A DEEP DIVE INTO YOUR PROCEDURAL SAFEGUARDS

Presented by: Community Advisory Committee, North Coastal Consortium for Special Education

January 18, 2023



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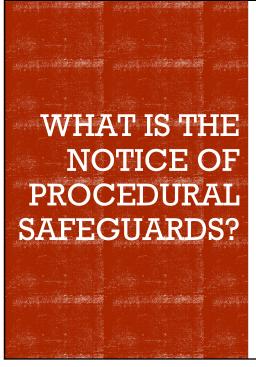
Outcomes of Tonight's Presentation

Deepen Understanding of:

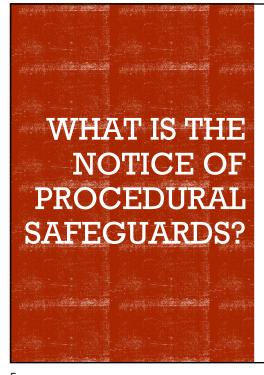
- Your procedural safeguards
- How to use procedural safeguards to advocate for your student to proactively resolve disputes
- Access resources for assistance







This information provides you as a parent, legal guardians, and surrogate parents of children with disabilities from 3 years of age through age 21 and students who have reached age 18, the age of majority, with an overview of your educational rights or procedural safeguards.



Individuals with Disabilities Education Act (IDEA) requires that you receive your procedural safeguards when:

- 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 removal that constitutes a change of placement



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WHAT IS IDEA?

- Provides, for eligible children ages 3 through 21:
 - Individualized Education Program (IEP)
 - Free Appropriate Public Education (FAPE)
 - Least Restrictive Environment (LRE) in which student can be expected to meet their educational goals with "reasonable supports and services."

<u>History of the Individuals with Disabilities</u> Education Act (IDEA)



MAY I PARTICIPATE IN DECISIONS ABOUT MY CHILD'S EDUCATION?

YES!!! You must be given the opportunity 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 your child's FAPE.

You can audio record your child's IEP meeting. You need to provide the district with written notice at least 24 hours prior to the IEP meeting that you intend to audio record the meeting.

If you do not consent to the IEA audio recording the IEP meeting, the meeting shall not be recorded on an audiotape recorded.

Your rights include information about the availability of FAPE, including all program options and all available alternative programs, both public and nonpublic



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WHERE CAN I GET MORE HELP?

- When you have a concern about your child's education here are people you can reach out to:
 - Your child's teacher and/or case manager
 - Site administrator
 - · District's special education department
 - NCCSE SELPA
 - Parent Liaison-Heidi Marshall

 $\underline{heidi.marshall@sdcoe.net}$

(760) 307-1509

 Senior Program Specialist-Shauna Schmoke

shauna.schmoke@sdcoe.net

(760) 307-1242



Exceptional Family Resource Center

- https://efrconline.org/
- (619) 594-7416

Resolutions for Student Success (RSS)

• (619) 594-7383

Family Empowerment Centers on Disability

• (916) 492-4000

Parent Training and Information Centers

• (858) 432-3238

Education California Parent Organization

• https://www.cde.ca.gov/sp/se/qa/caprntorg.asp

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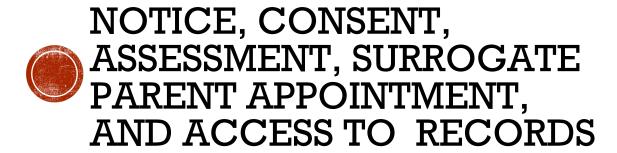
Key Points

Procedural Safeguards are a requirement from IDEA that advises you of your rights of a parent/guardian/surrogate of child who is eligible for special education supports and services.

You are to receive a copy of these when you ask for a copy, when your child is initially referred for special education assessment, anytime you are provided with an assessment plan, when the first state or due processes complaint is filed per year, and/or when a change of placement is being recommended.

There are many people you can go to for help









• When is it 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
- Proposed evaluations of your child in a written notice or an assessment plan within 15 days of your written request for evaluation
- Prior Written Notice (PWN) must be understandable and in your native language or other mode of communication, unless it is clearly not feasible to do so



• What will the notice tell me?

