Chapter 7: Procedural Safeguards

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Introduction

The Desert/Mountain Special Education Local Plan Area (SELPA) is committed to the assessment, identification, and placement of students with exceptional needs in the appropriate and least restrictive environment. During these processes, parents are afforded their rights through procedural safeguards that are established in accordance with state and federal guidelines. A due process hearing can be initiated at any time during these processes by the parent, the student, or the school district. Hearings may be filed when a dispute exists between the parent and the education agency providing special education services regarding the student’s eligibility for special education, need for assessment, and/or the student’s program or services. Alternative options and guidelines for filing are outlined in this chapter. If programs and services are not provided according to the Individualized Education Program (IEP), the parent may file a complaint with the California Department of Education (CDE) as outlined in SELPA Policy Chapter 8.

Each participating Local Education Agency (LEA) shall ensure that parents receive written notification of their procedural safeguards including their right to file a complaint for a due process hearing. A copy of the procedural safeguards shall be given to the parents and explained as needed:
(1) Upon initial referral for evaluation;

(2) Upon each notification of an IEP meeting;

(3) Upon reevaluation of the child;

(4) Upon receipt of the first state complaint;

(5) Upon receipt of the first due process complaint;

(6) In accordance with discipline procedures; and

(7) Upon a request by a parent.

The notice of procedural safeguards shall be available in the primary language of parents whose primary language is not English, unless to do so is clearly not feasible. The written notice shall be in language easily understood by the general public and shall include the following:

(1) The right to initiate a referral for a child to determine eligibility for special education services;

(2) The right to obtain an independent educational assessment if there is a disagreement with a district assessment; and

(3) The right to participate in the development of the IEP and to be informed of the availability of free appropriate public education and of all available alternative programs, both public and nonpublic.

Planning for the needs of non-English speaking parents shall include access to interpreters and translators, unless to do so clearly is not feasible.

Section A – Procedural Safeguards

E.C. 56500.1. (a) All procedural safeguards under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 and following) shall be established and maintained by each noneducational and educational agency that provides education, related services, or both, to children who are individuals with exceptional needs. (b) At each individualized education program meeting, the public education agency responsible for convening the meeting shall inform the parent and pupil of the federal and state procedural safeguards that were provided in the notice of parent rights pursuant to Section 56321.

E.C. 56028. (a) “Parent” means any of the following:

(1) A biological or adoptive parent of a child.

(2) A foster parent if the authority of the biological or adoptive parents to make educational decisions on the child’s behalf specifically has been limited by
court order in accordance with Section 300.30(b)(1) or (2) of Title 34 of the Code of Federal Regulations.

(3) A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child, including a responsible adult appointed for the child in accordance with Sections 361 and 726 of the Welfare and Institutions Code.

(4) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child’s welfare.

(5) A surrogate parent who has been appointed pursuant to Section 7579.5 or 7579.6 of the Government Code, and in accordance with Section 300.519 of Title 34 of the Code of Federal Regulations and Section 1439(a)(5) of Title 20 of the United States Code.

(b)(1) Except as provided in paragraph (2), the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under subdivision (a) to act as a parent, shall be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (1) to (4), inclusive, of subdivision (a) to act as the “parent” of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the “parent” for purposes of this part, Article 1 (commencing with Section 48200) of Chapter 2 of Part 27 of Division 4 of Title 2, and Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and Sections 361 and 726 of the Welfare and Institutions Code.

(c) “Parent” does not include the state or any political subdivision of government.

(d) “Parent” does not include a nonpublic, nonsectarian school or agency under contract with a local educational agency for the provision of special education or designated instruction and services for a child.

**Surrogate Parents**

Federal Regulation, 34 C.F.R. 300.519, and California Education Code section 56050, mandate the appointment of a surrogate parent to ensure the educational rights of a child with exceptional needs when 1) no parent can be identified, 2) after reasonable efforts, the parents’ whereabouts cannot be determined, 3) the child is a ward of the court and that court has limited the rights of the parents or guardian to make educational decisions regarding the child, or 4) the child is an unaccompanied homeless youth. The surrogate parent shall act as the child’s parent and have all rights as delineated in federal and state law.
In order to meet the needs of the federal and state mandates, the Desert/Mountain SELPA staff supports the utilization of surrogate parents. LEA staff will provide training for surrogate parent nominees. Individual LEAs will determine which students require the services of a surrogate parent, nominate surrogate parent volunteers, determine if the surrogate parent has sufficient knowledge of the educational process as it relates to special education students, appoint the surrogate parent once they’ve been determined to be knowledgeable, supervise the surrogate parent, and then evaluate the surrogate parent annually.

To be eligible, it must be established that the volunteer has no interest that would conflict with the interest of the student. For example, the volunteer cannot be employed by any LEA or hold a position that might restrict or bias his/her ability to make decisions regarding the student’s educational needs. Once the prospective surrogate has gained sufficient knowledge, the LEA is free to appoint the parent to serve as a surrogate for students with exceptional needs within that LEA. The surrogate parent may represent the student in matters relating to: identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in all other matters relating to the provision of a free appropriate public education for the student.

**Procedural Safeguards**

The law requires that LEAs establish procedures to protect the rights of individuals with exceptional needs and their parents or guardians. These procedures are called procedural safeguards. Parents have a right to receive a written copy of the Desert/Mountain SELPA procedural safeguards (D/M 77). These are provided 1) when the student is being referred for an evaluation for special education services for the first time; 2) when a written notice of an IEP meeting is sent to the parent; 3) before the student is reassessed; 4) when the parent registers a complaint or requests for a mediation or hearing with the California Department of Education (CDE); 5) when a decision is made to remove a child in a change of placement because of a violation of a code of student conduct; or 6) anytime they are requested by the parent. Parents are afforded these rights through the processes of assessment, as well as under the design and implementation of their child’s IEP. Definitions of terms used in the document are included in order to assist parents with further understanding of their rights. The written copy of the parents’ rights is provided in the parent’s native language, unless it is clearly not feasible, or in their primary mode of communication, if their language is not written.

A complete copy of the Desert/Mountain SELPA Notice to Parent/Guardian/Surrogate regarding parental procedural safeguards is available in both English and Spanish (D/M 77 and D/M 77s) and is available through the district special education office, SELPA and SELPA website.

**Age of Majority**

**34 C.F.R. 300.520; E.C. 56041.5.** When an individual with exceptional needs reaches the age of 18, with the exception of an individual who has been determined to be incompetent under state law, the local education agency shall provide any notice of procedural safeguards required by this part to both the individual and the parents of the individual. All other rights accorded to the parent under this part
shall transfer to the individual with exceptional needs. The local education agency shall notify the individual and the parent of the transfer of rights.

IDEA requires that the student and parent be notified of the age of majority rule one year prior to the student reaching 18 years of age. At the time the student turns 18, he/she will be recognized as an adult under California Education Code and will be able to exercise parent rights as provided for by federal and state law. It may be impossible for a student with exceptional needs to exercise his/her rights. If this is the case, the student may designate another person to approve and execute school programs or the student’s parents can apply for a traditional or limited conservatorship.

**Parent Revokes Consent for Special Education and Related Services**

IDEA was amended December 31, 2008, to clarify and strengthen regulations in *Title 34, Code of Federal Regulations, Part 300*, in the areas of parental consent for continued special education and related services. *34 C.F.R. section 300.300(b)(4)* was revised to require that parental revocation of consent for the continued provision of special education and related services must be in writing and that upon revocation of consent, LEAs must provide the parent with prior written notice in accordance with *34 C.F.R. 300.503*.

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

- May discontinue the provision of special education and related services to the child, but must provide prior written notice in accordance with *34 C.F.R. 300.503* before ceasing the provision of these services
- May not use the procedures in subpart E of this part (including the mediation procedures under *34 C.F.R. 300.506* or the due process procedures under *34 C.F.R. 300.507* through *300.516*) in order to obtain agreement or a ruling that the services may be provided to the child
- Will not be considered to be in violation of the requirement to make a free appropriate public education (FAPE) available to the child because of the failure to provide the child with further special education and related services
- Is not required to convene an individualized education program (IEP) team meeting or develop an IEP under *34 C.F.R. 300.320* and *300.324* for the child for further provision of special education and related services

Upon receiving a written notice from the parent that he/she is revoking consent for special education and related services for his/her child, the LEA should provide a written response to the parent no more than 10 days from receipt of the parent’s letter. The LEA letter should contain the following in order to meet requirements for prior written notice:

- Date services will end. (It is recommended that special education and related services cease 10 school days from the date of the LEA’s prior written notice/letter to the parent.)
• List of services (i.e., placement, accommodations, modifications, and/or supports, including behavioral supports) the student will no longer receive;

• Date the student will be placed in general education. (Include a description of the general education placement and services to which the student will have access.);

• Information that the student will no longer be entitled to special education and related services and the protections under the IDEA and related provisions in the California Education Code;

• Information that the student’s disability will not be taken into consideration when determining appropriate disciplinary action, nor will the student be entitled to the IDEA’s discipline protections;

• Information that if the parent later decides to have his/her child receive special education and related services, that he/she should contact the LEA office. Inform the parent that this request will be treated as a request for an initial evaluation;

• A copy of the SELPA Procedural Safeguards/Parent Rights (SELPA Form D/M 77) together with the prior written notice;

• Contact information for the LEA office and the California Department of Education (CDE).

The LEA should document this action by sending the prior written notice to the parent(s) by U.S. Mail and Certified Mail, Return Receipt Requested.

Section B – Prior Written Notice

Prior Written Notice (PWN) is a procedural obligation that acts as a safeguard to ensure that a student’s (and parent’s) right to a free appropriate public education is not violated. PWN provides parents with written notification of decisions affecting the child and gives the parent the opportunity to object to those decisions before action is taken by the LEA. PWN is often referred to as a 300.503 letter pursuant to 34 C.F.R. 300.503, which requires a LEA to provide written notice whenever it proposes or refuses to begin or change the identification, evaluation, or educational placement of a child or the provision of FAPE.

PWN consists of these components:

1. It is a written document, not an oral agreement or refusal. It can be a separate letter or documented in the IEP notes.
2. It is addressed to the parent or guardian.
3. It proposes or refuses a change in a student’s program or assessment.

A PWN has seven required components:

1. A description of the action proposed or refused
2. An explanation of why the action is proposed or refused
3. A description as to the basis of the actions

4. A reference to the procedural protections under IDEA

5. A reference of sources to contact to provide assistance in understanding procedural protection

6. A description of other options considered and why those options were rejected.

7. A description of other relevant factors

[34 C.F.R. 300.503(b) and E.C. 56500.4(b)]

PWN must be provided to the parents of a student whenever the LEA:

- Proposes to initiate or change;
- Refuses to initiate or change: the identification, evaluation, educational placement of the child, or the provision of FAPE to the child.

Additionally under California law, parents have the right to receive PWN in their native language when the LEA initiates or refuses the request to make a change in the student’s identification, assessment, or educational placement in special education.

