

1 **NORTH ORANGE COUNTY SPECIAL EDUCATION LOCAL PLAN AREA**
2 **OCDE CONNECTIONS**

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4 **Notice to Parent/Guardian/Surrogate**
5 **Notice of Procedural Safeguards**
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7 This notice is provided to you as parents, legal guardians, surrogate parents or
8 court appointed responsible adult, because your child is receiving special education
9 services or has been referred for possible placement in special education. This
10 information is your Notice of Procedural Safeguards (Notice) as required under the
11 Individuals with Disabilities Education Act (IDEA). The IDEA is a federal law that
12 requires school districts to provide a “free appropriate public education” (FAPE) to
13 eligible children with disabilities, as defined further below. This Notice will also be
14 provided to students who are entitled to these rights at age eighteen (18). The purpose
15 of this Notice is to explain to you your rights as a parent of a child with disabilities under
16 federal and state laws. In California, special education is provided to disabled students
17 between birth and twenty-one (21) years of age. Federal and state laws protect you and
18 your child throughout the procedures for evaluation and identification of special
19 education placement and services. A copy of this Notice will be given to you (1) once a
20 school year; (2) upon initial referral or your request for evaluation; (3) upon the receipt
21 of the first filing of a state complaint or due process complaint; (4) when a decision is
22 made to make a disciplinary change of placement; or (5) upon your request. The
23 definitions below will help you understand the statement of rights.

24 (20 U.S.C. section 1415(d); 34 C.F.R. section 300.504; Education Code section
25 56301(d)(2).)

26 **DEFINITIONS**

27 **Children With Disabilities** is defined by federal law as a child with mental retardation,
28 hearing impairments (including deafness), speech or language impairments, visual
29 impairments (including blindness), emotional disturbance, orthopedic impairments,
30 autism, traumatic brain injury, other health impairments, specific learning disabilities,
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1 deaf-blindness, or multiple disabilities; and who by reason thereof, needs special
2 education and related services.

3 (20 U.S.C. section 1402(3); 34 C.F.R. section 300.8; Education Code section 56026.)
4

5 **Evaluation** means the assessment of your child using various tests and measures in
6 accordance with state and federal laws to determine whether your child has a disability
7 and the nature and extent of special education and related services needed by your
8 child for his or her educational benefit. The assessment tools are individually selected
9 for your child and are administered by trained and knowledgeable professionals
10 employed or contracted by the school district. These tests do not include the basic tests
11 given to all children in the school setting.

12 (34 C.F.R. sections 300.15, 300.304 – 300.311; Education Code sections 56302.5 and
13 56320.)
14

15 **Free Appropriate Public Education (FAPE)** is defined by federal law as special
16 education and related services (1) provided at public expense, under public supervision
17 and direction, and without charge to you; (2) meets the standards of the California
18 Department of Education (CDE); (3) is provided in conformity with a written
19 Individualized Education Program (IEP) developed for your child to confer an
20 educational benefit; and (4) is provided in an appropriate preschool, elementary or
21 secondary school program of the State, or in a nonpublic school if there is no
22 appropriate program available in a school district. (20 U.S.C. section 1402(9); 34 C.F.R.
23 section 300.17; Education Code section 56040.)
24

25 **Least Restrictive Environment (LRE)** means that to the maximum extent appropriate,
26 children with disabilities will be educated with children who are not disabled, and that
27 special classes, separate schooling, or other removal of children with disabilities from
28 the regular education environment will occur only when the nature or severity of the
29 disability is such that education in regular classes with the use of supplementary aids
30 and services cannot be achieved satisfactorily.
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1 (20 U.S.C. section 1412(a)(5); 34 C.F.R. section 300.114; Education Code section
2 56040.1.)

3
4 **Related Services** means transportation and such developmental, corrective and
5 supportive services that may be required to assist a child with a disability to benefit from
6 special education, including the early identification and assessment of disabling
7 conditions. Related services may also include:

- 8 1. Speech-language pathology and audiology services.
- 9 2. Interpreting services.
- 10 3. Psychological services.
- 11 4. Physical and occupational therapy.
- 12 5. Recreation, including therapeutic recreation.
- 13 6. Counseling services, including rehabilitation counseling.
- 14 7. Orientation and mobility services.
- 15 8. School nurse services.
- 16 9. Medical services for diagnostic or evaluation purposes only.
- 17 10. Social work services.
- 18 11. Parent counseling and training.

19 (20 U.S.C. section 1402(26); 34 C.F.R. section 300.34; Education Code section 56363.)
20

21 **Special Education** means specially designed instruction, at no cost to parents, to meet
22 the unique needs of a child with a disability, including instruction conducted in the
23 classroom, in the home, in hospitals and institutions, and in other settings, and
24 instruction in physical education.

