Chapter 7: Procedural Safeguards

Introduction

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

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

(1) Upon initial referral for evaluation;

(2) Upon each notification of an IEP meeting;

(3) Upon reevaluation of the child;

(4) Upon receipt of the first state complaint;

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

(6) In accordance with discipline procedures; and

(7) Upon a request by a parent.

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

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

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

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

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

Section A – Procedural Safeguards

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

E.C. 56028. (a) *"Parent" means any of the following:*

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

(2) A foster parent if the authority of the biological or adoptive parents to make educational decisions on the child's behalf specifically has been limited by

court order in accordance with Section 300.30(b)(1) or (2) of Title 34 of the Code of Federal Regulations.

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

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

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

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

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

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

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

Surrogate Parents

Federal Regulation, 34 C.F.R. 300.519, and California Education Code section 56050, mandate the appointment of a surrogate parent to ensure the educational rights of a child with exceptional needs when 1) no parent can be identified, 2) after reasonable efforts, the parents' whereabouts cannot be determined, 3) the child is a ward of the court and that court has limited the rights of the parents or guardian to make educational decisions regarding the child, or 4) the child is an unaccompanied homeless youth. The surrogate parent shall act as the child's parent and have all rights as delineated in federal and state law.

In order to meet the needs of the federal and state mandates, the Desert/Mountain SELPA staff supports the utilization of surrogate parents. LEA staff will provide training for surrogate parent nominees. Individual LEAs will determine which students require the services of a surrogate parent, nominate surrogate parent volunteers, determine if the surrogate parent has sufficient knowledge of the educational process as it relates to special education students, appoint the surrogate parent once they've been determined to be knowledgeable, supervise the surrogate parent, and then evaluate the surrogate parent annually.

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

Procedural Safeguards

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

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

Age of Majority

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

shall transfer to the individual with exceptional needs. The local education agency shall notify the individual and the parent of the transfer of rights.

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

Parent Revokes Consent for Special Education and Related Services

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

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

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

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

- Date services will end. (It is recommended that special education and related services cease 10 school days from the date of the LEA's prior written notice/letter to the parent.);

- List of services (i.e., placement, accommodations, modifications, and/or supports, including behavioral supports) the student will no longer receive;
- Date the student will be placed in general education. (Include a description of the general education placement and services to which the student will have access.);
- Information that the student will no longer be entitled to special education and related services and the protections under the IDEA and related provisions in the California Education Code;
- Information that the student's disability will not be taken into consideration when determining appropriate disciplinary action, nor will the student be entitled to the IDEA's discipline protections;
- Information that if the parent later decides to have his/her child receive special education and related services, that he/she should contact the LEA office. Inform the parent that this request will be treated as a request for an initial evaluation;
- A copy of the SELPA Procedural Safeguards/Parent Rights (SELPA Form D/M 77) together with the prior written notice;
- Contact information for the LEA office and the California Department of Education (CDE).

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

Section B – Prior Written Notice

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

PWN consists of these components:

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

A PWN has seven required components:

1. A description of the action proposed or refused
2. An explanation of why the action is proposed or refused

3. A description as to the basis of the actions
4. A reference to the procedural protections under IDEA
5. A reference of sources to contact to provide assistance in understanding procedural protection
6. A description of other options considered and why those options were rejected.
7. A description of other relevant factors

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

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

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

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

PWN must be given when:

1. Assessment - The LEA must send PWN regarding its refusal to assess or reassess
2. Request for Independent Educational Evaluation (IEE)
3. Parental request for a change to the IEP
4. Parental unilateral placement of a student outside the public school district and a request for reimbursement
5. A change in placement
6. A change in location resulting in a change of placement
7. A change in a service provider
8. Parent revocation of consent for special education services
9. Student exits from special education
    a) Graduation
    b) No longer eligible

The elements of PWN may be included in the IEP notes during an IEP meeting. A separate PWN document is not required when the PWN elements are included in the IEP.

Section C – Due Process Procedures

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

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

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

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

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

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

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

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

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

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

The response to a due process complaint must be sent within 10 days of receiving it. The response must address the issues raised in the complaint. *34 C.F.R. 300.508(f)*

The due process procedure consists of a series of steps ending with a hearing if needed.

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

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

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

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

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

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

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

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

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

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

- **Step 3 - Due Process Hearing**

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

  The ALJ from OAH is in charge of the hearing just like a judge is in a trial. The ALJ rules on all procedural matters, rules the hearing, listens to the evidence and arguments of the parties, and writes a final decision which is binding.

The due process timeline is 45 calendar days from the receipt of a complaint for a due process hearing. The timeline does not include time used by a postponement requested by a party or granted by OAH, or time used by the resolution session. Expedited hearings, which involve student discipline, must be held within 20 school days of the receipt of the complaint, and a written decision must be issued within 10 school days after the hearing.

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

Stay Put

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

Due Process Complaints and General Liability

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

The Due Process "Process"

DUE PROCESS WRITTEN FILING

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

RESOLUTION MEETING WITHIN 15 DAYS

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

MEDIATION

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

DUE PROCESS HEARING

Court may award attorney fees
Law now provides provisions for "frivolous, unreasonable, without foundation, harassment" claims regarding attorney fees

Due Process Hearing Deadlines

Complaint: Filed by student or district *34 C.F.R. 300.508*[1]

10 DAYS AFTER RECEIPT OF COMPLAINT

1. Response: District's response to allegations due. § 300.508
2. PWN: If district has not given parent Prior Written Notice ("PWN") under § 300.503, it must do so now. § 300.508

15 DAYS AFTER RECEIPT OF COMPLAINT

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

11 DAYS BEFORE HEARING (i.e., "more than 10 days before the proceeding begins")

1. Statutory Offer: May be provided to opposing counsel. If parties litigate and parent receives less than the statutory offer, parent is not entitled to attorney's fees accrued after the statutory offer. 20 USC § 1415 (i)(3)(D) & (F); § 300.518

10 DAYS BEFORE HEARING

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

5 BUSINESS DAYS BEFORE THE HEARING

1. NPW and List of Doc Evidence Notice of Potential Witnesses ("NPW") and List of Documentary Evidence must be served on opposing party. § 300.512

5 CALENDAR DAYS BEFORE HEARING

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

90 DAYS FROM DATE OF DECISION

1. An aggrieved party may appeal the decision to state or federal court. § 300.515

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[1]*All further statutory references are to 34 Code of Federal Regulations unless otherwise noted.*

APPENDIX A: Form D/M 77 Notice of Procedural Safeguards

NOTICE OF PROCEDURAL SAFEGUARDS

The Individuals with Disabilities Education Act (IDEA) Part B

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

Introduction:

The IDEA is a Federal law that requires LEAs to provide a free appropriate public education (FAPE) to eligible children with disabilities. "A free appropriate public education" means special education and related services provided as described in an individualized education program (IEP) and under public supervision, to your child at no cost to you. When you have a concern about your child's education, it is important that you call or contact your child's teacher or administrators to talk about your child and any problems you see. Staff in your LEA or special education local plan area (SELPA) can answer questions about your child's education, your rights and procedural safeguards. When you have a concern, it is this informal conversation that often solves the problem and helps maintain open communication. You may also want to contact one of the California parent organizations (Family Empowerment Centers and Parent Training Institutes), which were developed to increase collaboration between parents and educators to improve the educational system. Contact information for these organizations is found on the California Department of Education Parent Organizations web page (http://www.cde.ca.gov/sp/se/aq/caprntorg.asp).