PWN must be given when:

1. Assessment - The LEA must send PWN regarding its refusal to assess or reassess

2. Request for Independent Educational Evaluation (IEE)

3. Parental request for a change to the IEP

4. Parental unilateral placement of a student outside the public school district and a request for reimbursement

5. A change in placement

6. A change in location resulting in a change of placement

7. A change in a service provider

8. Parent revocation of consent for special education services

9. Student exits from special education
   a) Graduation
   b) No longer eligible

The elements of PWN may be included in the IEP notes during an IEP meeting. A separate PWN document is not required when the PWN elements are included in the IEP.
Section C – Due Process Procedures

Due process, under the IDEA, is the main vehicle for resolving disputes between parents of children with disabilities and LEAs concerning identification, evaluation, placement or provision of FAPE. 34 C.F.R. 300.511

The IDEA requires the opportunity for a parent or a public agency to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement or provision of FAPE. 34 C.F.R. 300.507(a)

A child who has reached the age of majority may file a due process complaint in his/her own name.

Under the 2006 regulation at 34 C.F.R. 300.511(e), a party must file a due process complaint within two years of the date it knew or should have known about the alleged action that forms the basis of the complaint.

The party initiating the due process complaint must provide a copy of the complaint to the other as well as the Office of Administrative Hearings (OAH). The complaint must include the following:

1. The name of the student, the student’s address and the name of the school the student is attending.
2. A description of the nature of the problem of the student relating to such proposed initiation or change concerning the identification, evaluation, or educational placement of the child or the provison of FAPE, including facts relating to such problem.
3. A proposed resolution of the problem to the extent known and available to the party at the time. 34 C.F.R. 300.508(b)

A due process complaint shall be deemed sufficient unless the party receiving it notifies OAH in writing that the complaint does not meet the requirements [34 C.F.R. 300.508(d)(1)]. This must be done within 15 days of receiving the complaint [34 C.F.R. 300.508(d)(1)]. Then, within five days of receipt of the notice of insufficiency, OAH must make a determination as to whether the complaint is sufficient or not.

A party may amend a due process complaint only for two reasons:

1. The other party consents in writing to the amended complaint.
2. OAH grants permission for the amended complaint. Due process timelines start over with an amended complaint.

Timelines for due process begin when the party named in the complaint receives the complaint from the filer.

The response to a due process complaint must be sent within 10 days of receiving it. The response must address the issues raised in the complaint. 34 C.F.R. 300.508(f)
The due process procedure consists of a series of steps ending with a hearing if needed.

➢ **Step 1 - Resolution [34 C.F.R. 300.510] Mandatory**

The LEA is required to convene a meeting with the parents and relevant members of the IEP team who have specific knowledge of the facts identified in the complaint. The resolution session:

a) must take place within 15 days of the LEA receiving notice of the parent’s complaint [34 C.F.R. 300.510(a)(1)]

b) must include a district representative who has decision-making authority [34 C.F.R. 300.510(a)(1)(i)]

c) may not include an attorney for the LEA unless the parent is accompanied by an attorney [34 C.F.R. 300.510(a)(1)(ii)]

d) must provide the parents with the opportunity to discuss the complaint and the facts that form the basis of the complaint, and the LEA must be allowed the opportunity to resolve it [34 C.F.R. 300.510(a)(2)]

If an agreement is reached during resolution, either party has three business days to void the agreement.

There is no requirement for a resolution session when the LEA files a due process complaint.

➢ **Step 2 - Mediation: Voluntary and Confidential**

If the complaint is not settled during the resolution session the next step is voluntary mediation. The mediator is an administrative law judge (ALJ) assigned by OAH who is a neutral participant, skilled in methods of facilitating effective communication between the parties. As a mediator, the ALJ’s role is to manage the communication between the parties in order to settle the issues in the complaint. If the parties reach an agreement during mediation it is binding and the due process complaint is withdrawn. Any agreement reached or discussions during mediation are confidential and protected by law from being revealed in any other place.

➢ **Step 3 - Due Process Hearing**

If resolution and/or mediation are not successful in settling the complaint, the case moves to a due process hearing before a different ALJ. A telephonic pre-hearing conference will be scheduled with both parties before the first date of hearing to discuss the issues, documents, witnesses and length of days for the hearing.

The ALJ from OAH is in charge of the hearing just like a judge is in a trial. The ALJ rules on all procedural matters, rules the hearing, listens to the evidence and arguments of the parties, and writes a final decision which is binding.
The due process timeline is 45 calendar days from the receipt of a complaint for a due process hearing. The timeline does not include time used by a postponement requested by a party or granted by OAH, or time used by the resolution session. Expedited hearings, which involve student discipline, must be held within 20 school days of the receipt of the complaint, and a written decision must be issued within 10 school days after the hearing.

A party has the right to appeal the decision to a state or federal court of competent jurisdiction within 90 days of the receipt of the decision, but no later. The hearing is recorded and either party may request a written verbatim transcript of the hearing.

Stay Put

The stay-put, or status quo, provision of the IDEA acts as an automatic preliminary injunction, preventing a party from unilaterally changing the student’s program or placement pending the resolution of the due process complaint or judicial action concerning the student’s program or placement. Stay-put is only in effect during due process. 34 C.F.R 300.518(a)

Due Process Complaints and General Liability

The LEA has the primary responsibility for ensuring that a free appropriate public education (FAPE) is available to students in the LEA who are eligible for special education. The Desert/Mountain SELPA holds no jurisdiction, financially or decision making, over any due process complaints filed against its member LEAs. If named as an individual in a due process complaint filing, the member LEAs agree to dismiss the Desert/Mountain SELPA as a named participant and shall inform other parties of the SELPA role and responsibilities in terms of liability and due process filings.
The Due Process "Process"

DUE PROCESS WRITTEN FILING

Only for evaluation, identification, educational placement, free and appropriate public education (FAPE)
Must be filed within two years of date of basis for hearing
45 days to resolve
Students stays in current placement

RESOLUTION MEETING WITHIN 15 DAYS

Members of the IEP team, parent, district representative, no attorney unless parent has attorney
Neutral facilitator
Agreement is binding
Three business days to void agreement
If no agreement, then mediation

MEDIATION

Voluntary meeting
State mediator facilitates
Agreement is binding
If no agreement then case goes to due process hearing

DUE PROCESS HEARING

Court may award attorney fees
Law now provides provisions for "frivolous, unreasonable, without foundation, harassment" claims regarding attorney fees
Due Process Hearing Deadlines
Complaint: Filed by student or district 34 C.F.R. 300.508

10 DAYS AFTER RECEIPT OF COMPLAINT
1. Response: District’s response to allegations due. § 300.508
2. PWN: If district has not given parent Prior Written Notice (“PWN”) under § 300.503, it must do so now. § 300.508

15 DAYS AFTER RECEIPT OF COMPLAINT
1. NOI and Motion to Dismiss: Notice of Insufficiency (“NOI”) due. § 300.508
2. Resolution Meeting Offered: Parents, relevant members of IEP team, and decision-maker must attend, but no district attorney unless parent brings attorney. Alternatively, parties may agree in writing to waive resolution meeting and mediate instead. § 300.510
   a) Settlement: If a resolution is reached, parties must draft agreement, but either party may void it within three business days. § 300.501

11 DAYS BEFORE HEARING (i.e., “more than 10 days before the proceeding begins”)
1. Statutory Offer: May be provided to opposing counsel. If parties litigate and parent receives less than the statutory offer, parent is not entitled to attorney’s fees accrued after the statutory offer. 20 USC § 1415 (i)(3)(D) & (F); § 300.518

10 DAYS BEFORE HEARING
1. Hearing Brief: Optional per pre-hearing order but no more than 10 pages.

5 BUSINESS DAYS BEFORE THE HEARING
1. NPW and List of Doc Evidence Notice of Potential Witnesses (“NPW”) and List of Documentary Evidence must be served on opposing party. § 300.512

5 CALENDAR DAYS BEFORE HEARING
1. Amended Complaint: A party may amend if: (1) the other party consents in writing or (2) the hearing officer grants permission to amend but no less than five days before the hearing. § 300.508(d)

90 DAYS FROM DATE OF DECISION
1. An aggrieved party may appeal the decision to state or federal court. § 300.515

1All further statutory references are to 34 Code of Federal Regulations unless otherwise noted.
NOTICE OF PROCEDURAL SAFEGUARDS
The Individuals with Disabilities Education Act (IDEA) Part B

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. This information is your Notice of Procedural Safeguards as required under the Individuals with Disabilities Education Act (IDEA). This notice is also provided for students who are entitled to these rights at age 18. (NOTE: The term LEA (local education agency) 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 or testing.)

Introduction:

The IDEA is a Federal law that requires LEAs to provide a free appropriate public education (FAPE) to eligible children with disabilities. "A free appropriate public education" 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 LEA 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. You may also want to contact one of the California parent organizations (Family Empowerment Centers and Parent Training Institutes), which were developed to increase collaboration between parents and educators to improve the educational system. Contact information for these organizations is found on the California Department of Education Parent Organizations web page (http://www.cde.ca.gov/sp/se/aq/caprntorg.asp).

Prior Written Notice:

The LEA must inform you about proposed evaluations of your child in a written notice or an assessment plan within 15 days of your written request for evaluation that is 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 when the LEA proposes or refuses to initiate a change in the identification, assessment, or educational placement of your child with special needs or the provision of a free appropriate public education. If you refuse consent for the initial or continued placement and receipt of special education and related services for your child, the LEA is not required to develop an IEP and is not
considered to be in violation of the requirement to make available a free and appropriate public education. You may only revoke consent in writing and the LEA must then provide you written notice that services for your child will be discontinued. The LEA must also provide reasonable written prior notice that your child will be aging out (reaching age 22) or graduating from high school with a regular high school diploma because graduation from high school constitutes a change in placement.

**The Notice of Procedural Safeguards must be given to you (Education Code section 56301(d)(2)):**

- Upon initial referral for special education
- Once each year
- When you request them
- Your request for an evaluation
- The first occurrence of mediation or a due process hearing
- Decision made to make a removal that constitutes a change of placement

**Parent Participation:**

You have the right to refer your child for special education services. You must be given opportunities to participate in any decision-making meeting regarding your child's special education program. You have the right to participate in IEP meetings about the identification (eligibility), assessment, and educational placement of your child and other matters relating to your child's free appropriate public education. You also have the right to participate in the development of the IEP and to be informed of the availability of free appropriate public education 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 on an audiotape recorder. The law requires that you notify the LEA at least 24 hours prior to meeting if you intend to record the proceedings. If the LEA initiates the notice of intent to audio record a meeting and you object or refuse to attend the meeting because it will be audio recorded, the meeting shall not be audio recorded.

