

# **PARENTAL AND ADULT STUDENTS' RIGHTS AND PROCEDURAL SAFEGUARDS FOR SPECIAL EDUCATION**

**Please keep this document for future reference.**

## **GENERAL RIGHTS**

- 1 All children with disabilities, birth through twenty-one years of age, have the right to a free appropriate public education.
- 2 All children with disabilities have the right to placement in the least restrictive learning environment which provides maximum interaction with the general school population in a manner that is appropriate to the needs of both.
- 3 A copy of the procedural safeguards notice shall be given to the parents of a child with a disability only one time a year, except that a copy also shall be given to the parents upon initial referral or parental request for assessment or upon any reevaluation of the child, upon the first occurrence of the filing for a due process hearing under Education Code Section 56502 and upon request by a parent.
- 4 The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parent, unless it clearly is not feasible to do so, and written in an easily understandable manner. If the native language or other mode of communication of the parent is not a written language, the notice is to be translated orally or by other means to the parent in his or her native language or other mode of communication. The local educational agency (LEA) shall take steps to ensure that the parent understands the content of the notice and shall ensure that written evidence exists that these requirements have been met.
- 5 Parents have the right to participate in meetings with respect to the identification, evaluation, and educational placement of their child, and the provision of a free appropriate public education.

## **RIGHTS RELATED TO EVALUATION AND ASSESSMENT**

- 6 Parents have the right to initiate a referral of their child for special education services.
- 7 Parents must give their written consent for an initial assessment to determine if their child qualifies as a child with a disability. If the parent does not provide consent for initial assessment or the parent fails to respond to a request to provide the consent, the LEA may pursue the initial assessment utilizing the mediation and due process procedures described later in this document.
- 8 The parent shall be given, in writing, a proposed assessment plan within 15 calendar days of the referral for assessment, not counting days between school sessions or days of school vacation in excess of 5 school days, from the date of receipt of the referral unless there is written parental agreement to an extension. Assessment plans shall be developed within 10 days after the start of the new regular school year when a referral was made 10 days or less prior to the end of the regular school year. For pupil school vacations, the 15 day time starts again when the regular school year reconvenes. Parent consent is not required before reviewing existing data as part of an assessment or reassessment or before administering a test or other assessment that is administered to all children, unless consent is required of the parents of all children before administration.
- 9 The assessment plan shall be provided in the native language of the parent, unless it is clearly not feasible to do so, and shall explain the types of assessments to be conducted and the facts which make an assessment necessary or desirable. The parent shall have at least 15 calendar days from receipt of the proposed assessment plan to provide written consent. Assessment may begin immediately upon receipt by the LEA of the signed assessment plan.
- 10 Upon completion of the administration of tests and other assessment materials, an IEP Team meeting shall be scheduled, including the parent and his or her representatives, to determine eligibility for special education and to discuss the assessment, educational recommendations and the reasons for these recommendations.

In making a determination of eligibility for special education, a pupil shall not be determined to be an individual with exceptional needs if the determinant factor for the determination is any of the following: (a) lack of appropriate instruction in reading, including the essential components of reading instruction as defined in paragraph (3) of Section 6368 of Title 20 of the United States Code; (b) lack of instruction in mathematics; (c) limited-English proficiency.

The parent has the right to receive a copy of the evaluation report and the documentation of determination of eligibility for special education services.

- 11 A reassessment of a child with a disability shall be conducted if the LEA determines that the educational or related services needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment, or if the pupil's parents or teacher requests a reassessment. A reassessment shall occur not more frequently than once a year, unless the parent and the LEA agree otherwise, and shall occur at least once every three years, unless the parent and the LEA agree, in writing, that a reassessment is unnecessary. A reassessment may not be conducted, unless the written consent of the parent is obtained prior to reassessment, except in cases where the LEA has been granted the right through a due process hearing to conduct a reassessment without parental consent. Informed parental consent need not be obtained for the reassessment if the LEA can demonstrate that it has taken reasonable measures to obtain that consent and the child's parent has failed to respond.
- 12 The LEA shall conduct a reevaluation of a child with a disability before determining that the child no longer meets the criteria for eligibility as a child with a disability. If, as part of a reevaluation, the Individualized Education Program (IEP) Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the educational needs of the child, the LEA shall notify the child's parents of that determination and the reasons for it, and the right of the parent to request an assessment to determine whether the child continues to be a child with a disability and to determine the educational needs of the child.
- 13 Parents have the right to obtain an independent educational evaluation of their child at public expense if they disagree with an evaluation obtained by the LEA. If an LEA observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the LEA regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding. Parents must indicate in writing to the LEA or inform the LEA at an IEP meeting that they disagree with an evaluation conducted by the LEA and that they are requesting an IEE at public expense. If the parent makes an oral request for an IEE, LEA staff shall offer to assist the parent in putting the request in writing and shall assist the parent if the parent so requests. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the LEA uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. The LEA shall provide to parents, on request, information about where an independent educational evaluation may be obtained. If a parent requests an independent educational evaluation at public expense, the LEA must either initiate a due process hearing to show that its evaluation is appropriate or ensure an independent educational evaluation is provided at public expense. If the final decision, as a result of a due process hearing, is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. If a parent obtains an independent educational evaluation at private expense, the results of the assessment shall be considered by the LEA with respect to the provision of a free appropriate public education and may be presented as evidence at a due process hearing.

