

## SFUSD SPECIAL EDUCATION LOCAL PLAN AREA

1098 Harrison Street  
San Francisco, California 94103

# NOTICE OF PROCEDURAL SAFEGUARDS AND PARENTS' RIGHTS

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

## INTRODUCTION

This information provides you as parents, legal guardians, and surrogate parents of children with disabilities from 3 years of age through age 21 with an overview of your educational rights, sometimes called procedural safeguards. This notice is also provided for students who are entitled to these rights at age 18. (20 USC 1415; EC 56321) A copy of these safeguards will be given to you once a year. Additional copies may be given upon an initial referral or parent request for evaluation, upon the first occurrence of the filing of a complaint under Section 615(b) (6) of H.R. 1350, upon provision of an assessment plan to parents and at your request. If your district has a website, a copy of these procedural safeguards may be made available to you through that website. [615(d) (1) (A-B)] You may elect to receive this notice and other notices required under this section by an electronic mail (e-mail) communication, if your district makes such an option available. [615(n)]

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

You have the right to refer your child for special education services. You must be given opportunities to participate in any decision-making meeting regarding your child's special education program. You have the right to participate in an IEP meeting about the identification (eligibility), assessment, educational placement of your child and other matters relating to your child's free appropriate public education. [20 USC 1414(b)(c)(d) and (f); EC 56341(b), 56343(c)]

You also have the right to participate in the development of the IEP and to be informed of program options, and the availability of free appropriate public education.

Additionally, you have the right to electronically record the meeting on an audio tape recorder. The law requires that you notify the district at least 24 hours prior to meeting if you intend to record the proceedings. (EC 56341.1)

## **Additional Assistance**

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

## **NOTICE, CONSENT, ASSESSMENT, AND ACCESS**

### **Prior Written Notice**

You have the right to receive a written notice from the school district before decisions affecting your child's special education are put into place. These include decisions to:

- identify your child as a child with a disability, or change your child's eligibility from one disability to another;
- evaluate or reevaluate your child;
- provide a free appropriate public education to your child, or change a component of your child's free appropriate public education;
- place your child in a special education program; or,
- change your child's special education placement. (20 USC 1415[b]; EC 56500.4)

You also have the right to written notice from the school district if the district refuses your request to take these actions.

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

If the notice is not in regard to an initial referral for assessment, the notice must provide a statement that you have protection under procedural safeguards, information on how you can obtain a copy of described procedural safeguards, and sources of additional assistance in understanding the procedural safeguards. (20 USC 1415[c])

#### **Parent Consent**

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

- **First Evaluation:** The school district must have your informed written consent before it can evaluate your child. You will be informed about the evaluations to be used with your child.
- **Re-evaluation:** The school district must have your informed written consent before reevaluating your child. To avoid confusion, you should inform the school in writing if you want to refuse consent to a reevaluation. The school district may reevaluate your child without your written consent if the school district has taken reasonable measures to get your consent and you have not responded.
- **Initial and Continued Placement in Special Education:** You must give informed written consent before the school district can place your child in a special education program. You can refuse consent for an evaluation, a reevaluation or the initial placement of your child in special education. The school district may seek to evaluate or continue your child's placement in special education through a due process hearing, if it believes that it is necessary for your child's education. You and the school district may agree to first try mediation to resolve your disagreements.  
(EC 56321[c], 56346,56506[e]; 20 USC 1414[a][c])

Consent forms must describe the activity for which consent is sought and list the records (if any) that will be released and to whom. You can revoke consent at any time, except that revocation is not retroactive (does not negate actions that occurred after consent was given and before consent was revoked). (34 CFR 300.500)

#### **Surrogate Parent Appointment**

In order to protect the rights of the child, 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 be appointed if the child is an adjudicated dependent or ward of the court under the state Welfare and Institutions Code and the child is referred to special education or already has an IEP. A district must make reasonable efforts to appoint a surrogate within 30 days after determining that a surrogate is needed. (20 USC 1415[b]; EC 56050)

#### **Age of Majority**

When your child reaches the age of 18, all rights under Part B of the Individuals with Disabilities Education Act (IDEA) will transfer to your child. The only exception will be if your child is determined to be incompetent under State Law.

