

SAN DIEGO UNIFIED SCHOOL DISTRICT  
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**NOTICE OF PROCEDURAL SAFEGUARDS**

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# NOTICE OF PROCEDURAL SAFEGUARDS

## INTRODUCTION

**This is your Notice of Procedural Safeguards as required under the Individuals with Disabilities Education Act 2004 (IDEA). This notice is also provided for students who are entitled to these rights at age 18.** This information provides parents, legal guardians, and surrogate parents of children with disabilities from three years of age through age 21 an overview of their educational rights, sometimes called procedural safeguards. The term "school district" is used throughout this document to describe any public education agency responsible for providing your child's special education program. The term "assessment" is used to mean evaluation.

The IDEA is a federal law that requires school districts to provide a free appropriate public education ("FAPE") to eligible children with disabilities. FAPE means special education and related services provided as described in an individualized education program ("IEP") and under public supervision to your child at no cost to you.

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 your school district or special education local plan area ("SELPA") can answer questions about your child's education, your rights and procedural safeguards. When you have a concern, it is this informal conversation that often solves the problem and helps maintain open communication. Resources are listed at the end of this document to help you better understand the procedural safeguards.

## NOTICE, CONSENT, ASSESSMENT, PARTICIPATION, AND ACCESS

### Prior Written Notice

You have the right to receive written notice from the school district before decisions affecting your child's special education are put into place. The District must inform you about proposed evaluations of your child in a written notice or an assessment plan within fifteen (15) days of your written request for evaluation. The notice must be understandable and in your native language or other mode of communication unless it is clearly not feasible to do so.

This notice must be given to you when the school district proposes or refuses to:

- Identify your child as a child with a disability, or change your child's eligibility from one disability to another;
- Assess your child's special education needs;
- Evaluate or reevaluate your child;
- Place your child in a special education program;
- Change your child's special education placement; or
- Provide a FAPE to your child, or change a component of your child's FAPE;
- Cease provision of special education services if you revoke your consent in writing.

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 is proposed or refused;
- A description of any 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
- Sources for you to obtain assistance in understanding the provision in this notice.

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.

### Right to Receive Notice of Procedural Safeguards

A copy of the Notice of Procedural Safeguards must be given to you:

- Once each school year;
- Upon initial referral for special education evaluation;
- Upon receipt of the first State complaint in a school year;
- Upon receipt of the first due process complaint in a school year

- Upon decision by the school district to change your child's placement because of a violation of a code of student conduct;
- Each time you request a copy;
- Each time you receive an assessment plan.

### **Parent Consent**

You must provide informed, written consent before the school district takes certain actions with regards to your child's special education. 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 as to the types of evaluations to be used with your child. You will have at least fifteen (15) days to from receipt of the proposed assessment plan to arrive at a decision. The assessment may begin immediately upon receipt of the consent and must be completed and an IEP developed within sixty (60) days of your consent.
- **Re-Evaluation:** The school district must have your informed, written consent before re-evaluating your child. The school district may re-evaluate your child without your written consent if the school district has taken reasonable measures to get your consent and you have not responded. To avoid confusion, you should inform the school in writing that you refuse consent to a reevaluation.
- **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 or change your child's placement.

Consent forms must describe the activity for which consent is sought.. You may refuse consent to an evaluation, a reevaluation, or the placement of your child in special education. If you refuse to consent to the initiation of services, the school district must not provide special education and related services. If you consent to the special education and related services for your child but do not consent to all of the components of the IEP, those components of the program to which you have consented must be implemented without delay. If the school district determines that the proposed special education program component to which you do not consent is necessary to provide a FAPE to your child, a due process hearing must be initiated. The school district may seek to evaluate, re-evaluate, or change the placement of your child through an impartial due process hearing, if it believes the action is necessary for your child to benefit from his/her education. You and the school district may agree to first try mediation to resolve your disagreement.

You can revoke consent at any time, except that revocation is not retroactive, meaning it does not negate actions that occurred after consent was given and before consent was revoked.

### **Consent Revocation**

If at any time after the initial provision of special education and related services you revoke consent in writing for continued provision of special education and related services, the school district must provide you with prior written notice before ceasing the provision of special education and related services to your child and shall not seek to provide services through due process procedures.

Upon written receipt of revocation of consent, the school district:

- May not use procedures indicated in subpart E of Part 300.34 *CFR*, including mediation and due process procedures to obtain an order for providing special education and/or related services. 34 *CFR* Sections 300.507 through 300.516.
- Will not be considered to be in violation of providing a FAPE because of failure to provide your child with further special education and/or related services.
- Is not required to convene an IEP team meeting or develop an IEP for further special education and/or related services. 34 *CFR* Sections 300.320 and 300.324
- Is not required to amend the child's records to remove references to the child's receipt of special education and related services because of the revocation of consent. 34 *CFR* Section 300.9 (c)(3).

