

**East San Gabriel Valley  
Special Education Local Plan Area  
Bonita Unified School District  
115 W. Allen Avenue, San Dimas, CA 91773**

**Parents' Rights and Procedural Safeguards  
Please keep this document for future reference**

***Dear Parent(s)/Guardian(s)/Pupil:***

This notice is provided to you because your child is being considered for possible placement or is currently enrolled in a special education program. This notice is also provided for students who are entitled to these rights at age 18. If your child is being referred for special education and all options of the regular education program have been considered and, where appropriate utilized, for your child, you have the right to initiate a referral for special education.

In California, special education is provided to disabled students between birth and twenty-one years of age. Federal and state laws protect you and your child throughout the procedures for evaluation and identification of special education placement and services. Parents of students with disabilities have the right to participate in the individual education program ("IEP") process and be informed of the availability of a free appropriate public education ("FAPE") and of all available alternative programs, including public and nonpublic programs.

You have the right to receive this notice in your primary/native language or other mode of communication (i.e., sign language or Braille), unless it is clearly not feasible to do so. These rights may also be translated orally to you if your primary/native language is not a written language. This notice will be given to you only one time a year, except that a copy will also be given to you upon initial referral or your request for assessment, upon the first occurrence of the filing for a due process hearing under Section 56502, and upon your request. If available, a copy of these procedural safeguards may also be accessible on your district's website and may be sent to you, upon your request, by electronic mail.

The definitions below will help you understand the statement of rights. Should you need further information regarding the contents or use of this guide, you may contact your school district of residence special education administrator, whose telephone number is on the last page of this document.

Revised 9/12/05

***Definitions***

**Children with Disabilities:** The Individuals with Disabilities Education Act (IDEA) defines "children with disabilities" as including children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities, and who by reason thereof, need special education and related services.

**Evaluation:** An assessment of your child using various tests and measures per Education Code Section 56320-56339 and 20 U.S.C. Section 1414(a), (b) and (c) to determine whether your child has a disability and the nature and extent of special and related services needed by your child for his/her educational benefit. The assessment tools are individually selected for your child and are administered by competent professionals employed by the local education agency. Testing and evaluation materials and procedures will be selected and administered so as not to be racially or culturally discriminatory. The materials or procedures will be provided and administered in your child's native language or mode of communication, unless it clearly is not feasible to do so. No single procedure shall be the sole criterion for determining an

appropriate educational program for a child. These tests do not include the basic tests given to all children in the school setting.

**Free Appropriate Public Education (FAPE):** An education that (1) is provided at public expense, under public supervision and direction, and without charge to you; (2) meets the standards of the California Department of Education; and (3) is provided in conformity with a written individualized education program developed for your child to confer an educational benefit and to be implemented in a preschool, elementary or secondary school program of the State. This education may be provided in a nonpublic or private school if there is no appropriate program available in the Local Education Agency.

**Individual Education Program (IEP):** A written document developed in a meeting of the individualized education program team and shall include at least all of the following; (1) the present levels of performance; (2) the annual goals and short-term instructional objectives; (3), the specific special educational instruction and related services required by the pupil; (4) the extent to which the pupil will participate in general educational programs; (5) the projected date for initiation and the anticipated duration of the programs and services included in the individualized education program; and (6) appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

**Least Restrictive Environment (LRE):** To the maximum extent appropriate, children with disabilities will be educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the general education program will occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

**Local Educational Agency (LEA):** This term includes a school district, County Office of Education (“COE”), a Special Education Local Plan Area (“SELPA”), or a charter school participating as a member of a SELPA.

**Notification of Majority Rights:** Your child has the right to receive all information about her/his educational program and to make all decisions when s/he reaches the age of eighteen unless determined incompetent by state law and procedures. Non-conserved adults are presumed under the laws of the State of California to be competent.

### ***What is, and how may I obtain an Independent Educational Evaluation?***

An independent educational evaluation (“IEE”) is an assessment conducted by a qualified examiner who is not employed by the LEA providing an education to your child, but satisfies the same requirements of the California Department of Education (“CDE”) and the LEA. If you disagree with the results of a recent assessment conducted by the school district and make that disagreement known to the district, you have the right to request and possibly obtain an IEE for your child at public expense from a qualified person. Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you. Your LEA has information available for you about where such an IEE may be obtained and what the LEA’s criteria is for determining qualification.

