

KERN COUNTY CONSORTIUM SELPA

Notice to Parent/Guardian/ Surrogate

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THIS IS A STATEMENT OF YOUR RIGHTS
PLEASE KEEP THIS DOCUMENT SO YOU CAN REFER TO IT

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OVERVIEW

The notice of Parental Rights and Procedural Safeguards will be given to parents upon: 1) initial referral for evaluation of their child for special education service, 2) each notification of an Individualized Education Program (IEP) meeting, 3) reevaluation of their child, and 4) registration of a complaint or a request for a due process hearing. An expanded version will be provided upon the initial IEP, upon the registration of a complaint or a request for a due process hearing, and at any time a parent requests one. A complete but shorter version will be provided at all other times a notice of rights is required. (A copy of parental procedural safeguards will be provided by the Department of Education at the time a complaint is filed.)

Local education agencies (LEA), and state, and other public agencies have an obligation to seek out children with disabilities between birth and age 21. A child with a disability is one who has been identified by an individualized education program (IEP) team as having one of 13 disabling conditions which are defined in federal regulation, who because of the disability, needs special education and related services to benefit from education and who meets state eligibility criteria. A child with a disability has a right to participate in a free, appropriate public education. Children with disabilities are offered programs that provide for maximum interaction with children who are not disabled in a manner that is appropriate to the needs of both. When a child no longer requires special education services to benefit from education, an assessment and IEP team meeting will be conducted prior to discontinuing special education services.

No child is required to participate in special education and related services unless the parent is first informed in writing of the facts making participation necessary or desirable and of the contents of the individualized education program (IEP) and gives written approval for all or part of the IEP.

DEFINITIONS

- “Consent” means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in the primary language, or other mode of communication of the parent. The parent understands and agrees in writing to the carrying out of the activity for which the consent is sought and the consent describes that activity including lists of the records (if any) that will be released and to whom. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
- “Personally identifiable” means information that includes the name of the child, the child’s parent or other family members, address of the child, a personal identifier such as the child’s social security number or student number, or a list of personal characteristics or other information that could make it possible to identify the child with reasonable certainty.
- “Evaluation” (also called assessment) means procedures used to determine whether a child has disabilities and the nature and extent of

the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered or procedures used with all children in a school, grade or class.

- “Independent educational evaluation” (IEE) means an evaluation (assessment) conducted by a qualified examiner who is not employed by the local educational agency (LEA) responsible for the education of the child in question.
- “Public expense” means that the LEA either pays for the full cost of the evaluation or ensures that it is otherwise provided at no cost to the parent.
- “Local Educational Agency” (LEA) includes a public board of education which has administrative control over a public elementary or secondary schools, school district, county office of education, or county superintendent of schools.

PARENTAL CONSENT

Written parental consent is required before the child is assessed, placed in a special education program, and for the implementation of all or part of the individualized education program (IEP). A LEA may not require parental consent as a condition of any benefit to the parent or child except for the service or activity for which consent is required by law. The LEA can file for a due process hearing to override a parent’s refusal to consent to the assessment or placement of their child for special education and related services or in regard to the provision of special education or related services.

When a child with a disability reaches age 18 (unless determined to be incompetent by appropriate authorities), the school district must provide any required notices to both the individual with disabilities and the parents. All rights transfer to the child at the age of majority. The school district must notify the individual and the parents of this transfer at least one year before the child reaches the age of majority. If a child with a disability has reached 18 and has not been determined to be incompetent, but is determined not to have the ability to provide informed consent, the school district shall follow the state procedures for appointing an appropriate individual to represent the educational interest of the child. All rights of youth incarcerated in adult or juvenile federal, state, or local correctional institutions transfer to the youth.

PRIOR NOTICE TO PARENTS

The LEA must provide prior written notice to parents of a child with disabilities a reasonable time before they propose or refuse to initiate or change, the identification, assessment, or educational placement of the child or the provision of a free appropriate public education which includes:

- Full explanation of all the procedural safeguards available to parents which is included in this notice;

- Description of the action proposed or refused by the LEA with an explanation of why the agency proposes or refuses to take the action, and a description of other options considered and why those options were rejected;
- Description of each assessment procedure, test, record or report the agency uses as a basis for the proposal or refusal; and
- Description of any other factors which are relevant to the agency's proposal or refusal.

Parents can obtain assistance in understanding their rights and procedural safeguards from the Special Education Director of their child's district of attendance, the SELPA Director at 805-636-4801, or the California Department of Education in Sacramento.

The notice is written in a language understandable to the general public, and is provided in the primary language of the parent or other mode of communication used by the parent (i.e., sign language or Braille), unless it is clearly not feasible to do so. If the primary language is not a written language, the LEA will translate the notice orally or by other means of communication to ensure that the parent understands the content of the notice. The LEA will keep written evidence that they have met these requirements.