#### **RIGHTS RELATED TO THE INDIVIDUALIZED EDUCATION PROGRAM**

- 14 An IEP required as a result of an assessment of a child shall be developed within a total time not to exceed 60 days, not counting days between the child's regular school sessions, terms, or days of school vacation in excess of 5 school days, from the date of receipt of the parent's written consent for assessment, unless the parent agrees, in writing, to an extension. However, such an IEP shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each district's school calendar for each pupil for whom a referral has been made 30 days or less prior to the end of the regular school year. In the case of pupil school vacations, the 60-day time shall recommence on the date that pupil school days reconvene.
- 15 Parents have the right to be a member of the IEP Team. They shall have the right to present information to the Team in person or through a representative; to participate in meetings related to eligibility for special education and related services, recommendations, and program planning; to participate in the development of the IEP and to be informed of the availability under state and federal law of a free appropriate public education and of all available alternative programs, both public and nonpublic.
- 16 Parents are entitled to receive notice of the proposed meeting.
- 17 The IEP Team meeting shall be arranged at times and places mutually agreeable to the parent and the LEA.
- 18 When conducting IEP Team Meetings the parent and the LEA may agree to use alternative means of meeting participation, such as video conferences and conference calls.
- 19 Parents have the right to be members of any group that makes decisions on the educational placement of their child.
- 20 Parents have the right to include as members of the IEP Team individuals who have knowledge or special expertise regarding their child, including related services personnel as appropriate.
- 21 Parents of children transitioning from programs for children ages birth to three may request that the coordinator or other representative of the early intervention infant toddler program be invited to the initial IEP meeting.

- 22 Parents shall be given a copy of the IEP at no cost, and a copy of the IEP shall be provided in the native language at the request of the parent.
- 23 The IEP and placement of the child will be reviewed at least once each year by the IEP team.
- 24 In making changes to a child's IEP after the annual IEP meeting for a school year, the parent and the LEA may agree not to convene an IEP Team meeting for the purpose of making those changes and instead may develop a written document, signed by the parent and by a representative of the LEA, to amend or modify the child's existing IEP. Changes to the IEP may be made either by the entire IEP Team or by amending the IEP rather than by redrafting the entire IEP. Upon request, the parent shall be provided with a revised copy of the IEP with the amendments incorporated.
- 25 Parents have the right to request a meeting of the IEP Team to review their child's IEP. A meeting of the IEP Team requested by a parent shall be held within 30 calendar days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of 5 school days, from the date of receipt of the parent's written request. If a parent makes an oral request, the LEA shall notify the parent of the need for a written request and the procedure for filing a written request.
- 26 Parents and the LEA have a right to make an audio tape recording of the proceedings of the IEP Team meeting by giving 24 hours notice to the IEP Team of the intent to tape the meeting. If the LEA gives notice of the intent to audiotape the meeting and the parent objects or refuses to attend, then the meeting shall not be tape recorded. Under federal law, audio tape recordings made by an LEA are subject to the Family Educational Rights and Privacy Act, and are subject to the confidentiality requirements of the regulations under Part 300 of Title 34 of the Code of Federal Regulations. Parents or guardians have the right to: (a) inspect and review the tape recordings; (b) request that the tape recordings be amended if the parent or guardian believes that they contain information that is inaccurate, misleading, or in violation of the rights of privacy or other rights of the child; and (c) challenge, in a hearing, information that the parent or guardian believes is inaccurate, misleading, or in violation of the individual's rights of privacy or other rights.
- 27 The LEA that is responsible for making available a free appropriate public education to a child with a disability shall seek to obtain informed written consent from the parent before providing initial special education and related services to the child. If the parent refuses to consent to the initiation of services, the LEA shall not provide special education and related services by utilizing the due process hearing procedures.
- 28 If the parent refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide the consent: (a) the LEA shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the child with the special education and related services for which the LEA requests consent; and (b) the LEA shall not be required to convene an IEP Team meeting or develop an IEP for the child for the special education and related services for which the LEA requests consent.
- 29 If at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency:
  - 1) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 34 *CFR* Section 300.503 before ceasing such services
  - 2) May not use the procedures in subpart E of Part 300 34 *CFR* (including the mediation procedures under 34 *CFR* Section 300.506 or the due process procedures under 34 *CFR* Sections 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child
  - 3) Will not be considered to be in violation of the requirement to make a free appropriate public education (FAPE) available to the child because of the failure to provide the child with further special education and related services
  - 4) Is not required to convene an IEP team meeting or develop an IEP under 34 *CFR* Sections 300.320 and 300.324 for the child for further provision of special education and related services