(34 CFR 300.517 30; EC 56041.5)

#### **Assessment**

##### **Nondiscriminatory Assessment**

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(s) administered in your child's native language or mode of communication, unless it is clearly not feasible to do so. No single procedure can be the sole criterion for determining eligibility and developing an appropriate education program for your child. (20 USC 1414[a][b]; EC 56001[j] and 56320)

##### **Assessment Plan**

When the district is seeking to assess your child, you will be given a written, proposed assessment plan. Along with that plan you will receive a copy of this Procedural Safeguards document. When the assessment is completed, an individualized education program team meeting, which includes you, the parent or guardian, and or your representatives, will be scheduled to determine whether the student qualifies for special education services. The IEP Team will discuss the assessment, the educational recommendations and the reasons for these recommendations. A copy of the assessment report and the documentation of determination of eligibility will be given to you. (EC 56329 (a))

### **Independent Educational Evaluation**

If you disagree with the results of the assessment conducted by the school district, you have the right to ask for an independent education evaluation (IEE) for your child, from a person qualified to conduct the assessment, at public expense. The school district must respond to your request for independent educational evaluation and provide you information, upon request, about where to obtain an independent educational evaluation. Alternatively, 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 a public expense. The IEP Team must consider independent assessments.

District assessment procedures may allow in-class observation of students. If the school district observed 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 an equivalent opportunity to observe your child in the classroom. If the school district proposes a new school setting for your child an independent educational assessor must be allowed to first observe your child in the proposed new setting. (EC 56329(b)and(c))

### **Access to Educational Records**

All parents of a child enrolled in the school district have the right to inspect records under the federal Family Educational Rights and Privacy Act (FERPA), which has been implemented in California under Education Code sections 49060-49079. Under IDEA, parents of a child with disabilities (including noncustodial parents whose rights have not been limited) have the right to review all educational records regarding the identification, evaluation and educational placement of the child and the provision of a free appropriate public education and to receive an explanation and interpretation of the records. Under California statutes, the parents have the right to review and to receive copies of educational records. These rights transfer to a nonconserved pupil who is eighteen years old or attending an institution of post secondary education.

**“Education record”** means those records that are directly related to a pupil and maintained by an educational agency or a party acting for the agency or institutions, and may include (1) the name of the child, the child’s parent or other family member; (2) the address of the child; (3) a personal identifier such as the child’s social security number, student number, or court file number; (4) a list of personal characteristics or other information that would make it possible to identify the child with a reasonable certainty. Both federal and state

laws further define a pupil record as any item of information directly related to an identifiable pupil, other than directory information, which is maintained by a school district or required to be maintained by an employee in the performance of his duties whether recorded by handwriting, print, tapes, film, microfilm, computer or by other means. Pupil records do not include informal personal notes prepared and kept by a school employee for his/her own use or the use of a substitute. If records contain information about more than one student, a parent can have access only to that portion of the record pertaining to his/her child.

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

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

You have a right to inspect and review all of your child’s educational 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 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. (20 USC 1415[b]; EC 56501, 56504, and 49069)

Parents who believe that information in the education records collected, maintained or used by the school district is (among other things) inaccurate, misleading or violates the privacy or other rights of the pupil may request in writing that the school district amend the information. If the district concurs, the record will be amended and the parent will be informed. Should the district refuse to make the amendment requested, the district shall notify the parent of the right to and provide a hearing, if required, to determine whether the challenged information is inaccurate, misleading, or otherwise in

violation of the privacy or other rights of the pupil. If it is decided by the governing board after the hearing that a record will not be amended, the parent shall have the right to provide what he/she believes is a corrective written statement to be permanently attached to the record. The district has policies and procedures governing the retention and destruction of records. Parents wishing to request the destruction of records, which are no longer necessary to the school district, may contact the District's Custodian of Records. However, the district is required to maintain certain information in perpetuity.