Prior Written Notice:

The LEA must inform you about proposed evaluations of your child in a written notice or an assessment plan within 15 days of your written request for evaluation that is understandable and in your native language or other mode of communication unless it is clearly not feasible to do so. This notice must be given when the LEA proposes or refuses to initiate a change in the identification, assessment, or educational placement of your child with special needs or the provision of a free appropriate public education. If you refuse consent for the initial or continued placement and receipt of special education and related services for your child, the LEA is not required to develop an IEP and is not

considered to be in violation of the requirement to make available a free and appropriate public education. You may only revoke consent in writing and the LEA must then provide you written notice that services for your child will be discontinued. The LEA must also provide reasonable written prior notice that your child will be aging out (reaching age 22) or graduating from high school with a regular high school diploma because graduation from high school constitutes a change in placement.

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

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

Parent Participation:

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

Surrogate Parents:

LEAs must ensure that an individual is assigned to act as a surrogate parent for the parents of a child with a disability when a parent cannot be identified and the LEA cannot discover the whereabouts of a parent. A surrogate parent may be appointed if the child is an unaccompanied homeless youth, adjudicated dependent, or ward of the court under the State Welfare and Institution Code and the child is referred to special education or already has an IEP *(34 CFR 300.519; EC 56050; GC 7579.5 and 7579.6)*.

Parent Consent:

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

Consent to Bill California Medi-Cal:

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

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

- You may refuse to sign consent.
- Information about your family and child is strictly confidential.
- Your rights are protected under *Title 34 of the Code of Federal Regulations 300.154*; Family Education Rights Privacy Act of 1974 (FERPA); *Title 20 of the United States Code Section 1232(g)*; and *Title 34 of the Code of Federal Regulations Section 99*.

- Your consent is good for one year unless you withdraw your consent before that time. Your consent can be renewed annually at the IEP team meeting.

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

- May not require you to sign up for or enroll in public benefits or insurance programs (Medi-Cal) in order for your child to receive FAPE under Part B of the IDEA *(34 CFR 300.154(d)(2)(i))*.
- May not require you to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services and reimbursement through Medi-*Cal (34 CFR 300.154(d)(2)(ii))*.
- May not use your child's benefits under Medi-Cal if that use would:
  - ❖ Decrease available lifetime coverage or any other insured benefit;
  - ❖ Result in the family paying for services that would otherwise be covered by the public benefits or insurance program (Medi-Cal) and are required for your child outside of the time your child is in school;
  - ❖ Increase premiums or lead to the discontinuation of public benefits or insurance (Medi-Cal); and/or
  - ❖ Risk loss of eligibility for home and community-based waivers, based on aggregate health related expenditures.

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

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

Child Participation/Right:

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

Age of Majority:

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

Nondiscriminatory Evaluations:

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

Access to Educational Records and Other Rights Related to Records:

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

Independent Educational Evaluation:

If you disagree with the results of the evaluation conducted by the LEA, you have the right to ask for and obtain an independent educational evaluation (IEE) for your child from a person qualified to conduct the evaluation at public expense. You are entitled to only one independent educational evaluation at public expense each time the LEA conducts an evaluation with which you disagree. The LEA must respond to your request for an independent educational evaluation and provide you information upon request about where to obtain an independent educational evaluation. If the LEA disagrees that an

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

Local Mediation/Alternative Dispute Resolution:

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

Due Process Hearing:

You have the right to request an impartial due process hearing regarding the identification, evaluation, educational placement, or the provision of a free appropriate public education for your child. The request for a due process hearing must be filed within two years from the date you knew, or had reason to know of the facts that are the basis for the hearing request *(Title 34 of the Code of Federal Regulations section 300.507*; *Education Code sections 56501 and 56505(l))*. There is an exception to this timeline if you were prevented from requesting a hearing earlier because the LEA misrepresented that it had resolved the problem or withheld information that should have been provided

to you. Requests for a hearing are to be sent to the Special Education Headquarters, Office of Administrative Hearings, 2349 Gateway Drive, Suite 200, Sacramento, CA 95833-4231. Requests must include the student's name; residential address; the name of the student's school; in the case of a homeless child, available contact information and the name of the school the child is attending; and a description of the problem, facts about the problem, and a proposed resolution. A due process hearing may not take place until the party or the attorney representing the party files a notice that meets these requirements.

Due Process Rights:

You have a right to:

- A fair and impartial administrative hearing at the State level before a person who is knowledgeable of the laws governing special education and administrative hearings;
- Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities;
- Present evidence, written arguments, and oral arguments;
- Confront, cross-examine, and require witnesses to be present;
- Receive a written or electronic verbatim record of the hearing, including findings of fact and decisions;
- Have your child present at the hearing;
- Have the hearing open or closed to the public;
- Be informed by the other parties of the issues and their proposed resolution of the issues at least 10 calendar days prior to the hearing;
- Within five business days before a hearing, receive a copy of all documents, including assessments completed by that date and recommendations, and a list of witnesses and their general area of testimony;
- Have an interpreter provided;
- Request an extension of the hearing timeline;
- Have a mediation conference at any point during the hearing; and
- Receive notice from the other party at least 10 days prior to the hearing that it intends to be represented by an attorney.

Filing a Written Due Process Complaint:

Whenever a request for a due process hearing has been filed, you and the LEA have the opportunity for an impartial due process hearing which is conducted by officials of the

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

The child involved in any administrative or judicial proceeding must remain in the current educational placement pending the decision of the hearing officer or 45 school days whichever comes first, unless you and the LEA agree on another arrangement. If you are applying for initial admission to a public school, your child may be placed in a public school program with parental consent until all proceedings are completed. The hearing decision is final and binding on both parties. Either party can appeal the hearing decision by filing a civil action in State or Federal court within 90 days of the final decision. Federal and State laws require that either party filing for a due process hearing must provide a copy of the written request to the other party.

Attorney Fees:

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

Fees may be reduced if any of the following conditions prevail: (1) the court finds that you unreasonably delayed the final resolution of the controversy; (2) the hourly attorney fees exceed the prevailing rate in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; (3) the time spent and legal services provided were excessive; or (4) your attorney did not provide to the LEA the appropriate information in the due process complaint. Attorney fees will not be reduced, however, if the court finds that the State or the LEA unreasonably delayed the final resolution of the action or proceeding, or there was a violation of this section of law.

Attorney fees may not be awarded relating to any meeting of the IEP team unless an IEP meeting is convened as a result of a due process hearing proceeding or judicial action. Attorney fees may also be denied if you reject a reasonable settlement offer made by the LEA/public agency at least 10 days before the hearing begins and the hearing decision is not more favorable than the settlement offer.

Complaint Regarding Violation of a State or Federal Law:

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

School Discipline and Placement Procedures for Students with Disabilities:

Children with disabilities may be suspended or placed in other alternative interim settings or other settings to the same extent these options would be used for children without disabilities. If a child exceeds 10 consecutive days in such a placement, or more than 10 cumulative days in certain circumstances, an IEP meeting must be held to determine whether the child's misconduct was a manifestation of his/her disability. This IEP meeting must take place immediately, if possible, or within 10 days of the LEA's decision to take this type of disciplinary action.

As a parent, you will be invited to participate as a member of this IEP team to help determine if your child’s behavior was a manifestation of their disability. If the team determines that this is the case, the LEA may be required to develop an assessment plan to address the misconduct, or if your child has a behavior intervention plan, review and modify the plan, as necessary. If the IEP team concludes that the misconduct was not a

manifestation of your child's disability, the LEA might take disciplinary action, such as expulsion, in the same manner as it would for a child without disabilities. If you disagree with the IEP team's decision, you may request an expedited due process hearing, which must occur within 20 school days of the date on which you requested the hearing (Title 34 of the Code of Federal Regulations section 300.531(c)) from the Office of Administrative Hearings, Special Education Unit.

Alternative Interim Educational Settings:

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

Unilateral Placement by Parents in Private School:

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

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

- At the most recent IEP meeting you attended before removing your child from the public school; or

- In writing, to the LEA at least 10 business days (including holidays) before removing your child from the public school.