Please note, in accordance with 34 *CFR* Section 300.9 (c)(3), that if the parents revoke consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

- 30 If the parent of the child consents in writing to the receipt of special education and related services for the child but does not consent to all of the components of the IEP, those components of the program to which the parent has consented shall be implemented so as not to delay providing instruction and services to the child.
- 31 If the LEA determines that the proposed special education program component to which the parent does not consent is necessary to provide a free appropriate public education to the child, a due process hearing shall be initiated. If a due process hearing is held, the hearing decision shall be the final administrative determination and shall be binding upon the parties. While a resolution session, mediation conference, or due process hearing is pending, the child shall remain in his or her current placement unless the parent and the LEA agree otherwise.

## **RIGHTS RELATED TO PARENTAL NOTICE**

- 32 Written prior notice to the parents of the child is required whenever the LEA proposes to initiate or change or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education. Such notice shall be provided in the parent's native language unless it clearly is not feasible to do so.
- 33 The notice shall include a description of the action proposed or refused by the LEA; an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; a statement that the parents of the child with a disability have protection under the procedural safeguards of the IDEA and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; sources for parents to contact to obtain assistance in understanding the provisions of the IDEA; a description of other options considered by the IEP Team and the reasons why those options were rejected; and a description of the factors that are relevant to the agency's proposal or refusal.

## **RIGHTS RELATED TO STUDENT RECORDS**

- 34 Parents have the right to receive notice in their native language which includes a summary of the policies, procedures and rights related to personally identifiable information, including the rights under the Family Educational Rights and Privacy Act of 1974 (FERPA). The following information meets this requirement.
- 35 The LEA shall provide parents, on request, a list of the types and locations of education records collected, maintained, or used by the agency.
- 36 Parents shall have the right and opportunity to examine all school records of their child and to receive copies within 5 days after such request is made, either orally or in writing and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education. An LEA may charge no more than the actual cost of reproducing such records, but if this cost effectively prevents the parent from exercising the right to receive such copy or copies, the copy or copies shall be reproduced at no cost.
- 37 The parent's rights to inspect and review the educational records of the child include the right to a response from the LEA to reasonable requests for explanations and interpretations of the records and the right to have a representative of the parent inspect and review the records.
- 38 The LEA may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.
- 39 The parent of a pupil may file a written request with the superintendent of the LEA to correct or remove any information recorded in the written records concerning his or her child which the parent alleges to be any of the following: (a) inaccurate; (b) an unsubstantiated personal conclusion or inference; (c) a conclusion or inference outside of the observer's area of competence; (d) not based on the personal observation of a named person with the time and place of the observation noted, (e) misleading; (f) in violation of the privacy or other rights of the pupil.
- 40 Within 30 days of receipt of a request as described above, the superintendent or superintendent's designee shall meet with the parent and the certificated employee who recorded the information in question, if any, and if the employee is presently employed by the LEA. The superintendent shall then sustain or deny the allegations. If the superintendent sustains any or all of the allegations, he or she shall order the correction or the removal and destruction of the information. However, the superintendent shall not order a pupil's grade to be changed unless the teacher who determined the grade is, to the extent practicable, given an opportunity to state orally, in writing or both, the reasons for which the grade was given and is, to the extent practicable, included in all discussions relating to the changing of the grade. If the superintendent denies any or all of the allegations and refuses to order the correction or the removal of the information, the parent may, within 30 days of the refusal, appeal the decision in writing to the governing board of the LEA.
- 41 Within 30 days of receipt of an appeal, the governing board shall, in closed session with the parent and the certificated employee who recorded the information in question, if any, and if the employee is presently employed by the LEA, determine whether or not to sustain or deny the allegations. If the governing board sustains any or all of the allegations, it shall order the superintendent to immediately correct or remove and destroy the information from the written records of the pupil. However, the governing board shall not order a pupil's grade to be changed unless the teacher who determined the grade is, to the extent practicable, given the opportunity to state orally, in writing, or both, the reasons for which the grade was given and is, to the extent practicable, included in all discussions relating to the changing of the grade. The decision of the governing board shall be final. Records of these administrative proceedings shall be maintained in a confidential manner and shall be destroyed one year after the decision of the governing board, unless the parent initiates legal proceedings relative to the disputed information within the prescribed period.