### **Surrogate Parents**

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. The surrogate shall not be an employee of the school district or any other agency that is involved in the education or care of the child. A surrogate parent may also be appointed if the child is an adjudicated dependent or ward of the court under the state Welfare and Institution Code and the child is referred to special education or already has an IEP.

### **Age of Majority**

When your child reaches the age of 18, all rights under Part B of the IDEA will transfer to your child. The only exception will be if your child is determined to be incompetent under state law.

## **Parent Participation**

You have the right to refer your child for special education services. You have the right to participate in any decision-making meetings, including, but not limited to, IEP meetings, with respect to the identification (eligibility), evaluation, and educational placement of your child, and other matters relating to your child's FAPE.

You also have the right to participate in the development of the IEP and to be informed of the availability of a FAPE including all program options and of all available alternative programs, both public and nonpublic.

You have the right to record electronically the proceedings of the IEP team meeting on an audiotape recorder providing the members of the IEP team have been notified of your intent to record the meeting at least 24 hours prior to the meeting.

## **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 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 educational program for your child.

### **Assessment Plan**

When the school district is seeking to assess your child, you will be given a written, proposed assessment plan. When the assessment is completed, an IEP 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 (the IEP) will be given to you.

### **Independent Educational Evaluation**

If you disagree with the results of the assessment conducted by the school district, you have the right to ask for and obtain an independent educational evaluation (IEE) for your child from a person qualified to conduct the assessment at public expense. You are entitled to only one independent educational evaluation at public expense each time the district conducts an evaluation with which you disagree. The school district must respond to your request for an independent educational evaluation and provide you information upon request about where to obtain an independent educational evaluation. If the school district 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 school district prevails, you still have the right to an independent assessment but not at public expense. The IEP team must consider independent assessments.

School 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 also be allowed to observe your child in the classroom.

If the school district proposes a new school setting for your child and an independent educational assessment is being conducted, the independent assessor must be allowed to first observe the proposed new setting.

## **Access to Educational Records**

You have a right to inspect and review education records regarding the identification, evaluation, and education placement of your child or the provision of a FAPE to your child, and to receive an explanation and interpretation of those records before any meeting about your child's IEP or before any due process hearing. The school district must provide you access to records, without unnecessary delay, and copies if requested, within 5 business days of receipt of an oral or written request. The school district may charge no more than the actual cost of reproducing the records, but if the cost effectively prevents you from exercising this right, then you are entitled to receive a copy or copies at no cost. These rights transfer to a nonconserved pupil who is eighteen years old or attending of 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(s); (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, you 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 school district shall provide you with a list of the types and locations of the pupil records, if requested. The school district shall limit access to those persons authorized to review the pupil record, which includes 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 including outside contractors, consultants and agencies outsourced to provide institutional services under district control, post secondary institutions designated by the pupil, and employees of federal, state and local education agencies. Unauthorized access will be denied unless you have provided written consent to release the records or the records are released pursuant to a subpoena or court order. The school district shall keep a log indicating the time, name and purpose for access of those individuals who are not employed by the school district.

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 school district concurs, the record will be amended and you will be informed. Should the school district refuse to make the amendment requested, the school district shall notify you of the right to 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 the governing board decides after the hearing that a record will not be amended, you shall have the right to provide what you believe is a corrective written statement to be permanently attached to the record. The school district has policies and procedures governing 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 school district. However, the school district is required to maintain certain information in perpetuity.

## **HOW DISPUTES ARE RESOLVED**

### **Due Process Rights**

You have a right to:

- 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 at no cost to the parent.
- Have your child present at the hearing.
- Have the hearing be open or closed to the public.
- Be informed by the other parties of their issue(s) and proposed resolution(s) at least ten calendar days prior to hearing.
- 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 at least five (5) business days prior to the hearing. You have the right to prohibit introduction of any evidence at the hearing not disclosed at least five business days prior to the hearing.
- Have an interpreter provided at the expense of the California Department of Education.
- Request an extension of the hearing timeline.
- Have a mediation conference at any point during the due process hearing.
- Receive notice from the other party at least ten days prior to the hearing that it intends to be represented by an attorney.

### **Mediation**

At any point during the hearing process, you may ask the school district to resolve disputes through mediation or another form of alternative dispute resolution (ADR), which is less adversarial than a due process hearing. ADR and mediation are voluntary methods of resolving a dispute and may not be used to deny or delay your right to a due process hearing. A mediator is a neutral person who is knowledgeable in laws and regulations relating to special education and trained in strategies that help people come to agreement over difficult issues. At a mediation conference, you or the school district may be accompanied and advised by non-attorney representatives and may consult with an attorney prior to or following the conference. If agreement is reached through the mediation process, the parent(s) and the school district will sign a written, legally binding agreement that prevents disclosure of information from the mediation and forecloses its use in later due process hearings and civil proceedings. If agreement cannot be reached at the mediation conference, either you or the school district may request a due process hearing to resolve the disagreement.

### **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; or
- the provision of a FAPE for your child.