A court or hearing officer may not reduce or deny reimbursement to you if you failed to give this notice for any of the following reasons: illiteracy and inability to write in English; giving notice would likely result in physical or serious emotional harm to the child; the school prevented you from giving notice; or you had not received a copy of this Notice of Procedural Safeguards or otherwise been informed of this notice requirement.

Observation of Your Child at a Nonpublic School:

If you unilaterally place your child in a nonpublic school and you propose the placement in the nonpublic school to be publicly financed, the LEA must be given the opportunity to observe the proposed placement and your child in the proposed placement. The LEA may not observe or assess any other child at the nonpublic school without permission from the other child's parent or guardian.

State Special Schools:

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

APPENDIX B: Prior Written Notice Template and Sample Letters

DESERT/MOUNTAIN SPECIAL EDUCATION LOCAL PLAN AREA
DESERT/MOUNTAIN CHARTER SPECIAL EDUCATION LOCAL PLAN AREA
17800 HIGHWAY 18 • APPLE VALLEY, CA 92307
(760) 552-6700 • (760) 242-5363 FAX

Prior Written Notice

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

Student Name: _____ **Date of Birth:** _____ **Date:** _____

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

☐ **PROPOSAL TO INITIATE OR CHANGE THE:**
☐ *Identification* ☐ *Evaluation* ☐ *Educational Placement* ☐ *Provision of a Free Appropriate Public Education*

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

☐ **REFUSAL OF YOUR REQUEST TO INITIATE OR CHANGE THE:**
☐ *Identification* ☐ *Evaluation* ☐ *Educational Placement* ☐ *Provision of a Free Appropriate Public Education*

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

Description of the proposed or refused action:

Reason(s) for the proposed or refused action:

Description of evaluation procedures, tests, records, or reports used in deciding to propose or refuse this action:

Description of other options considered and reasons for rejecting them:

Other factors relevant to the proposal or refusal:

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

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

LEA Contact Name: _____ Position/Title: _____
Contact Phone: _____ E-mail Address: _____

PWN Template Rev. 8/16

SAMPLE PWN 1 - ASSESSMENT: PROPOSAL TO INITIATE/CHANGE IDENTIFICATION

Date

Parent/Guardian
Address Line 1
Address Line 2

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

Dear Parent/Guardian,

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

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

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

Your written permission must be given before the District can assess your child to determine eligibility. You have the right to be familiar with the assessment procedures and types of tests that may be given to your child. After the assessment is completed, you will be notified in writing of a meeting to discuss the results of the evaluation and to make recommendations. Your input is vital to this discussion and you will be included in the decisions regarding any special education eligibility. If your child is found eligible for special education services, a full range of program options will be discussed.

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

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

and/or

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

We look forward to working with you and Jane.

Sincerely,

Name
Title/Position

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

j:/manuals/p&pmanual/chapt7-pwn1-assess

SAMPLE PWN 2 – INDEPENDENT EDUCATIONAL EVALUATION (IEE)

Date

Parent/Guardian
Address Line 1
Address Line 2

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

Dear Parent/Guardian,

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

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

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

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

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

1. Wide Range Assessment of Memory and Learning – 2nd Edition, (WRAML-2)
2. Woodcock-Johnson Tests of Achievement – 3rd Edition, (WJ-III)
3. Test of Auditory Processing Skills – 3rd Edition, (TAPS-III)
4. Beery-Buktenica Developmental Test of Visual-Motor Integration – 5th Edition, (VMI-5)
5. Test of Visual-Perceptual Skills – 3rd Edition, (TVPS-3)

6. Connors' 3-Parent Short
7. Connors' 3-Teachers Short
8. The Attention Deficit Disorder Evaluation Scale – 3rd Edition: Home Version, (ADDES-3 HV)
9. The Attention Deficit Disorder Evaluation Scale – 3rd Edition: School Version, (ADDES-3 SV)
10. Behavior Assessment System for Children, 2nd Edition – (BASC-2)
11. Parent Rating Scales-Adolescent: (PRS-A [Ages 12-21])
12. Teacher Rating Scales-Adolescent (TRS-A [Ages 12-21])

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

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

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

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

J:/MANUALS/P&PMANUAL/CHAPT7-PWN2-IEE

SAMPLE PWN 3 – PARENT REQUEST TO INITIATE OR CHANGE IEP

Date

Parent/Guardian
Address Line 1
Address Line 2

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

Dear Parent/Guardian,

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

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

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

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

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

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

and/or

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

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

J:/MANUALS/P&PMANUAL/CHAPT7-PWN3-PARENT REQUEST

SAMPLE PWN 4 – UNILATERAL PLACEMENT & REIMBURSEMENT

Date

Parent/Guardian
Address Line 1
Address Line 2

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

Dear Parent/Guardian,

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

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

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

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

Because *Johnny* is making substantial progress toward all of his goals and objectives and an in-home program would not help him towards generalizing the skills he learns during the school day or help him sustain his friendships at school, all of which will better prepare him for first grade, the District does not believe changing *Johnny's* program will help him receive a free appropriate public education in the least restrictive environment.

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

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

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

and/or

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

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

J:/MANUALS/P&PMANUAL/CHAPT7-PWN4-UNILATERALREQ1

SAMPLE PWN 5 – CHANGE IN LEAST RESTRICTIVE ENVIRONMENT/ PLACEMENT

Date

Parent/Guardian
Address Line 1
Address Line 2

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

Dear Parent/Guardian,

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

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

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

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

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

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

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

and/or

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

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

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

SAMPLE PWN 6 – CHANGE OF PLACEMENT

Date

Parent/Guardian
Address Line 1
Address Line 2

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

Dear Parent/Guardian,

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

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

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

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

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

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

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

and/or

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

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

J:/MANUALS/P&PMANUAL/CHAPT7-PWN6-CHANGEOFPLACEMENT

SAMPLE PWN 7 – CHANGE IN SERVICE PROVIDER

Date

Parent/Guardian
Address Line 1
Address Line 2

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

Dear Parent/Guardian,

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

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

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

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

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

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

If you disagree with the District's change in service provider, or if you have other questions about your rights under the IDEA, please consult the enclosed procedural safeguards. You may also contact the following agencies for assistance:

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

and/or

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

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

J:/MANUALS/P&PMANUAL/CHAPT7-PWN7-CHANGEOFPROVIDER

SAMPLE PWN 8 – PARENT REVOCATION OF CONSENT TO SPECIAL EDUCATION & RELATED SERVICES

Date

Parent/Guardian
Address Line 1
Address Line 2

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

Dear Parent/Guardian,

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

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

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

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

PRIOR WRITTEN NOTICE

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

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

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

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

Sincerely,

Name
Title/Position

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

J:/MANUALS/P&PMANUAL/CHAPT7-PWN8-REVOKECONSENT

SAMPLE PWN 9.1 – STUDENT EXITS FROM SPECIAL EDUCATION: STUDENT NO LONGER QUALIFIES FOR SPECIAL EDUCATION

Date

Parent/Guardian
Address Line 1
Address Line 2

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

Dear Parent/Guardian,

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

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

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

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

and/or

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

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

J:/MANUALS/P&PMANUAL/CHAPT7-PWN9.1-EXITSPECIALEDUCATION

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

Date

Parent/Guardian
Address Line 1
Address Line 2

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

Dear Parent/Guardian,

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

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

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

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

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

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

J:/MANUALS/P&PMANUAL/CHAPT7-PWN9.2-EXITSPECIALEDUCATION-AGEOUT

SAMPLE PWN 9.3 – STUDENT EXITS FROM SPECIAL EDUCATION: GRADUATE WITH A REGULAR HIGH-SCHOOL DIPLOMA

Date

Parent/Guardian
Address Line 1
Address Line 2

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

Dear Parent/Guardian,

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

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

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

Under the IDEA, the District is required to provide you with a summary of Johnny's academic achievement and functional performance, as well as recommendations to assist Johnny in meeting his post-secondary goals. Please find the information in the enclosed document.