25 (20 U.S.C. section 1402(29); 34 C.F.R. section 300.39; Education Code section 56031.)
26
27

28 **ACCESS TO EDUCATIONAL RECORDS**

29 All parents of a child enrolled in the school district have the right to inspect
30 records under the federal Family Educational Rights and Privacy Act (FERPA), which
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1 has been implemented in the California Education Code. Under the federal and state
2 law, parents of a child with disabilities (including noncustodial parents whose rights
3 have not been limited) are presumed to and have the right to inspect and review all
4 educational records regarding your child, the provision of a FAPE and to receive an
5 explanation and interpretation of the records without unnecessary delay, including prior
6 to a meeting regarding your child's IEP or before a resolution session or due process
7 hearing. Under California statutes, parents have the right to review and to receive
8 copies of educational records. These rights transfer to a pupil who is eighteen (18)
9 years old unless the pupil has had a conservator appointed by a court to assume the
10 educational rights of the pupil.

11
12 The custodian of records at each school site is the principal of the school. The
13 district custodian of records is Analee Kredel. Pupil records may be kept at the school
14 site or the district office, but a written request for records at either site will be treated as
15 a request for records from all sites. The custodian of records will provide you with a list
16 of the types and locations of pupil records (if requested). A request for a copy of your
17 child's special education records may be made to the District's Director of Special
18 Education.

19
20 A review and/or copies of educational records will be provided to the parent
21 within five (5) business days after the request is made by the parent, either orally or in
22 writing. A fee for copies, but not the cost to search and retrieve, is determined by local
23 policy and will be charged unless charging the fee would effectively deny access to the
24 parent. Once a complete copy of the records has been provided, a fee will be charged
25 for additional copies of the same records.(20 U.S.C. section 1232g; 34 C.F.R. section
26 99.1-99.67; 34 C.F.R. section 300.613; Education Code sections 49060-49079;
27 Education Code sections 56041.5, 56043(n) and 56504.)

1 **PRIOR WRITTEN NOTICE**

2 The IDEA requires school districts to provide prior written notice to you as the
3 parent of a child with disabilities when the school district proposes or refuses to initiate
4 or change the identification, evaluation or educational placement of your child or the
5 provision of a FAPE to your child or if you revoke consent in writing for the continued
6 provision of special education and related services. The notice will be provided in your
7 native language, unless it is clearly not feasible to do so.

8 The prior written notice must include:

- 9 1. A description of the action proposed or refused by the school district.
- 10 2. An explanation of why the school district proposes or refuses to take the
11 action.
- 12 3. A description of each evaluation procedure, assessment, record, or report
13 the school district used as a basis for the proposed or refused action.
- 14 4. A description of other options that the IEP team considered and the
15 reasons why those options were rejected.
- 16 5. A description of other factors that are relevant to the school district=s
17 proposal or refusal.
- 18 6. A statement that the parents of a child with a disability have protection
19 under the procedural safeguards, and if this notice is not an initial referral
20 for evaluation, the means by which a copy of a description of the
21 procedural safeguards can be obtained.
- 22 7. Sources for parents to contact to obtain assistance in understanding the
23 provisions of this part.

24 (20 U.S.C. section 1415(c); 34 C.F.R. sections 300.503 and 300.300(b)(4); Education
25 Code section 56500.4.)

26 **INFORMED PARENTAL CONSENT**

27
28 The IDEA requires that school districts obtain informed consent from you before
29 the commencement of an initial evaluation of your child to determine if your child
30 qualifies as a child with disabilities. Informed consent means you have been fully
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1 informed in your native language, or other mode of communication, of all information
2 about the action for which you are giving consent and that you understand and agree in
3 writing to the evaluation and educational placement decision for your child. Your
4 consent is voluntary and may be withdrawn at any time. Your consent for the initial
5 evaluation does not imply or grant consent for placement and receipt of special
6 education and related services. The school district will request your consent for special
7 education and related services separately and at a later date. The school district will
8 also obtain your informed consent for reevaluations of your child and will not conduct a
9 reevaluation unless you fail to respond to requests for your consent.

10
11 If you do not provide consent for an initial assessment or fail to respond to a
12 request to provide the consent, the school district may pursue the initial assessment by
13 utilizing due process procedures.

14
15 If you refuse to consent to the initiation of special education and related services,
16 the school district must not provide special education and related services and shall not
17 seek to provide services through due process procedures.

18
19 If at any time after the initial provision of special education and related services,
20 you revoke consent in writing for the continued provision of special education and
21 related services after having consented to those services in the past, the school district
22 must provide you prior written notice before ceasing the provision of special education
23 and related services to your child and shall not seek to provide services through due
24 process procedures.