- 42 If the final decision of the governing board is unfavorable to the parent, or if the parent accepts an unfavorable decision by the district superintendent, the parent shall have the right to submit a written statement of his or her objections to the information. This statement shall become a part of the pupil's school record until the information objected to is corrected or removed.
- 43 Parental consent must be obtained by the LEA before personally identifiable information is disclosed or released to other agencies.

#### **RIGHTS OF ADULT STUDENTS**

- 44 When a child with a disability reaches the age of 18, the age of majority in California, (except for a child with a disability who has been determined to be incompetent under State law) the LEA shall provide any required notices to both the individual and the parents. At the age of 18, all other rights accorded to the parents under the IDEA transfer to the child. The LEA shall notify the individual and the parents of the transfer of rights.
- 45 Beginning at least one year before a child with a disability reaches the age of 18, the child shall be informed of his or her rights under the IDEA, if any, that will transfer to the child at the age of majority.

#### **PROCEDURES FOR APPOINTMENT OF SURROGATE PARENTS**

- 46 The LEA will assign an individual to act as a surrogate for the parents upon referral of the child to an LEA for special education and related services or, in cases where the child already has a valid IEP, under the following circumstances: (a) the child is a dependent or ward of the court, the court has specifically limited the right of the parent or guardian to make educational decisions for the child and the child has no responsible parent or guardian to represent him or her, or (b) the child is not a ward or dependent of the court and no parent or guardian can be located, or (c) there is no caretaker of the child or the child is an unaccompanied homeless youth. An LEA shall make reasonable efforts to ensure the appointment of a surrogate parent not more than 30 days after the LEA determines that a child needs a surrogate parent. In the case of a child who is a ward of the state, the surrogate parent may be appointed by the judge overseeing the child's care as long as the appointee meets the requirements described below.
- 47 The individual appointed to act as a surrogate shall not be an employee of the State education agency, the LEA, or any other agency that is involved in the education or care of the child. The surrogate shall have no interest that conflicts with the interest of the child he or she represents and shall have knowledge and skills that ensure adequate representation of the child. An individual who would have a conflict of interest means a person having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure a free appropriate public education for a child with a disability.
- 48 As far as practical, a surrogate parent should be culturally sensitive to his or her assigned child.
- 49 When appointing a surrogate parent, the LEA shall, as a first preference, select a relative caretaker, foster parent, or court appointed special advocate, if any of these individuals exist and is willing and able to serve. If none of these individuals is willing or able to act as a surrogate parent, the LEA shall select the surrogate parent of its choice. If the child is moved from the home of the relative caretaker or foster parent who has been appointed as a surrogate parent, the LEA shall appoint another surrogate parent if a new appointment is necessary to ensure adequate representation of the child.
- 50 Except for individuals who have a conflict of interest in representing the child, individuals who may serve as surrogate parents include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers who are not employees of a public agency involved in the education or care of the child. If a conflict of interest arises subsequent to the appointment of the surrogate parent, the LEA shall terminate the appointment and appoint another surrogate parent.
- 51 The surrogate parent shall serve as the child's parent and shall have the rights relative to the child's education that a parent has as specified in the IDEA. A surrogate parent may represent a child with a disability in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the IEP, and in other matters relating to the provision of a free appropriate education to the individual. This representation shall include the provision of written consent to the IEP including non-emergency medical services, mental health treatment services and occupational or physical therapy services. The surrogate parent may sign any consent relating to IEP purposes.
- 52 A surrogate parent may represent the child until: (a) the child is no longer in need of special education; (b) the child reaches the age of 18, unless the child chooses not to make educational decisions for himself or herself or has been declared incompetent by a court of law; (c) another responsible adult is appointed to make educational decisions for the child; or (d) the right of the parent or guardian to make educational decisions for the child is restored.
- 53 A surrogate parent shall be held harmless by the State of California when acting in his or her official capacity except for acts or omissions which are found to have been wanton, reckless, or malicious.
- 54 The parent or guardian of a child with a disability may designate another adult individual to represent the interests of the child for education and related services.