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

and/or

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

We wish Johnny continued success in his future.

Sincerely,

Name
Title/Position

ENCLOSURE: NOTICE OF PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

J:/MANUALS/P&PMANUAL/CHAPT7-PWN9.1-EXITSPECIALEDUCATION

APPENDIX C: Surrogate Parents in California
(https://www.cde.ca.gov/sp/se/sr/documents/surrogateparents.pdf)

Surrogate Parents in California Special Education: An Overview

California Department of Education
Sacramento, 2019

Publishing Information

Surrogate Parents in California Special Education: An Overview was prepared under the direction of the Special Education Division of the California Department of Education (CDE). This publication was edited by Tom Wyant, CDE Press, working in cooperation with Allison Smith, Special Education Consultant, Associate Division Director's Office, CDE Special Education Division. The document was prepared for publication by the staff of CDE Press; Leomel Castellano created the cover and interior design. It was published by the Department of Education, 1430 N Street, Sacramento, CA 95814, and was distributed under the provisions of the Library Distribution Act and Government Code Section 11096.

ISBN: 978-0-8011-1797-8

Notice

The guidance in *Surrogate Parents in California Special Education: An Overview* is not binding on local educational agencies or other entities. Except for the statutes, regulations, and court decisions that are referenced herein, the document is exemplary, and compliance with it is not mandatory. (See *Education Code Section 33308.5*.)

Additional Publications and Educational Resources

For information about publications and educational resources available from the California Department of Education, please visit the CDE's Educational Resources Catalog page or call the CDE Press sales office at 1-800-995-4099.

Surrogate Parents in California Special Education: An Overview

Contents

Introduction

The federal Individuals with Disabilities Education Act (IDEA) requires assurances from states receiving federal funds for the provision of special education that surrogate parents will be appointed for students with disabilities who are without parental representation in special education procedures.

In compliance with this federal mandate, *California Government Code Section 7579.5(m)* requires the California Department of Education to "develop a model surrogate parent training module and manual that shall be made available to local educational agencies."

Surrogate Parents in California Special Education: An Overview is intended for use as a reference to assist local educational agencies (LEAs) in developing and implementing procedures for parental representation that comply with federal law. Many LEAs already have their own policies and procedures related to the appointment of surrogate parents and educators. Readers are encouraged to review those materials for more specific information pertinent to their region.

An accompanying model surrogate parent training module is published on the California Department of Education's website at California Department of Education.

This manual was developed by the California Department of Education.

Chapter 1 – A Legislative Overview

In 1975 the United States Congress enacted the Education of All Handicapped Children Act (EAHCA) (*Title 20, United States Code, Section 1400,* et seq.) to support states and localities in protecting the rights of, meeting the individual needs of, and improving educational results for infants, toddlers, children, and youths with disabilities and their families. Among the protections this law introduced was the assurance that a surrogate parent would be provided when necessary for a student who receives special education (Public Law 94-142, Section 5[a]). An individual was to be appointed as a surrogate parent when no parent could be identified or located, or when the student was a ward of the state. The role of the surrogate parent was to represent the student in all matters relating to the identification, evaluation, educational placement, and provision of a free appropriate public education, or FAPE.

In 1990 California provided more specific direction for the appointment of a surrogate parent by enacting Assembly Bill 1528, which prohibited the appointment of individuals who would have a conflict of interest in representing the child. Assembly Bill 1528 was codified as *California Government Code Section 7579.5*.

At the federal level, the EAHCA was renamed the Individuals with Disabilities Education Act (IDEA) in 1990, and substantive amendments were made to it in 1997. The IDEA established the rights of students, from birth through twenty-one years of age, to a free appropriate public education. In 2004 the IDEA was reauthorized and signed into law, revising certain requirements related to the assignment of surrogate parents (*Title 20, United States Code, Section 1415[b][2)][A] and [B]*).

This manual was developed to assist LEAs, placing agencies, and other service providers in the implementation of state and federal requirements pertaining to the appointment of surrogate parents. Explanations of state and federal mandates about parental involvement, educational entitlements, and procedural safeguards for individualized education programs (IEPs) are contained in this manual as required by *California Government Code Section 7579.5(m)*.

This manual covers the major considerations under state and federal law that should be applied by LEAs when appointing surrogate parents. These considerations are listed below:

- Identification of children in need of a surrogate parent
- Appointment process
- Rights, responsibilities, and requirements of surrogate parents
- Recruitment of surrogate parents
- Training of surrogate parents
- Roles and responsibilities of agencies in implementing this program

The goal of this manual is to develop a common body of information for local policymakers, administrators from both educational and social service agencies, and coordinators of local training programs who will implement or participate in the appointment and training of surrogate parents. This manual also provides references to statutes and regulations, sample forms, and documents containing other agency guidelines.

Current State and Federal Law

This section provides an overview of state and federal legal mandates and describes surrogate parents and other persons who have legal authority to act on a child's behalf in the special education process.

Federal law requires the state and LEAs to establish and maintain procedures for assigning a surrogate parent to a student whenever the location of the biological parents or guardian of the child is not known or available or the child is a ward of the state. The surrogate parent must not be an employee of any public agency involved in the education or care of the child (*Title 20, United States Code, Section 1415[b][2][A]* and *Title 34, Code of Federal Regulations, Section 300.519[d][2][i]*).

Federal implementing regulations provide a legal definition of a "surrogate parent" and stipulate the requirements that must be met when a public agency selects and assigns a surrogate parent for a child with no identifiable parent or to a child who is a ward of the state. State law provides that "surrogate parent" shall be defined as it is defined in the IDEA regulations cited above (*Title 34, Code of Federal Regulations, Section 300.519[d]*). A surrogate parent may represent a student who receives special education in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in other matters relating to the provision of a free appropriate public education to the student (*California Education Code Section 56050* and *Title 34, Code of Federal Regulations, Section 300.519[g]*).

Who Can Be a Surrogate Parent?

A surrogate parent must be a person appointed by the LEA to represent a student whenever the student does not have parental representation and has been referred for, or is currently being served in, special education (*California Education Code Section 56050; California Government Code Section 7579.5[c]; Title 34, Code of Federal Regulations, Section 300.519[d][2]*). In general, state and federal law mandate that each person appointed as a surrogate parent must meet the following requirements:

1. The surrogate shall not be an employee of a public or private agency involved in the education or care of the child.

2. The surrogate shall have no interest that conflicts with the interests of the child he or she represents.

3. The surrogate shall have knowledge and skills that ensure adequate representation of the child.

There are some exceptions to these requirements. For instance, for a student who is a ward of the court, the surrogate parent needs to meet only the first requirement of the law if the surrogate is appointed by the court. (For information about other court-appointed advocates, see appendix D.) In addition, for a homeless student, the surrogate parent may be an employee of an agency, if needed.

An LEA shall select, as a first preference, a surrogate who is a relative caregiver, foster parent, or court-appointed special advocate. If none of these individuals are willing or able to serve, another person may be appointed to be the surrogate (California Government Code Section 7579.5[b]).

The basic premise is that a surrogate parent will have the appropriate knowledge and skills required to adequately represent a student who receives special education and related services and who does not have parental representation in educational matters.

When Must a Surrogate Parent Be Appointed?

California Government Code Section 7579.5 specifies the following requirements for when a surrogate parent must be appointed:

> *A local educational agency shall appoint a surrogate parent for a child in accordance with Section 300.519 of Title 34 of the Code of Federal Regulations under one or more of the following circumstances:*
>
> *(1)(A) The child is adjudicated a dependent or ward of the court pursuant to Section 300, 601, or 602 of the Welfare and Institutions Code upon referral of the child to the local educational agency for special education and related services, or if the child already has a valid individualized education program, (B) the court specifically has limited the right of the parent or guardian to make educational decisions for the child, and (C) the child has no responsible adult to represent him*

or her pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055 of the Education Code.