25
26 If you consent in writing to the receipt of special education and related services
27 for your child but do not consent to all of the components of the IEP, those components
28 of the program to which you have consented must be implemented so as not to delay
29 providing instruction and services. If the school district determines that the proposed
30 special education program component to which you do not consent is necessary to
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1 provide a free appropriate public education to your child, the school district must file a
2 request for a due process hearing. If a due process hearing is held, the hearing
3 decision shall be final and binding.
4

5 In the case of reevaluations, the school district must document reasonable
6 measures to obtain your consent. If you fail to respond, the school district may proceed
7 with the reevaluation without your consent. (20 U.S.C. sections 1414(a)(1)(D), 1414(c)
8 and 1415; 34 C.F.R. sections 300.9 and 300.300; Education Code sections 56021.1,
9 56321(c) and (d), 56346, 56381(f) and 56506(e).)
10

11 When a parent cannot be identified and the school district cannot locate the
12 whereabouts of a parent, the school district must ensure that an individual is assigned
13 to act as a surrogate for the parents of a child with a disability. A surrogate parent may
14 also be appointed for unaccompanied homeless youth or a child who is a dependent or
15 ward in which an educational representative has not been appointed by the Court.
16 (20 U.S.C. section 1415(b)(2); 34 C.F.R. section 300.519; Education Code section
17 56050; CA Rules of Court Rule 5.650.)
18

19 **PROTECTION IN EVALUATION PROCEDURES**

20 Federal law refers to evaluation and California law refers to assessment.
21 Therefore, these words may be used interchangeably by employees of the school
22 district and in this Notice. The school district must provide you with a written
23 assessment plan or prior written notice within fifteen (15) days after a referral for special
24 education has been received, including your written request for evaluation. You will
25 have a minimum of fifteen (15) days in which to review the assessment plan and to
26 provide consent to the school district to conduct the written assessment. You may
27 request assessment in additional areas of suspected disability. Thereafter, the school
28 district has sixty (60) days after receipt of your written consent to complete the
29 assessment and to develop an IEP to determine the educational needs of your child.
30 However, this timeline is extended by periods of school holiday or vacation, if you refuse
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1 to make your child available for assessment, or if your child transfers to another school
2 district and you and the receiving school district agree to a specific time when the
3 assessment will be completed.

4
5 The IDEA states that in conducting the evaluation the school district will:

- 6
7 1. Use a variety of assessment tools and strategies to gather relevant
8 functional, developmental and academic information, including information
9 provided by the parent, that may assist in determining whether the child is
10 a child with a disability and the content of the child's IEP, including
11 information related to enabling the child to be involved in and progress in
12 the general curriculum or, for preschool children, to participate in
13 appropriate activities;
- 14 2. Not use any single procedure as the sole criterion for determining whether
15 a child is a child with a disability or determining an appropriate educational
16 program for the child; and
- 17 3. Use technically sound instruments that may assess the relative contribution
18 of cognitive and behavioral factors, in addition to physical or developmental
19 factors.
- 20

21 The school district will also make sure that tests and other evaluation materials
22 used to assess your child are selected and administered so as not to be racially,
23 culturally or sexually discriminatory and are provided and administered in the child's
24 native language or other mode of communication, unless it is clearly not feasible to do
25 so. Any standardized tests that are given to the child will have been validated for the
26 specific purpose for which they are used, administered by trained and knowledgeable
27 personnel, and administered in accordance with any instructions provided by the
28 producer of such tests. Your child will be assessed in all areas of suspected disability
29 and the school district will use assessment tools and strategies that provide relevant
30 information that will directly assist the school district in determining the educational

1 needs of your child. Upon completion of the administration of evaluation materials, the
2 determination of whether the child is a child with a disability will be made by you and
3 qualified professionals comprising the IEP team. A copy of the evaluation report and
4 documentation of the determination of eligibility will be given to you.

5
6 In making a determination of eligibility, your child will not be determined to be a
7 child with a disability due to a lack of instruction in reading or math or as a result of
8 limited English proficiency.

9
10 As part of an initial evaluation (if appropriate) and as part of any reevaluation
11 under this section, the IEP Team and other qualified professionals, as appropriate, will:

- 12
13 1. Review existing evaluation data on the child, including evaluations and
14 information provided by you, current classroom-based assessments and
15 observations, and teacher observation; and
- 16 2. On the basis of that review, and input from you, identify what additional
17 data, if any, are needed to determine:
 - 18 a. Whether the child has a particular disability, or, in case of
19 reevaluation of a child, whether the child continues to have such a
20 disability and such educational needs;
 - 21 b. The present levels of performance and related developmental
22 needs of the child;
 - 23 c. Whether the child needs special education and related services, or
24 in the case of a reevaluation of a child, whether the child continues
25 to need special education and related services; and
 - 26 d. Whether any additions or modifications to the special education
27 and related services are needed to enable the child to meet the
28 measurable annual goals set out in the IEP of the child and to
29 participate, as appropriate, in the general curriculum.

1 Generally, a reevaluation is required every three (3) years. However, if the IEP
2 Team determines that no additional data is needed to determine whether your child
3 continues to be a child with a disability and to determine the child’s educational needs
4 the school district will notify you as to the reasons the school district believes a
5 reevaluation is not necessary. After receiving this notice, you may request a
6 reevaluation of your child. If the school district does not receive a reevaluation request
7 from you, the school district will not conduct a reevaluation of your child.

