

**PLACER NEVADA SPECIAL EDUCATION LOCAL PLAN AREA (SELPA)  
PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS FOR SPECIAL EDUCATION (Complete, Short Version)**

**DEFINITIONS**

- “Consent” means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in the primary language, or other mode of communication of the parent. The parent understands and agrees in writing to the carrying out of the activity for which the consent is sought, and the consent describes that activity including lists of the records (if any) that will be released and to whom. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
- “Personally identifiable” means information that includes the name of the child, the child’s parent or other family members, address of the child, a personal identifier such as the child’s social security number or student number, or a list of personal characteristics, or other information that would make it possible to identify the child with reasonable certainty.
- “Evaluation” (also called assessment) means procedures used to determine whether a child has disabilities and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered or procedures used with all children in a school, grade or class.
- “Independent educational evaluation” means an evaluation (assessment) conducted by a qualified examiner who is not employed by the local education agency (LEA) responsible for the education of the child in question.
- “Public expense” means that the LEA either pays for the full cost of the evaluation or ensures that it is otherwise provided at no cost to the parent.

**ASSESSMENT, INDIVIDUALIZED EDUCATION PLAN, PARENT CONSENT**

- LEAs and other public education agencies (PEAs) have an obligation to seek out children with disabilities between birth and age 21.
- Parents have a right to consent for initial evaluation.
- The school district can file for due process hearing to override the parent’s refusal to consent for initial evaluation.
- Copies of reports and documentation of eligibility are given to the parents.
- A review of evaluation data includes evaluation and information by parents.
- Reevaluations require informed parental consent unless the agency can demonstrate the parent failed to respond.
- An IEP team can determine that no additional data are required for reevaluations and will notify the parent in writing. The parent may still request additional data be obtained for the reevaluations.
- A school district must conduct an evaluation before determining the child is no longer eligible.
- A school district must regularly inform parents of their child’s progress, at least as often as parents of nondisabled children.
- A parent has a right to be member of the IEP team.
- At the parent’s discretion, the parent has a right to have individuals, who have knowledge or special expertise regarding the child, attend IEP meetings.
- An individualized family service plan (IFSP) for a child, aged three through five, may serve as the IEP if agreed to by the parent and the school district.
- The IEP team must consider the concerns of the parents for enhancing the education of their child.
- The parent has a right to be a member of any group that makes decisions regarding the educational placement of their child.
- There must be an opportunity for parents to examine all records; participate in meetings with respect to identification, evaluation, and placement and to obtain independent educational evaluation.
- The parent has a right to an independent evaluation at public expense if the parent disagrees with agency reports, subject to the school district’s right to initiate hearing. The parent may present the independent evaluation as evidence.
- A child with a disability has a right to participate in a free appropriate public education (FAPE).
- Children with disabilities are offered programs that provide for maximum interaction with children who are not disabled in a manner that is appropriate to the needs of both.
- Testing and evaluation materials and procedures for evaluation and placement will be selected and administered so as to not be racially, culturally, or sexually discriminatory; administered in the child’s native language or mode of communication unless clearly not feasible; and no single procedure to be the sole criterion for determining placement.
- Parents will be provided with a description of any evaluation procedures the agency proposes to conduct.
- Parent have the right to an offer of services in accordance with IEP within 50 days of receipt of parent consent to the initial evaluation unless parent agrees, in writing, to an extension.
- The parent has the right to an interpreter provided by the agency.
- Upon parent request, the agency must provide information about where an independent educational evaluation may be obtained.

**ASSESSMENT, INDIVIDUALIZED EDUCATION PLAN, PARENT CONSENT (Cont’d.)**

- If the parent’s native language is not written, the notice is to be translated orally or by other means; the parent should understand the content; and written evidence exists that these requirements are met.
- When a child no longer requires special education services to benefit from education, an assessment and IEP team meeting will be conducted prior to discontinuing special education services.