## PROCEDURES FOR RESOLVING DIFFERENCES

- 55 The parents and representatives from the LEA may meet informally to address any areas of concern regarding educational services for a child with a disability. An informal meeting may be initiated by sending a written request to your child's school principal.

### Mediation

- 56 Parents are encouraged to seek resolution of differences through participation in prehearing request mediation prior to filing a request for a due process hearing. Because the intent of voluntary prehearing request mediation is that it be an informal nonadversarial process to resolve issues relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education to the child, to the satisfaction of all parties, attorneys or other independent contractors used to provide legal advocacy services may not attend or otherwise participate in prehearing request mediation conferences. Parents and LEA representatives may be accompanied by non-attorney representatives and may consult with an attorney prior to or following a prehearing mediation conference.
- 57 Requesting or participating in a mediation conference is not a prerequisite to requesting a due process hearing.
- 58 A request for a prehearing mediation shall be filed in writing with the State Superintendent of Public Instruction, California Department of Education, 1430 N Street, Sacramento, CA 95814, with a copy of the request provided to the other party to the mediation at the same time the request is filed with the State Superintendent.
- 59 The prehearing mediation conference shall be scheduled within 15 days of receipt by the Superintendent of the request for mediation. The mediation conference shall be completed within 30 days after receipt of the written request unless both parties agree to extend the time for completing mediation.
- 60 If a resolution is reached that resolves the due process issue through the mediation process, the parties shall execute a legally binding written agreement that sets forth the resolution and that does all of the following: (a) states that all discussions that occurred during mediation shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; (b) is signed by both the parent and the representative of the LEA who has the authority to bind the agency; and (c) is enforceable in any state court of competent jurisdiction or in federal district court. If mediation fails to resolve the issues to the satisfaction of all parties, the party who requested the mediation has the option of filing for a state-level hearing.
- 61 Mediation conferences shall be scheduled in a timely manner and shall be held at a time and place reasonable convenient to the parties to the dispute. An LEA and a parent may, if the party initiating mediation so chooses, meet informally to resolve any issue to the satisfaction of both parties prior to the mediation conference.

### Due Process Hearings

- 62 Due process hearings involve disputes regarding the identification, assessment or educational placement of a child with a disability or the provision of a free appropriate public education. All requests for a due process hearing shall be filed with the State Superintendent of Public Instruction California Department of Education, 1430 N Street, Sacramento, CA 95814. Until October 9, 2006, a request for a due process hearing may be filed within three years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request, provided that the party requesting the hearing participates in the resolution session process described in section #66 below. Beginning on October 9, 2006 a party initiating a request for a due process hearing must file the request within two years from the date the party knew, or had reason to know, the facts underlying the basis of the request. The time periods described in this section shall not apply to a parent if the parent was prevented from requesting the due process hearing because the LEA either (a) made specific misrepresentations that it had solved the problem forming the basis of the hearing request or (b) withheld information from the parent that was required to be provided pursuant to the provisions of the California Education Code.
- 63 The party, or the attorney representing the party, initiating the hearing shall provide the other party to the hearing with a copy of the request at the same time as the request is filed with the State Superintendent. The hearing request shall include the following: (a) the name of the child, the address of the residence of the child, or available contact information in the case of a homeless child, and the name of the school the child is attending; (b) in the case of a homeless child, the request shall include available contact information for the child and the name of the school the child is attending; (c) a description of the nature of the problem of the child relating to the proposed initiation or change, including facts relating to the problem and; (d) a proposed resolution of the problem to the extent known and available to the party at the time. A party may not have a hearing until the party, or the attorney representing the party, files a request that meets the above requirements. The due process request notice shall be deemed to be sufficient unless the party receiving the notice provides, within 15 days of receipt of the hearing request, written notice to the hearing officer and the other party that the receiving party believes the hearing request notice has not met the stated requirements. The hearing officer shall determine, within 5 days of receipt of the insufficiency notification, whether the initial notification meets the requirements outlined above in this paragraph.
- 64 A party that receives a due process hearing request notice must, within 10 days, send to the other party a response that specifically addresses the issues raised in the hearing request.