8
9 Before determining that your child is no longer a child with a disability, the school
10 district must conduct an assessment in accordance with the procedures discussed
11 above.
12 (20 U.S.C. sections 1414, 1415; 34 C.F.R. sections 300.301 – 300.306; Education Code
13 sections 56320,56321, 56329, and 56381.)

14
15 **INDEPENDENT EDUCATIONAL EVALUATION**

16 After the school district has completed its evaluation and if you disagree with the
17 school districts evaluation of your child, you have the right to request an independent
18 educational evaluation at school district expense. Upon your request for an independent
19 educational evaluation, the school district will provide you with information about where
20 to obtain an independent educational evaluation and the district’s criteria applicable for
21 independent educational evaluations. A parent is entitled to only one (1) independent
22 educational evaluation at public expense each time the district conducts an evaluation
23 with which the parent disagrees. However, if the school district disagrees that an
24 independent educational evaluation is necessary, the school district must request a
25 hearing before a due process hearing officer to dispute your request for an independent
26 educational evaluation and to show that the school district’s assessment is appropriate.
27 If the school district prevails, you still have the right to an independent evaluation but not
28 at public expense. If you choose to obtain an independent educational evaluation at
29 your own expense, the results of the assessment must be considered by the district.

1 The independent educational evaluation must comply with all of the requirements that
2 apply to school district evaluations.

3
4 If the school district observes your child in his or her classroom during an
5 assessment, or if the school district procedures provide for in-class observations, an
6 equivalent opportunity must be provided for any independent educational evaluation in
7 the current and any proposed educational placement.

8
9 If you unilaterally place your child in a nonpublic school and you propose the
10 placement in the nonpublic school to be publicly financed, the school district must be
11 given the opportunity to first observe the proposed placement and your child in the
12 proposed placement. (20 U.S.C. section 1415(b)(1); 34 C.F.R. section 300.502;
13 Education Code section 56329.)

14 **IEP MEETINGS**

15
16 As the parent or legal guardian of a special education student, you have the right
17 to be a part of the IEP Team and participate in any meeting regarding the identification,
18 assessment and educational placement of your child. The term IEP or Individualized
19 Education Program means a written document for each child with a disability that is
20 developed, reviewed and revised in accordance with federal and state law. The IEP
21 includes the child's present levels of academic achievement and functional performance
22 and must consider your concerns as a parent for improving the education of your child.
23 As a parent or legal guardian, you have the right to be a member of any group that
24 makes decisions with respect to the educational placement of your child. You also have
25 the right to bring individuals who have knowledge or special expertise regarding your
26 child to an IEP meeting. If you are a parent of a child age three through five years, the
27 individualized family service plan (IFSP) may serve as the IEP if agreed to by the parent
28 and the school district.

1 Federal and state law requires that the first IEP to be in effect beginning at age
2 sixteen include a statement of the transition service needs of the child and that the IEP
3 be updated annually thereafter. Beginning at age sixteen or younger, if determined
4 appropriate by the IEP Team, appropriate measurable postsecondary goals related to
5 training, education, employment, and where appropriate, independent living skills, a
6 statement of needed transition services for the child, including, when appropriate, a
7 statement of the interagency responsibilities or linkages between the agencies is
8 required. Beginning at least one year before the child reaches age eighteen (18), a
9 statement must be included in the IEP that the child has been informed of his or her
10 rights that will transfer to the child on reaching the age of majority. Under California law,
11 when a child turns age eighteen (18), he or she is considered an adult and unless the
12 parent obtains a conservatorship or guardianship over the child through court
13 proceedings, the child may make decisions regarding his or her education.
14

15 In developing an IEP for your child, the IEP Team must include positive
16 behavioral intervention strategies and supports in cases where the child's behavior
17 prevents the child from learning and consider, when appropriate, strategies, including
18 positive behavioral intervention strategies and supports to address the child's behavior.
19 The regular education teacher of your child, as a member of the IEP Team, must to the
20 extent appropriate, participate in the development of the IEP of your child, including the
21 determination of appropriate, positive behavioral intervention strategies and the
22 determination of supplementary agency services, program modifications and support for
23 the school personnel.
24

