

North Coastal Consortium for Special Education  
**Special Education Rights of Parents and Children**  
Under the Individuals with Disabilities Education Act, Part B

## ***Notice of Procedural Safeguards***

Revised February 1, 2009

### **What is the Notice of Procedural Safeguards?**

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) and students who have reached age eighteen (18), the age of majority, with an overview of your educational rights or procedural safeguards. This notice is also provided for students who are entitled to these rights at age 18. The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) requires that you be provided a Notice of Procedural Safeguards once per school year. In addition, a copy must be provided to you:

- When you ask for a copy;
- The first time your child is referred for a special education assessment;
- Each time you are given an assessment plan to evaluate your child;
- Upon receipt of the first state or due process complaint in a school year; and
- When the decision is made to make a disciplinary removal that constitutes a change of placement. (20 U.S.C. § 1415(d); 34 C.F.R. § 300.504, Educ. Code §§ 56301(d)(2) and 56321.)

### **What is the Individuals with Disabilities Education Act (IDEA)?**

IDEA is a federal law that requires school districts to provide a "free appropriate public education" (FAPE) to eligible children with disabilities. (20 U.S.C. § 1400; 34 C.F.R. § 300.1.) A FAPE means that special education and related services are to be provided as described in an individualized education program (IEP) and under public supervision to your child at no cost to you. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.)

### **May I participate in decisions about my 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 IEP team meetings about the identification (eligibility), assessment, or educational placement of your child and other matters relating to your child's FAPE. (20 U.S.C. § 1414(d); 34 C.F.R. § 300.321; Educ. Code §§ 56341(b) and 56343(c).)

You have the right to participate in the development of the IEP. You also have the right to record electronically the proceedings of the IEP team meetings on an audiotape recorder if you notify the school district at least 24 hours prior to the meeting that you intend to record. If the school district initiates the notice of intent to audiotape the IEP team meeting and you object or refuse to attend the meeting because it will be tape recorded, the meeting shall not be audiotaped.

Your rights include information about the availability of FAPE, including program options, and all available alternative programs, both public and nonpublic. (20 U.S.C. §§ 1401(3), 1412(a)(3); 34 C.F.R. § 300.111; Educ. Code §§ 56301, 56321.5, 56341.1(g)(1) and 56506)

### **Where can I get more help?**

When you have a concern about your child's education, it is important that you contact your child's teacher or administrator to talk about your child and any problems. Staff in your school district or special education local plan area (SELPA) can answer questions about your child's education, your rights, and procedural safeguards.

Also, when you have a concern, this informal conversation often solves the problem and helps to maintain open communication. Additional resources are listed at the end of this document to help you understand the procedural safeguards.

## **Prior Written Notice**

### **When is notice needed?**

This notice must be given when the school district proposes or refuses to initiate a change in the identification, assessment, or educational placement of your child with special needs or the provision of a FAPE. Prior written notice must also be provided to you after the school district receives your written notice revoking consent for the continued provision of special education and related services to your child. The notice must be understandable and in your native language or other mode of communication, unless it is clearly not feasible to do so. (20 U.S.C. §§ 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1); 34 C.F.R. §§ 300.503, 300.304 and 300.300 Educ. Code §§ 56321, 56329, 56500.4, and 56506(a).)

### **What will the notice tell me?**

The Prior Written Notice must include the following:

1. A description of the action proposed or refused by the school district;
2. An explanation of why the action was proposed or refused;
3. A description of each assessment procedure, test, record, or report the school district used as a basis for the action proposed or refused;
4. A statement that parents of a child with a disability have protection under the procedural safeguards;
5. Sources for parents to contact to obtain assistance in understanding the provisions of this part;
6. A description of other options that the IEP team considered and the reasons those options were rejected; and
7. A description of any other factors relevant to the action proposed or refused.

(20 U.S.C. §§ 1415(b)(3), 1415(b)(4), 1415(c)(1), 1414(b)(1); 34 C.F.R. §§ 300.300 and 300.503; Educ. Code § 56500.4.)

## **Parental Consent**

### **When is my approval required for assessment?**

You have the right to refer your child for special education services. If the school district initiates the offer to assess your child and/or agrees to your request to assess, then the school district must provide you with a proposed assessment plan within fifteen (15) days of the referral for assessment not counting days between the child's regular school sessions or terms or days of school vacation in excess of five (5) school days from the date of receipt of the referral, unless you agree in writing to an extension. You must give informed, written consent before your child's first special education assessment can proceed. The parent has at least fifteen (15) days from the receipt of the proposed assessment plan to arrive at a decision. The assessment may begin immediately upon receipt of the consent and must be completed and an IEP developed within sixty (60) days of your consent.