SURROGATE PARENTS

Each LEA will ensure that an individual is assigned to act as a surrogate parent for the parents of a child when no parent can be identified. If the LEA, after reasonable efforts, cannot discover the whereabouts of a parent, or a child is an adjudicated dependent or ward of the court under the Welfare and Institution Code and the child is referred to special education or already has an IEP a surrogate will be appointed. A surrogate parent is not appointed for a child who is a dependent or ward of the court unless the court specifically limits the right of the parent or guardian to make educational decisions for the child or the child has reached the age of majority. The LEA has procedures for determining whether a child needs a surrogate parent, and for assigning a surrogate parent for the child. The LEA may select a surrogate parent in any way permitted under State law but must ensure that a person selected as a surrogate is not an employee of an LEA which is involved in the education or care of the child, has no interest that conflicts with the interest of the child he or she represents, and has knowledge and skills that ensure adequate representation of the child. (Payment by the agency to serve as a surrogate parent does not make the surrogate an employee.) A surrogate parent serves as the child's parent and has the same rights regarding educational decisions as a parent — specifically in matters regarding identification, assessment, instructional planning and development, educational placement, reviewing and revising the IEP, and the provision of a free appropriate public education.

EVALUATIONS

Participation in General Education Assessments

Children with disabilities must have as part of the IEP development decisions made about the degree of involvement in general state and district-wide assessments. They may participate in the assessment, they may participate with accommodations, they may have alternative assessments given or they may be exempt.

Individual Assessment

A child is assessed in all areas related to the suspected disability to determine the need for special education instruction and related services. Whenever an assessment for the development of the IEP is to be conducted, the parent is given a proposed assessment plan in writing within 15 days of the referral for the assessment. Assessment of the child occurs only after the parent gives permission. Parents have 15 days from the receipt of the proposed assessment plan to give consent to the assessment. An IEP team meeting will be held to discuss the assessment and the educational recommendations.

When an assessment determines that a child is emotionally disturbed and residential placement is recommended, the IEP team expands to include a representative of the county mental health department. The IEP will be reviewed by the IEP team, including the mental health representative, at least every six months.

An evaluation will be conducted before determining a child is no longer eligible for special education.

Parents have the right to:

- Initiate a request for educational assessment (referral) and give or withhold written consent for any proposed assessment activities (unless a hearing officer orders assessment through a due process hearing).
- Receive an assessment plan explaining the types of assessments to be conducted in language easily understood by the general public and have 15 calendar days in which to give or withhold consent for assessment.
- An assessment plan is provided in the primary language of the parent or other mode of communication unless clearly not feasible.
- Obtain information regarding availability of independent assessments.
- Obtain an independent outside assessment at public expense under certain conditions. Procedures for obtaining such assessment are outlined in Independent Education Assessment (Evaluation) section.
- Present information including the results of independent assessments for consideration by the LEA at an IEP meeting.

- An assessment that is designed to be free of racial, cultural or sexual discrimination and in the child's primary language.
- Tests and other assessment materials that have been validated for the specific purpose for which they are used, administered by trained personnel, and are tailored to assess specific areas of educational need.
- Have a description of the procedures and assessments to be used and to be fully informed of the assessment results. Parents will be provided with a copy of assessment results. No placement or services will commence without the parent's consent.
- Give written consent for the release of any confidential information.

No single procedure will be used as the sole criterion for determining whether the pupil is an individual with exceptional needs or for determining an appropriate educational program for the pupil.

Parents will be informed of their child's progress at least as often as parents of nondisabled children.

Three-Year Reevaluation

A child with disabilities will be reevaluated if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, or at least once every three years. The IEP team shall review existing data on the child, including evaluations and information provided by the parent to determine what additional data, if any, is needed to determine: 1) whether the child continues to have a disability, 2) the present levels of performance, 3) whether the child continues to need special education services, and 4) whether any additions or modifications to the special education services are needed to enable the child to meet the measurable annual goals in the IEP and to appropriately participate in the general curriculum. Parents will be notified if staff believe existing data only can be used to make the required determinations. If parents disagree with the use of existing data, they have a right to request further assessment.

A reevaluation can be conducted without parent consent if the school district has taken reasonable measures to obtain such consent, and the parents have failed to respond.

Independent Education Assessment (Evaluation)

A parent has the right to obtain an independent educational evaluation at public expense if the parent disagrees with the evaluation obtained by the public agency. Before obtaining an independent educational assessment, the parent shall notify the educational agency, in writing, of his/her intent, reasons, and disagreement with the agency's assessment. In response, the educational agency may provide a list of qualified persons not employed by the agency, to the parent from which the parent will select the independent evaluator.