25 The IEP will be reviewed by the IEP Team at least annually in order to determine
26 whether the annual goals for your child are being achieved and revise the IEP as
27 appropriate to: (1) address any lack of anticipated progress toward the annual goals and
28 in the general curriculum, where appropriate, (2) to address the results of any
29 reevaluation conducted, (3) to address information about your child provided by you,
30 and 4) to address your child's anticipated needs, if necessary. Your child will also
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1 receive report cards in the same manner as regular education students. You and the
2 school district may agree in writing that the attendance of an IEP Team member is not
3 necessary because the member's area of curriculum or related service is not being
4 modified or discussed at the meeting. In addition, if you and the school district agree in
5 writing to excuse a member of the IEP team from the IEP Team meeting, in whole or in
6 part, when the meeting involves a modification to or discussion of the member's area or
7 the curriculum or related service, the member must submit in writing to you and the IEP
8 Team, input into the development of the IEP prior to the meeting. Under state law, you
9 have the right to electronically record IEP meetings by audio tape if you give 24 hours
10 notice to other members of the IEP Team. After the annual IEP meeting for a school
11 year, you and the school district may agree in writing not to convene an IEP meeting to
12 make changes to the annual IEP, and instead may develop a written document to
13 amend or modify the current IEP. (20 U.S.C. section 1414(d); 34 C.F.R. sections
14 300.320-300.324; Education Code sections 56032, 56304, 56341, 56341.1, 56341.5,
15 56342.5 and 56345.)

16
17 **PLACEMENT (“STAY-PUT”) DURING THE PENDENCY OF**
18 **DUE PROCESS PROCEDURES**

19 As a parent of a child with disabilities, should you get involved in a disagreement
20 with the school district over the identification, evaluation or placement of your child and
21 you file a request for a due process hearing, your child will remain (“stay-put”) in the
22 current educational placement during the pendency of the proceedings. Unless you and
23 the school district agree to a change in placement, or the school district obtains a court
24 order or an order from a hearing officer, your child will remain in his or her current
25 educational placement during the pendency of the proceedings. For initial admission to
26 school, your child will be placed in a public school program, with parental consent, until
27 the proceedings have been completed. There are exceptions to this general rule which
28 allow the school district to place your child in an alternative educational setting for a
29 limited period of time. These exceptions will be discussed in the next section on interim
30 alternative educational settings.

1 (20 U.S.C. section 1415(j); 34 C.F.R. section 300.518; Education Code section
2 56505(d).)

3
4 **INTERIM ALTERNATIVE EDUCATIONAL SETTINGS**
5 **DISCIPLINE PROCEDURES**

6 School personnel may change the placement of your child if he or she violates a
7 code of student conduct to (1) an appropriate interim alternative educational setting; (2)
8 another educational setting, or (3) suspend your child for not more than ten (10)
9 consecutive school days (to the extent such alternatives would be applied to children
10 without disabilities) and for additional removals of not more than ten (10) consecutive
11 school days in that same school year for separate incidents of misconduct. If school
12 personnel seek a change in placement that exceeds more than ten (10) school days in
13 the same school year, school personnel must determine if the behavior that gave rise to
14 the violation of the code of student conduct is a manifestation of your child's disability. If
15 a determination is made that the behavior is not a manifestation of your child's disability,
16 school personnel may discipline your child under the same procedures applicable to
17 children without disabilities.

18
19 In order to determine if the behavior that gave rise to the violation of the code of
20 student conduct is a manifestation of your child's disability, the school district, you and
21 relevant members of the IEP Team must review all relevant information in your child's
22 file, including the IEP, any teacher observations, and any relevant information provided
23 by you to determine if the conduct in question was caused by, or had a direct and
24 substantial relationship to your child's disability. This meeting must take place within
25 ten (10) school days of any decision to take disciplinary action. If the IEP Team
26 determines that the conduct is a manifestation of your child's disability, the IEP Team
27 must either conduct a functional behavioral assessment, and implement a behavioral
28 intervention plan for your child, or review and modify as necessary the existing
29 behavioral intervention plan.

1 School personnel may also place your child in an interim alternative educational
2 setting for up to forty-five (45) school days without regard to whether the behavior is
3 determined to be a manifestation of your child's disability, in cases where: (1) your child
4 carries or possesses a weapon to or at school, on school premises, or to or at a school
5 function or activity; (2) your child knowingly possesses or uses illegal drugs, or sells or
6 solicits the sale of a controlled substance while at school, on school premises, or a
7 school function or activity; or (3) your child inflicts serious bodily injury upon another
8 person while at school, on school premises, or at a school function or activity. The IEP
9 team determines the interim alternative education setting for services. After a child with
10 a disability has been removed from his or her current placement for ten (10) school days
11 in the same school year, during any subsequent days of removal the school district
12 must provide services to enable the child to continue to participate in the general
13 education curriculum, although in another setting, and to progress toward meeting the
14 IEP goals. If appropriate, the child may receive a functional behavioral assessment and
15 behavior intervention services and modifications designed to address the behavior
16 violation so that it does not recur.

17
18 No later than the date on which the decision to take disciplinary action against
19 your child is made, the school district must notify you of that decision and notify you of
20 your procedural safeguards. If you disagree with any decision regarding placement, or
21 the manifestation determination of your child, you may request an expedited due
22 process hearing which must occur within twenty (20) school days of the date of the
23 hearing request. During the pendency of the due process hearing, your child will remain
24 in the interim alternative education setting pending the decision of the hearing officer or
25 for forty-five (45) school days, whichever occurs first, unless you and the school district
26 agree otherwise. If the school district believes it is dangerous for your child or others,
27 for your child to return to the current educational placement, the school district may
28 request an expedited hearing.