(2) No parent for the child can be identified.

(3) The local educational agency, after reasonable efforts, cannot discover the location of a parent.

Additionally, an LEA must appoint a surrogate parent for unaccompanied homeless youths (*Government Code Section 7579.5*).

The surrogate parent for a child who is a ward of the state may be appointed by a judge overseeing the child's care, provided that the surrogate meets the requirements of *Government Code Section 7579.5*. If a judge appoints the surrogate parent, then the LEA is not required to do so (*Government Code Section 7579.6*).

California's Education Code Section 56028 provides the following definitions of a parent:

(a) "Parent" means any of the following:

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

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

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

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

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

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

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (1) to (4), inclusive, of subdivision (a) to act as the "parent" of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the "parent" for purposes of this part, Article 1

(commencing with Section 48200) of Chapter 2 of Part 27 of Division 4 of Title 2, and Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and Sections 361 and 726 of the Welfare and Institutions Code.

School administrators are encouraged to familiarize themselves with the definitions of "parent" set forth in *California Education Code Section 56028* and *Title 34, Code of Federal Regulations, Section 300.30*. It is also advised that school administrators determine the most efficient way to find out whether parents of children who are wards of the court have retained their educational rights.

An LEA's authority to appoint a surrogate may be exercised only when the parent(s) cannot be located or parental rights have been terminated. If the location of the parent(s) is known but the parent(s) fails or refuses to participate in the IEP meeting, the LEA may need to file for a due process hearing to obtain approval for the district's offer of a free appropriate public education. In this case, the LEA does not need, or have authority, to appoint a surrogate parent.

In its publication of the 2006 regulations—*Federal Register; Volume 71; Number 156; Monday, August 14, 2006, page 46689*—the federal Department of Education provided further clarification on this issue when responding to comments about IDEA:

> **Comment**: A few commenters recommended that placement meetings not be held, or decisions made, without a representative of the child. The commenters recommended appointing a surrogate parent when the biological or adoptive parent refuses to attend, or is unable to participate, in the placement meeting.
>
> **Discussion**: There is no statutory authority to permit the appointment of a surrogate parent when a parent is either unable or unwilling to attend a meeting in which a decision is made relating to a child's educational placement. In section 615(b)(2) of the Act, a public agency does not have the authority to appoint a surrogate parent where a child's parent is available or can be identified and located after reasonable efforts, but refuses, or is unable, to attend a meeting or otherwise represent the child.

Educators are advised to consult with their legal counsel, as needed, to identify who has been assigned legal authority to make educational decisions for the child.

Conservatorship

Students who reach the age of majority—age eighteen—are presumed competent to make their own decisions. In some situations, a student over the age of eighteen, who is legally an adult, may have a conservator who will act on the student's behalf for decisions about special education and related services. The term "conservator" refers to a person given legal authority and responsibility by the superior court to make decisions for an adult person, married minor, or married minor whose marriage has been dissolved who is not competent to make such decisions or to give informed consent. Duly appointed conservators can be identified by a document called "Letters of Conservatorship" issued by the court, pursuant to California Probate Code, Section 1800, et seq. The "Letters of Conservatorship" define the scope of the conservator's power over the person and property of the incompetent adult.

The LEA must examine the conservatorship documents to determine whether the conservator meets the legal requirements of a "parent" under state and federal law. Each situation involving a conservator must be analyzed individually to determine whether the LEA must appoint a surrogate parent.

For further information regarding the appointment and responsibilities of conservators, please visit http://www.courts.ca.gov/documents/gc350.pdf.

Adult Students in Special Education

When a student reaches the age of eighteen, adult rights accorded under California law include the authority to make decisions regarding his or her own education, unless the adult student chooses not to make decisions or a court deems the student incompetent (Education Code Section 56041.5).

An LEA has no authority to appoint a surrogate parent for an adult student even if the IEP team considers the student incapable of participating in the educational process as a result of the student's disabilities. A court may appoint a conservator for this purpose, or an adult student may give permission for another person to act on his or her behalf. In addition, a surrogate parent appointed to represent a student before the student turns age eighteen may continue to represent the student after he or she turns eighteen if the student chooses not to make educational decisions for himself or herself (Government Code Section 7579.5[k]). (See section titled "Special Situations" in Chapter 5 for an example related to adult students).

Chapter 2 – Responsibilities and Rights of Surrogate Parents

The surrogate parent's role is to represent the rights of a student with special education needs in all educational matters related to the provision of a free appropriate public education (*California Education Code Section 56050*). This role gives surrogate parents certain rights within the educational process that are the same for any "parent," with identical guarantees for participation in decision-making and procedural safeguards.

Responsibilities of the Surrogate Parent

Under current law, a surrogate parent shall serve as a child's parent and has all the same rights as a child's parent pertinent to special education and related services (*California Government Code Section 7579.5[c]*). A surrogate parent may represent an individual with exceptional needs in matters related to identification, assessment, instructional planning and development, educational placement, reviewing and revising the IEP, and in other matters related to the provision of a free appropriate public education to the individual (*California Education Code Section 56050[b]*).

Notwithstanding any other provision of law, this representation shall include the provision of written consent to the IEP, including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to Chapter 26.5 (commencing with Section 7570) of the Government Code (*California Government Code Section 7579.5[c]*).

The surrogate parent may sign any consent related to IEP purposes (*California Education Code Section 56050[b]*).

Because a surrogate parent may represent a child in all matters related to the special educational process (*Title 34, Code of Federal Regulations, Section 300.519[g]*), the surrogate parent should learn as much as possible about the child with disabilities to appropriately represent the rights of the child throughout the special education process. Federal regulation requires that LEAs ensure that a person selected as a surrogate parent has knowledge and skills that ensure adequate representation of the child (Title 34, Code of Federal Regulations, Section 300.519[d][2][iii]). Additionally, state law requires that the surrogate parent meet with the child at least one time (*California Government Code Section 7579.5[d]*). Although not explicitly required by law, CDE recommends that LEAs provide training to each prospective surrogate parent before he or she is appointed for a specific child.

Rights of Surrogate Parents

The surrogate parent's rights necessarily include access to educational records relevant to any decisions made regarding the educational program of the child. That is, the surrogate parent has the right to examine any records collected, maintained, or used by an agency to make decisions affecting the child's educational program within five business days of the information request, just like other parents (*California Education Code Section 56504*).

Surrogate parents and the LEAs that appoint them are held harmless by the state of California when acting in their official capacity except in acts or omissions found to have been wanton, reckless, or malicious (*California Government Code Section 7579.5[l]*).

When a student is being considered for suspension or expulsion, or there is a dispute over the identification, assessment, or placement of the student, the surrogate parent is entitled to participate as the "parent" in all phases of the proceedings (*California Education Code sections 48900, et seq. and 56505, et seq.*). Surrogate training should include information regarding parents' procedural rights during suspension or expulsion proceedings and due process hearing procedures.

If a surrogate parent requires legal assistance in the representation of the child, the LEA must provide information about low-cost legal resources, just as it would provide this information for other parents (*California Education Code Section 56502[h]*).

More information about parents'—and therefore surrogate parents'—procedural rights is available in the California Department of Education's Notice of Procedural Safeguards at https://www.cde.ca.gov/sp/se/qa/pseng.asp.