- The prior written notice (PWN) must include the following:
 - A description of the actions proposed or refused by the school district
 - An explanation of why the action was proposed or refused
 - A description of each assessment procedure, record, or report the agency used as a basis for the action proposed or refused
 - A statement that parents of a child with a disability have protections under the procedural safequards
 - Sources of parents to contact to obtain assistance in understanding the provisions of this parent
 - A description of other options that the IEP team considered and the reasons those options were rejected; and
 - A description of any other factors relevant to the action proposed or refused

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PARENTAL CONSENT

When is my approval required for assessment?

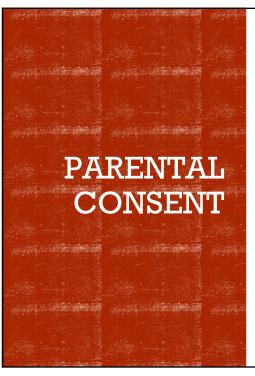
- You have the right to refer your child for special education services
- You must give informed, written consent before your child's first special education assessment can proceed
- The parent/guardian/surrogate has at least 15 days from the receipt of the proposed assessment plan to arrive at a decision
- The assessment may begin immediately upon receipt of the consent and must be completed, and an IEP developed within 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

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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 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 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.



WHEN MAY I REVOKE CONSENT?

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

- May not continue to provide special education and related services to the child, but must provide prior
 written notice in accordance with 34CFR Section 300.503 before ceasing such services
- 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
- Will not be considered to be in violation of the requirement to make a FAPE available to the child because
 of the failure to provide the child with further special education and related services
- 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 provisions of special education and related services



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WHEN MAY I REVOKE CONSENT?

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 reference to the child's receipt of special education and related services because of the revocation of consent.

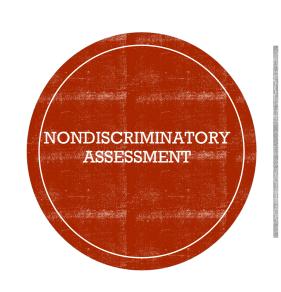


What if a parent cannot be identified or located?

- 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 Institution Code, and is referred to special education or already has an IEP



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How is my child assessed for special education services?

- You have the right to have your child assessed in all areas of suspected disability. Materials and procedures used for assessment and placement must not be racially, culturally, or sexually discriminatory.
- Assessment materials must be provided and the test administered in your child's native language or mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer
- No single procedure can be the sole criterion for determining eligibility and developing FAPE for your child

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 an 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



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INDEPENDENT EDUCATIONAL ASSESSMENTS

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

District assessment procedures 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 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 first observe the proposed new setting.



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 **business** days after the request has been made orally or in writing.



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Key Points

Prior Written Notice is a legal requirement that the district provides to families that shares what the district is proposing or denying and why they came to this decision

Parent Consent: You must give written consent for your child's initial special education assessment as well to authorize initial special education services

Parent Consent: You may provide written notice to the school district to revoke your child's special education and related services at any time



Key Points

Nondiscriminatory assessment-you have the right to request that your child be assessed in all areas of suspected disability. The assessments chosen must not discriminate against the child. The assessments and procedures must be provided in their native language unless it is clearly not feasible to do so.

IEE - Understand the process.

Educational Records-You have the right to review your child's educational records with undo delay. If you submit a request for records, the district will provide those within five business days upon receiving the request



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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

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MEDIATION AND ALTERNATIVE DISPUTE RESOLUTION

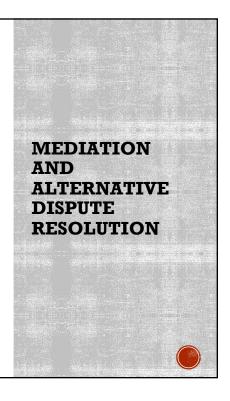
May I request mediation or an alternative way to resolve the dispute?

- 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. The ADR and mediation are voluntary methods of resolving a dispute and may not be used to delay your right to a due process hearing



What is a pre-hearing 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 nonadversarial 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 nonattorney 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 Superintendent of the Office of Administrative Hearing (OAH). The party initiating a prehearing mediation conference by filing a written request with the Superintendent of the OAH shall provide the other party to the mediation with a copy of the request at the same time the request is filed



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The prehearing mediation conference shall be scheduled within 15 days of receipt by the Superintendent of OAH of the request for mediation and shall be completed within 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

DUE PROCESS RIGHTS

What are my due process rights?