1 A hearing officer may order a change in the placement of your child to an
2 appropriate interim alternative educational setting for not more than forty-five (45) days,
3 if the hearing officer determines that maintaining your child in his or her current
4 placement is substantially likely to result in injury to your child or to others.

5 (20 U.S.C. section 1415(k); 34 C.F.R section 300.530; Education Code section
6 48915.5.)

7
8 **CHILDREN WITH DISABILITIES**
9 **ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS**

10 A school district's obligation to children with disabilities enrolled in private schools
11 is limited. Under the IDEA *"no parentally- placed private school child with a disability*
12 *has an individual right to receive some or all of the special education and related*
13 *services that the child would receive if enrolled in a public school."* School districts
14 must locate, identify and assess all private school children with disabilities, including
15 religiously affiliated school age children, who have disabilities and are in need of special
16 education and related services, referred to as "child find". The school district in which
17 the private school is located, also referred to as the "District of Location" is responsible
18 for conducting child find activities for children enrolled by their parents in private
19 schools. If the District of Location is not the same school district in which the parents of
20 the private school student reside, then the District of Location may contract with the
21 school district of residence to assess the child.

22
23 Children with disabilities enrolled in private school may receive equitable special
24 education services as determined through consultation with private schools and
25 parents. In order to receive such equitable services, a "Service Plan" must be
26 developed for the private school student and consented to by the parents. The school
27 district in which the private school is located, the District of Location, is responsible for
28 developing and implementing the Service Plan.

1 A parent of a child enrolled by that parent in a private school has the right to file a
2 due process complaint only regarding the school district's child find activities. A due
3 process complaint must be filed with the school district in which the private school is
4 located, the District of Location, and the California Department of Education (CDE).
5 However, because there is no individual right to services for children enrolled by their
6 parents in private school, any complaints regarding a Service Plan can only be filed in
7 accordance with the CDE's compliance complaint procedures.

8 (20 U.S.C. section 1412(a)(10)(A); 34 C.F.R. section 300.130–300.144; Education Code
9 sections 56170–56177.)

11 **UNILATERAL PLACEMENT BY PARENTS IN PRIVATE SCHOOL**

12 If you decide to unilaterally enroll your child in a private school after the school
13 district made a free appropriate public education available to your child, the school
14 district is not required to pay for the cost of your child's education. In order to obtain
15 reimbursement for the cost of the private school from the school district, including
16 special education and related services, you must first attempt to obtain the consent of
17 the school district, and establish that the school district does not have an appropriate
18 program for your child. Reimbursement may be denied or reduced if: 1) at the most
19 recent IEP meeting that you attended prior to removal of your child from the public
20 school, you did not inform the IEP Team that you were rejecting the placement
21 proposed by the school district to provide a free appropriate public education to your
22 child, including a statement of your concerns and your intent to enroll your child in a
23 private school at public expense; or 2) at least 10 business days prior to the removal of
24 your child from the public school, you did not give written notice to the school district of
25 your concerns regarding the school districts proposed placement and your intent to
26 enroll your child in a private school at public expense.

27
28 If the school district notifies you prior to the removal of your child from the public
29 school that the school district wishes to evaluate your child and indicates the purpose of
30 the evaluation, you should make your child available for the evaluation. If you have not
31

1 complied with these requirements, a court or hearing officer may find that you acted
2 unreasonably in unilaterally removing your child from the public school and in placing
3 your child in a private school. The court or hearing officer may deny you reimbursement
4 unless you can show one or more of the following: 1) you are illiterate and cannot write
5 in English, or 2) the school district=s placement would result in physical or serious
6 emotional harm to your child.

7 (20 U.S.C. section 1412(a)(10)(C); 34 C.F.R. section 300.148; Education Code sections
8 56175-56177.)

9 **OPPORTUNITY TO PRESENT AND RESOLVE COMPLAINTS**

10 **A. STATE COMPLAINT PROCEDURES**

11 The IDEA grants parents an opportunity to present and resolve complaints with
12 respect to any matter relating to the identification, evaluation or educational placement
13 of your child or the provision of a free appropriate public education to your child. Written
14 complaints may be filed with the school district or the state or federal agencies at the
15 addresses listed below. Compliance complaints must allege a violation that occurred
16 not more than one (1) year prior to the date the complaint is received. A copy of
17 the written complaint must also be provided to the school district serving the child at
18 the same time it is filed with the state agency. The school district, state or federal
19 agency has sixty (60) days from the date of receipt of the complaint to render a
20 decision in the matter. For complaints filed with the school district, within fifteen (15)
21 days of receiving the school district's decision, you may appeal the school
22 district's decision to the California Department of Education (CDE). Complaints may
23 also be filed directly with the CDE.