### **When is my approval required for services?**

You must give informed, written consent before your school district can provide your child with special education and related services. Your consent for an initial evaluation does not mean that you have also given your consent for the school district to start providing special education and related services to your child.

### **What are the procedures when a parent does not provide consent?**

If you do not provide consent for an initial assessment or fail to respond to a request to provide the consent, the school district may pursue the initial assessment by utilizing due process procedures. If you refuse to consent to the initiation of services, the school district must not provide special education and related services and shall not seek to provide services through due process procedures. If you refuse all services in the IEP after having consented to those services in the past, the school district must file a request for a due process hearing. If you consent in writing to the special education and related services for your child but do not consent to all of the components of the IEP, those components of the program to which you have consented must be implemented without delay. If the school district determines that the proposed special education program component to which you do not consent is necessary to provide a FAPE to your child, a due process hearing must be initiated. If a due process hearing is held, the hearing decision shall be final and binding. In the case of reevaluations, the school district must document reasonable measures to obtain your consent. If you fail to respond, the school district may proceed with the reevaluation without your consent. 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). (20 U.S.C. §§ 1414(a) and 1414(c); 34 C.F.R. § 300.300; Educ. Code §§ 56506(e), 56321(c) and (d), 56381(f), and 56346.)

### **Can I revoke consent to the provision of special education and related services?**

At any time subsequent to the initial provision of special education and related services you may revoke consent, **in writing**, for the continued provision of special education and related services to your child. Once you revoke consent, your child will be considered a general education student and the school district may not continue to provide your child with special education and related services, but must provide prior written notice in accordance with 34 C.F.R. section 300.503 before ceasing the provision of special education and related services.

Your revocation of consent is not retroactive and does not obligate the school district to amend your child's education records to remove any references to his/her receipt of special education and related services. If you later request your child to be re-enrolled in special education, the school district will treat this request as a request for an initial evaluation under 34 C.F.R. section 300.301 as opposed to a reevaluation under 34 C.F.R. section 300.303.

The school district may not utilize mediation or due process procedures to continue to provide your child with his/her special education and related services if you give written notice revoking your consent to your child's IEP. The school district may offer to meet with you to discuss concerns regarding your child's education or ask why you are revoking consent, but you are not required to either meet with the school district or provide an explanation of your decision.

If you revoke consent to special education and related services for your child, the school districts will not be considered to be in violation of the requirements to provide your child with a FAPE, and will not be required to convene and IEP meeting or develop an IEP under 34 C.F.R. sections 300.320 and 300.324 for the further provision of special education and related services. (34 C.F.R. §§ 300.9 and 300.300.)

### **Surrogate Parent Appointment**

#### **What if a parent cannot be identified or located?**

School districts must ensure that an individual is assigned to act as a surrogate parent for the parents of a child with a disability when a parent cannot be identified and the school district cannot discover the whereabouts of a parent.

A surrogate parent may also be appointed if the child is an 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 school 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)(2); 34 C.F.R. § 300.519; Educ. Code § 56050; Gov't. Code §§ 7579.5 and 7579.6)

### **Nondiscriminatory Assessment**

#### **How is my child assessed for special education services?**

You have the right to have your child assessed in all areas of suspected disability. Reassessments may not occur more frequently than once a year, unless you and the school district agree otherwise. Reassessments must occur at least once every three years, unless you and the school district agree, in writing, that a reassessment is not necessary. 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 so provide or administer. No single procedure can be the sole criterion for determining eligibility and developing FAPE for your child. (20 U.S.C. §§ 1414(b)(1)-(3), 1412(a)(6)(B); 34 C.F.R. § 300.304; Educ. Code §§ 56001(j), 56320, and 56381.)

### **Independent Educational Assessments**

#### **May my child be tested independently at the district's expense?**

If you disagree with the results of the assessment conducted by the school district, you have the right to ask for and obtain an independent educational assessment for your child from a person qualified to conduct the assessment at public expense. The parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

The school district must respond to your request for an independent educational assessment and provide you information about where to obtain an independent educational assessment. If the school district believes that the district's assessment is appropriate and disagrees that an independent educational assessment is necessary, the school district must request a due process hearing to prove that its assessment is appropriate. If the district prevails, you still have the right to an independent educational assessment but not at public expense. The IEP team must consider independent assessments.