(34CFR99; CFR300.561—573; 20USC 1415 [b](1); 34 CFR 500.567; EC 49070)

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

The public education agency initiates and conducts meetings for the purpose of developing, reviewing and revising the individualized education program of each child with a disability. The IEP documents the child's eligibility for special education services and parents receive a copy of each IEP for their child. These meetings are conducted by the individualized education program (IEP) team.

When the IEP has been completed and appropriate parental consent has been provided, it is implemented as soon as possible following the IEP team meeting. A copy of the IEP is provided to the parents at no cost and if necessary, a copy of the IEP will be provided in the primary language of the parent(s), at the request of the parent(s). An individualized family service plan (IFSP) for a child aged three through five may serve as the IEP after a full explanation of the difference and written parent consent. The IEP team must consider the concerns of the parents for enhancing the education of their child.

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

The IEP team includes:

- An administrator or a representative designated by administration who is knowledgeable about program options appropriate for the child and who is qualified to provide, or supervise the provision of special education;
- At least one general education teacher of the child, if the child is, or may be participating, in the general education environment;
- At least one special education teacher of the child, or if appropriate, at least one special education provider of the child; and,
- One or both of the child's parents, individuals selected by the parent, or both.

When appropriate, the IEP team will also include:

- The child, including when the team will discuss transition services;
- Other persons who possess expertise or knowledge necessary for the development of the IEP;
- When the child has been assessed for purposes of developing, reviewing or revising the IEP, a person who has conducted an assessment of the child or who is knowledgeable about the assessment procedures used to assess the child and is familiar with the results of the assessment; and,
- When the child is suspected to have a learning disability, at least one member of the IEP team, other than the child's regular teacher, will be a person who has observed the child's educational performance in an appropriate setting. If the child is younger than five years or is not enrolled in a school, a team member will observe the child in an environment appropriate for a child that age.

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

If the child does not attend an IEP team meeting where transition services will be discussed, the district will ensure that the child's needs and preferences are considered. The district may invite representatives from other agencies that are likely to be responsible for transition services.

## **HOW DISPUTES ARE RESOLVED**

### **Due Process Hearing**

You have the right to request an impartial due process hearing regarding:

- The identification of your child for special education eligibility.
- The assessment of your child.
- The educational placement of your child.
- The provision of a free appropriate public education (FAPE) for your child.

The request for a due process hearing must be filed within three years (or within two years, after October 9, 2006) from the date you knew or had reason to know of the facts that were the basis for the hearing request. [H.R.1350 §615(f)(3)(C)]

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

- a) the district misrepresented that it had resolved the problem
- b) the district withheld information that should have been provided to you. [H.R.1350 §615(f)(3)(D)]

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

You may ask the school district to resolve disputes through mediation, which is less adversarial than a due process hearing. Alternative Dispute Resolution (ADR) may also be available in your district. Mediation and ADR are voluntary methods of resolving a dispute and may not be used to delay your right to a due process hearing. The parents and the school district must agree to try mediation before mediation is attempted. A mediator is a person who is trained in strategies that help people come to agreement over difficult issues. (20 USC 1415[e]; EC 56500.3)

### **Due Process Rights**

You have a right to:

1. Have a fair and impartial administrative hearing at the state level with a person who is knowledgeable of the laws governing special education and administrative hearings (EC 56501[b]);
2. Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities (EC 56505[e]; 20 USC 1415[h]);
3. Present evidence, written arguments, and oral arguments (EC 56505[e]);
4. Confront, cross-examine, and require witnesses to be present (EC 56505[e]);
5. Receive a written or, at the option of the parent, an electronic verbatim record of the hearing, including findings of fact and decisions (EC 56505[e]; 20 USC 1415[h]);
6. Have your child present at the hearing (EC 56501[c]);
7. Have the hearing be open or closed to the public (EC 56501[c]);
8. Be informed by the other parties of the issues and their proposed resolution of the issues at least ten calendar days prior to the hearing (EC 56505[e] and 56043[s]; 20 USC 1415[b]);
9. Receive a copy of all documents, including assessments completed by that date and

recommendations, and a list of witnesses and their general area of testimony within five business days before a hearing.

