

**The District's SELPA Director and Director of Special Education can be contacted at 2465 Dolan Way, San Pablo, CA 94806, (510) 307-4630.**

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