Parents have the right to:

- Information, upon request, about where an independent educational evaluation may be obtained.

If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either:

- initiate a due process hearing to show that the LEA's assessment is appropriate (within 20 calendar days); or
- ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a due process hearing that the evaluation obtained by the parent did not meet agency criteria applicable for an independent educational evaluation.

If the LEA initiates a due process hearing and the hearing officer's final decision is that the LEA's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

If a parent requests an independent educational evaluation, the LEA may ask for the parent's reason why he or she objects to the LEA evaluation. However, the explanation by the parent may not be required and the LEA may not unreasonably delay either providing the independent educational evaluation at public expense or by initiating a due process hearing to defend the LEA's evaluation.

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

The public education agency initiates and conducts meetings for the purpose of developing, reviewing, and revising the individualized education program (IEP) 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 a parent requests a meeting of the IEP team to review the IEP, the meeting will be held within 30 days from the date of receipt of the parent's written request, not counting school breaks of more than five days. An IEP developed as a result of assessment is developed within 50 days of the consent for assessment, unless the parent agrees in writing to an extension. The person who conducted the assessment or who is knowledgeable about assessment procedures and the results of the assessment given to the child for the purpose of developing, reviewing, or revising the IEP must be present at the meeting. When the IEP has been completed, 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 years may serve as the IEP after a full explanation of the differences between the documents and potential services and parent written 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 (other than the child's teacher) 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;
- The child's present teacher. If the child does not have a teacher, this representative will be a teacher with most recent and complete knowledge of the child who has also observed the child's educational performance in an appropriate setting. If no such teacher is available, the representative will be a regular classroom teacher, or a special education teacher qualified to teach a child of his or her age; and
- One or both of the child's parents, individuals selected by the parent, or both;
- At least one general education teacher if the child is or may be participating in general education.

When appropriate, the IEP team will also include:

- The child;
- 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 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 for 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 have observed the child in an environment appropriate for a child that age.

Each public agency must take steps to make sure that parents have an opportunity to participate in meetings about the IEP including ensuring that there is early enough notification to parents so that they can attend and scheduling occurs at a mutually agreed on time and place. The notice will indicate the purpose, time, and location of meetings and who will attend. The LEA will arrange for an interpreter as necessary.

The IEP team:

- Reviews assessment results;

- Determines eligibility;
- Determines the content of the IEP;
- Considers local transportation policies and criteria; and
- Makes a program placement decision.
- Writes goals and objectives.
- Reviews the provision of a free, appropriate, public education.
- Can modify the IEP of a youth convicted and subsequently incarcerated as an adult.

The IEP team meets whenever:

- The child has received an initial formal assessment and may meet whenever he or she receives any subsequent formal assessment;
- The child demonstrates a lack of anticipated progress; The parent or teacher requests a meeting to develop, review, or revise the IEP; and
- At least annually to review the child's progress, including whether the annual goals for the child are being achieved, and the appropriateness of placement, and to make any necessary revisions.

Individualized Education Program (IEP)

Parents have the right to:

- Receive notice of the IEP meeting in the parent's primary language or other mode of communication unless it is clearly not feasible to do so.
- Participate in the development of the IEP and to be informed of the availability of free and appropriate public education.
- Be informed of the purpose of the IEP meeting, assessment results, recommendations, and rationale for the recommendations.
- Be notified prior to, and to participate in and/or be represented at meeting(s), and to present information at the meeting. The student has the right to participate in the meeting(s) as appropriate.
- Have the meeting and individualized education program within 50 calendar days from date of receipt of signed consent for assessment (not counting school breaks of more than five days, and the days between school sessions or term days as specified on the district calendar).

- Have the meeting within 30 days after the commencement of the subsequent school year for each pupil for whom a referral was made; 20 days or less prior to the end of the school year.
- Be informed of program/service options.
- Have the meeting conducted with an interpreter in the parent's primary language/communication mode and to request and receive a copy of the IEP in the parent's language unless it is clearly not feasible to do so.
- Agree to only selected provisions of the IEP program.
- Give written consent for the initial special education placement and Individualized Education Program or revoke consent at any time.
- Have a review of the individualized education program at least annually, or within 30 days of a written request by the parent or teacher to develop, review, or revise the IEP, or when the student receives any subsequent formal reassessment/reevaluation, or prior to any change of placement including suspension of more than 10 days in any school year.
- Appeal the decision of the IEP team by the due process hearing procedure concerning the identification, evaluation, educational placement, or provision for a free, appropriate educational program.
- Be informed that parental permission is required for initial placement in special education and that all parent consents are voluntary and may be withdrawn at any time.
- Participation in an IEP meeting preceding the commencement of expulsion proceedings.
- Have their child considered for education programs other than on state hospital grounds.
- Electronically record the proceedings of an IEP meeting with an audio tape recorder with 24 hours written notice to IEP team members.