- You have the right to:
 - 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
 - Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities
 - Present evidence, written arguments, and oral arguments
 - · Confront, cross-examine, and require witnesses to be present
 - Receive a written or, at the option of the parent, an electronic verbatim record of the hearing, including findings of fact and decisions
 - · Have your child present at the hearing
 - · Have the hearing be open or closed to the public



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- Receive a copy of all documents, including assessments completed by that date and recommendations, and a list of witnesses and their general are of testimony within five (5) business days before a hearing
- 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
- Have an interpreter provided
- Request an extension of the hearing timeline
- Have a mediation conference at any point during the due process hearing
- Receive notice from other party at least ten days prior to the hearing that the other party intends to be represented by an attorney



How do I request a due process hearing?

You need to file a written request for a due processing hearing. You or your representative needs to submit the following information in your request:

- · Name of the child
- · Address of the residence of the child
- · Name of the school the child is attending
- In the case of a homeless child, available contact information for the child and the name of the school the child is attending, and
- · A description of the nature of the problem, including facts relating
- to the problem(s) and a proposed resolution of the problem(s)

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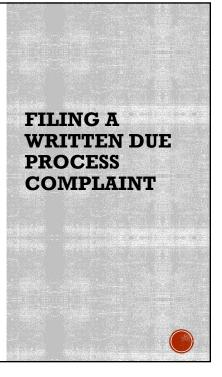


How do I request a due process hearing (cont.)?

- Federal and state laws require that either party filing for a due processing hearing must provide a copy of the written request to the other party.
- Prior to filing for a due process hearing, the school district shall be provided the opportunity to resolve the mater 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

What does a resolution session include?

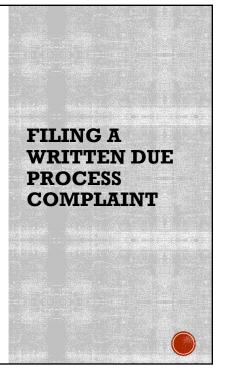
- Resolution sessions shall be convened within fifteen (15) days of receiving notice of the parents' due process hearing request. The sessions shall include a representative of the school district who has decision-making authority and not include an attorney of the school district unless the parent is 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.



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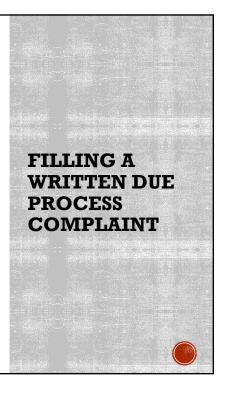
Does my child's placement change during the proceedings?

• 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.



May the decision be appealed?

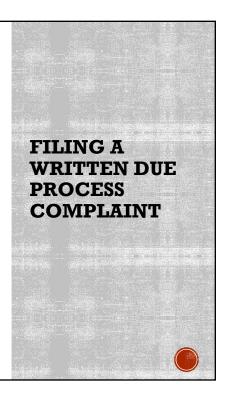
 The hearing decision is final and binding on both parties. Either party may appeal the hearing decision by filling a civil action in state or federal court within 90 days of the final decision



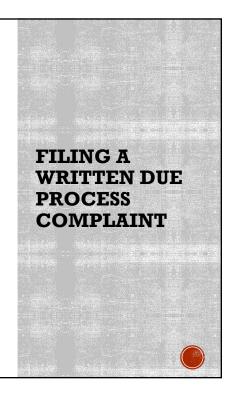
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Who pays for my attorney's fees?

- In any action or proceeding regarding the due process hearing, 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, with the agreement of the parties
- Fees may be reduced if any of the following conditions prevail:
 - The court finds that you unreasonably delayed the final resolution of the controversy
 - The attorneys' hourly fees exceed the prevailing rate in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience
 - The time spent and legal services provided were excessive, or
 - 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
- Attorneys' fees relating to any meeting of the IEP team may not be awarded unless an IEP team meetings is convened as a result of a due process hearing proceeding or judicial action. Attorneys' fee may also be denied if you reject a reasonable settlement offer made by the districts/public agency ten (10) days before the hearing begins and the hearing decision is not more favorable than the offer of settlement