Chapter 3 - When to Appoint Surrogate Parents

This chapter presents procedural considerations for the LEA in appointing a surrogate parent. As described earlier, each public agency must ensure that the rights of a child are protected by determining the need for and by assigning a surrogate parent whenever the child is referred to or is eligible for special education and one or more of the following circumstances apply:

- No parent can be identified
- The child is a ward of the state
- The public agency, after reasonable efforts, cannot locate a parent
- The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act ("McKinney-Vento Act") (*Title 42, United States Code, Section 11434a[6]*)

Wards and Dependents of the Court

Under California law, there are both "dependent" children as well as children who are described as "wards" of the courts (*California Welfare and Institutions Code sections 300, 601, and 602*). A minor may be declared a ward of the court for habitual refusal to obey parents or guardians or for truancy from school (*California Welfare and Institutions Code Section 601*). A minor may also be declared a ward for commission of a crime (*California Welfare and Institutions Code Section 602*). A "dependent" child may be one who is at risk of abuse or neglect by his or her parents (*California Welfare and Institutions Code Section 300*).

When a court decides that a minor is a ward or dependent, the court may limit the parent's educational rights (*California Welfare and Institutions Code sections 361[a] and 726*). If the court limits parental rights, it must issue an order clearly assigning those educational rights to another responsible adult. If a responsible adult or educational representative has been appointed by the court, the LEA does not need to appoint an educational surrogate. After limiting the parent's educational rights, the court must use form JV-535 (see appendix B) to document one of the following items:

- The appointment of an educational representative
- The determination that the caregiver may make educational decisions
- A referral to the LEA
- Educational decisions made by the court with contributing comments from interested persons (*California Rules of Court, Rule 5.650[d]*)

If the court cannot identify an educational representative or responsible adult and the child is or may be eligible for special education and related services, the court must refer the matter to the LEA for the prompt appointment of a surrogate parent for the child (*California Rules of Court, Rule 5.650[d][1]*). A surrogate parent may also be appointed by the judge overseeing the child's case (*Title 34, Code of Federal Regulations, Section 300.519[c]*).

If the court refers a child to the LEA for appointment of a surrogate parent, the relevant papers must be served on the LEA within five court days of the court's order (*California Rules of Court, Rule 5.650[d][2]*). The LEA must make reasonable efforts to assign a surrogate parent within 30 calendar days after the court's referral (*California Rules of Court, Rule 5.650[d][3]*). The LEA must provide notification to the court, the child's attorney, and the child's social worker or

probation officer—as stated on Form JV 535—within five court days of the appointment of a surrogate parent (*California Rules of Court, Rule 5.650[d][3]*).

If the LEA does not appoint a surrogate parent within 30 days of the request from the court, it must, within the next five court days, notify the court on form JV-536 of its inability to appoint a surrogate parent and its continuing reasonable efforts to assign a surrogate parent. The court forms relevant to surrogate parents are included in appendix B.

Unaccompanied Homeless Youths

LEAs are responsible for appointing a surrogate parent for unaccompanied "homeless children and youths" as defined in the McKinney-Vento Act (*Title 42, United States Code, Section 11434a*; see also *California Government Code Section 7579.6* and *Title 34, Code of Federal Regulations, Section 300.519[a][4]*). The term "unaccompanied youth" is defined as a homeless child or youth who is not in the physical custody of a parent or guardian (*Title 42, United States Code, Section 11434a[6]*).

The term "homeless children and youths" means persons who lack a fixed, regular, and adequate nighttime residence, as defined in *Title 42, United States Code, Section 11434a(2)*:

- Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals
- Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings
- Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings
- Migratory children who are living in the circumstances described above

In the case of an unaccompanied homeless youth, a temporary surrogate parent may be appointed until a surrogate parent can be appointed who meets all the requirements (*Title 34, Code of Federal Regulations, Section 300.519[f]*). Such temporary surrogate parents may include appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs (*Title 34, Code of Federal Regulations, Section 300.519[f]*). However, temporary surrogate parents must still be free of any personal or professional conflict of interest with the child's interest and must possess knowledge and skills that ensure adequate representation of the child (*Title 34, Code of Federal Regulations, sections 300.519[d] and [f]*).

Chapter 4 – The Appointment Process

This chapter presents considerations for the procedures LEAs may wish to follow in appointing surrogate parents. Many LEAs also have their own written policies and procedures on appointing

surrogate parents, and educators are encouraged to review these documents in addition to this manual for local requirements.

Recruitment efforts and timelines for surrogate parent appointments will be different for students already eligible for special education and related services and for those students suspected of having a disability. The suggestions presented in this chapter for a step-by-step approach to the appointment process are offered for guidance only. Except for the reference statutes, regulations, and court decisions, the described practices are not mandatory. Related sample forms are included in appendix B and are optional.

Any student who has been referred for assessment because of a suspected disability, who is already eligible for special education, or who is enrolled in special education may need a surrogate parent. If the parent cannot be identified; documented "reasonable inquiries" do not locate the parent or guardian; a child is an unaccompanied homeless youth; or a child has been declared a ward or dependent of the court, a surrogate parent appointment would be in order.

Step 1: Contacting the Parents

The majority of students eligible for special education or suspected of being eligible for special education will have an easily identifiable and locatable parent, as defined under law. However, in situations in which the parent is not known, efforts to locate the parent should begin immediately once a student has been referred for assessment. Time is of the essence for several reasons. First, a series of tasks with specific timelines begin on referral that pertain to identification, assessment, and placement decisions (*California Education Code Section 56043*). Since a parent must be involved in education-related decisions, the determination of the need for a surrogate parent should be made within 30 days of the referral.

If the student has not been adjudicated a ward or dependent, and if the LEA cannot determine that the student is in a home with an adult who is acting as a parent or who could be appointed as the surrogate parent, the LEA is advised to consider making a report of neglect or abuse to the child welfare agency in the county (*California Penal Code Sections 11165.7* and *11165.9*).

Before appointing a surrogate parent, an LEA must make reasonable efforts to locate the parent (*Title 34, Code of Federal Regulations, Section 300.519[a][2]* and *California Government Code Section 7579.5[a][3]*). Reasonable efforts to contact parents include, but are not limited to, the following measures:

- Documented telephone calls
- Letters
- Certified letters with return receipts
- Documented visits to the parents' last known address

If the reasonable efforts described above fail to locate the parent or to obtain parent status notification from the placing agency, a surrogate parent appointment may be necessary. Please note that the placing agency is the entity that makes a placement, and a placement is the arrangement for the care of a child in a foster home or a child-caring agency or institution, including placement with a relative, or into a pre-adoptive home (visit the California Department

of Social Services' website at http://www.cdss.ca.gov/inforesources/Foster-Care/Interstate-Compact-on-the-Placement-of-Children-ICPC/faqs). A surrogate parent shall be appointed not more than 30 days after the LEA determines that a student needs a surrogate parent (*California Government Code Section 7579.5[a]*). The timely appointment of a surrogate parent, when necessary, will facilitate timely IEP review, establish consent for special education assessment, or both.

If a surrogate parent is appointed for a child who is a ward or dependent of the court, the LEA must notify the court within five court days of the appointment. If the child has been referred by a placing agency, it is helpful for the LEA to inform the placing agency of the appointment.

Step 2: Selecting a Surrogate Parent

When appointing a surrogate parent, the LEA shall give first preference to a relative caregiver, foster parent, or court-appointed special advocate. However, if none of those individuals are willing or able to act as a surrogate parent, the LEA must be prepared to appoint another qualified responsible adult to act in that capacity (*California Government Code Section 7579.5[b]*). The local surrogate parent appointment program is more likely to be successful if an ongoing process of recruitment, screening, and training is used to develop and maintain a pool of potential surrogate parents.

Finding Volunteers

Individuals who may serve as surrogate parents include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers (*California Government Code Section 7579.5 [j]*). Appropriate community groups may be contacted for purposes of recruiting surrogate parents. It is recommended that such groups be given a clear explanation of the roles and responsibilities of surrogate parents as well as an overview of the time commitments involved in representing a student receiving special education and related services. Volunteers should be informed that they will be representing children who have special and sometimes unique needs. Volunteers must be willing to be trained to act as educational representatives for students requiring a surrogate parent.