If you request an IEE at public expense, the LEA must either (1) file a complaint for due process against you to prove that its assessment is appropriate, or that the IEE fails to meet the LEA’s criteria, or (2) ensure that the IEE is provided to you at public expense. If the LEA proves at a due process hearing that its assessment is appropriate, you still have the right to an IEE, but not at public expense.

If you obtain an assessment at private expense and provide a copy of it to the district, the results of the assessment will be considered by the IEP team with respect to the provision of a FAPE to your child. The privately funded assessment may also be introduced at a due process hearing regarding your child.

If the district observed your child in conducting its assessment, or if the district's assessment procedures allow in-class observations of students, an individual conducting an IEE must also be allowed to observe your child in the classroom, or observe an educational setting proposed by the IEP team.

### ***What is Prior Written Notice and when will I receive it?***

When the LEA proposes or refuses to initiate a change in the identification, assessment, or educational placement of a child with a disability, the LEA must provide written notice to parents of this proposal or refusal within a reasonable time. This notice, if not previously provided to the parent, will also be provided upon the LEA's receipt of a parent's or student's request for due process. The written notice will include:

- The procedural safeguards available to parents which is included in this notice.
- A description of the actions proposed or refused by the LEA with an explanation of why the agency proposed or refused to take the action and a description of other actions considered and why those options were rejected.
- A description of each assessment procedure, test, record, or report the agency used as a basis for the proposal or refusal.
- A description of other options considered by the IEP Team and the reason why those options were rejected.
- A description of any other factors, which are relevant to the LEA's proposal or refusal.
- Notice that parents can obtain copies or assistance in understanding their rights and procedural safeguards from the Special Education Director of their child's district of residence, the SELPA Director at (626) 966-1679, or the CDE in Sacramento.

### ***What constitutes Parental Consent and when is it required?***

Consent means that the parent ("parent" includes any person with legal custody, a guardian, surrogate, a grandparent with whom the child lives who is acting in place of a parent, or a non-conserved adult student) of the student has been given all information relevant to any activity for which consent is sought in his/her native language or other mode of communication (unless it is clearly not feasible to do so). A parent must understand and agree in writing to the implementation of the activity to which s/he consents. The consent form executed by the parent should contain a description of the activity and a list of records that will be released and to whom the records will be released in order to initiate or implement the activity. Consent is voluntary and can be revoked at any time, but if you revoke your consent, it does not negate an action that has already occurred.

Your District must get parental consent before assessing and/or providing special education and related services to your child. If you refuse to consent to the *initial IEP* placement and services, the LEA may not use the due process procedures described below to challenge your refusal to consent. However, when the LEA requests consent and you do not provide it, the LEA will not be considered to be in violation of the requirement to make available a FAPE to your child. The LEA will also not be required to convene an IEP team meeting or develop an IEP when such consent is not provided after the LEA's request.

When parents refuse all services in a child's IEP after having consented to those services in the past, the LEA must file a request for due process. Parent may consent in writing to the receipt of some components of the IEP and those components of the program shall be implemented by the LEA. If the LEA determines that the remaining proposed special education component(s) to which the parent does not consent is/are necessary to provide a FAPE to the child, the LEA must initiate a due process hearing. Ca. Ed. Code § 56346 et seq.

Finally, informed parental consent need not be obtained in the case of a reassessment of the child if the local educational agency can demonstrate that it has taken reasonable measures to obtain consent and the child's parent has failed to respond. Ca. Ed. Code § 56506(e).

### ***When may I access Educational Records, and how do I do so?***

All parents or guardians of children enrolled by the Los Angeles County Office of Education (LACOE) or member districts of the East San Gabriel Valley (ESGV) Special Education Local Plan Area (SELPA) have the right to inspect records under the Family Rights and Privacy Act (FRPA), 20 U.S.C. Section 1232g, 34 C.F.R. 99.1-99.67, which has been implemented in the California Education Code. Under the IDEA, parents of a child with disabilities (including non-custodial parents whose rights have not been limited) are presumed to and have the right to review all educational records regarding the identification, evaluation, and educational placement of the child and the provision of a FAPE and to receive an explanation and interpretation of the records. Under California statutes, the parents have the right to review and to receive copies of educational records. These rights transfer to a non-conserved pupil who is eighteen years old or attending an institution of post secondary education.