**SURROGATE PARENTS, PRIOR WRITTEN NOTICE, COMPLAINTS**

- School districts can assign a surrogate if the parent cannot be located or the child is a ward of the state.
- A school district must give prior written notice whenever it proposes to initiate or change; or refuses to initiate or change identification, evaluation, placement, or provision of a free appropriate public education.
- The content of the prior written notice must include description of action proposed/refused, why, options considered/why rejected, description of each evaluation/test/record/report used for proposal/refusal, and description of other relevant factors.
- The parent must have an opportunity to present complaints or seek resolution of disputes on any matters regarding examination of records, participating in meetings with respect to identification, evaluation and placement of their child, and obtaining an independent educational evaluation.
- The parent or attorney is required to provide notice to the agency of the dispute to include: name of child, address of child’s residence, name of school child attends, description of the problem, and proposed resolutions to the extent known and available to the parent at that time.
- Notice is to be given at a minimum, upon initial referral or evaluation; upon notification of an IEP meeting; upon reevaluation; and upon receipt of request for due process. The parent has protections under procedural safeguards listed in this document and may obtain an expanded version of the procedural safeguards by calling the Special Education Local Plan Area (SELPA) Administrator at the Placer County Office of Education.
- Procedural safeguards include a full explanation written in parent’s primary language, unless clearly not feasible, and in an easily understandable manner.
- No child is required to participate in special education and related services unless the parent is first informed in writing of the facts making participation necessary or desirable; and of the contents of the Individualized Education Program and gives written approval for all or part of the IEP.

**MEDIATION**

- The parent has a right to the opportunity for a mediation conference at any time if requested.
- The mediation process is voluntary; may not be used to delay a parent’s right to a hearing or other rights; and will be conducted by a qualified, impartial, and trained mediator.
- A parent who chooses not to pursue mediation may be required to meet (at a time and location convenient to the parent) with a disinterested party who is under contract with a parent training center or an appropriate alternative dispute resolution entity, to explain the use and benefits of mediation.
- Each mediation session is to be scheduled in a timely manner and held in a location convenient to the parties.
- Any agreement reached in mediation must be put in a written mediation agreement.
- Discussions in mediation must be confidential, cannot be used in any subsequent hearings or civil proceedings, and parties may be required to sign a confidentiality pledge prior to the start of the process.

**DUE PROCESS HEARING, ATTORNEY FEES, UNILATERAL PLACEMENTS**

- The parent has a right to a fair and impartial hearing at the state level before a person knowledgeable in laws governing education and administrative hearings, who is not a employee of the state or local education agency in the education or care of the child.
- The parent has a right to a due process hearing based on matters regarding examination of records; participating in meetings with respect to identification, evaluation, and placement of their child including a placement in an alternative educational setting; and obtaining an independent educational evaluation.
- Any party to the hearing has a right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.
- The school district must inform the parent of free or reduced cost legal aid upon receipt of request for a hearing.
- The parent and the school district have the right to be informed by other parties to the hearing, at least 10 days prior to hearing, as to the issues. The parent who is not represented by an attorney has the right to have the school district provide a mediator to assist the parent.
- Each party is required to disclose all evaluations and recommendations at least five business days prior to a hearing.
- Any party to the hearing has a right to prohibit introduction of any evidence not disclosed at least five days prior to the hearing.
- Any party to the hearing has a right to request a mediation conference at any point during the hearing process.
- Any party to the hearing has a right to present evidence, written arguments, and oral arguments.
- Any party to the hearing has a right to confront, cross-examine, and compel attendance of witnesses.