(EC 56505[e];

10. Have an interpreter provided at the expense of the California Dept. of Education (CCR 3082[d]);
11. Have a mediation conference at any point during the due process hearing (EC 56501[b]; and
12. Receive notice from the other party, at least ten days prior to the hearing that it intends to be represented by an attorney. (EC56507[a])

In any action or proceeding regarding the due process hearing, the court, in its discretion, may award reasonable attorneys' fees as a part of the costs to you as the parent of a child with a disability if you are the prevailing party in the hearing. Reasonable attorneys' fees may also be awarded following the conclusion of the administrative hearing with the agreement of the parties. (20 USC 1415[i]; EC 56507[b])

Fees may be reduced for any of the following:

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

Attorneys' fees will not be reduced, however, if the court finds that the state or the school district unreasonable delayed the final resolution of the action or proceeding or there was a procedural safeguards violation. (20 USC 1415[j])

Attorneys' fees may not be awarded relating to any meeting of the IEP team unless an IEP meeting is convened as a result of a due process hearing proceeding or judicial action. Attorney fees may also be denied if you reject a reasonable settlement offer made by the district/public agency ten days before the hearing begins and the hearing decision is not more favorable than the settlement offer. (20 USC 1415[d])

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

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

**Office of Administrative Hearings  
Special Education Unit  
1102 Q Street, 4th Floor  
Sacramento, CA 95814  
Phone: (916) 323-6876**

## SCHOOL DISCIPLINE AND PLACEMENT PROCEDURES FOR STUDENTS WITH DISABILITIES

You need to file a written request for a due process hearing. The written notice shall be kept confidential. 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; and
4. A description of the nature of the problem, including facts relating to the problem(s) and a proposed resolution of the problem(s).

State law requires that either party filing for a due process hearing must provide a copy of the written request to the other party. (20 USC 1415[h]; EC 56502[c])

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

According to the "stay put" provision of the law, a child involved in any administrative or judicial proceeding must remain in the current educational placement unless you and the school district agree on another arrangement. If you are applying for initial admission to a public school, your child will be placed in a public school program with your consent until all proceedings are completed. (20 USC 1415[j]; EC 56505[d]and [i])

### Opportunity for District to Resolve the Complaint

If you choose to file a due process complaint as explained in the section entitled "Filing a Written Due Process Complaint," a meeting must be scheduled by the district within 15 days of receiving the notice of your due process complaint. The purpose of the meeting is to give you opportunity to discuss your due process complaint and the facts on which you based your complaint so that the district has a chance to address your concerns and work with you to reach a resolution. This meeting must be held before the initiation of a due process hearing. The meeting must include the parents and other members of the IEP team who have specific knowledge of the facts. The district has 30 days from the receipt of the due process complaint to resolve the due process complaint or the due process hearing must occur.

If the parents and the district are unable to resolve the due process complaint and it goes to hearing, the hearing decision is final and binding on both parties. Either party can appeal the hearing decision by filing a civil action in state or federal court within 90 days of the final decision. (20 USC 1415[j]; EC 56505[g] and [i]; EC 56043[u])

Children with disabilities may be suspended or placed in other alternative interim settings or other settings to the same extent these options would be used for children without disabilities.