Contents of the Individualized Education Program (IEP)

The IEP shows a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. The individualized education program (IEP) includes, but is not limited to, all of the following:

- The present levels of the child's educational performance;
- The annual goals, including short-term instructional objectives;
- The specific educational instruction and related services required by the child;

- The extent to which the child will be able to participate in regular education programs;
- The projected date for initiation and the anticipated duration of such programs and services;
- Appropriate objective criteria, assessment procedures, and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved; and
- A statement of the needed transitional services updated annually beginning at 14 or younger if appropriate, that focuses on the child's course of study including, when appropriate, a statement of the interagency responsibilities or linkages (or both) before the child leaves the school setting.
- Beginning at least one year before the child reaches 18 years, a statement that the child has been informed of his/her rights, if any, that will transfer to the child upon reaching 18 years;

When appropriate, the IEP will also include, but not be limited to, all of the following:

- In the case of a child whose behavior impedes his or her learning or that of others, consideration of positive behavioral interventions, strategies, and supports to address that behavior;
- In the case of a child who is blind or visually impaired, provide, if appropriate, instruction in Braille;
- Prevocational career education for children in kindergarten and grades 1 to 6;
- Vocational education, career education or work experience education, or any combination of these, in preparation for paid employment, including independent living skill training for children in grades 7 to 12;
- For children in grades 7 to 12, any alternative means and modes necessary for the child to complete the district's prescribed courses of study and to meet or exceed proficiency standards for graduation;
- For the children whose primary language is other than English, linguistically appropriate goals, objectives, programs and services;
- Extended school year services when needed, as determined by the IEP team;
- Provision of the transition into the regular class program if the child is to be transferred from a special class or center, or nonpublic, nonsecular school into a regular class in a public school for any part of the school day; and

- Consideration of full range of communication and language needs of deaf and hard of hearing children;
- Consider whether the child requires assistive technology devices and services.

CONFIDENTIAL RECORDS

The LEA will not permit access to any child's records without written parental permission except as follows:

- Local school officials and employees who have a legitimate educational interest including a school system where the child intends to enroll;
- Certain state and federal officials for audit purposes;
- To certain law enforcement agencies for purposes listed in Education Code and Federal law; and
- A pupil 16 years of age or older, or having completed the 10th grade, who requests access to their own records.

The LEA may release information from the student's records for the following:

- In cases of emergency when the knowledge of such information is necessary to protect the health or safety of the child and/or others;
- To determine the child's eligibility for financial aid;
- To accrediting organizations to the extent necessary to their function;
- In cooperation with organizations conducting studies and research that does not permit the personal identification of children or their parents by persons not connected with the research and provided that their personally identifiable information is destroyed when no longer needed;
- To officials and employees of private schools or school systems in which the child is enrolled or intends to enroll.

Parents have a right to:

- Receive notice regarding records in their native language on policies, procedures, and rights related to recordkeeping including the Family Educational Rights and Privacy Act of 1974 (FERPA).
- Review records without unnecessary delay before a meeting or hearing, and receive copies of records within five (5) days of an oral or written request;
- A response from the participating agency to reasonable requests for explanations and interpretations of the records;

- Have a representative of the parent inspect and review the records;
- A school district may charge no more than the actual cost of reproducing such records but only if such cost does not prevent the parent from exercising the right to receive the records.

An agency may charge a fee for copies of records which are made for parents if the fee does not prevent the parents from exercising their right to inspect and review these records. An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable state laws. Each LEA keeps a record of parties who obtain access to education records collected, maintained, or used including the name of the party, the date access was given, and the purpose for which the party is authorized to see the records. If any education record includes information on more than one child, the parents of those children will have the right to inspect and review only the information relating to their child or to be informed of that specific information.