- 65 When a due process hearing request is made, the LEA shall convene a meeting with the parents and relevant members of the IEP Team within 15 days of receiving notice of the hearing request for the purpose of attempting to resolve the issue(s) in dispute. The meeting shall not include an attorney of the LEA, unless the parent is accompanied by an attorney. The resolution session is not required if the parents and the LEA agree in writing to waive the meeting, or agree to use mediation instead.
- 66 If a resolution is reached as a result of convening a meeting as described above, the parties shall execute a legally binding agreement signed by both the parent and a representative of the LEA. If such an agreement is developed, either party may void the agreement within 3 business days of the agreement's execution.
- 67 If a resolution to a dispute is reached through the mediation process, the parties shall execute a legally binding agreement that states that all discussions that occurred during mediation shall be confidential and that is enforceable in any State court of competent jurisdiction or in a district court of the United States. If the issue(s) have not been resolved within 30 days of receipt of the hearing request, a due process hearing may occur. A party may amend a due process hearing request notice only if the other party consents in writing to the amendment and is given the opportunity to resolve the hearing issue through a resolution meeting, or the due process hearing officer grants permission, except that the hearing officer may grant permission not later than 5 days before a hearing occurs. The timeline for a due process hearing will re-start if an amended hearing request is filed. The party requesting the due process hearing shall not be allowed to raise issues at the hearing that were not raised in the hearing notice unless the other party agrees otherwise.
- 68 The hearing shall be held at a time and place reasonably convenient to the parent or guardian and the pupil. The hearing shall be conducted by a person who shall possess knowledge of the laws governing special education and administrative hearings. Any party to a due process hearing shall be afforded the following rights: (a) the right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of children with disabilities; (b) the right to present evidence, written arguments, and oral arguments; (c) the right to confront, cross-examine, and compel the attendance of, witnesses; (d) the right to a written, or, at the option of the parent or guardian, electronic verbatim record of the hearing; (e) the right to written, or at the option of the parent or guardian, electronic findings of fact and decisions which will be mailed to each party within 45 days after the receipt by the State Superintendent of the hearing request; (f) a written notice of the other party's issues and proposed resolutions and the other party's intent to use an attorney at least 10 days before commencement of the hearing, or in the case of a non-represented parent, the right to the assistance of a mediator to identify the issues and proposed resolutions; (g) receive at least 5 business days before the hearing a copy of all documents, including assessments completed by that date (and recommendations based on the assessments to be used in the hearing), and a list of witnesses and their general area of testimony which the other side intends to rely upon, as well as the right to prohibit the same by a party for failing to abide by this rule (exclusion is discretionary with the hearing officer); (h) have the child present at the hearing; (i) have the hearing open or closed; (j) have an interpreter; (k) request an extension of the hearing timeline for good cause.
- 69 The hearing decision shall be final and binding on all parties except that any party involved in such hearing may appeal the decision to a court of competent jurisdiction. An appeal shall be made within 90 days of receipt of the hearing decision.
- 70 During the pendency of the hearing and any judicial proceedings, unless the State or LEA and the parents agree otherwise, the child shall remain in the then-current educational placement, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.
- 71 Reasonable attorneys' fees may only be awarded to the prevailing parent, guardian, or pupil, as the case may be, either with the agreement of the parties following the conclusion of the administrative hearing process or by a court of competent jurisdiction. An LEA may be awarded attorneys' fees against the attorney of a parent who files a due process hearing request or subsequent cause of action that is frivolous, unreasonable, or without foundation, or who continues to litigate after the litigation clearly became frivolous, unreasonable, or without foundation. The LEA may also be entitled to attorneys' fees against the attorney of a parent, or against the parent, if the parent's due process hearing request or subsequent cause of action was presented for any improper purposes, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.
- 72 The court shall reduce the amount of attorneys' fees if: (a) the parent has unreasonably delayed the proceedings (unless the school district also delayed the proceedings or violated due process procedures); (b) the fees unreasonably exceed the prevailing hourly rate in the community; (c) the time spent and legal services were excessive; or (d) the parent's attorney did not provide the LEA with the information required in the due process hearing request notice.
- 73 A parent may not obtain additional attorneys' fees or costs after the rejection or failure to respond within 10 days to an offer of settlement that is made by an LEA at least 10 days before the hearing or court action if the hearing officer or court finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
- 74 Attorneys' fees may not be awarded to an attorney for attendance at an IEP Team meeting unless the meeting has been convened as a result of an administrative proceeding or judicial action. Attorneys' fees also may not be awarded for attendance at a resolution session required to take place prior to convening a due process hearing.