**Surrogate Parents:**

LEAs 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 LEA cannot discover the whereabouts of a parent. A surrogate parent may be appointed if the child is an unaccompanied homeless youth, 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 (34 CFR 300.519; EC 56050; GC 7579.5 and 7579.6).
Parent Consent:

You must give informed, written consent before your child's first special education assessment can proceed and before the LEA can provide your child's special education program. You have 15 days from the receipt of the proposed assessment plan to arrive at a decision. The assessment may begin immediately upon receipt of your consent and must be completed and an IEP developed within 60 days of your consent. In the case of reevaluations, the LEA must document reasonable attempts to obtain parental consent. If the parents do not respond to these attempts, the LEA may proceed with the reevaluation without consent (34 CFR 300.300; EC 56506(e) and (d), and 56346). If you do not provide consent for an initial assessment or fail to respond to a request to provide consent, the LEA may pursue the initial assessment by utilizing due process procedures. If you refuse to consent to the initiation of services, the LEA will not provide special education and related services and will not seek to provide services through due process. If you consent in writing to the special education and related services for your child but do not consent to all of the components of the IEP, those components of the program to which you have consented must be implemented without delay. If the LEA determines that the proposed special education program component to which you do not consent is necessary to provide a free appropriate public education to your child, a due process hearing must be initiated. If a due process hearing is held, the hearing decision shall be final and binding.

Consent to Bill California Medi-Cal:

Release/Exchange Information for Health-Related Special Education and Related Services. LEAs may submit claims to California Medi-Cal for covered services provided to Medi-Cal eligible children enrolled in special education programs. The Medi-Cal program is a way for LEAs and/or County Offices of Education (COEs) to receive Federal funds to help pay for health-related special education and related services.

Your consent is voluntary and can be revoked at any time. If you do revoke consent, the revocation is not retroactive. Consent will not result in denial or limitation of community-based services provided outside the school. If you refuse to consent for the LEA and/or COE to access California Medi-Cal to pay for health-related special education and/or related services, the LEA and/or COE is still responsible to ensure that all required special education and related services are provided at no cost to you. As a parent, you need to know that:

- You may refuse to sign consent.
- Information about your family and child is strictly confidential.
- Your rights are protected under Title 34 of the Code of Federal Regulations 300.154; Family Education Rights Privacy Act of 1974 (FERPA); Title 20 of the United States Code Section 1232(g); and Title 34 of the Code of Federal Regulations Section 99.
• Your consent is good for one year unless you withdraw your consent before that
time. Your consent can be renewed annually at the IEP team meeting.

Furthermore, as a public agency, the LEA may access your public benefits or insurance
to pay for related services required under Part B of the IDEA for a free appropriate public
education. For related services required to provide FAPE to an eligible student, the LEA:

• May not require you to sign up for or enroll in public benefits or insurance programs
(Medi-Cal) in order for your child to receive FAPE under Part B of the IDEA (34
CFR 300.154(d)(2)(i)).

• May not require you to incur an out-of-pocket expense such as the payment of a
deductible or co-pay amount incurred in filing a claim for services and
reimbursement through Medi-Cal (34 CFR 300.154(d)(2)(ii)).

• May not use your child's benefits under Medi-Cal if that use would:
  ❖ Decrease available lifetime coverage or any other insured benefit;
  ❖ Result in the family paying for services that would otherwise be covered by the
    public benefits or insurance program (Medi-Cal) and are required for your child
    outside of the time your child is in school;
  ❖ Increase premiums or lead to the discontinuation of public benefits or insurance
    (Medi-Cal); and/or
    ❖ Risk loss of eligibility for home and community-based waivers, based on
      aggregate health related expenditures.

**Parental Revocation of Consent after Consent to
Initial Provision of Services:**

You may only revoke your consent in writing and this action cannot be retroactive. Once
you revoke consent to the initial provision of services, the LEA will provide prior written
notice before ceasing the services. If in the future you seek re-enrollment in special
education for your child, the assessment will be treated as an initial evaluation. The LEA
may not use the procedures in **subpart E of Part 300, 34 CFR** (including the mediation
procedures under 34 CFR 300.506 or the due process procedures under 34 CFR 300.507
*through 300.516*) to obtain agreement or a ruling that the services may be provided to
your child. The LEA will not be in violation of the requirement to make a free appropriate
public education available to your child because of the failure to provide the child with
further special education and related services. The LEA is not required to convene an IEP
team meeting or develop an IEP under 34 CFR 300.320 and 300.324 for your child for
further provision of special education and related services. In accordance with 34 CFR
300.9(c)(3), if you revoke consent in writing for your child’s receipt of special education
services after your child is initially provided special education and related services, the
LEA is not required to amend your child’s education records to remove any references to
your child’s receipt of special education and related services because of the revocation
of consent.
Child Participation/Right:

As part of the participation of an individual with exceptional needs in the development of an individualized education program, as required by Federal law, your child has the right to meet with his/her IEP team at any time, to provide confidential input to any representative of his/her IEP team (EC 56341.5(d)).

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.

Nondiscriminatory Evaluations:

You have the right to have your child assessed in all areas of suspected disability. Evaluations are conducted prior to an initial placement, triennially, but not more frequently than once per year unless the parent and the school agree otherwise. Materials and procedures used for evaluations and placement must not be racially, culturally, or sexually discriminatory. Tests must be administered in your child's native language or mode of communication and in the form, most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so. No single procedure can be the sole criteria for determining an appropriate educational program for your child.

Access to Educational Records and Other Rights Related to Records:

You have a right to inspect and review all of your child's education records without unnecessary delay before any meeting about your child's IEP or before any due process hearing. The LEA must provide you access to records and copies if requested, within five days after the request has been made orally or in writing (Education Code sections 49060, 56043(n), 56501(b)(3), and 56504).

Independent Educational Evaluation:

If you disagree with the results of the evaluation conducted by the LEA, you have the right to ask for and obtain an independent educational evaluation (IEE) for your child from a person qualified to conduct the evaluation at public expense. You are entitled to only one independent educational evaluation at public expense each time the LEA conducts an evaluation with which you disagree. The LEA 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 LEA disagrees that an
independent evaluation is necessary, the LEA must request a due process hearing to prove that its evaluation was appropriate. If the LEA prevails, you still have the right to an independent evaluation but not at public expense. The IEP team must consider the results and recommendations of independent evaluations. LEA evaluation procedures allow in-class observation of students. If the LEA observes your child in his or her classroom during an evaluation or if the LEA would have been allowed to observe your child, an individual conducting an independent educational evaluation must also be allowed to observe your child in the classroom. If the LEA proposes a new school setting for your child and an independent educational evaluation is being conducted, the independent evaluator must be allowed to first observe the proposed new setting (Title 34 of the Code of Federal Regulations section 300.502; Education Code section 56329(b) and (c)).

Local Mediation/Alternative Dispute Resolution:

LEAs have the opportunity to resolve parent concerns and complaints at the local level through individual Uniform Complaint Process/Procedures which are described in the LEA’s board policy or charter petition. Alternate Dispute Resolution (ADR) is another voluntary method of resolving a dispute at the local level and is requested by the parent or LEA. It provides the opportunity for both the parent and LEA to meet at a convenient location and time to resolve concerns. It is facilitated by a trained ADR Coordinator. A request to schedule an ADR session is made to the Desert/Mountain Special Education Local Plan Area (SELPA), office of the Program Manager for Due Process. A request for Mediation Only is made by the parent or LEA to the Office of Administrative Hearings (OAH) before a due process complaint is filed. Mediation Only is a voluntary process and all discussion during a mediation session is confidential. Attorneys or advocates are not in attendance during a Mediation Only session. An Administrative Law Judge (ALJ) from OAH is assigned to facilitate this confidential process. The Uniform Complaint Process, ADR, and Mediation Only are voluntary methods of resolving a dispute and may not delay a parent’s right to a due process hearing. All three methods are less adversarial and allow all parties to resolve the concerns in a timely manner. The mandatory early resolution session (ERS) and mediation are the first two steps in the three-step process initiated when a parent files a due process complaint with OAH. Attorneys and advocates are invited to attend both the ERS and Mediation session when a due process complaint has been filed.

Due Process Hearing:

You have the right to request an impartial due process hearing regarding the identification, evaluation, educational placement, or the provision of a free appropriate public education for your child. The request for a due process hearing must be filed within two years from the date you knew, or had reason to know of the facts that are the basis for the hearing request (Title 34 of the Code of Federal Regulations section 300.507; Education Code sections 56501 and 56505(l)). There is an exception to this timeline if you were prevented from requesting a hearing earlier because the LEA misrepresented that it had resolved the problem or withheld information that should have been provided.
to you. Requests for a hearing are to be sent to the Special Education Headquarters, Office of Administrative Hearings, 2349 Gateway Drive, Suite 200, Sacramento, CA 95833-4231. Requests must include the student’s name; residential address; the name of the student’s school; in the case of a homeless child, available contact information and the name of the school the child is attending; and a description of the problem, facts about the problem, and a proposed resolution. A due process hearing may not take place until the party or the attorney representing the party files a notice that meets these requirements.

**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 electronic verbatim record of the hearing, including findings of fact and decisions;
- Have your child present at the hearing;
- Have the hearing open or closed to the public;
- Be informed by the other parties of the issues and their proposed resolution of the issues at least 10 calendar days prior to the hearing;
- Within five business days before a 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;
- Have an interpreter provided;
- Request an extension of the hearing timeline;
- Have a mediation conference at any point during the hearing; and
- Receive notice from the other party at least 10 days prior to the hearing that it intends to be represented by an attorney.

**Filing a Written Due Process Complaint:**

Whenever a request for a due process hearing has been filed, you and the LEA have the opportunity for an impartial due process hearing which is conducted by officials of the
State. Within 15 days of receiving the notice of the complaint and prior to the opportunity for an impartial due process hearing, the LEA shall convene a Resolution Meeting with you and the other relevant members of the IEP team who have specific knowledge of the facts contained in the complaint. This meeting includes a representative of the LEA who has decision-making authority on behalf of the LEA. The LEA will not have an attorney present at this meeting unless an attorney accompanies you. During the Resolution Meeting, you discuss the complaint and the LEA is provided the opportunity to resolve the complaint. You and the LEA can agree to waive the Resolution Meeting or agree to the mediation process. If a resolution is reached at the meeting, the parties will execute a written agreement that is signed by both you and the LEA. Either party may void the agreement within three business days. If the complaint is not resolved within 30 days of receiving the complaint, the due process hearing may take place and all applicable timelines will commence. Mediation is a voluntary method of resolving a dispute and may not be used to delay your right to a due process hearing. Parents and the LEA 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.

The child involved in any administrative or judicial proceeding must remain in the current educational placement pending the decision of the hearing officer or 45 school days whichever comes first, unless you and the LEA agree on another arrangement. If you are applying for initial admission to a public school, your child may be placed in a public school program with parental consent until all proceedings are completed. 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. Federal and State laws require that either party filing for a due process hearing must provide a copy of the written request to the other party.

**Attorney Fees:**

In any action or proceeding regarding a due process hearing, a court, in its discretion, may award reasonable attorney’s fees as part of the costs to you as parent of a child with a disability if you are the prevailing party in the hearing. Reasonable attorney fees may also be awarded following the conclusion of the administrative hearing with the agreement of the parties. The court may also award attorney fees to the State or LEA if the attorney of the parent files a claim or subsequent cause of action that is frivolous, unreasonable, and without foundation, or is presented for any improper use such as harassment, delay or needlessly increasing the cost of litigation.