Amendment of Records at Parent Request

Parents have the right, on request, to receive a list of the types and locations of education records collected, maintained, or used by the agency. A parent or eligible child who believes that information in education records collected, maintained, or used is: 1) inaccurate; 2) an unsubstantiated personal conclusion or inference; 3) a conclusion or inference outside of the observer's area of competence, 4) not based on personal observation of a named person with the time and place of the observation noted; 5) misleading; or 6) in violation of the privacy or other rights of the child, may request, in writing that the participating agency that maintains the information amend the record. The agency will decide whether to amend the record as requested within 30 days upon receipt of the request. If the agency decides to refuse to amend the record, they inform the parent of the refusal and of the right to a hearing. Under State law, a parent of a pupil may file a written request with the superintendent of the district to correct or remove any information in the written records that the parent alleges to be inaccurate. Within 30 days of receiving the written request, the district superintendent or designee meets with the parent and the employee who wrote the information. If the superintendent agrees with the parent, the records are corrected or the information in question is removed and destroyed. If the superintendent disagrees with the parent, the parent has 30 days to appeal the decision in writing to the local school board. Within 30 days, the school board meets with the parent and employee decides whether they agree or disagree with the parent. The school board can order the superintendent to correct the records or remove and destroy the information in question. The decision of the school board is final. The records of the Governing Board proceedings shall be maintained in a confidential manner for one year after which they will be destroyed, unless the parent initiates legal proceedings within the prescribed period relative to the disputed information.

If, as a result of the hearing or meetings with district superintendent or local school board, the agency does not agree with the parent and decides that the information in the record falls within the six reasons listed above, it will inform the parent of the right to place in the child's records a statement commenting on the record or explaining any reason they disagree with the decision of the agency. Any

explanation is placed in the records of the child as long as the record or contested portion is maintained by the agency. If the records of the child or the contested portion is given by the agency to any party, the explanation must also be given to the party. If, as a result of the hearing, the agency agrees with the parent, they amend the record and inform the parent in writing.

PARENTAL CHANGE OF RESIDENCE

When a child transfers into a district from another SELPA, an interim placement shall be provided for the child to continue the existing IEP, to the extent possible, unless the parent or guardian agrees otherwise. Before the end of 30 days, the IEP team reviews the interim placement and makes a final recommendation. In deciding the placement, the IEP team may use information, records, and reports from the school district or county program from which the child transferred.

If the parents of a child with a disability, who previously received special education and related services under the authority of a LEA, enroll the child in a private elementary or secondary school without the consent of or referral by the LEA, a court or a hearing officer, such LEA may be required to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the LEA had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

However, the cost of reimbursement by the LEA may be denied by the hearing officer or court, or reduced if:

- at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the LEA to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
- 10 business days prior to the removal of the child from the public school, the parent did not give written notice to the public agency of the information described in section 1; or
- if, prior to the parents removal of the child from public school, the LEA informed the parents of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasons, but the parents did not make the child available for such evaluation; or
- upon a judicial finding of unreasonableness with respect to the actions by the parents.

When a child is placed in a nonpublic school or agency, the nonpublic school or agency must notify the parents of their responsibility to report each change in residence. The notice is in writing and is given at the time that nonpublic school (NPS) or nonpublic agency (NPA) placement is recommended. The notice will include an explanation that the contract for services is between the contracting district/SELPA

and the NPS or NPA and obligates no other in the event of a residence change. When an individual receiving services in a NPS or NPA changes residence, and this change constitutes a change of local education agencies (LEA), the parent should immediately report the change of residence to the administrator of both the former and new public school and the NPS or NPA.

**PAYMENT FOR EDUCATION OF CHILDREN
ENROLLED IN PRIVATE SCHOOLS
WITHOUT CONSENT OR A REFERRAL
BY THE SCHOOL DISTRICT**

Reimbursement for the cost of a private school placement by the parent may be granted if the court or hearing officer finds that the LEA failed to provide a free, appropriate, public education to the student in a timely manner prior to the enrollment in the private school.

Exceptions to this are: 1) parent cannot write English; 2) compliance is likely to result in physical or serious emotional harm to the child; 3) the school district prevented the parent from providing such notice; and 4) the parents did not receive the notice regarding the assessment.

DISCIPLINARY ACTION

The parents have the right to be notified of the disciplinary action taken on the day that the decision to take disciplinary action is made if it involves a change of placement for more than ten (10) days or if the school district orders a change of placement if the 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 or the child knowingly possesses or used illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of the school district. The school district must ensure that special education and disciplinary records of the child are transmitted to the person(s) making the final decision about the disciplinary action. When the school district reports any crime committed by child with a disability to the appropriate authorities the district shall transmit copies of special education and disciplinary records to such authorities.

Suspension

If a disciplinary action is contemplated for a behavior of a child with a disability who has carried or possessed a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the school district or the child knowingly possesses or used illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of the school district, or if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the school district that applies to all children, then within 10 school days after the date on which the decision to take that action is made, an IEP meeting shall be conducted to determine the relationship between the child's disability and the behavior subject to the disciplinary action.