## RIGHTS RELATED TO STUDENT DISCIPLINE

- 75 School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct. School personnel may suspend a child with a disability from the child's current placement for not more than 10 consecutive school days and for additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement).
- 76 After a child with a disability has been removed for his/her current placement for 10 school days in the same school year; (a) educational services must be provided during any further days of removal sufficient to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals included in the child's IEP; and (b) as appropriate, a functional behavioral assessment and behavioral intervention services and modifications must be provided, designed to address the behavior violation so that it does not recur.
- 77 When a child is removed from his/her current placement for more than 10 school days in a school year and a subsequent removal is not a change of placement, school personnel in consultation with at least one of the child's teachers, shall determine the extent to which educational services are needed, if any, pursuant to #76(a) above, and the location in which any services will be provided. If the removal is for more than 10 consecutive school days or is a change of placement, the child's IEP Team determines appropriate educational services under #76(a) above and the location in which services will be provided.
- 78 When a school removal will be for more than 10 consecutive school days and will constitute a change of placement, within 10 school days of any decision to change the child's placement because of a disciplinary infraction, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine (a) if the misconduct was caused by, or had a direct and substantial relationship to, the child's disability; or (b) if the misconduct was the direct result of the LEA's failure to implement the IEP. If the IEP Team determines that either of the above conditions is met, the misconduct must be determined to be a manifestation of the child's disability. If it is determined that the child's misconduct was a manifestation of his/her disability, the IEP Team must either: (a) conduct a functional behavioral assessment, unless such an assessment had been conducted before the misbehavior resulting in the change of placement occurred, and implement a behavioral intervention plan; or (b) if a behavioral intervention plan already exists, review the plan and modify it, as necessary, to address the behavior. When the misbehavior of the child has been determined to be a manifestation of his/her disability, the child must be returned to his/her previous placement unless: (a) the parent and the LEA agree to a change of placement; or (b) the child's misbehavior is included in any of the categories described in #79 below.
- 79 A child may be removed from his/her current educational placement to an Interim Alternative Educational Setting (IAES) for a period not to exceed 45 school days if he/she: (a) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or LEA; (b) 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 a State or LEA; or (c) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of State or LEA. School officials are not prohibited by special education laws from reporting a crime committed by a child to appropriate authorities.
- 80 At the time the decision to take disciplinary action is made, the parents of the child have the right to be notified of the decision and provided written notice of procedural safeguards under the IDEA.
- 81 The parent of a child who disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others may request a due process hearing.
- 82 A hearing officer may return a child with a disability to the placement from which the child was removed or order a change of placement for a child to an appropriate IAES for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.
- 83 When an appeal has been requested by either the parent or the LEA relating to the disciplinary placement of a child or the results of the manifestation determination meeting, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period of the disciplinary removal, whichever occurs first, unless the parent and the State or LEA agree otherwise. The State or LEA shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.
- 84 If a child has not been determined to be eligible for special education and is subject to discipline, the parent may assert any of the protections provided under the IDEA if the LEA had a basis of knowledge that the child was a child with a disability before the occurrence of the behavior that caused disciplinary action. A basis of knowledge will only be determined if, prior to the behavior that is the subject of the disciplinary action: (a) the parent expressed concern in writing to district supervisory or administrative personnel, or to the child's teacher that the child was in need of special education and related services; (b) the parent requested a special education evaluation for his/her child; or (c) the child's teacher or other school personnel expressed specific concerns about a pattern of behavior demonstrated by the

child directly to the director of special education or to other supervisory personnel of the LEA. An LEA shall not be deemed to have knowledge if the parent has not allowed an evaluation of the child or has refused special education services or the child has been evaluated and it was determined that the child was not eligible for services. If an LEA did not have knowledge of the disability, the child may be subject to the same disciplinary measures as those applied to children without disabilities.

- 85 If an evaluation of the child is requested when disciplinary action is pending, the evaluation shall be conducted in an expedited manner. Pending such an evaluation, the child shall remain in an educational setting determined by school authorities.

#### **CHILDREN ATTENDING PRIVATE SCHOOL**

- 86 Children who are enrolled by their parents in private schools may participate in publicly funded special education programs.
- 87 Parents of private school children may seek special education services by contacting the local school district in which the private school is located.
- 88 Federal law limits the amount that LEA must spend for special education services for parentally enrolled private school students with disabilities to a proportionate share of federal funding available to the LEA under the IDEA.
- 89 Private school children with disabilities may receive a different amount of services than children with disabilities in public schools. No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.
- 90 If a child with a disability is enrolled in a private school and will receive special education or related services from an LEA, the LEA shall initiate and conduct meetings to develop, review, and revise a Private School Services Plan for the child and ensure that a representative of the private school attends each meeting or use other methods, including individual or conference telephone calls, to ensure participation by the private school.
- 91 Services provided to private school children with disabilities may be provided on-site at a child's private school, including a religious school, to the extent consistent with law.
- 92 The due process protections of the IDEA apply only to identification and evaluation and are inapplicable to issues related to the provision of services pursuant to a Private School Services Plan for children with disabilities enrolled by their parents in private school.