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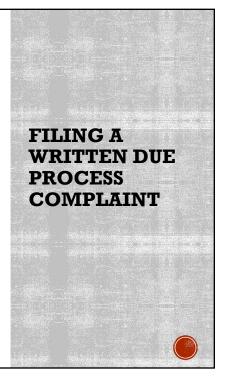
To obtain more information or to file for mediation or a due process hearing contact:

Office of Administrative Hearings Attention: Special Education Division 2349 Gateway Oaks Drive, Suite 200 Sacramento, CA 95833-4231

Phone: 916-263-0880 Fax: 916-263-0890

 The OAH can also be contacted by email using the Secure e-File Transmission (SFT)

system. The SFT may be found on OAH's website at https://www.applications.dgs.ca.gov/OAH/oahSFTWeb



Key Points

Compliance Complaints (to CA Dept of Ed or local Uniform Complaint) – When the IEP was not implemented OR when Special Education law is alleged to have been violated.

Due Process Complaint (to Office of Administrative Hearings) – When the school and the parent are not in agreement,

And before you do either, it might be worth thinking about RSS (dispute prevention and alternative dispute resolution).



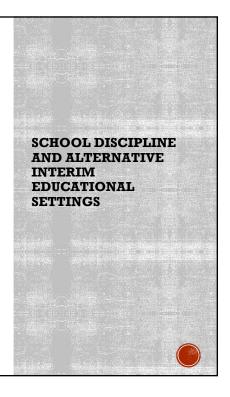
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SCHOOL DISCIPLINE AND PLACEMENT PROCEDURES FOR STUDENTS WITH DISABILITIES

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 education 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



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SCHOOL DISCIPLINE AND ALTERNATIVE INTERIM EDUCATIONAL SETTINGS

What occurs after a removal of more than then (10) days?

- After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal the public agency must provide services to enable the child to continue to participate in the general education curriculum and progress toward meeting the goals set out in the child's IEP. Also, a child will receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not recur.
- If a child exceeds then (10) days in such a placement, an IEP team meeting must be held to
 determine whether the child's misconduct is caused by the disability. This IEP team meeting
 must take place immediately, if possible, or within 10 days of the school district's decision to
 take this type of disciplinary action.
- As a parent you will be invited to participate as a member of this IEP team. The school district
 may be required to develop an assessment plan to address the misconduct or, if your child has
 a behavior intervention plan, review and modify the plan as necessary.



SCHOOL DISCIPLINE AND ALTERNATIVE INTERIM EDUCATIONAL SETTINGS

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.
- If you disagree with the IEP team's decision, you may request an expedited due process hearing, which must occur within 20 school days of the date on which you requested the hearing.
- Regardless of the setting the school district must continue to provide FAPE for your child. 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.



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Key Points

Students with disabilities can be suspended and/or expelled – just like any other general education student.

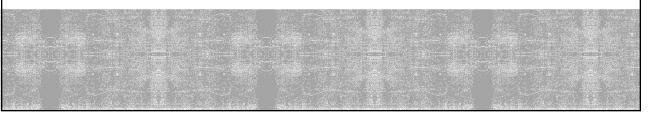
Once a student with an IEP has reached 10 days of suspension, a Manifestation Determination will be held to determine if the student's behavior was a manifestation of their disability and determine if the student's IEP was being implemented as written.

We recommend that families be

- Reach out to your child's teacher and support providers and ask about behavioral strategies
 Behavior Intervention Plans are SO important.
- Seek support to prepare for the Manifestation Determination Review.







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CHILDREN ATTENDING PRIVATE SCHOOL

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

- Children who are enrolled by their parents in 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 parent in private schools, do
 not have the right to receive some or all of the special education and related services necessary to provide
 FAPE
- 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



CHILDREN ATTENDING PRIVATE SCHOOL

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 10 business days (including holidays) before removing your child from the public school.



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CHILDREN ATTENDING PRIVATE SCHOOL

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 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



Key Points

School districts have a clear responsibility to offer FAPE to students with disabilities, those children, when placed by their parent in private schools, do not have the right to receive some or all of the special education and related services necessary to provide FAPE

- When students are placed by their parent in a private school, the student does not have the right to receive some or all of the special education and related services necessary to provide FAPE
- School districts may offer an Independent Service Plan (ISP) to provide the student with consultation support while attending the private school.