Expulsion

A child with a disability can be expelled for violation of school conduct codes only when certain procedural safeguards are followed. Within ten (10) days of the school's decision to propose a specific disciplinary action that includes a change in placement of more than ten (10) days, the IEP team must meet to review the behavior intervention plan; determine if the misconduct is a manifestation of the disability; determine an appropriate interim alternative setting for the child's educational placement; develop a functional behavioral assessment plan if no behavioral intervention plan exists; and consider a need to change, the placement by the end of the planned placement in an alternative educational setting, from the placement the child was in at the time of the misconduct. If the pupil's IEP team finds that the behavior that was the cause of the disciplinary action was not a manifestation of the child's disability and the child's placement was appropriate, then the relevant disciplinary procedures applicable to children without disabilities may be applied to the disabled child in the same manner in which they would be applied to children without disabilities.

The school district may be excluded from school bus transportation. However, if a disabled pupil is excluded from school bus transportation because the pupil was ordered to a change in placement for more than 10 days and/or they are expelled, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent or guardian, provided that such transportation has been specified in the pupil's IEP program.

If the parents disagree with the IEP team's findings that the expulsion process can proceed because the behavior subject the disciplinary action was not a manifestation of the child's disability, the parents can file for a due process hearing. Even if the district can and does expel the child, the district must provide a free, appropriate public education during the time of expulsion. Additionally, the pupil is entitled to an expulsion hearing by the school board. If the school board agrees with the decision to expel the child, the child or parent or guardian may file an expulsion appeal with the county board of education.

Manifestation Determination

The IEP team may determine that the misconduct was not a manifestation of the disability only if they first consider all relevant information relating to the behavior subject to disciplinary action. This includes evaluation and diagnostic results, other relevant information supplied by the parent, observation of the child, the child's IEP and placement. This includes evaluation and diagnostic results, other relevant information supplies by the parent; observations of the child; and the child's IEP and placement. Based upon this evaluation, the IEP team determines 1) whether the child's IEP and placement were appropriate and special education services, supplementary aids and services, and behavioral intervention strategies were provided; and 2) the child's disability did not impair the ability of the student to understand the impact and consequences of his/her misconduct; and 3) the disability did not impair the child's ability to control the behavior subject to disciplinary action. If the IEP team determines that the child's misconduct was not a manifestation of his/her disability, the school may proceed with disciplinary procedures applicable to non-disabled students except that special education services will be continued even if the child is placed in another setting. If the parents disagree with the IEP team's finding on manifestation, they may file a due process hearing.

Placement in Alternative Educational Setting

School personnel may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days and to an appropriate interim alternative educational setting, but for not more than 45 days if:

- the child careis 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; or
- the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of the school district.

Before 10 school days after taking the disciplinary action noted above, if the school district did not conduct a functional behavioral assessment and implement a behavioral support plan for such child before the behavior that resulted in the suspension described above, the school district shall convene an IEP meeting to develop an assessment plan to address that behavior; or if the child already has a behavioral support plan, the IEP team shall review the plan and modify it, as necessary, to address the behavior. At that IEP meeting, the IEP shall also conduct a review of the relationship between the child’s disability and the behavior subject to the disciplinary action.

The alternative educational placement must enable the child to continue to participate in the general curriculum, receive IEP services and modifications designed to address and prevent recurrence of the behavior for which the child is being disciplined.

The alternative educational setting shall be determined by the IEP team.

**PLACEMENT PENDING ADMINISTRATIVE
OR JUDICIAL REVIEW**

Pending administrative or judicial proceedings, the child remains in the current placement unless both parties agree or a court orders otherwise.

Children Not Yet Eligible for Special Education Services

A child who has not been determined to be eligible for special education services and has violated school rules or codes of conduct may assert protections if the school district had knowledge that the child had a disability. The school is deemed to have knowledge if the parent expressed concerns in writing to the school district (unless the parent is illiterate or has a disability that prevents written notification); or parent requested an evaluation; or the teacher or other school personnel expressed concern to the special education director or other school personnel or the behavior or performance of the child demonstrated the need for such services. If the school district does not have knowledge that the child has a disability, the child may be subject to regular disciplinary procedures. If an evaluation request for a child not yet

eligible is made during the period of the disciplinary procedures, the evaluation is expedited. The child remains in the placement determined by the school authorities pending the evaluation. If the child is determined to be eligible, the school district must provide the services.

DISPUTE RESOLUTION PROCESS

Local Intervention

The public education agency and parent can meet informally to resolve issues. Parents are encouraged to utilize local systems to resolve concerns. Each district in this Special Education Local Plan Area (SELPA) has a person designated to work with special education issues. Contact the SELPA Director at (661) 636-4802.