Education record means those records that are directly related to a pupil and maintained by an educational agency or a party acting for the agency or institution. Personally identifiable records may include (1) the name of the child, the child's parent or other family member; (2) the address of the child; (3) a personal identifier such as the child's social security number, student number, or court file number; (4) a list of personal characteristics or other information that would make it possible to identify the child with a reasonable certainty. Both federal and state laws further define a pupil record as any item of information directly related to an identifiable pupil, other than directory information, which is maintained by a school district or required to be maintained by an employee in the performance of his duties whether recorded by handwriting, print, tapes, film, microfilm, computer or by other means. Pupil records do not include informal personal notes prepared and kept by a school employee for his/her own use or the use of a substitute. If records contain information about more than one student, a parent can have access only to that portion of the record pertaining to his/her child. Upon receiving notice that the records are no longer necessary to the school district, the parent may request destruction of the records.

The custodian of records at each school site is the principal of the school. There is also a district level custodian of records. Pupil records may be kept at the school site or the district office, but a written request for records at either site will be treated as a request for records from all sites. The district custodian of records will provide you with a list of the types and locations of pupil records (if requested). Three years after a student exits a program, the special education records will be destroyed.

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

A review and/or copies of educational records will be provided to the parent within, five (5) days of a request. A fee for copies, but not the cost to search and retrieve, is determined by local policy and will be charged unless charging the fee would effectively deny access to the parent. Once a complete copy of the records has been provided, a fee will be charged for additional copies of the same records.

Parents who believe that information in the education records collected, maintained or used by the school district is inaccurate, misleading or violates the privacy or other rights of the pupil may request in writing that the school district amend the information. If the district concurs, the record will be amended and the parent will be informed. Should the district refuse to make the amendment requested within 30 days, the district shall notify the parent of the right to and provide a hearing, if requested, to determine whether the challenged information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the pupil. If it is decided by the governing board after the hearing that the record will not be amended,

the parent shall have a right to provide what s/he believes is a corrective written statement to be permanently attached to the record. The parent statement will be attached if the contested record is disclosed. A record of the administrative appeal to the governing board shall be destroyed at the end of one (1) year unless the parent has initiated legal proceedings.

***If I have a complaint about my child's educational program, how do I raise it?***

Any concern relating to the educational program of your child, should be first brought to the attention of the teacher, school administrator, or entire IEP team. If your concern relates to the identification, assessment, educational placement or services or your child with exceptional needs, you may request an IEP team meeting at any time to discuss such your concerns.

Additionally, Section 1415(b)(6) of the IDEA grants parents an opportunity to present complaints with respect to any matter relating to the identification, evaluation or educational placement of your child or the provision of a FAPE to your child. If you are unable to resolve your concerns with school staff or at an IEP team meeting, these complaints may be filed with your school district at the address provided on the last page of this notice, with the CDE, or, in the case of due process requests, with the Office of Administrative Hearings ("OAH").

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

**District Level Compliance Complaint:** Complaints regarding special education issues related to your child may be filed directly with your school district. The LEA encourages you to file your complaint with the school district in order for it to quickly address your concerns in an informal and efficient manner. Your local district has established confidential procedures for the filing of these complaints and will meet with you to investigate your complaint in a timely manner and attempt to resolve any concerns. The Compliance Officer will assist you in resolving any complaint of discrimination against the district, its employees or contractors, and students. The Compliance Officer also is able to assist you to prepare your complaint in writing and to provide the information required by law. The Compliance Officer will refer you to other agencies responsible for the investigation and resolution of complaints when appropriate. **A complaint filed with the school district may be filed with the superintendent of the district or his/her designee, or the District's Compliance Officer, whose address can be found at the end of this notice.**