Other resources to consider are local school–parent organizations, volunteer offices of LEAs, community advisory committees, retired teachers associations, service clubs (e.g., Rotary, Lions, Soroptimists, and Kiwanis), and the California Court Appointed Special Advocates Association. Some volunteer organizations have established screening processes for recruiting persons to work with children (e.g., Big Brothers, Big Sisters, Foster Grandparents, and so forth).

Recruitment is more likely to be successful when LEAs bring the needs of their surrogate parent program to the attention of their local interagency network groups. The combination of local resource and referral networks—which include public and nonpublic schools, other public non-educational agencies, private agencies, private practitioners, and other local community volunteer agencies—may assist LEAs in locating potential surrogate parents.

Reasonable efforts should be made to ensure that persons representing all sections of the community and all racial, ethnic, linguistic, and economic subgroups within the community are recruited and made available for appointment as surrogate parents to ensure that surrogate parents

are culturally sensitive to their assigned child (*California Government Code Section 7579.5[e]*). It is helpful to include information about cultural awareness when training individuals to become surrogate parents.

Foster Parents

When a court has limited the right of the parent or guardian to make educational decisions and has not assigned another responsible adult to do so, foster parents and care providers who live with the child in small foster family homes have the usual rights of parents to participate in educational decisions. The foregoing is true unless a court expressly excluded the foster parents from such decisions in a written order (*California Education Code Section 56055[b]*).

For example, "The foster parent may represent the foster child for the duration of the foster parent-foster child relationship in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising an individualized education program, if necessary, and in all other matters relating to the provision of a free appropriate public education of the child. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program, including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to this chapter. The foster parent may sign any consent relating to individualized education program purposes" (*California Education Code Section 56055[a]*).

State law allows these foster parents to be appointed as surrogate parents except when there is a conflict of interest (*California Government Code Section 7579.5[i]* and *[j]*). An additional factor to consider is that monies received by foster parents and small foster family home care providers are not regarded by the California Department of Social Services (DSS) as payment for contracted services but as reimbursements for expenses incurred on the child's behalf. Foster parents may have a conflict of interest if changes in placement leading to residential placement are under consideration.

A conflict of interest could arise if the foster parent seeks to retain the child in the current placement, since changing the residential placement of a child would mean a loss of income to the foster parent. Therefore, local "blanket" policies concerning conflicts of interest may be problematic regarding foster parents acting as surrogate parents. When substantial issues likely to result in a change in residential placement are faced by the IEP team, it is suggested that the LEA review surrogate parent appointments to address possible conflict-of-interest concerns (*Title 34, Code of Federal Regulations, Section 300.519[d][2][i] and [ii]* and *California Government Code Section 7579.5 [i] and [j]*). Each case should be determined on its own merits.

Step 3: Reviewing the Surrogate Parent Application

The application procedures for surrogate parents usually try to collect, at the outset, the following information:

- Facts that show the applicant does not have any interests that will conflict with the student's interests in the area of special education

- Assurance that the applicant has or is willing to acquire knowledge about the special educational interest of the student and the qualities and skills necessary to fulfill the role of surrogate parent
- Facts that show the applicant is not an employee of a public, non-public, or private agency involved in the care or education of the student
- Assurance that the applicant is willing to commit the time and energy necessary to effectively represent and advance the best interests of the student in educational matters

It is helpful to develop or adapt forms for a surrogate parent application that ensures appropriate surrogate parent appointments. Generally, implementing districts include the following items in a surrogate parent application packet: (1) an application; (2) a disclosure statement to screen potential conflicts of interest; (3) an acknowledgment that the potential appointee will complete the local training program for surrogates; and (4) an agreement between the appointing agency and the surrogate parent that includes an assurance of confidentiality for student records.

The application package may also include a personal-interest questionnaire, personal references for verification of personal information, releases of information for Department of Motor Vehicles screening, or even possible fingerprinting documentation, depending on the LEA's procedures. If an LEA already has an existing volunteer program, it may be expeditious to adapt the program for surrogate parent appointment purposes.

Step 4: Screening for Conflict of Interest

Federal and state law mandate that the surrogate parent not have a conflict of interest (*Title 34, Code of Federal Regulations, Section 300.519[d][2][ii]* and *California Government Code Section 7579[i]*). Some factors to consider are provided below:

- Whether the volunteer is employed by an LEA or any agency involved in the education or care of the student
- Whether the volunteer holds a position that might restrict or bias his or her ability to represent the student's educational needs
- Whether the volunteer holds a position that might subject the volunteer to administrative influence or reprimand for acting as the student's educational representative
- Whether the volunteer has interests that might restrict or bias his or her ability to advocate for all the services required to ensure a free appropriate public education for an individual with exceptional needs

Disclosures of financial interests are the primary measures that special education local plan areas (SELPAs) and LEAs may use to establish conflict-of-interest criteria. Currently adopted forms available at local or county personnel departments may be adapted as surrogate parent conflict-of-interest disclosure statements. It is advisable to complete the eligibility determination before the surrogate parent candidate is invited to a formal training.

The Surrogate Parent Agreement sample form (see appendix B) contains possible terms and conditions that may be agreed on between the surrogate parent and the LEA. These terms and conditions pertain to the following areas:

- Responsibilities of a surrogate parent to the student
- LEA's responsibility to provide training regarding disabilities
- Laws applicable to surrogate parents' responsibilities
- Continuum of program placements and opportunities
- Term of appointment
- Termination of the agreement
- Confidentiality of student information

Step 5: Training of Potential Surrogate Parents

Because it is the responsibility of the SELPA or LEA to appoint persons who have "knowledge and skills that ensure adequate representation of the child" (*Title 34, Code of Federal Regulations, Section 300.519[d][2][iii]*), these entities are encouraged to provide effective screening, training, and consultation on an as-needed basis for potential surrogate parents. (For a directory of SELPAs, see appendix C.) Training and ongoing consultation with potential surrogate parents may include familiarization with the following items:

- The educational needs of the student to be represented
- The local programs and related services available in the SELPA or LEA
- Procedural safeguards to ensure that the student's needs are met and IEP services are delivered
- Time commitments of surrogate parents

Additional Procedures

It is suggested that the following procedures be considered:

- Matching the student's needs to the most appropriate volunteer applying to be a potential surrogate parent
- Introducing the student and the potential surrogate parent
- Obtaining a written agreement with the surrogate parent to serve the specific student in the IEP process and to maintain the student's and the family's rights to confidentiality
- Informing all involved persons and agencies responsible for the residential care and education of the student of the surrogate parent's appointment

It is also suggested that appointments be reviewed annually to determine whether the status of the parent of the child still warrants the appointment.

Caseloads for surrogate parents vary nationally depending on the complexity or severity of the individual cases and the availability of surrogate parents. Other local considerations may be the driving distances between the special education programs of the represented students.

It is recommended that a surrogate parent's agreement to serve be documented in writing. Some examples of appointment and agreement forms are included in appendix B.

Whenever possible, an introductory meeting before finalizing the appointment may be arranged for the child and potential surrogate to become acquainted. Such preliminary introductions may allay any serious reservations held by the potential surrogate or the child. Once a surrogate parent is appointed, notices should be sent to all staff involved in the residential care and education of the student.

It is recommended that local policies be developed to ensure that the surrogate parent has appropriate access to the student, the student's records, and the meetings necessary for the development and review of the IEP.

Chapter 5 – Appointment Duration, Termination, and Resignation of a Surrogate Parent

The surrogate parent may represent the child until any of the following circumstances are determined:

- The child is no longer in need of special education
- The minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by a court to be incompetent
- Another responsible adult is appointed to make educational decisions for the minor
- The right of the parent or guardian to make educational decisions for the minor is fully restored

  (*California Government Code Section 7579.5[k]*)

Since a surrogate appointment is contingent on a child's eligibility for special education services, the surrogate parent's appointment lapses when an LEA no longer has the responsibility to provide a free appropriate public education to a student who is represented by a surrogate parent. For example, if a child ceases to be a resident of a particular LEA, the new LEA of residence would be obligated to provide the free appropriate public education. The sending LEA, when terminating the surrogate parent appointment, should notify the new LEA that a surrogate parent was previously appointed, so that the former surrogate parent may provide important information concerning the child's educational needs to the new LEA and any new surrogate parent that may be appointed.