24
25 Orange County Department of Education

26 Division of Special Education Services

27 Attn: Analee Kredel, Chief

28 200 Kalmus Drive

29 Costa Mesa, CA 92628-9050

30 Phone: (714) 966-4132 Fax: (714) 545-6312

1 California Department of Education
2 Special Education Division
3 Procedural Safeguards Referral Service
4 1430 N Street, Suite 2401
5 Sacramento, California 95814
6 Phone: 1-800-926-0648
7 Fax: (916) 327-3704

8
9 United States Department of Education
10 Office for Civil Rights
11 50 Beale Street, Suite 7200
12 San Francisco, CA 94105
13 Phone: (415) 486-5555
14 Fax: (415) 486-5570
15 TDD: (877) 521-2172
16

17 The school district encourages you to file your complaint with the school district.
18 We will meet with you and investigate your complaint in a timely manner and attempt to
19 resolve any concerns. The school district has established confidential procedures for
20 the filing of complaints. A complaint form is available from the school district. (20 U.S.C.
21 Section 1415(b)(6); 34 C.F.R. section 300.153; Education Code section 56500.2; 5
22 CCR section 4600.)
23

24 **B. MEDIATION AND DUE PROCESS HEARING PROCEDURES**

25 The IDEA requires states to establish procedures for mediation and impartial due
26 process hearings regarding the identification, assessment, and educational placement
27 of your child or the provision of a free appropriate public education (FAPE). You or the
28 school district may file a request for mediation-only or a due process hearing complaint.
29

30 Your request for mediation-only or a due process hearing must include the name
31

1 and address of the child, date of birth, grade level and name of the school the child is
2 attending, parent information, parties to the mediation, a description of the nature of the
3 problem, including facts relating to such problem, and a proposed resolution of the
4 problem. The CDE has developed model forms to assist you in filing a request for
5 mediation-only or a due process hearing. You may access these model forms at:

6 <http://www.oah.dgs.ca.gov/Special+Education/default.htm>

7 You must serve the mediation-only or due process hearing complaint on the
8 school district and file a copy with the Office of Administrative Hearings at the address
9 listed below:

10 Office of Administrative Hearings
11 Attn: Special Education Division
12 2349 Gateway Oaks Drive, Suite 200
13 Sacramento, CA 95833-4231
14 Phone: (916) 263-0880
15 Fax: (916) 376-6319

16
17 In California, mediation is voluntary. You may request a due process hearing or
18 mediation-only. Mediation-only means you are asking for mediation without asking for a
19 due process hearing. Mediation is an informal proceeding conducted in a
20 nonadversarial manner. If you request mediation-only you and the school district will
21 receive a notice that mediation has been scheduled, and the notice will contain the time,
22 date and location of the mediation as well as the name, address, and phone number of
23 a knowledgeable and impartial mediator assigned to the case. The mediation must be
24 scheduled within 15 days of the Office of Administrative Hearing's receipt of the request.
25 Attorneys cannot attend mediation-only. However, you or the school district may be
26 accompanied and advised by non-attorney representatives. Statements made by you
27 and the school district during mediation are confidential and may not be used in a due
28 process hearing or court action. Any agreement reached during mediation must be in
29 writing and signed by all parties. You may also ask the school district to resolve
30 disputes through alternative dispute resolution (ADR), which is also less adversarial

1 than a due process hearing. ADR and mediation are voluntary methods of resolving a
2 dispute. If the dispute is not resolved during mediation or through ADR, you may
3 proceed to a due process hearing. Mediation or ADR are not prerequisites to
4 requesting a due process hearing.

5
6 A due process hearing is a formal proceeding where you and the school district
7 are given the opportunity to present witnesses, documentary evidence, and oral and
8 written argument in support of your respective positions on disputed special education
9 issues. You may request a mediation conference at any point during the due process
10 hearing. A request for a due process hearing must be filed within (2) years from the
11 date you or the school district knew or should have known about the alleged action that
12 forms the basis of the due process hearing complaint. Upon receiving a request for a
13 due process hearing, you and the school district will receive a notice from the Office of
14 Administrative Hearings with the time, date and location of the due process hearing.

15
16 Prior to the opportunity for an impartial due process hearing, within fifteen (15)
17 days of receiving your due process hearing complaint, the school district is required to
18 convene a mandatory resolution meeting with you and the relevant members of the IEP
19 Team who have specific knowledge of the facts raised in your complaint, where you can
20 discuss your complaint and the facts that form the basis of your complaint, and the
21 school district is provided the opportunity to resolve the complaint. The resolution
22 meeting must include a representative from the school district who has decision making
23 authority on behalf of the school district, but may not include an attorney for the school
24 district unless the parent is also accompanied by an attorney. Attorneys' fees may not
25 be awarded relating to a resolution meeting. Unless the school district agrees, you may
26 not waive the mandatory resolution meeting. If resolution is reached to resolve the
27 complaint at the mandatory resolution meeting, the parties must sign a legally binding
28 agreement. If the school district has not resolved the complaint to your satisfaction
29
30
31

1 within thirty (30) days of the receipt of the complaint, the due process hearing may
2 move forward and all applicable timelines for a due process hearing shall commence.