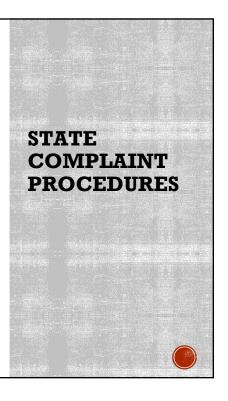


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When may I file a state compliance complaint?

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 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



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

California Department of Education

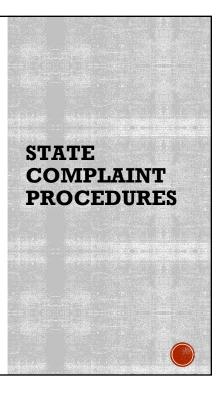
Special Education Division

Complaint Support Unit

1430 N Street, Suite 2401

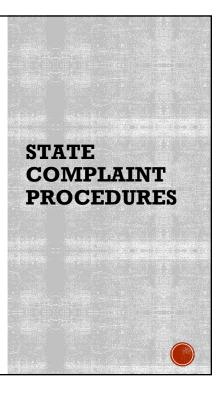
Sacramento, CA 95814

You may also email your complaint to speceducation@cde.ca.gov



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

To obtain more information about dispute resolution, including how to file a complaint, contact the CDE, Special Education Division, Complaint Support Unit, by telephone at 800-926-0648; by fax at 916-327-3704; or by visiting the CDE, Special Education web page at https://www.cde.ca.gov/sp/se/index.asp.



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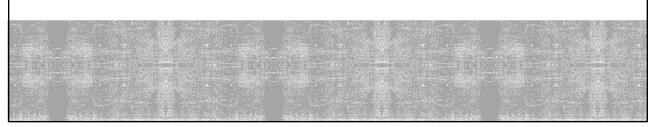
Key Points

You may file a written state compliance complaint when you believe that a school district has violated federal or state special education laws or regulations.

Your complaint must specify at least one alleged violation of federal and state special education laws







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SENATE BILL 511, FAMILY EMPOWERMENT CENTERS

Background

The Family Empowerment Centers (FECs) were established in 2001 by enactment of Chapter 690 of the Statutes of 2001 (Senate Bill 511, Alpert), enacted as *Education Code (EC)* 56400-56415. The FECs provide services to families with children with disabilities ages three to twenty-two. The intent of the legislature is to ensure that parents, guardians, and families of children and young adults with disabilities have access to accurate information, specialized training, and peer-to-peer support.

Exceptional Family Resource Center – FEC serving San Diego & Imperial Counties Program Specialists

Joe Goyos

Moira Allbritton

jgoyos@sdsu.edu

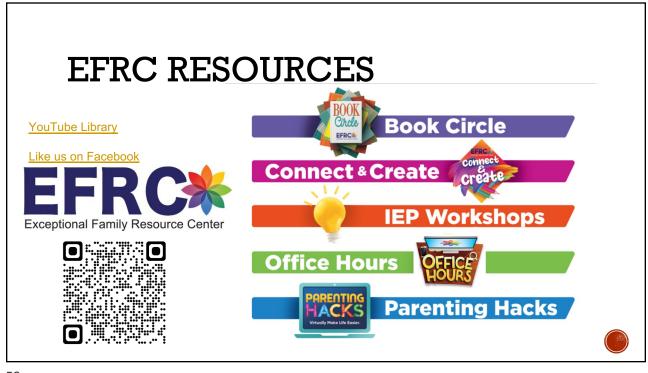
mallbritton@sdsu.edu

619.936.5361

619.936.4387







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STATE & LOCAL RESOURCES



by Disability Rights California in a family-friendly Q&A format. Available in several languages. https://serr.disabilityrightsas.com/ Special Education Rights and Responsibilities is an online, searchable publication

For assistance with your issue, please visit: Get Help | Disability Rights California

Clients of SAN DIEGO REGIONAL CENTER only:

Office of Clients' Rights Advocacy Phone: (619) 239-7877



Client Rights Advocate: Tania.Schloss@disabilityrightsca.org

Assistant CRA: Maria.Salas@disabilityrightsca.org



MILITARY RESOURCES

Exceptional Family Member Program (Activeduty Military Families only):



Marine Corps Families
EFMP Attorney: Karen Taylor Karen.Taylor@usmc.mil 760.725.6880



Navy Families Downloadable Resource from Navy Region Southwest



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