**State Level Compliance Complaint:** Parents of children with disabilities may file a complaint with the CDE. A Compliance Officer will assist you in resolving any complaint of discrimination against the district, its employees or contractors, and students. The Compliance Officer also is able to assist you to prepare your complaint in writing and to provide the information required by law. The Compliance Officer will refer you to other agencies responsible for the investigation and resolution of complaints when appropriate. Complaints should be filed with the **California Department of Education, Special Education Division, Procedural Safeguards Referral Service, 1430 "N" Street, Suite 2401, Sacramento, CA 95814, Phone (800) 926-0648 Fax (916) 327-3704, Web site: <http://www.cde.ca.gov/spbranch/sed>.**

For both District Level and State Level Compliance Complaints which allege a violation of the law under the IDEA or California special education law, the complaint must (1) be in writing; (2) contain a statement that the LEA has violated a law or regulation under the IDEA or California Education Code counterparts; (3) contain the facts which support the allegation; (4) contain a signature and contact information of the complainant; and (5) if alleging a violation against a single child, must contain (a) the name and address of the child (or available contact information for a homeless child); (b) the name of the school the child is attending; (c) a description of the nature of the problem and facts relating to the

problem; and (d) a proposed resolution to the extent known. Where appropriate, complaints filed with the school district may be mailed or faxed to the CDE, Compliance Unit, within twenty-four (24) hours.

Compliance complaints filed with the CDE must be filed within one (1) year from the date you knew or had reason to know of the facts that were the basis for the complaint.

If the complaint cannot be resolved by you and the school district within ten (10) days, CDE will complete an on-site evaluation, if necessary, including possibly requesting additional information from you and/or the LEA. Within sixty (60) days of the date the complaint was initially filed, the CDE will issue a written decision addressing its findings for each allegation in the complaint. CDE may also order corrective actions to be taken by the LEA as well as prospective services for your child.

### ***What is a Due Process hearing and what are my rights related to it?***

A due process hearing is a formal proceeding presided over by an administrative law judge which is similar to a court action. The hearing can be initiated by a parent (as described above), emancipated pupil, or school district when there is a disagreement over a proposal or refusal to initiate or change the identification, assessment or educational placement of the pupil or the provision of a free, appropriate public education of the pupil (including such disciplinary action as multiple suspensions or expulsion). Requests should be sent to **Office of Administrative Hearings, Special Education Unit, 1102 Q Street, 4<sup>th</sup> Floor, Sacramento, CA 95814, Phone (916) 323-6876, Fax (916) 322-8014**. Requests for due process will be investigated in an expeditious and effective manner by OAH.

Under State law, 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 were the basis for the hearing request. CA Ed. Code § 56505(l). Federal law provides an exception to this timeline if you were prevented from requesting the hearing earlier because the LEA: (1) misrepresented that it had resolved the problem which is the basis of your request; or (2) withheld information from you relating to the information contained in this document.

Your Request for due process must include the name, address of the residence (or available contact information in the case of a homeless child) and the school of your child; a description of the problem relating to the proposed initiation or change, including specific facts about the problem; a proposed resolution to the problem to the extent it is known to you. Be aware that an opposing party may challenge the contents of your letter if it does not contain this required information. You may be given the opportunity to amend a complaint, however, this will delay the commencement and final determination in your child's due process hearing. State and Federal law requires that either party filing for a due process hearing must provide a copy of the written request to the other party. (20 U.S.C. § 1415(h); CA. Ed. Code § 56502(c)).

Before a party may proceed to a due process hearing, within 15 days of receiving a parent's request for due process, the LEA shall convene a meeting between the parents, the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the due process hearing request, a representative of the LEA who has decision-making authority on behalf of the agency to discuss a resolution to the issues raised. The meeting will not include the LEA's attorney, unless the parent is accompanied by an attorney.

The resolution session is required unless both the parent and LEA agree in writing to (1) not hold the meeting, or (2) use the mediation process in lieu of the meeting. If an agreement is reached, the agreement must be memorialized in writing and signed by both the parent and LEA representative. After signing, both you and/or the LEA have three business days to void the agreement. If agreement is not reached within 30 days, the due process hearing may proceed and the applicable timelines will begin.