Fees may be reduced if any of the following conditions prevail: (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 reasonably comparable skill, reputation, and experience; (3) the time spent and legal services provided were excessive; or (4) your attorney did not provide to the LEA the appropriate information in the due process complaint. Attorney fees will not be reduced, however, if the court finds that the State or the LEA unreasonably delayed the final resolution of the action or proceeding, or there was a violation of this section of law.
Attorney 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 LEA/public agency at least 10 days before the hearing begins and the hearing decision is not more favorable than the settlement offer.

**Complaint Regarding Violation of a State or Federal Law:**

You may file a compliance complaint with the California Department of Education (CDE) if you believe the LEA has, or is, violating a State or Federal law. You may send a written complaint to the California Department of Education, Special Education Division, Procedural Safeguards Referral Service, 1430 N Street, Suite 2401, Sacramento, CA 95814. This is NOT the same thing as filing for due process. Your written complaint must specify at least one alleged violation of Federal and State special education laws, and the violation must have occurred not more than one year prior to the date the complaint is received by the California Department of Education. Within 60 days after a complaint is filed, the California Department of Education will carry out an independent investigation, give the complainant an opportunity to provide additional information, and make a determination as to whether the LEA has violated laws or regulations and issue a written decision that addresses the allegations. Complaints not involving IDEA 2004 generally fall under the Uniform Complaint Procedures in each LEA. To obtain more information about dispute resolution, including how to file a complaint, contact the California Department of Education, Special Education Division, Procedural Safeguards Referral Services, by telephone at (800) 926-0648; by fax at (916) 327-3704; or by visiting the California Department of Education, Special Education website (http://www.cde.ca.gov/sp/se).

**School Discipline and Placement Procedures for Students with Disabilities:**

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 10 consecutive days in such a placement, or more than 10 cumulative days in certain circumstances, an IEP meeting must be held to determine whether the child’s misconduct was a manifestation of his/her disability. This IEP meeting must take place immediately, if possible, or within 10 days of the LEA’s decision to take this type of disciplinary action.

As a parent, you will be invited to participate as a member of this IEP team to help determine if your child’s behavior was a manifestation of their disability. If the team determines that this is the case, the LEA 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 IEP team concludes that the misconduct was not a
manifestation of your child's disability, the LEA might take disciplinary action, such as expulsion, in the same manner as it would for a child without disabilities. If you disagree with the IEP team's decision, you may request an expedited due process hearing, which must occur within 20 school days of the date on which you requested the hearing (Title 34 of the Code of Federal Regulations section 300.531(c)) from the Office of Administrative Hearings, Special Education Unit.

Alternative Interim Educational Settings:

Federal and State laws allow the use of alternative educational placements for up to 45 school days if a child with a disability carries a weapon, knowingly possesses or uses illegal drugs, inflicts serious bodily injury or sells or solicits the sale of a controlled substance while at school or at a school function. An alternative educational setting must be determined by an IEP team that allows the child to: continue to participate in the general curriculum, although in another setting; and ensure continuation of services and modifications detailed in the IEP.

Unilateral Placement by Parents in Private School:

Children who are enrolled in private schools may participate in publicly funded special education programs. The LEA must consult with private schools and with parents to determine the services that will be offered to private school students. Although LEAs have a clear responsibility to offer FAPE to children with disabilities, those children, when placed by their parent in private schools, do not have the right to receive some or all of the special education and related services necessary to provide FAPE. If you enroll your child in a private school, you may be entitled to reimbursement for the cost of a private school from the LEA, including special education and related services, if the court or hearing officer determines that the LEA has not made a free and appropriate public education available to your child. You must first attempt to obtain consent of the LEA, and you must also establish that the LEA does not have an appropriate program for your child.

When reimbursement may be reduced, or denied. The court or hearing officer may reduce or deny reimbursement for private school costs if you did not make your child available for an assessment upon notice from the LEA before removing your child from public school. If you have not complied with these requirements, a court may find that you acted unreasonably in unilaterally removing your child from the public school and placing your child in a private school. Your request for reimbursement may also be reduced or denied if you did not inform the LEA that you were rejecting the special education placement proposed by the LEA and/or you failed to give the LEA notice of your concerns and your intent to enroll your child at a private school at public expense. Your notice to the LEA must be given either:

- At the most recent IEP meeting you attended before removing your child from the public school; or
• In writing, to the LEA at least 10 business days (including holidays) before removing your child from the public school.

A court or hearing officer may not reduce or deny reimbursement to you if you failed to give this notice for any of the following reasons: illiteracy and inability to write in English; 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.

**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 LEA must be given the opportunity to observe the proposed placement and your child in the proposed placement. The LEA may not observe or assess any other child at the nonpublic school without permission from the other child’s parent or guardian.

**State Special Schools:**

The State Special Schools provide services to students who are deaf, hard of hearing, blind, visually impaired, or deaf-blind at each of its three facilities: the California Schools for the Deaf in Fremont and Riverside and at the California School for the Blind in Fremont. Residential and day school programs are offered to students from infancy to age 21 at both State Schools for the Deaf and from ages five through 21 at the California School for the Blind. The State Special Schools also offer assessment services and technical assistance. Referrals for State Special Schools are part of the IEP process and parents must be referred by their LEA when considering such placements. For more information about the State Special Schools, please visit the [California Department of Education State Special Schools](http://www.cde.ca.gov/sp/ss/) website (http://www.cde.ca.gov/sp/ss/) or ask for more information from the members of your child’s IEP team.
**APPENDIX B: Prior Written Notice Template and Sample Letters**

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**PRIORITY WRITTEN NOTICE**

Provided to Parent Prior to LEA Initiation or Refusal Regarding Change of Identification, Evaluation, Educational Placement, or Provisions of a Free Appropriate Public Education

<table>
<thead>
<tr>
<th>Student Name:</th>
<th>Date of Birth:</th>
<th>Date:</th>
</tr>
</thead>
</table>

This Notice is the inform the parent(s) of the above-named student regarding the Local Education Agency’s (LEA):

**PROPOSAL TO INITIATE OR CHANGE THE:**

- Identification
- Evaluation
- Educational Placement
- Provision of a Free Appropriate Public Education

This notice includes a description of the proposed action, an explanation of why the LEA proposed to take this action, a description of any other options considered and the reasons why those options were rejected, and other factors that are relevant in this proposal. Your written permission must be given before we assume your child to determine his/her eligibility. You have the right to be familiar with the assessment procedures and types of tests that may be given to your child. After the assessment is completed, you will be invited in writing of a meeting to discuss the results of this evaluation and to make recommendations discussed at this meeting without your written consent. If your child is found eligible for special education services, a full range of program options will be discussed.

**REFUSAL OF YOUR REQUEST TO INITIATE OR CHANGE THE:**

- Identification
- Evaluation
- Educational Placement
- Provision of a Free Appropriate Public Education

This notice includes a description of actions being refused, an explanation of why the LEA refused to take this action, a description of any other options that were considered and the reasons why those options were rejected, and other factors that are relevant to this refusal.

- Description of the proposed or refused action:
- Reasons for the proposed or refused action:
- Description of evaluation procedures, tests, records, or reports used in deciding to propose or refuse this action:
- Description of other options considered and reasons for rejecting them:
- Other factors relevant to the proposal or refusal:

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**YOU HAVE PROTECTION UNDER STATE AND FEDERAL PROCEDURAL SAFEGUARD PROVISIONS. PLEASE REFER TO THE ENCLOSED NOTICE OF PROCEDURAL SAFEGUARDS FOR AN EXPLANATION OF THESE RIGHTS.**

For further information about your rights or the proposed action and/or referral, contact:

LEA Contact Name: ___________________________ Position Title: ___________________________
Contact Phone: ________________ E-mail Address: ___________________________

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FWN Template Rev. 1/16
SAMPLE PWN 1 - ASSESSMENT: PROPOSAL TO INITIATE/CHANGE IDENTIFICATION

Date

Parent/Guardian
Address Line 1
Address Line 2

Subject: Assessment/Proposal to Initiate or Change the Identification - Jane Doe (DOB: 01/00/00)

Dear Parent/Guardian,

Pursuant to 34 Code of Federal Regulations (C.F.R.) Section 300.503, the District is required to provide written notice to you whenever it proposes to begin or change the identification, evaluation, or educational placement of your child or the provision of FAPE to your child.

The District is proposing to conduct an evaluation to determine eligibility for special education for your child, Jane Doe, Date of Birth: 01/00/00. The evaluation process starts with a review of information that the District already knows about Jane. Following this review, the evaluation team may need to collect additional information in order to determine eligibility for special education and related services. Your consent will be required before the District can conduct additional assessments or place Jane in a special education program.

As you know, the District Teacher Assistance Team (TAT) has been working with you and Jane’s teacher to increase her reading ability. The District considered strategies used during the TAT intervention process, which included such things as specific practice on sound-letter relationships, phonemic awareness, and part-to-whole decoding. However, in spite of our joint efforts, Jane has not been making adequate progress in acquiring basic reading skills. The proposed special education evaluation for Jane will begin with a review of what the District knows about her current reading status, learning modes, and general aptitude. We have considered waiting until April in order to give Jane more time to catch on; however, we feel that waiting would likely place her further behind.

Your written permission must be given before the District can assess your child to determine eligibility. You have the right to be familiar with the assessment procedures and types of tests that may be given to your child. After the assessment is completed, you will be notified in writing of a meeting to discuss the results of the evaluation and to make recommendations. Your input is vital to this discussion and you will be included in the decisions regarding any special education eligibility. If your child is found eligible for special education services, a full range of program options will be discussed.
PRIOR WRITTEN NOTICE
Re: Assessment/Proposal to Initiate or Change Identification – Jane Doe
Page 2

If you disagree with the District’s proposal to initiate or change the identification of your child, or if you have other questions about your rights under the IDEA, please consult the enclosed IDEA procedural safeguards. You may also contact the following agencies for assistance:

California Department of Education
1430 N. Street, Suite 2401
Sacramento, CA 95814-5901

and/or

Desert/Mountain Special Education Local Plan Area (SELPA)
17800 Highway 18
Apple Valley, CA 92307

We look forward to working with you and Jane.

Sincerely,

Name
Title/Position

ENCLOSURES: Notice of Parental Rights and Procedural Safeguards, Transition Summary of Performance

j:/manuals/p&pmanual/chapt7-pwn1-assess
Sample PWN 2 – Independent Educational Evaluation (IEE)

Date

Parent/Guardian
Address Line 1
Address Line 2

Subject: District Independent Educational Evaluation (IEE) dated xx/xx/xxxx – Johnny Doe (DOB 01/11/00)

Dear Parent/Guardian,

This letter is in response to your letter that I received on xx/xx/xxxx, in which you stated you disagreed with the (insert district’s name) assessment on xx/xx/xxxx of an initial evaluation of a Multidisciplinary Psycho-educational Evaluation on your child, Johnny Doe, date of birth: 01/11/00. Please consider this, the District’s response to your request under 34 Code of Federal Regulations (C.F.R.) Sections 300.502 and California Education Code Section 56329(b).