School district assessment procedures generally allow in-class observation of students. If the school district observes your child in his or her classroom during an assessment, or if the school district would have been allowed to observe your child, an individual conducting an independent educational assessment must also be allowed to observe your child in the classroom. If the school district proposes a new school setting for your child and an independent educational assessment is being conducted, the independent assessor must be allowed to observe the proposed new setting. (20 U.S.C. § 1415(b)(1) and (d)(2)(A); 34 C.F.R. § 300.502; Educ. Code § 56329(b) and (e).)

### **Access to Educational Records**

#### **May I examine my child's educational records?**

You have a right to inspect and review all of your child's education records without unnecessary delay, including prior to a meeting about your child's IEP or before a due process hearing. The school district must provide you access to records and copies, if requested, 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. (Educ. Code §§ 49069, 56043(n), 56501(b)(3), and 56504.)

## **Due Process Hearing**

### **When is a due process hearing available?**

You have the right to request an impartial due process hearing regarding the identification, assessment, and educational placement of your child or the provision of FAPE. The request for a due process hearing must be filed within two years from the date you knew or should have known about the alleged action that forms the basis of the due process complaint, unless you were prevented from requesting a due process hearing due to either of the following: (1) specific misrepresentations by the school district that it had solved the problem forming the basis of the due process request; or (2) the school district withheld of information that it was required to provide you. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.507; Educ. Code §§ 56501 and 56505(1).)

## **Mediation and Alternative Dispute Resolution**

### **May I request mediation or an alternative way to resolve the dispute?**

A request for mediation may be made either before or after a request for a due process hearing is made. You may ask the school district to resolve disputes through mediation or alternative dispute resolution (ADR), which is less adversarial than a due process hearing. ADR and mediation are voluntary methods of resolving a dispute and may not be used to delay your right to a due process hearing. The North Coastal Consortium for Special Education has developed an informal resolution program called Resolutions for Student Success (RSS). RSS is a free, effective problem-solving process for resolving conflicts in a manner that respects the dignity of individuals while creating mutually satisfying solutions. RSS uses communication, collaboration, and mediation to assist the parties in reaching a mutually satisfactory agreement. When participating in RSS, parents and school districts maintain the right to seek state-level due process. The Exceptional Family Resource Center (EFRC) facilitates the RSS process to help resolve conflicts between school districts and families who have children with special needs. RSS is available throughout the fourteen (14) school districts within NCCSE and may be contacted by calling (800) 977-7008.

To obtain more information or to file for mediation or a due process hearing, contact:

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

### **What is a prehearing mediation conference?**

You may seek resolution through mediation prior to filing a request for a due process hearing. The conference is an informal proceeding conducted in a non-adversarial manner to resolve issues relating to the identification, assessment, or educational placement of a child or to a FAPE. At the prehearing mediation conference, the parent or the school district may be accompanied and advised by non-attorney representatives and may consult with an attorney prior to or following the conference. However, requesting or participating in a prehearing mediation conference is not a prerequisite to requesting a due process hearing. All requests for a prehearing mediation conference shall be filed with the Office of Administrative Hearings (OAH). The party initiating a prehearing mediation conference by filing a written request with OAH shall provide the other party to the mediation with a copy of the request at the same time the request is filed. The prehearing mediation conference shall be scheduled within fifteen (15) days of receipt by OAH of the request for mediation and shall be completed within thirty (30) days after receipt of the request for mediation unless both parties agree to extend the time. If a resolution is reached, the parties shall execute a legally binding written agreement that sets forth

the resolution. All discussions during the mediation process shall be confidential. All prehearing mediation conferences shall be scheduled in a timely manner and held at a time and place reasonably convenient to the parties. If the issues fail to be resolved to the satisfaction of all parties, the party who requested the mediation conference has the option of filing for a due process hearing. (20 U.S.C. § 1415; Educ. Code §§ 56500.3 and 56503.)