Your right to a fair and impartial administrative hearing before a person knowledgeable in laws governing special education and administrative hearings also includes the right to (1) have a mediation conference at any time in the proceedings; (2) be represented by an advocate with knowledge and training related to the problems of children and youth with disabilities; (3) present evidence, written arguments, and oral arguments; (4) confront, cross examine, and require witnesses to be present; (5) a written (or electronic at the option of the parent) verbatim record of the hearing, including, findings of fact and a final decision which will be mailed to each party within 45 days after the request for a hearing (6); a written notice of the other party's issues and proposed resolutions or the other party's intent to use an attorney at least 10 days before commencement of the hearing, or in the case of a non-represented parent, the right to the assistance of a mediator to identify the issues and proposed resolutions; (7) receive at least five days before hearing a copy of all documents, including assessments completed by that date, and a list of witnesses and their general area of testimony which the other side intends to rely upon, as well as the right to prohibit the same by a party for failing to abide by this rule (exclusion is discretionary with the hearing officer); (8) have your child present at the hearing; (9) have the hearing open or closed (10) have an interpreter; (11) request an extension of the hearing timeline for good cause.

***What if I disagree with the results of a due process hearing,  
may I appeal it in a civil action?***

The hearing decision is final and binding on both parties. Either party may appeal the decision by filing an appeal in a State or Federal district court. In a civil action, the records and transcription of the administrative proceedings will be filed with the court. The court may hear additional evidence at the request of either party and must base its decision on the preponderance of the evidence. This appeal must be made *within ninety (90) days after the date of the decision of the hearing officer.*

***What is Mediation and when can I request it?***

Parties are encouraged to seek resolution of special education disputes through less adversarial processes such as mediation or alternative dispute resolution ("ADR") prior to filing for due process. These voluntary prehearing mediation conferences are to be conducted in a nonadversarial atmosphere to resolve issues relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child, to the satisfaction of both parties. Therefore, attorneys or other independent contractors used to provide legal advocacy services may not attend or otherwise participate in the prehearing request mediation conferences. This does not prevent either party from consulting an attorney either prior to or following the mediation process nor does this bar a parent of the child in question from participating if the parent is an attorney. The parties may be accompanied and advised by non-attorney representatives at their discretion.

This mediation conference shall be scheduled within 15 days and completed within 30 days of the District superintendent's receipt of the request for mediation unless both parties agree to an extension. The resolution may not conflict with state or federal law and must be sent to the parties within 10 days of the conclusion of the mediation conference.

Additionally, apart from the prehearing mediation conferences, the parties may engage in the mediation of disputes at any time during the hearing process itself if ***both parties*** agree to mediation or ADR. A mediator who is trained to reconcile the differences of the parties in a non-adversarial manner will be appointed by OAH at no cost to either party. Mediation extends OAH's timeline to render its decision by the time necessary to convene and complete the mediation process; however, mediation is not intended to deny or delay your right to a hearing or any other rights.

If the issues which gave rise to the complaint are not resolved by the resolution session, mediation or ADR, OAH must hold a hearing, reach a final decision on the issues in the case, and send a copy of the decision to the parties within 45 days of the expiration of the 30 day resolution period. Extensions may be granted by OAH at the request of either party. The hearing must be held at a time and place that is reasonably convenient to the parties.

***Where will my child be placed during the pendency of a due process hearing?***

According to the “stay put” provision of the law, a child involved in any administrative or judicial proceeding must remain in the last agreed upon and implemented educational placement unless you and the school district agree on another arrangement. Under special circumstances, in the case of a child placed in an interim alternative educational setting (“IAES”), the child shall remain in the IAES for a maximum of 45 school days pending the due process hearing or until the expiration of the time period for the IAES, whichever occurs first. If you are applying for initial admission to a public school, your child will be placed in a public school program with your consent until all proceedings are completed. (20 U.S.C 1415(j); Ca. Ed. Code § 56505(d) and (i); P.L. 108-446 § 615(k)(4)).

***What are the procedures when my child is subject to placement in an IAES?***

A decision to place a student in an IAES may be made by the IEP team when disciplinary action is contemplated by a school district. An IAES is an educational placement or other setting or suspension that may be ordered by school personnel for a period not to exceed ten (10) school days (to the extent the alternative would be applied to students without disabilities).