Prehearing Mediation Conference

A Prehearing mediation conference can be requested by the parents or the local school district by sending a written request to the California Superintendent of Public Instruction and providing a copy to the other party. A person trained in alternate dispute resolution will be made available at no cost to either party within 15 days after the request is received by the State Superintendent. The prehearing mediation conference must be completed within 30 days unless both parties agree to extend the time for mediation. ***It is the intent of the legislature that these conferences will be informal and nonadversarial; therefore, no attorneys or independent contractors used to provide legal advocacy services can attend the prehearing mediation conferences.***

Alternative Mediation (Mediation only)

Prior to filing a request for a due process hearing, parents are encouraged to seek resolution through an informal pre-hearing mediation ONLY conference. This is intended to be a non-adversarial attempt at resolving issues related to identification, assessment, placement, or provision of free, appropriate education without attorneys or advocates E.C. 56500.3(a). This can be requested through the McGeorge School of Law, Special Education Hearing Office, 3200 Fifth Avenue, Sacramento, CA 95817, (916) 739-7053.

Mediation

The mediation process is voluntary and may not be used solely to delay a parent's right to a hearing or other due process. It will be conducted by a qualified, impartial, and trained mediator. The mediation is scheduled in a timely manner and held in a location convenient to both parties. Any agreement reached in mediation must be in a written mediation agreement. Mediation discussions are confidential and cannot be used in a subsequent hearing or civil proceeding when confidentiality requirements are stipulated.

A child will not be required to participate in special education and related services until the parents have been informed in writing of the facts that make participation necessary or desirable, the contents of the individual education

program (IEP) have been provided in writing, and the parents' written consent is given to the program. If the parents approve only a portion of the IEP, **only that portion will be implemented by the school district**. If the IEP team believes that the entire program must be implemented in order to provide your child with a free appropriate public education, the school district must initiate pre-hearing mediation or a due process hearing to determine the appropriateness of its educational program.

The parents have the right to: 1) an informal review of the IEP Team decision by the district superintendent or his/her designee; 2) the assistance of a translator in any of the due process procedures, including prehearing mediation, if your native language is other than English; and 3) a list of individuals providing legal services or advocacy from the school district or Special Education Hearing Office.

Due Process Hearing

A due process hearing can be initiated by a parent, guardian, surrogate, emancipated pupil, or school district when there is a disagreement over 1) a proposal or refusal to initiate or change the identification, assessment or educational placement of the pupil or the provision of a free, appropriate public education of the student (including such disciplinary action as multiple suspensions or expulsion) or 2) a school district is seeking a determination that its assessment is appropriate after the request for payment of an Independent Educational Evaluation. Requests should be sent to the California Special Education Hearing Office (SEHO), McGeorge School of Law, 3200 Fifth Avenue, Sacramento, CA 95817. Your letter to the SEHO must include the name, address of the residence and the school of your child; a description of the problem relating to the proposed initiation or change, including specific facts about the problem; a proposed resolution to the problem to the extent it is known to you.

Mediation Conference

Upon receipt of the written request for a hearing that includes a statement of concerns and proposed remedies, the state superintendent or designee informs the public education agency and parents, in writing, of a proposed mediation and all rights of both parties regarding procedural safeguards, including the right to waive the mediation conference. The parent may be accompanied by a representative(s) they choose. If mediation fails, the parties proceed to a state-level hearing at any reasonably convenient time to the parent and child in a local school facility.

The parties have the right to mediate their disputes at any time during the hearing process if **both parties** agree to mediation. A mediator who is trained to reconcile the differences of the parties in a nonadversarial manner will be appointed by the Special Education Hearing Office at no cost to either party. Mediation is held at a convenient location and extends the timeline of the Special Education Hearing Office to render its decision by the time necessary to convene and complete the mediation process; however, mediation is not intended to deny your right to a hearing or any other rights.

Due process hearing rights include 1) mediation at any stage of the procedure; 2) examination of pupil records; 3) representation by an advocate with knowledge and training relating to the problems of children and youth with disabilities or

an attorney; 4) an impartial hearing officer appointed by the Special Education Hearing Office; 5) written notice of the petitioner's issues or the other party's intent to use an attorney at least 10 days before commencement of the hearing; 6) disclosure of any evaluations and recommendations *completed* at least five business days before the hearing that the party intends to rely upon (exclusion is discretionary with the hearing officer); 7) prohibition of evidence that has not been disclosed at least five days before the hearing; 8) introduction of evidence, including an Independent Educational Evaluation and testimony of witnesses and records compelled by a subpoena or subpoena duces tecum (an order for documents) as necessary; 9) direct and cross-examination of all witnesses; 10) presentation of oral and written arguments; 11) verbatim electronic or written record of the hearing; 12) written (or electronic) findings of fact and a final decision will be mailed to each party within 45 days after the request for a hearing; 13) an extension of the hearing for a specific period of time may be granted at the request of either party; 14) appeal of the hearing decision to a court ***if appeal is made within ninety (90) days after receipt of the hearing decision.*** The parent of a student also has the right to 1) an open (public) hearing if requested; 2) the presence of the student at the hearing; and 3) a hearing at a reasonably convenient time and site.