## **Due Process Rights**

### **What are my due process rights?**

You have a right to:

1. Have a fair and impartial administrative hearing at the state level before a person who is knowledgeable of the laws governing special education and administrative hearings (20 U.S.C. §§ 1415(f)(1)(A), 1415(f)(3)(A)-(D); 34 C.F.R. § 300.511; Educ. Code § 56501(b)(4));
2. Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities (Educ. Code § 56505(e)(1));
3. Present evidence, written arguments, and oral arguments (Educ. Code § 56505(e)(2));
4. Confront, cross-examine, and require witnesses to be present (Educ. Code § 56505(e)(3));
5. Receive a written or, at the option of the parent, an electronic verbatim record of the hearing, including findings of fact and decisions (Educ. Code § 56505(e)(4) and (e)(5));
6. Have your child present at the hearing (Educ. Code § 56501(c)(1));
7. Have the hearing be open or closed to the public (Educ. Code § 56501(c)(2));
8. 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 (5) business days before a hearing (Educ. Code §§ 56505(e)(7) and 56043(v));
9. 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 (Educ. Code § 56505(e)(6));
10. Have an interpreter provided (5 C.C.R. § 3082(d));
11. Request an extension of the hearing timeline (Educ. Code § 56505(f)(3));
12. Have a mediation conference at any point during the due process hearing (Educ. Code § 56501(b)(2));
13. Receive notice from the other party at least ten (10) days prior to the hearing that the other party intends to be represented by an attorney (Educ. Code § 56507(a)). (20 U.S.C. § 1415(e) and (f); 34 C.F.R. §§ 300.506, 300.512, and 300.515.)

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

### **How do I request a due process hearing?**

You need to file a written request for a due process hearing. You or your representative needs 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, including facts relating to the problem(s) and a proposed resolution of the problem(s).

Federal and state laws require 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(b)(7), 1415(c)(2); 34 C.F.R. § 300.508; Educ. Code § 56502(c)(1).)

### **What is a resolution session?**

Prior to the due process hearing, the school district shall be provided the opportunity to resolve the matter by convening a resolution session, which is a meeting between the parents and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process hearing request. (20 U.S.C. § 1415(f)(1)(B); 34 C.F.R. § 300.510; Educ. Code § 56501.5.) Resolution sessions shall be convened within fifteen (15) days of receiving notice of the parents' due process hearing request. The sessions shall include a representative of the school district who has decision-making authority and not include an attorney of the school district unless the parent is accompanied by an attorney. The parent of the child may discuss the due process hearing issue and the facts that form the basis of the due process hearing request. The resolution session is not required if the parent and the school district agree in writing to waive the meeting. If the school district has not resolved the due process hearing issue within thirty (30) days, the due process hearing may occur. If a resolution is reached, the parties shall execute a legally binding agreement. Either party may void the agreement within three business days of the agreement's execution. (20 U.S.C. § 1415(f)(1)(B); 34 C.F.R. § 300.510; Educ. Code § 56501.5.)

### **Does my child's placement change during the proceedings?**

The child involved in any administrative or judicial proceeding must remain in the current educational placement unless you and the school district agree on another arrangement. If you are applying for initial admission of your child 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; Educ. Code § 56505(d).)

### **May the decision be appealed?**

The hearing decision is final and binding on both parties. Either party may 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(j)(2) and (3)(A), 1415(1); 34 C.F.R. § 300.516; Educ. Code §§ 56505(h) and (k), 56043(w).)

### **Who pays for my attorneys' fees?**

In any action or proceeding, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you as parent of a child with a disability if you are the prevailing party in the hearing. Reasonable attorneys' fees may also be made following the conclusion of the administrative hearing by a court, or with the agreement of the parties. (20 U.S.C. § 1415(i)(3)(B)-(G); 34 C.F.R. § 300.517; Educ. Code § 56507(b).)

Fees may be reduced if any of the following conditions exist:

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

Attorneys' fees will not be reduced, however, if the court finds that the State or the school district unreasonably delayed the final resolution of the action or proceeding or that there was a violation of this section of law. (20 U.S.C. § 1415(i)(3)(B)-(G); 34 C.F.R. § 300.517.) Attorneys' fees relating to any meeting of the IEP team may not be awarded unless an IEP team meeting is convened as a result of a due process hearing proceeding or judicial action. Attorneys' fees may also be reduced if you reject a reasonable settlement offer made by the district/public agency more than ten (10) days before the hearing begins and the hearing decision is not more favorable than the offer of settlement. The court, in its discretion, may award reasonable attorneys' fees as part of the costs to a school district if the attorney of a parent files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or if the attorney of a parent continues to litigate after the

litigation clearly became frivolous, unreasonable, or without foundation. The court may also award reasonable attorneys' fees to a school district against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. (20 U.S.C. § 1415(i)(3); 34 C.F.R. § 300.517.)