Under special circumstances, the IAES may be ordered for a period not to exceed forty-five (45) school days when a child has committed one of the following offenses at school, on school premises or at a school function under the jurisdiction of a State or LEA; (1) carried or possesses a weapon; (2) knowingly possessed or used illegal drugs, or sold or solicited the sale of controlled substances; (3) inflicted serious bodily injury upon another person. If the LEA has not already done so, after placing the student in a forty-five school day IAES, the LEA shall conduct a functional behavioral assessment and implement a behavioral intervention plan (if one has not already been implemented). If such a plan is already in place, the IEP Team shall consider its modification. The IAES shall be affirmed by the IEP team if it will enable the child to continue to participate in the general curriculum and to receive those services and modifications, including those described in the child’s current IEP, to meet the goals set out in the IEP and provide the modifications to address the offending behavior.

Under federal law, a hearing officer may return a child with a disability to the placement from which the child was removed or order a change of placement for a child with a disability to an appropriate IAES for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

At the time the decision is made to place a student in the IAES, the parents of the student have the right to be notified of the decision and provided written notice of all procedural safeguards under the disciplinary section of the IDEA. If a placement in an IAES is in excess of 10 school days, the IEP team must determine the appropriate setting and necessary services that will allow your child to continue to receive an educational benefit.



***What are the rules relating to my decision to unilaterally place my child in a private school?***

The reimbursement to a parent for placement of a child in a private school or agency may be ordered by a hearing officer or court when it is determined that the school district did not provide a FAPE to the child in a timely manner prior to the enrollment and that the private placement is appropriate.

Reimbursement may be reduced if the parent failed to inform the LEA that they were rejecting the proposed placement and of their intent to place their child in a private school at public expense at (1) the most recent IEP, or (2) at least ten (10) business days prior to the removal of the child from public school. Reimbursement may also be reduced if, prior to the removal of the child from public school, the LEA informed the parent of its intent to evaluate the child and parent refused to permit or did not make the child available for the evaluation.

Such notice shall be in writing unless the parent is not literate or uses a mode of communication that is not written. Reimbursement cannot be reduced if the school district prevented the parent from giving notice; the parent had not received notice of the “written notice” requirement; or if compliance with the notice requirement would likely result in the physical harm to the child. The cost of reimbursement may or may not be reduced if the parent is not literate or cannot write in English, or compliance with the notice requirement would likely result in serious emotional harm to the child.

***Under what circumstances could my attorneys’ fees be reimbursed to me?***

A court, in its discretion, may order that a member district pay reasonable attorneys’ fees to the parent of a child with disabilities if the parent prevails at a due process hearing. Additionally, the LEA may be awarded attorneys’ fees against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation. The LEA may also be entitled to attorneys’ fees against the attorney of a parent, or against the parent, if the parent’s complaint or subsequent cause of action was presented for any improper purposes, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

The Court shall reduce the amount of attorneys’ fee if (1) the parent has unreasonably delayed the proceedings (unless the school district also delayed the proceedings or violated due process procedures); (2) the fees unreasonably exceed the prevailing hourly rate in the community; (3) the time spent and legal services were excessive; (4) or the parent’s attorney did not provide the school district with notice required by 20 U.S.C. Section 1415 (b)(7).

A parent may not obtain additional attorneys’ fees or costs after the rejection or failure to respond within ten (10) days to an offer of settlement that is made by the LEA at least (10) days before the hearing or court action if the hearing officer or court finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

Attorney's fees may not be awarded to an attorney for attendance at an IEP team meeting unless the meeting has been convened as a result of an administrative proceeding, a judicial action, or at the discretion of the state, for a mediation described above.

***What are my child’s rights when the LEA is contemplating disciplining him/her?***

Before a student with disabilities may be suspended from school for a period in excess of 10 days or 10 cumulative days when such suspensions constitute a change in placement, the LEA must hold an IEP team meeting to determine whether the behavior subject to discipline was a manifestation of your child’s disability. The IEP team will determine whether the (1) conduct in question was caused by, or had a direct

and substantial relationship to your child's disability; or (2) if the conduct in question was the direct result of the LEA's failure to implement the IEP. Under special circumstances, your child may be removed from his/her placement for a period not to exceed 45 school days if he/she (1) carries or possesses a weapon at school or at a school function; (2) knowingly possesses, uses, sells or solicits illegal drugs or controlled substances at school or a school function; or (3) has inflicted serious bodily injury upon another student at school or at a school function. School officials are not prohibited by special education laws from reporting a crime committed by your child to appropriate authorities.