Under California Education Code Section 56329(c), the District will be exercising its right to a due process hearing pursuant to Chapter 5 (commencing with Section 56500) to show that its assessment is appropriate.

The District is refusing your request for an Independent Educational Evaluation (IEE) based on the fact that the District evaluation was comprehensive and appropriate.

The assessment included all the components of a comprehensive evaluation required by state regulations, including information provided by the parent or primary caregiver (if the student is younger than 18 years of age). Information regarding Johnny’s current classroom performance (observations and assessments), and the observations of his/her teachers and other providers of instructional or educational services were also included. Johnny's primary language, racial, and ethnic background were considered prior to selection and interpretation of evaluation procedures and measures. All assessment procedures measure a limited sample of a person’s total repertoire. The selected measures should only be interpreted within the limits of their measured validity. Summary of assessment(s) including results of the child’s progress in the general education curriculum and instructional implications were reviewed to ensure progress.

Additionally, educational history was based on a review of Johnny’s records and parent information. Developmental information was provided through a social and developmental form that was completed by Parent/Guardian. Tests/inventories completed:

PRIOR WRITTEN NOTICE
Re: Independent Educational Evaluation (IEE)
Page 2

6. Connors’ 3-Parent Short
7. Connors’ 3-Teachers Short

The District psychologist who assessed your child has 13 years of experience and is qualified to complete psycho-educational evaluations per California Department of Education. Your statement that your child is failing to make expected progress toward the initial IEP goals is premature as the goals are expected to be met by the next annual IEP, which does not take place until (Date of Next Annual IEP) and the fact that on (Date IEP Meeting) an IEP was held to adjust his academic placement based on a review of his progress at the time.

You have protections under state and federal procedural safeguard provisions. Please refer to the enclosed Notice of Procedural Safeguards for an explanation of these rights.

For further information about your rights or the proposed action and/or referral, contact (Contact Person Name) at (760) 000-0000, 12345 School Lane, Anytown, CA 90000.

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

J:/MANUALS/P&PMANUAL/CHAPT7-PWN2-IEE
SAMPLE PWN 3 – PARENT REQUEST TO INITIATE OR CHANGE IEP

Date
Parent/Guardian
Address Line 1
Address Line 2

Subject: Parent Request to Initiate or Change Identification – Johnny Doe (DOB 01/11/00)

Dear Parent/Guardian,

The District is in receipt of your letter dated February 1, 2008, requesting that a one-to-one-aide be assigned to your child Johnny Doe, date of birth: 01/00/00. Please consider this the District’s response to your request under 34 Code of Federal Regulations (C.F.R.) Section 300.300 and 300.503.

The District is denying your request to assign a one-to-one aide to Johnny at this time. Based on the information below, we believe that Johnny does not require a one-to-one aide in order to benefit from his educational program.

In reaching this decision, the District considered the following information: Special Circumstances Instructional Assistance (SCIA) Evaluation conducted in November of 2007, a SCIA Evaluation Report dated 12/2/07, Johnny’s first semester report card and progress report, his IEP dated 10/31/07, as well as his triennial psycho-educational report dated 5/31/07. Also, during the 12/14/07 IEP meeting, the team considered assigning a classroom aide during Johnny’s math and science courses, which are the only courses he is having difficulty. The team discussed the possible reasons for Johnny’s difficulty in these classes: failure to turn in homework and missing quizzes due to asthma attacks and leaving school early to visit his grandparents. The team added a goal for homework completion and an accommodation to permit Johnny to take quizzes he misses due to asthma attacks. Therefore, the team determined that the new goal and accommodation would address his difficulties in math and science, whereas adding an aide to these classes would likely cause Johnny to revert to his negative behaviors that he displayed last year and increase his dependence on an adult to socialize and communicate appropriately with his peers.

The District also considered that when an aide was assigned to Johnny last school year, his negative behaviors increased (inappropriately touching classmates and yelling out answers during classroom instruction). Johnny was overly dependent upon his aide for initiating games and conversations with his peers and resisted volunteering in class. Since the beginning of the school year, when he started (School Name) without an aide, Johnny initiates games and conversations with only one verbal prompt by the recess aide and appropriately raises his hand during class to respond to questions with the teacher and classroom aide using only 2 visual prompts.

If you disagree with the District’s proposal to initiate or change the identification of your child, or if you have other questions about your rights under the IDEA, please consult the enclosed IDEA procedural safeguards. You may also contact the following agencies for assistance:
PRIOR WRITTEN NOTICE
Re: Parent Request to Initiate or Change IEP
Page 2

California Department of Education
1430 N. Street, Suite 2401
Sacramento, CA 95814-5901

and/or

Desert/Mountain Special Education Local Plan Area (SELPA)
17800 Highway 18
Apple Valley, CA 92307

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

J:\MANUALS/P&PMANUAL/CHAPT7-PWN3-PARENT REQUEST
As of 03/15/2013

SAMPLE PWN 4 – UNILATERAL PLACEMENT & REIMBURSEMENT

Date

Parent/Guardian
Address Line 1
Address Line 2

Subject: Unilateral Placement and Reimbursement – Johnny Doe (DOB 01/11/00)

Dear Parent/Guardian,

This letter is in response to your request for reimbursement of privately obtained clinic-based speech and language services in the amount of $2,800, and removal of your child, Johnny Doe, date of birth: 01/00/00, from the school district program to place him in the CARD Program for 40 hours per week. Please consider this the District’s response to your request under 34 Code of Federal Regulations (C.F.R.) Section 300.500 and 300.503.

The District is denying your request because it does not believe changing Johnny’s program will help him receive a free appropriate public education (FAPE). The placement and services offered by the District at Johnny’s IEP meeting on February 5, 2007, meet his educational needs in the least restrictive environment. In order for Johnny to accomplish his goals and objectives, generalize his skills he learns in the half-day kindergarten special day class (SDC), and to better prepare him for first grade, Johnny requires both a half-day kindergarten SDC and a half-day general education kindergarten class, rather than a one-to-one in-home program like the one provided by CARD.

The District considered the Regional Center assessment report dated June of 2006, the private speech therapist’s progress reports dated from October 2007 to the present, the District assessment reports in the areas of speech and language, academics and psycho-education dated January 15, 2007, the report of the private speech and language therapist dated April of 2007, as well as the December 2007 observations of Johnny by the school psychologist and speech therapist while he received services by his private speech therapist.

The District considered reimbursement for the privately obtained speech therapy services for Johnny, but decided against doing so because the private speech therapist did not address any of the goals in his IEP and Johnny made progress towards his speech and pragmatic goals worked on by the District school speech therapist before Johnny started receiving the private speech therapy services during the summer of 2007.

Because Johnny is making substantial progress toward all of his goals and objectives and an in-home program would not help him towards generalizing the skills he learns during the school day or help him sustain his friendships at school, all of which will better prepare him for first grade, the District does not believe changing Johnny’s program will help him receive a free appropriate public education in the least restrictive environment.
You have protections under state and federal procedural safeguard provisions. Please refer to the enclosed Notice of Procedural Safeguards for an explanation of these rights.

If you disagree with the District’s proposal to initiate or change the identification of your child, or if you have other questions about your rights under the IDEA, please consult the enclosed IDEA procedural safeguards. You may also contact the following agencies for assistance:

California Department of Education
1430 N. Street, Suite 2401
Sacramento, CA 95814-5901

and/or

Desert/Mountain Special Education Local Plan Area (SELPA)
17800 Highway 18
Apple Valley, CA 92307

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

J:/MANUALS/P&PMANUAL/CHAPT7-PWN4-UNILATERALREQ1
SAMPLE PWN 5 – CHANGE IN LEAST RESTRICTIVE ENVIRONMENT/PLACEMENT

Date

Parent/Guardian
Address Line 1
Address Line 2

Subject: Change in Least Restrictive Environment/Placement – Jane Doe (DOB 01/00/00)

Dear Parent/Guardian,

The District is proposing that your child, Jane Doe, date of birth: 01/00/00, be considered for placement in the Learning Disability (LD) self-contained program at School/Program Name for the 2012-2013 school year. Pursuant to Title 34 Code of Federal Regulations (C.F.R.) Section 300.503, the District is required to provide written notice to you whenever it proposes to begin or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education (FAPE) to your child.

The LD self-contained classroom is a smaller class with a lower teacher-student ratio that provides a more structured academic routine. The class, located at Location of School/Program, is closest to where your child currently attends school and will continue to develop and expand your child’s educational opportunities.

Based upon this year’s progress of IEP goals, a more intense academic program is recommended for Jane. The self-contained program will provide a smaller classroom setting and a paraprofessional that assists the teacher in working with students individually or in small groups. When special education placement requires a student to change to a different school, we honor least restrictive environment by placing in the school closest to your home.

Moving your child out of special education is not recommended at this time because the District is able to meet Jane’s unique needs in our special education program. We feel that the extra service provided in the self-contained setting will allow Jane to progress at a faster rate in closing her deficits in reading and math.

You have protections under state and federal procedural safeguard provisions. Please refer to the enclosed Notice of Procedural Safeguards for an explanation of these rights.

If you disagree with the District’s proposal to initiate or change the identification of your child, or if you have other questions about your rights under the IDEA, please consult the enclosed IDEA procedural safeguards. You may also contact the following agencies for assistance:
PRIOR WRITTEN NOTICE
Re: Change in Least Restrictive Environment/Placement
Page 2

California Department of Education
1430 N. Street, Suite 2401
Sacramento, CA 95814-5901

and/or

Desert/Mountain Special Education Local Plan Area (SELPA)
17800 Highway 18
Apple Valley, CA 92307

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

J:/MANUALS/P&PMANUAL/CHAPT7-PWN5-LRE
Date

Parent/Guardian
Address Line 1
Address Line 2

Subject: Change of Placement – Johnny Smith (DOB 01/00/00)

Dear Parent/Guardian,

This letter is in response to your request that the District fund and place your child, Johnny Smith, date of birth: 01/00/00, at Name of School, a residential school in State/City. Please consider this the District’s response to your request under 34 Code of Federal Regulations (C.F.R.) Section 300.500 and 300.503.

Based on the information described below, your son does not require such a restrictive type of placement. In fact, he has made progress toward his goals, is appropriately interacting with his peers and school staff, and is on track to graduate with his peers this June.

In reaching this decision, the District reviewed your child’s assessments, class work, transcripts, recent IEPs and progress reports. In fact, during the April 1, 2011, IEP team meeting, the team heard from your child’s private counselor, classroom teachers and service providers, all of whom agreed that Johnny is doing well academically, socially and behaviorally at school despite the behavioral issues you are experiencing at home. Also, during the April 1, 2011, IEP team meeting, your child’s IEP team discussed whether a residential placement could be appropriate and it was determined that it would not be the least restrictive environment for Johnny. Nor would Johnny be able to interact with non-disabled peers or participate in next month’s senior class events, which we know he has been looking forward to for many months.

So even though the District and the IEP team considered other placement options, such as a non-public school as well as a residential school, we continue to believe Johnny will receive a free appropriate public education in the least restrictive environment at School, in his current general education classroom with outpatient counseling.