## **School Discipline and Interim Alternative Educational Settings**

### **May my child be suspended or expelled?**

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct from his or her setting to:

- An appropriate interim alternative educational setting, another setting, or suspension for not more than ten (10) consecutive school days; and
- Additional removals of not more than ten (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). (20 U.S.C. 1415; 34 C.F.R. § 300.530.)

### **What occurs after a removal of more than ten (10) consecutive school days?**

After a child with a disability who is removed from his or her current placement for more than ten (10) consecutive school days in the same school year, during any subsequent days of removal, the public agency must: (1) provide educational services to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and (2) provide, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavioral violation so that it does not occur again.

After a child with a disability has been removed from his or her current placement for ten (10) school days in that same school year, and if the current removal is for ten (10) school days in a row or less and if the removal is not a change of placement, then school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the removal is a change of placement, the child's IEP team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

### **What is a manifestation determination meeting?**

Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for ten (10) school days in a row or less and not a change of placement), you, the school district, and relevant members of the IEP team (as determined by you and the school district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by you to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
2. If the conduct in question was the direct result of the school district's failure to implement the child's IEP.

If you, the school district, and relevant members of your child's IEP team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability. However, if you, the school district, and relevant members of your child's IEP team determine that the conduct in question

was the direct result of the school district's failure to implement the IEP, the school district must take immediate action to remedy those deficiencies.

**What happens if the IEP team determines that the misconduct is not caused by the disability?**

If the IEP team concludes that the misconduct was not a manifestation of the child's disability, the school district may take disciplinary action, such as expulsion, in the same manner as it would for a child without a disability. (20 U.S.C. § 1415(k)(1) and (7); 34 C.F.R. § 300.530.)

If you disagree with the IEP team's decision, you may request an expedited due process hearing, which must occur within twenty (20) school days of the date on which you requested the hearing. Your child will stay in the interim alternative educational setting or disciplinary setting unless the maximum time for that setting is reached, or you and the school district agree to another placement. (20 U.S.C. § 1415(k)(2); 34 C.F.R. § 300.532(c).)

The school district may place your child in an appropriate interim alternative educational setting for up to forty-five (45) school days regardless of whether his or her behavior is a manifestation of his/her disability if your child:

- Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the school district;
- Knowingly possess 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 school 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 school district.

Regardless of the setting the school district must continue to provide FAPE for your child. Interim alternative educational settings must allow the child to continue to participate in the general curriculum and ensure continuation of services and modifications detailed in the IEP. (34 C.F.R. § 300.530; Educ. Code § 48915.5(b).)

**State Special Schools**

**What are state special schools?**

The state special schools provide services to students who are deaf, hard of hearing, blind, visually impaired, or deaf-blind. There are three state special schools: the California Schools for the Deaf in Fremont and Riverside and the California School for the Blind in Fremont. The California Schools for the Deaf provide comprehensive residential and non-residential educational programs composed of academic, non-academic and extracurricular activities for deaf and hard of hearing pupils, ages 3-22. The California School for the Blind provides intensive, disability specific educational services for pupils who are blind, visually impaired, or deaf-blind, ages 3-22. For more information about 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. (Education Code section 56321.6.)

**Parentally Placed Private School Students**

**May students who are parentally placed in private schools participate in publicly funded special education programs?**

Children who are enrolled by their parents in non-profit private schools may participate in publicly funded special education programs. The school district must consult with private schools and with parents to determine the services that will be offered to private school students. Although school districts have a clear responsibility to offer FAPE to students with disabilities, those children, when placed by their parents in private schools, do

not have an individual right to receive some or all of the special education and related services necessary to provide FAPE. (20 U.S.C. § 1412(a)(10)(A); 34 C.F.R. §§ 300.137 and 300.138; Educ. Code § 56173.) If a parent of an individual with exceptional needs who previously received special education and related services under the authority of the school district enrolls the child in a private elementary school or secondary school without the consent of or referral by the local educational agency, the school district is not required to provide special education if the district has made FAPE available. A court or a due process hearing officer may require the school district to reimburse the parent or guardian for the cost of special education and the private school only if the court or due process hearing officer finds that the school district had not made FAPE available to the child in a timely manner prior to that enrollment in the private elementary school or secondary school, and that the private placement is appropriate. (20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148; Educ. Code § 56175.)

### **When may reimbursement be reduced or denied?**

The court or hearing officer may reduce or deny reimbursement if you did not make your child available for an assessment upon notice from the school district before removing your child from public school. You may also be denied reimbursement if you did not inform the school district that you were rejecting the special education placement proposed by the school district, including stating your concerns and intent to enroll your child in a private school at public expense.