3
4 The due process hearing is limited to those issues raised in your due process
5 hearing complaint. An impartial hearing officer presides over the due process hearing.
6 You have the right to be accompanied and advised by an attorney and by individuals
7 with special knowledge or training related to the problems of children with exceptional
8 needs; the right to present evidence, written and oral arguments; the right to confront,
9 cross-examine and compel attendance of witnesses; the right to a written or electronic
10 verbatim record of the hearing; and the right to written findings of fact and decision.

11
12 At least ten (10) days prior to the hearing you and the school district must inform
13 each other of the issues to be decided at the hearing and the proposed resolution of
14 those issues as well as whether the parties will be represented by an attorney at the
15 hearing. At least five (5) business days prior to the hearing you and the school district
16 must disclose all your witnesses and evidence you intend to introduce at the hearing
17 including evaluations completed to the other party, or the witnesses, evidence or
18 evaluations cannot be introduced as evidence at the hearing.

19
20 In general, a hearing officer's decision should be made on substantive grounds
21 based on a determination of whether your child received FAPE. The hearing officer
22 must reach a final decision and mail a copy of the written decision to you and the school
23 district within forty-five (45) days of the receipt of the request for a hearing by the Office
24 of Administrative Hearings or State Superintendent of Public Instruction, unless a
25 continuance has been granted for good cause. The decision made in a due process
26 hearing is final, except that any party involved in the hearing may appeal the decision by
27 filing a civil action with respect to the findings and decision in the due process
28 complaint.

29 (20 U.S.C. sections 1415(b)(7)(a)–1415(j); 34 C.F.R. sections 300.506–300.518;
30 Education Code sections 56500.3, 56502–56507; 5 CCR section 3082.)

1 **CIVIL ACTIONS**

2 Either you or the school district may appeal the hearing officer’s decision by filing
3 a civil action. In a civil action, the records and transcription of the administrative
4 proceedings shall be filed with the court. The court may hear additional evidence at the
5 request of either party and must base its decision on the preponderance of the
6 evidence. The action may be filed in the United States District Court or in Orange
7 County Superior Court. The action must be filed within ninety (90) days of the receipt of
8 the hearing officers decision.

9 (20 U.S.C. section 1415(i); 34 C.F.R. sections 300.514, 300.516; Education Code
10 section 56505(k).)

11 **ATTORNEYS FEES**

12 The United States District Court or the Orange County Superior Court has the
13 authority to award you reasonable attorneys’ fees if you are the prevailing party in a due
14 process hearing or civil action; or to award the school district reasonable attorneys’ fees
15 if your attorney files a complaint or subsequent cause of action that is frivolous,
16 unreasonable, or without foundation, or the complaint or subsequent action was filed to
17 harass, cause unnecessary delay, or to needlessly increase the cost of litigation. The
18 fees awarded are based on rates prevailing in the community in which the action or
19 proceeding arose. No attorneys’ fees may be awarded to you following a written offer
20 of settlement from the school district made at least ten (10) days prior to hearing, if the
21 court or hearing officer finds that the relief you ultimately obtained is not more favorable
22 than the written offer of settlement. However, attorneys’ fees will not be reduced if you
23 were substantially justified in rejecting the settlement offer, or the school district
24 unreasonably prolonged the proceedings.
25

26
27 You may not be awarded attorneys fees and related costs if you unreasonably
28 prolonged the final resolution of the controversy or the amount of the fees requested is
29 unreasonable. In addition, attorneys’ fees or related costs may not be awarded for
30 attorney time spent attending resolution meetings or IEP Team meetings, unless the
31

1 IEP team meeting is convened as a result of an administrative proceeding or judicial
2 action.
3 (20 U.S.C. section 1415(i)(3); 34 C.F.R. section 300.517; Education Code section
4 56507(b).)

6 STATE SPECIAL SCHOOLS

7 The State Special Schools operated by CDE provide services to students who
8 are deaf, hard of hearing, blind, visually impaired, or deaf-blind at each of its three
9 facilities: the California Schools for the Deaf in Fremont and Riverside and at the
10 California School for the Blind in Fremont. Residential and day school programs are
11 offered to students from infancy to age 21 at both State Schools for the Deaf and from
12 ages five through 21 at the California School for the Blind. The State Special Schools
13 also offer assessment services and technical assistance. For more information about
14 the State Special Schools, please visit the California Department of Education Web site
15 at <http://www.cde.ca.gov/sp/ss/> or ask for more information from the members of your
16 child's IEP team.
17 (Education Code section 56321.6.)