As parents of a child with a disability, you are entitled to certain procedural safeguards under the IDEA, including the prior written notice. For your convenience, we have enclosed a copy of these procedural safeguards with this notice.

If you disagree with the District’s proposal to initiate or change the identification of your child, or if you have other questions about your rights under the IDEA, please consult the enclosed IDEA procedural safeguards. You may also contact the following agencies for assistance:
PRIOR WRITTEN NOTICE
Re: Change of Placement
Page 2

California Department of Education
1430 N. Street, Suite 2401
Sacramento, CA 95814-5901

and/or

Desert/Mountain Special Education Local Plan Area (SELPA)
17800 Highway 18
Apple Valley, CA 92307

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

J:/MANUALS/P&PMANUAL/CHAPT7-PWN6-CHANGEOFPLACEMENT
SAMPLE PWN 7 – CHANGE IN SERVICE PROVIDER

Date

Parent/Guardian
Address Line 1
Address Line 2

Subject: Change of Service Provider – Johnny Doe (DOB 01/11/00)

Dear Parent/Guardian,

This notice is to inform you of the school District’s decision to change the service provider for the 2013-2014 school year.

The District will be providing occupational therapy (OT) services via the occupational therapy department of the Desert/Mountain Special Education Local Plan Area (SELPA). The District was previously using a non-public agency (Horizon Therapies) to provide OT services.

The District is making this change in service providers in order to provide quality OT services to our students. The Desert/Mountain SELPA Occupational Therapists (OT) and Certified Occupational Therapy Assistants (COTA) are a geographically local department who will be able to provide quality services to our students. Therapists from the previous provider were traveling from the Riverside area. The District does not have an in-house occupational therapist.

The District has reviewed and evaluated the various options available as vendors to provide occupational therapy services to our students. We believe the Desert/Mountain SELPA occupational therapy department will fit the bill.

The service provider on your child’s current IEP will be changed internally to reflect the change in service provider from NPA to DMSELPA for occupational therapy effective July 1, 2013.

This letter serves as the District’s prior written notice which requires the District to notify parents whenever it is proposing to change, or refuse the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education (FAPE) to your child.

If you disagree with the District’s change in service provider, or if you have other questions about your rights under the IDEA, please consult the enclosed procedural safeguards. You may also contact the following agencies for assistance:
PRIOR WRITTEN NOTICE
Re: Change of Service Provider
Page 2

California Department of Education
1430 N. Street, Suite 2401
Sacramento, CA 95814-5901

and/or

Desert/Mountain Special Education Local Plan Area (SELPA)
17800 Highway 18
Apple Valley, CA 92307

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

J:/MANUALS/P&PMANUAL/CHAPT7-PWN7-CHANGEOFPROVIDER
SAMPLE PWN 8 – PARENT REVOCATION OF CONSENT TO SPECIAL EDUCATION & RELATED SERVICES

Date

Parent/Guardian
Address Line 1
Address Line 2

Subject: Parent Revocation of Consent to Special Education and Related Services – Johnny Doe (DOB 01/11/00)

Dear Parent/Guardian,

This letter is in response to your letter dated 10/01/2014, in which you revoked consent for your child, Johnny Doe, to receive special education and related services from the Name of School District. Please consider this the District’s response to your request under 34 Code of Federal Regulations (C.F.R.) Sections 300.300 and 300.503.

Based on the receipt of your revocation of consent, the District will discontinue all special education and related services for Johnny on Service End Date. After that date, Johnny will no longer receive the educational supports contained in his Date of Last IEP Individualized Education Program, which include, but are not limited to: List placement, services, accommodations, modifications, and supports, including behavioral supports child will no longer receive. Beginning on Date Student Will Start in General Education, Johnny will be placed in description of General Education placement. At that time, Johnny Smith will have access to list any supports, accommodations and/or opportunities made available outside of special education.

Please be advised that after Date Prior to Start Date for Student in General Education, Johnny will be served entirely through a general education setting and will no longer be entitled to the special education and related services and protections provided under the Individuals with Disabilities Education Act (IDEA) and related provisions in the California Education Code. Johnny will be treated as a student in general education in all respects, including discipline (testing, and graduation, if appropriate). As a result, Johnny’s disability will not be taken into consideration when determining appropriate disciplinary action and he will not be entitled to the IDEA’s discipline protections. Therefore, we encourage you to consider the possible consequences of removing your child from special education and related services.

Your revocation of consent for special education and related services releases the District from liability for providing your child with a free appropriate public education. If, in the future, you would like your child to receive special education and related services from the District, please contact us. The District will treat such a request as a request for an initial evaluation.
PRIOR WRITTEN NOTICE

Re: Parent Revocation of Consent for Special Education & Related Services
Page 2

The District would like to meet with you on Proposed Meeting Date with Parent to discuss your decision and its potential impacts. However, you are not obligated to meet with us and any meeting will not delay the discontinuation of special education and related services to your child. Please contact my office at 1-Area Code + Phone Number to confirm you will attend the meeting. If we do not hear from you, we will assume that you do not wish to meet.

I have enclosed a copy of Johnny’s Date of Last IEP IEP for your reference, as well as a copy of the District’s parental rights and procedural safeguards. Please feel free to contact me at the number provided above with any questions you may have at this time. You may also contact the California Department of Education with your questions at P.O. Box 944272, Sacramento, CA 94244-2720.

Thank you for your time and careful consideration in this matter. Again, if you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Name
Title/Position

ENCLOSURE: PARENT WRITTEN REVOCATION OF CONSENT, NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS, COPY OF LAST IEP

J:/MANUALS/P&PMANUAL/CHAPT7-PWN8-REVOKECONSENT
**SAMPLE PWN 9.1 – STUDENT EXITS FROM SPECIAL EDUCATION: STUDENT NO LONGER QUALIFIES FOR SPECIAL EDUCATION**

Date

Parent/Guardian
Address Line 1
Address Line 2

Subject: Exit from Special Education: Student No Longer Qualifies for Special Education – Johnny Smith (DOB 01/00/00)

Dear Parent/Guardian,

Under the Individuals with Education Act (IDEA), a student must be re-evaluated at least every three years to determine his/her continued eligibility for special education and related services. This is also known as a triennial review. This re-evaluation process starts with a review of all existing data that the District already knows about your child, Johnny. Based on the existing data determined to be sufficient by the IEP team to re-determine your child’s continued eligibility, he no longer qualifies for special education and related services. Federal law requires that the District provide written notice to parents anytime it proposes to begin or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education (FAPE) to your child.

Johnny’s determination for continued eligibility as a student with a disability is due January 26, 2013. Based on the existing data determined to be sufficient by the team to re-determine Johnny’s eligibility, the team found that he no longer meets the criteria for specific learning disability in reading and writing nor does he qualify for any other disability category. The team reviewed all existing data and also determined that the testing from a prior evaluation completed in January 2010 was still current. Johnny’s achievement data from his most recent AIMS scores, current school year’s grades, progress reports, input and feedback from the special education and general education teachers, along with sample of his work in the areas of reading and writing were also reviewed and considered. The data indicates Johnny has demonstrated marked achievement in the areas of reading and writing. He is fully included in the regular class and has been receiving minimal support from the special education teacher. His achievement scores and grade reports indicate he is now performing at grade level. Both of Johnny’s teachers feel he is able to maintain progress without special education services.

If you disagree with the District’s proposal to initiate or change the identification of your child, or if you have other questions about your rights under the IDEA, please consult the enclosed IDEA procedural safeguards. You may also contact the following agencies for assistance:
PRIOR WRITTEN NOTICE
Re: Student Exits from Special Education – Student No Longer Qualifies for Special Education
Page 2

California Department of Education
1430 N. Street, Suite 2401
Sacramento, CA 95814-5901

and/or

Desert/Mountain Special Education Local Plan Area (SELPA)
17800 Highway 18
Apple Valley, CA 92307

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

J:/MANUALS/P&PMANUAL/CHAPT7-PWN9.1-EXITSPECIALEDUCATION
As of 03/15/2013

SAMPLE PWN 9.2 – STUDENT EXITS FROM SPECIAL EDUCATION: EXCEEDS AGE ELIGIBILITY FOR SPECIAL EDUCATION SERVICES

Date

Parent/Guardian
Address Line 1
Address Line 2

Subject: Exit from Special Education: Exceeds Age Eligibility for Special Education Services – Johnny Doe (DOB 01/11/00)

Dear Parent/Guardian,

This is to notify you that you on June 30, 2013, your child, Johnny Doe, will no longer qualify for special education and related services due to exceeding the age eligibility requirements under law. Based on C.F.R. Section 300.503(a), the District is required to provide you with written notice whenever it proposes or refuses to begin or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child.

Under federal law, students with disabilities are entitled to special education and related services until the end of the school year following his/her 21st birthday or, whenever the student accepts a diploma – whichever comes first. Johnny will turn 22 on June 30, 2013, at which time, all special education and related services will be terminated. The District will no longer be responsible for future educational costs for Johnny [E.C. § 56026(c)(4)(d)].

A summary of performance is attached to assist your child as he/she moves from high school. The summary of performance outlines Johnny’s academic achievement and how he functions in activities of daily living. The summary of performance also includes recommendations about how to assist Johnny in meeting his post school goals.

You have protections under state and federal procedural safeguard provisions. Please refer to the enclosed Notice of Procedural Safeguards for an explanation of these rights.

For further information about your rights or the proposed action and/or referral, contact Contact Person name at Contact Number, Address School District Office and/or Location.

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

J:/MANUALS/P&PMANUAL/CHAPT7-PWN9.2-EXITSPECIALEDUCATION-AGEOUT
SAMPLE PWN 9.3 – STUDENT EXITS FROM SPECIAL EDUCATION: GRADUATE WITH A REGULAR HIGH-SCHOOL DIPLOMA

Date

Parent/Guardian
Address Line 1
Address Line 2

Subject: Exit from Special Education: Graduate with a High School Diploma – Johnny Doe (DOB 01/11/00)

Dear Parent/Guardian,

The District is pleased to inform you that your child, Johnny Doe, date of birth: 01/00/00 is on track to earn a high school diploma and graduate on May 26, 2012. The purpose of this letter, along with extending our sincere congratulations on Johnny’s expected high school graduation, is also to provide prior written notice pursuant to the Code of Federal Regulations Section 300.503, that upon graduation, your child will no longer receive special education and related services under the Individuals with Disabilities Education Act (IDEA).

As you may know, when a student graduates from high school with a regular diploma, he/she is no longer entitled to special education or services under the IDEA; nor is the school district legally obligated to continue providing such services to a student with disabilities after high school graduation. Johnny’s IEP team has determined that Johnny is on track to satisfy all requirements for high school graduation, as well as complete or substantially complete his IEP goals, by the end of this school term, based on the following information: For example, grades, class work, test scores, high school IEPs, assessment reports, transition plan, etc. The IEP team considered other options, for example, not awarding a high school diploma at this time and continuing to provide special education and related services to Johnny. However, those options were rejected, as Johnny is currently on track to earn a regular high school diploma and he is making progress towards his IEP goals and transition plan.