Your notice to the school district must be given either:

- At the most recent IEP team meeting you attended before removing your child from the public school; or
- In writing to the school district at least ten (10) business days (including any holidays that occur on a business day) before removing your child from the public school. (20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148; Educ. Code § 56176.)

### **When may reimbursement NOT be reduced or denied?**

A court or hearing officer must not reduce or deny reimbursement to you if you failed to provide written notice to the school district for any of the following reasons:

- The school district prevented you from providing notice;
- You had not received a copy of this Notice of Procedural Safeguards or otherwise been informed of the requirement to notify the district;
- Providing notice would likely have resulted in physical harm to your child;
- Illiteracy and inability to write in English prevented you from providing notice; or
- Providing notice would likely have resulted in serious emotional harm to your child. (20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148; Educ. Code § 56177.)

## **State Complaint Procedures**

### **When may I file a state compliance complaint?**

You may file a state compliance complaint when you believe that a school district has violated federal or state special education laws or regulations. Your written complaint must specify at least one alleged violation of federal and state special education laws. The violation must have occurred not more than one year prior to the date the complaint is received by the California Department of Education (CDE). When filing a complaint, you must forward a copy of the complaint to the school district at the same time you file a state compliance complaint with the CDE. (34 C.F.R. §§ 300.151-300.153; 5 C.C.R. §§ 4600 *et seq.*)

Complaints alleging violations of federal and state special education laws or regulations may be mailed to:

California Department of Education  
 Special Education Division  
 Procedural Safeguards Referral Service  
 1430 N Street, Suite 2401  
 Sacramento, CA 95814

For complaints involving issues not covered by federal or state special education laws or regulations, consult your school district's uniform complaint procedures.

To obtain more information about dispute resolution, including how to file a complaint, contact the CDE, Special Education Division, Procedural Safeguards Referral Service, by telephone at (800) 926-0648; by Fax at (916) 327-3704; or by visiting the Department's web site at <http://www.cde.ca.gov/sp/se>.

**SPECIAL EDUCATION RESOURCES**

<p><b>Southern California</b>                  Exceptional Family Resource Center                  9245 Sky Park Court, Suite 130                  San Diego, CA 92123                  619-594-7416  <a href="http://www.efrconline.org/">http://www.efrconline.org/</a></p>	<p>Resolutions for Student Success                  9245 Sky Park Court, Ste. 130                  San Diego, CA 92123                  1-800-977-7008                  Free mediation service provided to parents and districts within                  North Coastal Consortium for Special Education</p>
<p>Team of Advocates for Special Kids (TASK)                  4550 Kearny Villa Road, Suite 102                  San Diego, CA 92123                  858-874-2386  <a href="http://www.taskca.org/">http://www.taskca.org/</a></p>	<p>Protection and Advocacy, Inc.                  800-776-5746  <a href="http://www.pai-ca.org/">http://www.pai-ca.org/</a></p>
<p>Fiesta Educativa                  163 S. Av. 24, Suite 201                  Los Angeles, CA 90031                  323-221-6696  <a href="http://www.fiestaeducativa.org/">http://www.fiestaeducativa.org/</a></p>	<p>Vietnamese Parents of Disabled Children Assoc., Inc.                  7526 Syracuse Avenue                  Stanton, CA 90680                  714-527-9216  <a href="http://www.vodca.org/">http://www.vodca.org/</a></p>
<p>Department of Developmental Services                  Early Start/Family Resource Center/Networks  <a href="http://www.dds.ca.gov/EarlyStart/ESFamResource.cfm">http://www.dds.ca.gov/EarlyStart/ESFamResource.cfm</a></p>	<p>Resources in Special Education (RISE)                  Lending Library                  408-727-5775, ext. 110</p>
<p>National Dissemination Center for Children with Disabilities                  800-695-0285  <a href="http://nichcy.org/">http://nichcy.org/</a></p>	<p>California Services for Technical Assistance and Training                  707-206-0533  <a href="http://www.calstat.org/">http://www.calstat.org/</a></p>
<p>National Dissemination Center for Children with Disabilities                  800-695-0285  <a href="http://nichcy.org/">http://nichcy.org/</a></p>	<p>California Services for Technical Assistance and Training                  707-206-0533  <a href="http://www.calstat.org/">http://www.calstat.org/</a></p>