The public education agency may use the services of an attorney during an IEP meeting or mediation conference or due process hearing. If the parent uses an attorney or advocate he/she will notify the educational agency, in writing, of the use of any attorney or advocate at least three (3) days prior to the IEP meeting or mediation conference. Failure to do so may result in a delay of the meeting to allow the agency to obtain an attorney.

In any action or proceeding regarding the due process hearing, the court, in its discretion, may award reasonable attorneys' fees as part of the cost to you as parent of a child with disability if you are the prevailing party in the hearing. Reasonable attorney fees may also be requested following the settlement of the administrative hearing.

Fees may be reduced if any of the following conditions occur: (1) the court finds that you unreasonably delayed the final resolution of the controversy; (2) the hourly attorney 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; (4) your attorney did not provide to the school district the appropriate information in the due process complaint. Attorney 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 and there was a violation of this section of the law.

Attorney fees may not be awarded related 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 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.

COMPLAINTS

Any individual, LEA, or organization may file a written complaint with the superintendent of a local education agency or with the State Superintendent of Public Instruction or the Office of Civil Rights (OCR) alleging a violation of federal or state law or regulation governing special education or related services for an individual student.

To file a state complaint, contact the Complaints Management and Mediation Unit, Special Education Division, 515 L Street, Suite 270, Sacramento, CA 95814. The Office of Civil Rights may be contacted at 50 United Nations Plaza, San Francisco, CA 94102.

KERN COUNTY CONSORTIUM SELPA

Arvin Union

Superintendent
(661) 854-6500

Beardsley

Superintendent
(661) 393-8550

Belridge Elementary

Superintendent
(661) 762-7381

Blake

Superintendent
(661) 536-8559

Buttonwillow Union

Superintendent
(661) 764-5166

Caliente Union

Superintendent
(661) 867-2301

Delano Union

Superintendent
(661) 721-5000

Delano Joint Union

High

Superintendent
(661) 725-4000

DiGiorgio

Superintendent
(661) 854-2604

Edison

Superintendent
(661) 366-8625

El Tejon Unified

Superintendent
(661) 248-6247

Elk Hills

Superintendent
(661) 765-7431

Fairfax

Superintendent
(661) 366-7221

Fruitvale

Superintendent
(661) 589-3830

General Shafter

Superintendent
(661) 831-3605

Greenfield Union

Superintendent
(661) 837-6000

Kernville Union

Superintendent
(760) 379-3651

Lakeside Union

Superintendent
(661) 831-3503

Lamont

Superintendent
(661) 845-0751

Linns Valley-Poso Flat

Union
Superintendent
(661) 536-8811

Lost Hills Union

Superintendent
(661) 797-2626

Maple

Superintendent
(661) 746-4439

Maricopa Unified

Superintendent
(661) 769-8231

McFarland Unified

Superintendent
(661) 792-3081

McKittrick

Superintendent
(661) 762-7303

Midway

Superintendent
(661) 768-4344

Mojave Unified

Superintendent
(661) 824-4001

Muroc Joint Unified

Superintendent
(760) 769-4821

Norris

Superintendent
(661) 399-7987

Panama-Buena Vista

Union
Superintendent
(661) 831-8331

Pond Union

Superintendent
(661) 792-2545

Richland-Lerdo

Superintendent
(661) 746-7700

Ridgecrest Charter

Director
(760) 375-1010

Rio Bravo-Greeley Union

Superintendent
(661) 589-2696

Rosedale Union

Superintendent
(661) 588-6000

Semitropic

Superintendent
(661) 758-6412

Sierra Sands Unified

Superintendent
(760) 375-3363

South Fork Union

Superintendent
(760) 378-4000

Southern Kern Unified

Superintendent
(661) 256-5000

Standard

Superintendent
(661) 392-2100

Taft City

Superintendent
(661) 763-1521

Taft Union High

Superintendent
(661) 763-2300

Tehachapi Unified

Superintendent
(661) 822-2100

Vineland

Superintendent
(661) 845-3713

Wasco Union

Superintendent
(661) 758-7100

Wasco Union High

Superintendent
(661) 758-7400

Kern County Supt. of

Schools Office
Administrator
(661) 636-4789

Kern County Consortium

SELPA Office
Director
(661) 636-4801

A telephone call may be made to the School District office to be directed to the Superintendent, the Director of Special Education, the Custodian of Records, or be directed to the individual most able to assist you.