As required by the IDEA, the IEP team previously held a meeting on December 1, 2011, regarding this change of placement, and determined that it is appropriate to award Johnny with a high school diploma, thereby ending his eligibility for special education and related services. As such, District will no longer be providing your child with special education and/or related services, effective May 26, 2012.

Under the IDEA, the District is required to provide you with a summary of Johnny’s academic achievement and functional performance, as well as recommendations to assist Johnny in meeting his post-secondary goals. Please find the information in the enclosed document.
PRIOR WRITTEN NOTICE
Re: Student Exits from Special Education – Graduate with a High School Diploma
Page 2

California Department of Education
1430 N. Street, Suite 2401
Sacramento, CA 95814-5901

and/or

Desert/Mountain Special Education Local Plan Area (SELPA)
17800 Highway 18
Apple Valley, CA 92307

We wish Johnny continued success in his future.

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS
J:/MANUALS/P&PMANUAL/CHAPT7-PWN9.1-EXITSPECIALEDUCATION
APPENDIX C: Surrogate Parents in California
(http://www.cde.ca.gov/sp/se/sr/documents/srgtpntml2012.pdf)

As of September 21, 2018, this information is undergoing revision by the California Department of Education and is currently unavailable. This Appendix will be updated in the future when the information becomes available.
APPENDIX D: Frequently Asked Questions (FAQs) – Mediation and Due Process

Frequently Asked Questions and Answers Regarding Mediation

1. **Question:** What is the difference between a pre-hearing mediation conference and a hearing?

   **Answer:** A mediation conference or alternative dispute resolution conference is an informal meeting by which the parents, the school and an experienced impartial mediator attempt to resolve the dispute in a nonadversarial atmosphere. State law currently allows for two types of mediation: 1) a pre-hearing request mediation or 2) a mediation that is scheduled when there is a request for a due process hearing. The parties’ rights under each type of mediation are different and are discussed in more detail below. A hearing is a more formal procedure where all parties are given a chance to present their evidence and argument before an impartial hearing officer. The hearing officer then makes the final administrative decision concerning the matter in dispute.

2. **Who may request a mediation conference or hearing?**

   **Answer:** The parents, including guardians, of a disabled child or child suspected of having a disability and the LEA may ask for a mediation conference or hearing. In some cases, the disabled child may ask for a mediation conference or hearing.

3. **When may a mediation conference or hearing be requested?**

   **Answer:** A mediation conference or hearing may be requested when there is a dispute between a parent and a public agency providing special education services regarding a child’s eligibility for special education, need for assessment, and/or the child’s program and services. Please note, these procedural safeguards describe two potential opportunities for mediation. A party may request a mediation conference prior to, or without requesting, a hearing. This is known as “pre-hearing request mediation.” The “pre-hearing request mediation” is included in the law to encourage parties to resolve disputes prior to requesting a hearing. Alternatively, if a hearing is requested, a mediation conference is automatically scheduled as part of the process, unless mediation is waived by one of the parties.

**Pre-Hearing Request Mediations**

The following questions relate to pre-hearing request mediations, i.e., mediations requested prior to, or without requesting, a hearing.

1. **Question:** How does one request a mediation conference?
**Answer:** Either parents or schools may request a pre-hearing request mediation conference by submitting a written request to the superintendent of the district within which the child resides. The request should provide as complete information as possible. The request can be made in the form of a letter that includes the following information:

a. Name of the child  
b. Date of birth of the child  
c. Child’s grade level  
d. Address where the child resides  
e. School district where the child attends  
f. School district where the child resides  
g. Parent or guardian’s name, address, and telephone number  
h. Any other school district or public agency that is responsible for providing services that should be a party in the mediation

The party should make it clear that he/she is asking for a pre-hearing request mediation.

2. **Question:** How will the parties, parents, and school be notified that mediation has been requested?  
   
   **Answer:** Upon receipt of a request for a mediation conference, the superintendent will promptly notify all parties regarding the date scheduled for the conference.

3. **Question:** How soon will the mediation conference be scheduled?  
   
   **Answer:** The mediation conference will be scheduled to take place within 15 days of the request for mediation.

4. **Question:** How soon will the mediation conference be completed?  
   
   **Answer:** The law requires that the mediation be completed within 30 days of the request for mediation unless all parties to the mediation agree to extend this time limit.

5. **Question:** Where will the mediation take place?  
   
   **Answer:** The law requires that the mediation conference be scheduled at a time and place reasonably convenient to the parent and the student. The mediation conference is usually held in a local educational facility.

6. **Question:** Who will be the mediator?
**Answer:** The mediation conference shall be conducted by a person knowledgeable in the process of reconciling differences in a non-adversarial manner. He or she will be impartial and will try to help the parties reach a resolution of the dispute that will be acceptable to each party.

7. **Question:** What is one of the parties does not want to participate in mediation?

**Answer:** Mediation is based upon the commitment of all parties to try to reach a mutually satisfactory settlement. Mediation is encouraged because it is informal and non-adversarial and is more likely to lead to a lasting settlement of the dispute. However, participation in the prehearing request mediation is voluntary. If one of the parties declines the opportunity to participate, either party still has the option of requesting a state-level hearing.

8. **Question:** Must a party request mediation before asking for a hearing?

**Answer:** No. Requesting or participating in mediation is not a prerequisite to requesting a due process hearing.

9. **Question:** Will attorneys be allowed in the mediation?

**Answer:** The law provides that attorneys and other independent contractors who provide legal advocacy services shall not attend or otherwise participate in “pre-hearing request mediation.” They may, however, attend or otherwise participate during all stages of the hearing process (See “The Hearing Process” below).

10. **Question:** Can a party bring a non-attorney to help in the mediation?

**Answer:** Any party is allowed to be accompanied by and advised by non-attorney representatives in a mediation conference. A party may also consult an attorney prior to or after the mediation conference.

11. **Question:** What happens if the parties reach an agreement during the mediation conference?

**Answer:** Any agreement reached during mediation must be to the satisfaction of all parties and must be consistent with the requirements of federal and state law. The agreement will be written up by the mediator and signed by the parties. Each party will receive a copy of the mediation agreement.

12. **Question:** What happens if an agreement is not reached during the mediation?

**Answer:** If the dispute is not resolved during the mediation conference, the parties have the option of requesting a state-level hearing. The mediator will assist the parties in specifying any unresolved issues to be included in the hearing request.

The parent, student, and public education agency involved may initiate the due process hearing procedures prescribed in Education Code Sections 56500-56509 under any of the following circumstances:
• There is a proposal to initiate or change the identification, assessment, or educational placement of the child or the provision of the free appropriate education to the child.

• There is a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free appropriate education to the child.

• The parent refuses to authorize the assessment of the child.

• There is a disagreement between a parent or guardian and a district, special education local plan area, or county office regarding the availability of a program appropriate for the child, including the question of financial responsibility.

The following steps are required when initiating a due process hearing:

Requests for a hearing are sent by the parent (or if the district is requesting a hearing, by the district) to the Office of Administrative Hearings (OAH), Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833-4231. Requests must include the student's name, residential address, the name of the student's school, a description of the problem, facts about the problem and a proposed resolution. A due process hearing may not take place until the party or the attorney representing the party files a notice that meets these requirements.

The district notifies the SELPA Due Process Office and forwards the district and school files. The SELPA Program Manager contacts the parents regarding their request for due process and to discuss their concerns.

The Office of Administrative Hearings (OAH) appoints a mediator and schedules a mediation date as well as a date for the hearing. The mediation hearing and hearing decision must be completed within 45 days of the receipt of the parents’ or district’s request.

The Due Process Program Manager reviews the file and case with the district director, district staff, and SELPA staff as appropriate and discusses options for resolving the issues.

The parent or district may waive mediation and proceed directly to hearing.

If the mediation process does not resolve the issue, the SELPA attorney, in consultation and cooperation with the district director and the Due Process Program Manager:

a) Prepares the case, including the list of witnesses and written evidence/documentation

b) Prepares the witnesses for their testimony

c) Presents the case in hearing

d) Assists the district staff in the implementation of the decision
Frequently Asked Questions and Answers Regarding the Hearing Process

1. **Question:** How does one request a hearing?
   **Answer:** Requests for a hearing are sent by the parent (or if the district is requesting a hearing, by the district) to the Office of Administrative Hearings (OAH), Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833-4231. Requests must include the student's name, residential address, the name of the student's school, a description of the problem, facts about the problem and a proposed resolution. A due process hearing may not take place until the party or the attorney representing the party files a notice that meets these requirements.

2. **Question:** How will the parties be notified that a hearing has been requested?
   **Answer:** Upon receipt of a request for a hearing, the Office of Administrative Hearings will promptly notify all parties regarding the date the hearing has been scheduled. The same notice will explain that a mediation conference has also been scheduled in the hope that a resolution of the dispute can occur without the case having to go to a hearing.

3. **Question:** Will a mediation conference by scheduled even if the parties have already attempted mediation prior to requesting a hearing?
   **Answer:** Yes. The law requires that the Special Education Hearing Office encourage mediation at all stages of the hearing process as a preferred method of resolving the dispute. Therefore, a mediation conference will automatically be scheduled whenever there is a hearing request, unless that request specifically waives mediation.

4. **Question:** Will attorneys be able to participate in mediations that take place when a hearing request has been filed?
   **Answer:** Yes. The law allows a party to be represented by an attorney at all stages of the hearing process. Any mediation that takes place when a hearing has been requested is considered part of the hearing process and, therefore, the parties have a right to be represented by attorneys during the mediation.

5. **Question:** When will the mediation and hearing be scheduled?
   **Answer:** The mediation conference is usually scheduled for a date approximately 15 days after a hearing request is received. The initial hearing date is usually set for approximately 25 days after the hearing request is received. All parties will receive notice of the time and place of the hearing and the time and place of the mediation in the same notice. The hearing may be postponed to another date if mediation is continued and the parties agree to the postponement. If the hearing is postponed, the parties will receive a notice of the new date and time of the hearing.

6. **Question:** How long will the hearing process take?
**Answer:** The law requires that the hearing be held and a written decision mailed within 45 days of the receipt of the request for hearing. However, the 45 days can be extended by a continuance or postponement of the hearing.

7. **Question:** When is it permissible to have a continuance or postponement of the hearing?

**Answer:** A continuance request is a motion to postpone the hearing. The law provides that either party may request a continuance of the hearing for good cause. If the Office of Administrative Hearings determines there is good cause, the hearing will be continued or postponed and the 45-day time limit will be extended by the number of days of the continuance or postponement.

8. **Question:** What does it mean to take the hearing off the calendar?

**Answer:** “Off the calendar” means that no hearing dates are set for the matter. By agreeing to have the hearing taken off calendar, the 45-day requirement for issuing a final hearing decision is extended by the number of days the matter is off calendar plus an additional 20 days to provide time to reschedule the hearing. A hearing may be taken off calendar only by agreement of all of the parties. A hearing that is off calendar will be returned to the calendar at the written request of any party.

9. **Question:** Who will conduct the hearing?