## **PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS FOR SPECIAL EDUCATION (Complete, Short Version) continued.**

### **DUE PROCESS HEARING, ATTORNEY FEES, UNILATERAL PLACEMENTS (Cont'd.)**

- Any party to the hearing has a right to a written or an electronic verbatim record of the hearing.
- Any party to the hearing has a right to a written or an electronic finding of facts and decisions.
- Any party to the hearing has a right to request an extension of the hearing timeline upon good cause.
- A final decision should be reached and a copy of the decision be mailed to parents 45 days after receipt of request for hearing.
- The hearing decision is final unless the parties appeal.
- The parent has a right to have the child present at the hearing.
- The parent has a right to open the hearing to the public.
- A court of law may award reasonable attorney fees to the parent who is the prevailing party.
- No attorney fees may be awarded and related costs may not be reimbursed subsequent to the time of a written offer of settlement to a parent if: offer is made more than 10 days prior to start of the proceedings; the offer is not accepted within 10 days; and the court or hearing officer finds that relief obtained by parents is not more favorable than the offer.
- Attorney fees and related costs may be awarded to parents who prevail and substantially justified rejecting settlement offer.
- Attorney fees will be reduced if the parent unreasonably protracted the final resolution during the course of the action or proceeding; if fees unreasonably exceed the prevailing hourly rate in the community; the time spent and legal services were excessive; and the parent's attorney did not provide the school district with the appropriate information when providing a notice to the school district of a complaint.
- Attorney fees will not be reduced if the state or local educational agency unreasonably protracted the resolution, or proceeding, or violated due process procedures.
- No attorney fees may be awarded related to any meeting of the IEP team unless convened as a result of a proceeding, judicial action, or mediation prior to filing a complaint related to matters regarding examination of records; participating in meeting with respect to identification, evaluation, and placement of their child including a placement in an alternative educational setting; and obtaining an independent educational evaluation.
- Pending administrative or judicial proceedings, the child remains in present placement unless parties agree otherwise.
- If placement involves the initial admission to school and the parent agrees, the child is placed in a public school program until proceedings are completed.
- Eligible children voluntarily enrolled in private school by their parents have limited access as a group to special education services through Individual Service Plans when free and appropriate public education (FAPE) is not an issue.
- Reimbursement for the cost of private school placement by the parent may be provided if a court or hearing officer finds the school district failed to provide a free appropriate public education in a timely manner prior to that enrollment.
- Reimbursement for tuition of unilateral placement in a private school by the parent may be limited if: 1) the parent did not inform the school district at the most recent IEP of the intent to remove the child from the public school and concerns about the public education program; 2) the parent failed to notify the school district 10 business days prior to the child's removal; 3) the school district, prior to the parent's removal of the child, notified the parent of its intent to evaluate the child and the parent failed to make the child available; and 4) a court finds the actions of the parent to be unreasonable.
- Reimbursement for tuition of unilateral placement in a private school by the parent may not be reduced or denied if: 1) the parent cannot read or write English; 2) continued placement in the public education program would likely result in physical or serious emotional harm to the child; 3) the school prevented the parent from providing notice; and 4) the parent did not receive notice of an obligation to inform the school of the parent's intent and concerns.

### **DISCIPLINARY ACTION**

- School personnel may order a change in the child's placement to an appropriate interim alternative educational setting, another setting, or suspension for not more than 10 days.
- School personnel may order a change in placement to an appropriate interim alternative educational setting for same amount of time as nondisabled peers subject to discipline, not more than 45 days if: 1) child carries a weapon to school/functions; or 2) child knowingly possesses, uses, sells, or solicits sale of illegal drugs or controlled substances at school/functions; or 3) if the parent agrees or if there is a court order.
- Not later than 10 days after taking disciplinary action, the school district must convene an IEP meeting to develop an assessment plan to address the behavior resulting in suspension. If a behavior plan already exists, the IEP team shall review the plan and modify it as necessary.
- A hearing officer may order a change in child's placement to an appropriate interim alternative educational setting for up to 45 days if the district demonstrates the current placement is likely to result in injury; considers appropriateness of current placement; considers whether the district made reasonable attempts to minimize harm in current placement, including use of supplementary aids and services; and determines that the alternative meets requirements of an appropriate interim alternative educational setting.