#### **PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OF OR REFERRAL BY THE LEA**

- 93 An LEA is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility. If a parent or guardian proposes a publicly financed placement of the pupil in a nonpublic school, the LEA shall have an opportunity to observe the proposed placement and the pupil in the proposed placement, if the pupil has already been unilaterally placed in the nonpublic school by the parent or guardian. Any observation conducted pursuant to this subdivision shall only be of the pupil who is the subject of the observation and may not include the observation or assessment of any other pupil in the proposed placement. The observation or assessment by an LEA of a pupil other than the pupil who is the subject of the observation pursuant to this subdivision may be conducted, if at all, only with the consent of the parent or guardian pursuant to this article. The results of any observation or assessment of any other pupil in violation of this subdivision shall be inadmissible in any due process or judicial proceeding regarding the free appropriate public education of that other pupil.
- 94 If the parent of a child with a disability who previously received special education and related services through the LEA, enrolls the child in a private school without the consent of or referral by the LEA, a court or hearing officer may require the LEA to reimburse the parent for the cost of the enrollment if the court or hearing officer finds that a free appropriate public education had not been made available to the child in a timely manner prior to that enrollment and that private placement is appropriate.
- 95 The cost of reimbursement may be reduced or denied in the event of any of the following: (a) at the most recent IEP meeting the parents attended prior to removal of the child from public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the LEA including stating their concerns and the intent to enroll their child in a private school at public expense; (b) the parents did not give written notice to the LEA of the information described in (a) at least 10 business days (including holidays that occur on a business day) prior to the removal of the child from public school; (c) prior to the parents' removal of the child from public school, the LEA informed the parents of its intent to assess the child (with notice including a statement of the purpose of the assessment that was appropriate and reasonable), but the parents did not make the child available for the assessment; or (d) if there is a judicial finding that the actions taken by the parents were unreasonable. The cost of reimbursement shall not be reduced or denied if the parent failed to provide the notice as required in (a) and (b) above as a result of any of the following: (1) the school prevented the parent from providing the notice; (2) the parents had not received notice of the requirement to provide the information in (a) and (b) above; or (3) providing such notice would likely result in physical

harm to the child. In the discretion of the court of hearing officer, the cost of this reimbursement may not be reduced or denied for failure to provide the notice in either of the following circumstances: (1) the parent or guardian is illiterate or cannot write in English; (2) providing the notice described in this section would likely result in serious emotional harm to the child.

## COMPLAINTS

- 96 An individual may file a written complaint with the superintendent of the LEA or the State Superintendent of Public Instruction, California Department of Education, 1430 N Street, Sacramento, CA 95814, with a copy to the district regarding the LEA's alleged violation of federal or state law involving special education and related services. Such complaints shall allege a violation that occurred not more than one year prior to the date that the complaint is received. If a complaint cannot be resolved by the parent and the LEA within 10 days, the California Department of Education shall issue a written decision addressing the findings for each allegation in the complaint within 60 days of the date of complaint was initially filed.

## DEFINITIONS

- 97 "Consent" means that the parent or guardian has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent or guardian revokes consent, that revocation is not retroactive to negate an action that has occurred after the consent was given and before the consent was revoked.
- 98 "Evaluation" (also called Assessment) means procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.
- 99 "Native language" if used with reference to an individual of limited English proficiency, means: (a) the language normally used by the individual, or, in the case of a child, the language normally used by the parents of the child except as provided in section (b) of this paragraph; (b) in all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment; (c) for an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).
- 100 "Parent" includes any of the following: (a) a person having legal custody of a child; (b) any adult pupil for whom no guardian or conservator has been appointed; (c) a person acting in the place of a natural or adoptive parent including a grandparent, stepparent or other relative with whom the child lives, "Parent" also includes a parent surrogate; (d) a foster parent if the authority of the parent to make educational decisions has been specifically limited by court order. "Parent" does not include the state or any political subdivision of government.
- 101 "Personally identifiable" means information that includes the name of the child, the child's parent or other family member, address of the child, a personal identifier such as the child's social security number or student number, or a list of personal characteristics or other information that could make it possible to identify the child with reasonable certainty.

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

**Parents wishing additional assistance in understanding the provisions of these rights and of the IDEA may contact the administrator responsible for special education for their local school district or the Director of the Santa Barbara County Special Education Local Plan Area at 683-1424.**