**Answer:** The hearing will be conducted by an impartial hearing officer employed by the Office of Administrative Hearings. The hearing officer is knowledgeable in the laws governing special education and administrative hearings.

10. **Question:** What authority does the hearing officer have?

**Answer:** The hearing officer has the authority to conduct the hearing, rule on all procedural matters, and render the final decision. By statute, the hearing officer may:

a) Question a witness on the record prior to any of the parties doing so;

b) With the consent of all parties to the hearing, request that conflicting experts discuss an issue or issues with each other while off the record;

c) Visit the proposed placement site when the physical attributes of the site are at issue;

d) Call a witness to testify at the hearing if all parties to the hearing consent to the witness giving testimony or if the hearing is continued for at least five days prior to the witness testifying;

e) Order that an impartial assessment of the student be conducted, the cost of which to be paid by the Hearing Office;
f) Bar introduction of any documents or the testimony of any witnesses not disclosed to the hearing officer or the parties at least five business days prior to the hearing; and

g) Call independent medical specialists as witnesses in cases involving the provision of related services by other public agencies, the cost for such witnesses to be paid by the Hearing Office.

11. Question: Where will the hearing be held?

Answer: The law requires that the hearing be held at a place reasonably convenient to the parent and the student. Hearings may be held in a local school facility or SELPA office.

12. Question: What will happen to the child’s education during the hearing process?

Answer: The law requires that the student remain in his or her present educational placement during the hearing process and pending the written decision, unless the school and the parents agree otherwise. This requirement is often referred to as the “stay put” provision of the law. The “stay put” requirement does not necessarily apply to prehearing request mediations. Recent federal law has created two important exceptions to stay put.

For more information see Individuals with Disabilities Education Act Amendments of 1997, P.L. 105-17, Title I, Part B, Section 615 (k)(1) and (2).

13. Question: What are the parties’ rights during the hearing?

Answer: All parties have the following rights during the hearing:

- **Right to representation.** All parties have the right to be accompanied, advised, and assisted by counsel and by persons with special knowledge or training related to the problems of disabled children.

- **Right to present evidence and argument.** All parties have the right to call witnesses and present written and other evidence that will help them prove their case. They will also be given the opportunity to argue the merits of their case orally or in writing.

- **Right to confront and cross-examine adverse witnesses.** All parties have the right to be present when witnesses testify against their position and to ask them questions concerning their views.

- **Right to compel the presence of witnesses.** If a witness refuses to appear at the hearing voluntarily, the party requesting that witness has the right to force him or her to come to the hearing. This is accomplished by the use of subpoenas that are issued by the Office of Administrative Hearings. Before requesting a subpoena, the party should first determine whether the witness will be at the hearing voluntarily.

- **Right to record of the hearing.** The hearing officer will record the hearing with a tape recorder. The parties have the right to a record of the hearing.
• **Right to written findings of fact and decision.** The hearing office must prepare a written decision setting forth his or her findings of fact, analysis of the law, and final decision.

• **Right to notice of issues for hearing and proposed resolution of the issues.** The law requires that the parties submit to each other at least ten (10) days prior to the hearing what they believe are the issues to be resolved in the hearing and their proposed resolution of the issues. A parent who is not represented by an attorney has the right to request assistance in identifying the issues and the proposed resolution of the issues.

• **Right to prohibit the introduction of surprise evidence.** A hearing officer may prohibit the introduction of any evidence at the hearing that has not been properly disclosed at least five business days before the hearing. That is why the notice of hearing instructs each party to give the other party – at least five business days before the hearing – a copy of all documents it plans to present in the hearing and a list of witnesses it expects to call and their general area of testimony.

• **Right to exclude witnesses.** A party may ask that the hearing office order prospective witnesses to remain outside the hearing room while other witnesses are testifying. This practice allows the hearing office to compare the testimonies of witnesses who have not heard each other testify.

• **Right to an interpreter.** If the primary language of a party is other than English, an interpreter will be provided by the Office of Administrative Hearings. It is important that parties notify the Office of Administrative Hearings well before the hearing when an interpreter is needed.

In addition to the right set out above, the parents have the following additional rights:

• **Right to examine student records.** Parents have the right to examine all records maintained by the school that are related to their child and to receive copies within five days after requesting them. Parents should call or write their local school district to request access to student records.

• **Right to public hearing.** Parents have the right to allow members of the public to attend the hearing.

• **Right to have the student present at the hearing.** Parents have the right to have the disabled student present during the hearing.

14. **Question: Are parents entitled to a free attorney?**

*Answer:* All parties have the right to be represented at all stages of the hearing by an attorney or other representative of their choosing. That does not mean that the school or other public agency must pay for the parents’ attorney. Parents may be entitled to have the cost of the attorney’s fees reimbursed if they prevail as a consequence of initiating a due
process hearing. The federal court, in its discretion, may award reasonable attorney’s fees to the parents or guardian of a disabled child or youth who is the prevailing party.

15. **Question:** Must a party give notice to the other parties if the party plans on using an attorney?

**Answer:** Yes. The law requires that a party notify all other parties ten (10) days before a hearing if that party intends to be represented by an attorney in the hearing.

16. **Question:** What happens during the hearing?

**Answer:** The purpose of the hearing is to allow all parties to present evidence supporting their positions and to explain to the hearing officer why they believe they should prevail in the hearing. The hearing is not governed by formal rules of procedure or evidence, and the hearing officer will attempt to ensure that both sides have an adequate opportunity to present their cases. Although less formal than a court trial, the hearing is expected to proceed in an orderly fashion.

At the beginning of the hearing, the hearing officer turns on the tape recorder to make a record of the hearing and, after identifying the case for the record, briefly explains how the hearing will proceed. The hearing officer then usually clarifies the issues to be decided by discussing the case with the parties. The hearing officer may only speak with the parties about the case on the record. All other communication with the parties is prohibited.

Once these preliminary matters are completed, the parties are given a chance to make opening statements. After the opening statements, the side presenting first will call its witnesses, with each witness being sworn to tell the truth. After one side has presented its witnesses and other evidence, the other side will call its witnesses. Each side will be given an opportunity to ask questions of the other side’s witnesses, and the hearing office may also ask questions of the witnesses. At the end of the hearing, each side is allowed to make a closing statement. Sometimes the statement is presented orally during the hearing and sometimes it is submitted in writing after the hearing. After closing statements, the hearing record is closed. The hearing officer then prepares a written decision.

17. **Question:** How are documents put into evidence?

**Answer:** To put documents into evidence, the party presents documents to the hearing officer and asks that they be put into evidence. Normally this is done at the beginning of the hearing. Remember that all parties must provide copies of the documents they wish to offer as evidence to the other parties and to the Hearing Office five business days prior to the hearing.

18. **Question:** How does one get a witness to come to the hearing?

**Answer:** The party requesting the presence of the witness should first contact the witness and ask him or her to come to the hearing voluntarily. Parents wishing to call a witness who is an employee of the school may contact the school representative and ask for assistance in making the witness available. If a witness refuses to attend the hearing and a
party believes that the witness is important to its case, the party may serve the person with a subpoena requiring his or her attendance. The subpoena may be requested by telephoning or writing the Office of Administrative Hearings. The Office of Administrative Hearings may ask for the name of the person to be served and an explanation of why that witness is needed.

19. **What law should one read and where can one locate it?**  
   **Answer:** There are four primary sources of law relating to special education and to hearings and mediations: California State statutes and regulations and federal statutes and regulations. Most of the state statutes relating to special education are contained in the Education Code. Part 30 of the Education Code from Section 56000 through Section 56885 contains the primary statutes relating to special education. Sections 56500-56509 contain the law relating to hearings and mediations. There are a number of sections in other state codes that also relate to special education, including the Administrative Procedure Act, found in the California Government Code. Regulations of the State Board of Education relating to special education are contained in Title 5 of the California Code of Regulations (CCR), Sections 3000-3089. The California Department of Education publishes A Composite of Laws relating to special education, which includes all relevant state statutes and regulations. A copy can be obtained by writing or calling the Special Education Hearing Office. Federal statutes are contained in the United States Code, Volume 20, Sections 1400-1420. Also see the Individuals with Disabilities Education Improvement Act of 2004. The federal regulations on special education are contained in the Code of Federal Regulations (CFR). To review a copy of the United States Code or the Code of Federal Regulations, a person may need to visit his or her local library or county law library. There are a number of court decisions that interpret the statutes and regulations. These court decisions can also be found at a county law library.

20. **Question: What is a party doesn’t like the decision of the hearing officer?**  
   **Answer:** All parties have the right to appeal any hearing decision to a court of competent jurisdiction within 90 days of the receipt of the decision. Appeals can be made to either state or federal court. The hearing officer’s decision is the final administrative determination and is binding on all parties unless a party successfully appeals to a court.  

Additional Rights of Parents in Relation to Special Education

There are a number of important rights that parents have in relation to special education. Below are listed some of the most important ones:

- The right to initiate a referral to special education. A parent has the right to request that a child be assessed and considered for special education services.
• Right to an independent assessment. If a parent disagrees with an assessment that has been obtained by the school, the parent has the right to obtain, at public expense, one independent educational assessment of the student from qualified specialists for each district assessment the parent refutes. However, if the hearing officer determines that the school’s assessment is appropriate, the parent’s independent assessment will be considered but will not be paid for by the school (see Chapter 25 on Independent Educational Evaluations).

• Right to information about and participation in the development of the child’s Individualized Education Program (IEP). The law provides that parents have the right to participate in the development of a child’s individualized education program. The law further requires the school to inform parents of their child’s right to a free appropriate public education and to provide information concerning all available alternative programs, both public and nonpublic.

• Consent of parents to perform assessment. California law provides that written parental consent must be obtained before an initial assessment of a child is conducted unless the school prevails in a due process hearing relating to such assessment.

• Consent of parents before placement in special education. The law provides that written parental consent must be obtained before a student is placed in a special education program.

If further information is required relative to due process hearing procedures, you may call the Office of Administrative Hearings.

**Tips on How to Avoid a Due Process Fair Hearing**

• Follow all legal timelines. Waivers for time extension may only be used as an exception.
• Follow SELPA and district procedures for assessment and placement.
• Be professional and complete in the quality of your work. Explore all areas of concern and elicit feedback from all staff, parents, and other professionals who have had contact with the student.
• Listen to the parents. They know their children well and may or may not be able to articulate their concerns in language that is translated into educational needs. Restate their concerns and explore their solutions.
• Be flexible, open, and creative in developing program modifications and in discussing options.
• Keep communication open between staff members and parents.
• Request assistance in the assessment process and placement options from your district and SELPA colleagues. Engage in brainstorming and problem solving with peers to generate new ideas.
• Be a student advocate.
• Consult with the Regional Services Program Manager or Program Specialist for program or instructional concerns and support.
• Develop a classroom profile that includes the qualifications of staff, specialized training of staff, instructional programs available to students and other relevant data.
• Provide a summary of student goals and objectives, as well as success rate, for a period of two to three years.
• Contact your district director or Due Process Program Manager for legal and/or technical assistance.