If a child exceeds ten days in such a placement, a meeting must be held to determine whether the child's misconduct is caused by the disability. This IEP meeting must take place immediately, if possible, or within ten school days of the school district's decision to take this type of disciplinary action. (20 USC 1415[k])

As a parent, you will be invited to participate as a member of the team. The school district must provide you with a written notice of the required action. 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. If the team concludes that the misconduct was not a manifestation of your child's disability, the school district might take disciplinary action, such as expulsion, in the same manner as it would for a child without disabilities.

If you disagree with the team's decision, you may request an expedited due process hearing from the Office of Administrative Hearing. (20 USC 1415[k])

### Placement in an Interim Alternative Educational Setting

Under Federal law, a school district may place a child in an appropriate interim alternative placement for up to forty-five school days under certain circumstances. Those circumstances are when the child has a weapon, or has knowingly possessed or used illegal drugs or sold controlled substances at school or a school function, or has inflicted serious bodily injury upon another person. (20 USC 1415[k])

If you request a hearing or an appeal regarding disciplinary action or manifestation determination, your child will stay in the interim alternative setting or disciplinary setting unless the maximum time for that setting is reached, or the parents and school district agree to another placement. (34 CFR 300.526)

Alternative educational settings, when permissible, must allow the child to continue to participate in the general curriculum and receive services designed to address the behavior so it does not recur. (20 USC 1415[k])

## CHILDREN ATTENDING PRIVATE SCHOOL

The school district is responsible for the full cost of special education in a nonpublic, nonsectarian school, when the school district, together with the IEP Team, recommends that this would be the appropriate placement for the student. (20 USC[a][10][B]; CFR 300.401; CFR 300.349[c]; EC 56361)

### Observation of Your Child at a Nonpublic School

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

### Unilateral Parent Placement in Nonpublic or Private School

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

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

- Illiteracy and inability to write;
- Giving notice would likely result in physical or serious emotional harm to the child;
- The school prevented you from giving notice; or
- You had not received a copy of this Notice of Procedural Safeguards or otherwise been informed of this notice requirement. (20 USC 1412[a]; 34 CFR 300.403)

The court or hearing office may reduce or deny reimbursement if you did not make your child available for an assessment upon written notice from the school district. 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 and did not give notice of your concerns and intent to enroll your child in a private school at public expense.

### **Notifying the District**

You must notify the district of your intent to place your child in a private school:

- At the most recent IEP meeting you attended before removing your child from the public school; or
- In writing to the school district at least ten business days (including holidays) before removing your child from the public school. (20 USC 1412[a]; 34 CFR 300.403)

The district is not obligated to offer a free appropriate public education to a child whose parent(s) have voluntarily enrolled that child in a private school. In such cases, the district will propose an Individual Services Plan for Private School Students. (20 USC 1412(a)(10)(A)(I))

## COMPLAINT PROCEDURES

### State Appeal Process

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

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

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

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

For complaints involving issues not covered by IDEA, consult your district's Uniform Complaint Procedures.

**The District would like to work with you to resolve all complaints at the local level whenever possible. We invite you to meet with the administrator who has been designated to work with compliance issues and attempt to resolve your concern informally before a complaint is filed. S/he will maintain confidentiality as permitted by law. If your complaint cannot be resolved, a formal investigation will be initiated or you will be referred to the appropriate agency for assistance.**

Please contact the Special Education Administrator at the phone number listed below for your school district if you:

- Would like additional copies of the Notice of Procedural Safeguards
- Need assistance in understanding the provisions of your rights and safeguards
- Require a translation orally, by other means, in a different language or other mode of communication

**If you need additional assistance beyond your Local District/County Office or wish general information regarding Special Education program and services within the SFUSD Special Education Local Plan Area (SELPA) you may contact the SELPA, at (415) 355-7735 or visit the SELPA Website at [http://portal.sfusd.edu/template/default.cfm?page=chief\\_academic.special\\_ed](http://portal.sfusd.edu/template/default.cfm?page=chief_academic.special_ed).**