Parents have the right to appeal a decision to suspend or expel special education students. When an appeal has been requested by either the parent or the LEA relating to the disciplinary placement of a child or the results of the manifestation determination meeting, the State or LEA shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing. Your child is entitled to a stay put placement during appeals, however, if your child is placed in a IAES for 45 school days, placement will remain in that setting pending the decision by the hearing officer or until the expiration of the time period of the suspension, whichever occurs first.

If an evaluation of the child is requested when disciplinary action is pending, the evaluation shall be conducted in an expedited manner. Pending such an evaluation, the child shall remain in an educational setting determined by school authorities.

A child who has not previously been determined to be eligible for special education and related services may assert any of the protections provided under the IDEA if the LEA had knowledge that the child was a child with a disability before the occurrence of the behavior that caused disciplinary action. Knowledge shall be deemed if (1) the parent expressed in writing to supervisory or administrative personnel of the school district, or the teacher of the child, that the child was in need of special education and related services; (2) the parent had requested an evaluation of the child; or (3) school personnel had expressed to the director of special education of the LEA or to other supervisory personnel specific concerns about a pattern of behavior demonstrated by the child. A LEA shall not be deemed to have knowledge if the parent has not allowed an evaluation of the child or has refused special education services or the child has been evaluated and it was determined that the child was not eligible for services. If the agency did not have knowledge of the disability, the child shall not receive the due process protections of the IDEA.

#### ***Under what circumstances will a surrogate parent be appointed for a child?***

Within 30 days of the local educational agency's determination that a student is in need of a surrogate parent, the LEA will appoint a surrogate parent for a child if:

1. The child has been made a dependent or ward of the court, the court has specifically limited the right of the parent or guardian to make educational decisions for the child, **and** the child has no responsible parent or guardian to represent him or her; or
2. The child is not a ward or dependent of the court **and** no parent or guardian can be located, **or** there is no caretaker of the child **or** the child is an unaccompanied homeless youth.

In determining who will act as a surrogate for a child, the SELPA will consider a relative caretaker, foster parent, or court appointed special advocate, if any of the individuals exist, otherwise it will appoint a person of its choice. The surrogate parent will be an individual with knowledge and skills to adequately represent the child. The surrogate must meet the child at least once and, unless such a person is unavailable, should be culturally sensitive to the child.

The surrogate parent shall represent the child in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the IEP, and in all other matters relating to the provision of a FAPE to the child, including the provision of written consent to the IEP for non-emergency medical services, mental health treatment services and occupational or physical therapy services.

Persons with a conflict of interest in representing the child shall not be appointed as a surrogate parent. Conflicts exist if the surrogate parent is an employee of the LEA involved in the education or care of the child, or a foster care provider who derives his/her primary source of income from the care of this child or other children. When no such conflict exists, foster care providers, retired teachers, social workers and probation officers may all serve as surrogates. In the case of an unaccompanied homeless youth, until such time as another surrogate can be found, staff from emergency and transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates without regard to the conflicts described above.

Alternatively, the surrogate parent be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements described in California Government Code § 7579.5.

Revised 11/06/06

**Addenda to Procedural Safeguards, effective 1/1/09:**

- Any time after the initial provision of special education and related services, you the parent, or the student of the age of majority, may revoke consent *in writing* for the continued provision of services. The LEA may not continue to provide services, but must provide prior written notice before ceasing the provision of services. The LEA may not use mediation or due process procedures to obtain agreement or a ruling that the services may be provided.
- 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. For more information about the State Special Schools, please visit the California Department of Education Web site at <http://www.cde.ca.gov/sp/ss/> or ask for more information from the members of your child's IEP team.

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**Dr. Gary Rapkin**

Special Education Senior Director/Compliance Officer

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