### **DISCIPLINARY ACTION (Cont'd.)**

- An interim alternative educational setting is determined by the IEP team as defined by law.
- The parent has a right to be notified on the date of decision for disciplinary actions involving a change of placement for more than 10 days.
- A review is conducted immediately, if possible, but no later than 10 school days after the date of decision to take disciplinary action to determine the relationship between the disability and the behavior.
- The IEP team may determine the behavior is not a manifestation of the disability only if the team considers all relevant information, including evaluation and diagnostic results; observations of the child; and the child's IEP and placement.
- The IEP team must further determine that the child's IEP/placement/supplementary aide services and behavior intervention strategies are consistent with the IEP and placement and whether the disability did impair child's understanding/ability to control the behavior.
- If the behavior is not a manifestation of the child's disability, regular disciplinary procedures may be applied, but the student must continue to be provided a free appropriate public education.
- The school district ensures that special education and disciplinary records of the child are transmitted to person(s) making final determination of disciplinary procedures.
- The parent has a right to request an expedited hearing if the parent disagrees with manifestation determination.
- The parent has a right to an expedited hearing in any case involving suspension/expulsion.
- The child remains in the interim alternative educational setting pending a hearing decision or until the expiration of the 45 day time period whenever the parent requests a hearing.
- A child who has not been determined to be eligible and has violated rules or codes of conduct may assert these protections if the school district had knowledge the child had a disability.
- The school is deemed to have knowledge if the parent expressed concerns in writing (unless the parent is illiterate or has a disability that prevents compliance) to the school district that the child needs special education; the behavior or performance of the child demonstrates the need for services; the parent requested an evaluation; or the teacher or other school district personnel expressed concern to the special education director or other personnel of the school district.
- If the school district does not have knowledge that the child has a disability, the child may be subject to regular disciplinary procedures.
- If the evaluation request is made during the period of disciplinary procedures, the evaluation if expedited. If the child is determined to be eligible, the school district must provide services, except that the child remains in the placement determined by school authorities pending results of the evaluation.
- The school district will report any crime committed by a child with a disability to the appropriate authorities and also will transmit copies of special education and disciplinary records to such authorities.
- When a child with a disability reaches age 18 (unless determined to be incompetent), the school district must provide the required notices to both the individual and the parent that all parental rights transfer to the child. The school district must notify the individual and the parent of this transfer at least one year before the transfer. All rights transfer to children incarcerated in adult or juvenile federal, state, or local correctional institutions.
- If a child with a disability has reached age 18 and has not been determined to be incompetent, but is determined not to have the ability to provide informed consent, the school district shall follow state procedures for appointing an appropriate individual to represent the educational interests of the child.

### **RECORDS**

- The parent has the right to receive notice in their native language on policies, procedures, and rights related to record-keeping, including Family Educational Rights and Privacy Act of 1974 (FERPA).
- Upon request, the parent has a right to a list of types and locations of education records collected, maintained, or used by the agency.
- The parent has a right to review records within five days of request, and the right to free or reduced cost of copies of records if costs prevent the parent from receiving such copies.
- The parent has a right to challenge content of any pupil record with written request to the superintendent.
- The school district will decide whether to amend the pupil's record within 30 days. If the allegations are sustained, the school district will correct or remove and destroy the information. The parent may appeal within 30 days of the district's refusal to amend or remove a record.
- The district's governing board will meet on an appeal within 30 days. If the allegations are sustained, the records will be corrected or removed, and the information will be destroyed.
- The parent has a right to submit a written statement of an objection to an unfavorable decision which becomes part of a pupil's record.
- Records of proceedings are maintained confidentially for one year unless the parent initiates legal proceedings.
- The parent has a right to electronically record IEP meetings on an audio tape player with 24 hour prior notice to team members.
- The agency must obtain consent before personally identifiable information is disclosed, used, or released to other agencies except where indicated in federal/state law or regulation.