The LEA shall terminate the appointment of a surrogate parent if either of the following circumstances apply:

- The person is not properly performing the duties of a surrogate parent.
- The person has an interest that conflicts with the interests of the child entrusted to his or her care

(*California Government Code Section 7579.5[h]*)

The surrogate parent may resign from his or her appointment only after giving notice to the LEA (*California Government Code Section 7579.5[g]*). It is advisable for LEAs to establish policies and procedures for the termination and resignation of appointed surrogate parents and to monitor the surrogate parents who are appointed to ensure that they perform their duties in the special education process and stay free of conflicts of interest. Parental rights automatically revert to the student's parents when the parents return to assume their roles, unless their rights have been limited by a court. When the student reaches the age of majority, the student will assume the parental role within the IEP process.

The Roles of Public Non-educational Agencies and Foster Care Providers

This section describes the responsibilities of the non-educational agencies and foster care providers, provides information needed by these agencies, and highlights the need for interagency collaboration. It also addresses issues related to local mental health providers' involvement with appointed surrogate parents.

The majority of youths who will require surrogate parents are those under the jurisdiction of a county agency (such as Social Services, public guardian, or Probation) or a state agency (such as the California Youth Authority, state hospitals, or developmental centers). Areas of concern are as follows:

- Determination of parental educational rights
- Notification regarding status of wards and dependent children
- Interaction with LEAs and SELPAs
- Interaction with surrogate parents
- Confidentiality
- Mental health assessment and treatment

Since the non-educational agencies (including Regional Centers for the Developmentally Disabled) are charged with the responsibility of maintaining care, custody, and control over children, it is helpful if the agency staff and the surrogate parent understand each other's roles and responsibilities.

Confidentiality

State and federal law protect the confidentiality of student records and limit the disclosure of such records. However, both state and federal law allow the parents to consent to the release of student information (*California Education Code Section 49076* and *Title 20, United States Code, Section 1232g[b][1]*). Surrogate parents have all the rights that a natural or biological parent would have, including the right to consent to the release of student information.

The presiding judges of the juvenile courts in many counties have issued special orders outlining authorization to release information in specific circumstances. LEA administrators and surrogate

parents should be aware of any such general orders in their county as well as specific orders regarding particular students and should consult with their legal counsel as needed to obtain access to records or to obtain permission to share information when necessary.

To ensure the confidentiality of all records, it is advised that LEAs provide detailed training to surrogate parents to ensure that protected information will not be released and will be appropriately returned or destroyed when the surrogate parent appointment ends. Such an assurance should facilitate the case management interaction with the non-educational agencies.

Local Mental Health Providers' Intervention

When a surrogate parent is appointed and agrees that there is a need for local mental health providers' involvement, *California Government Code Section 7579.5(c)* authorizes the surrogate parent to give written consent for nonemergency medical services, mental health treatment services, and occupational or physical therapy services relative to the IEP of the child being represented (see also *California Education Code Section 56050[b]*).

Monitoring and Complaint Procedures

This section describes various methods for state and local oversight of surrogate parent appointment programs. LEAs are encouraged to maintain adequate records of appointment, training, and monitoring of the surrogate parent program. Likewise, individual surrogate parents are trained and encouraged to comply with appropriate record-keeping policies, procedures, and methods to ensure that each student's needs for special education and related services are appropriately represented in meetings of the IEP team. To ensure that surrogate parent programs are compliant with both federal and state law, these programs are monitored through the California Department of Education's Quality Assurance Process (*California Education Code Section 56045*).

If a compliance complaint is filed by a surrogate parent, it will be handled pursuant to *Title 34, Code of Federal Regulations, sections 300.151–300.153; California Education Code sections 56043(p) and 56500.2; and Title 5, California Code of Regulations, sections 4600–4671*. A surrogate parent is also entitled to request a due process hearing to resolve a dispute over the content of an IEP pursuant to *California Education Code Section 56500,* et seq. Complaints arising under the interagency coordination statute can be addressed pursuant to *California Government Code Section 7585*.

Other agencies and departments interacting with the child will have distinct monitoring and complaint procedures with which the LEA must coordinate. When contracting with a nonpublic school or agency to provide special education and related services for eligible students, the LEA should consider whether its contract provisions ensure access for surrogate parents. In addition, public, non-educational agencies have established complaint procedures in place to ensure that the best interests of the child are always the primary concern of any assigned staff.

Surrogate Parents in California: Appendix A
(https://www.cde.ca.gov/sp/se/sr/documents/surrogateparents.pdf)

Statutory and Regulatory References

The text of pertinent federal and state statutes and regulations are provided below and are current as of July 2018.

Federal Statutes

Title 20, United States Code, Section 1415(b)(2)(A) and (B)

> *(2)(A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of—*
>
> *(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph; and*
>
> *(ii) an unaccompanied homeless youth as defined in section 11434a(6) of title 42, the local educational agency shall appoint a surrogate in accordance with this paragraph.*
>
> *(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.*

Federal Regulations

Title 34, Code of Federal Regulations, Section 300.30 Parent

> *(a) Parent means—*
>
> *(1) A biological or adoptive parent of a child;*
>
> *(2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;*
>
> *(3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);*

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

(5) A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a)(5) of the Act.

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

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section.

(*Authority: Title 20, United States Code, Section 1401[23]*)

Title 34, Code of Federal Regulations, Section 300.519 Surrogate Parents

(a) General. Each public agency must ensure that the rights of a child are protected when—

(1) No parent (as defined in § 300.30) can be identified;

(2) The public agency, after reasonable efforts, cannot locate a parent;

(3) The child is a ward of the State under the laws of that State; or

(4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

(b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—

(1) For determining whether a child needs a surrogate parent; and

(2) For assigning a surrogate parent to the child.

(c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) Criteria for selection of surrogate parents.

(1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies must ensure that a person selected as a surrogate parent—

(i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;

(ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and

(iii) Has knowledge and skills that ensure adequate representation of the child.

(e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(f) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.

(g) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(h) SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

(*Authority: Title 20, United States Code, Section 1415[b][2]*)

California Education Code

California Education Code Section 49076

(a) A school district shall not permit access to pupil records to a person without written parental consent or under judicial order except as set forth in this section and as permitted by Part 99 (commencing with Section 99.1) of Title 34 of the Code of Federal Regulations.

(1) Access to those particular records relevant to the legitimate educational interests of the requester shall be permitted to the following:

(A) School officials and employees of the school district, members of a school attendance review board appointed pursuant to Section 48321 who are authorized representatives of the school district, and any volunteer aide, 18 years of age or older, who has been investigated, selected, and trained by a school attendance review board for the purpose of providing follow-up services to pupils referred to the school attendance review board, provided that the person has a legitimate educational interest to inspect a record.

(B) Officials and employees of other public schools or school systems, including local, county, or state correctional facilities where educational programs leading to high school graduation are provided or where the pupil intends to or is directed to enroll, subject to the rights of parents as provided in Section 49068.

(C) Authorized representatives of the Comptroller General of the United States, the United States Secretary of Education, and state and local educational authorities, or the United States Department of Education's Office for Civil Rights, if the information is necessary to audit or evaluate a state or federally supported educational program, or in connection with the enforcement of, or compliance with, the federal legal requirements that relate to such a program. Records released pursuant to this subparagraph shall comply with the requirements of Section 99.35 of Title 34 of the Code of Federal Regulations.

(D) Other state and local officials to the extent that information is specifically required to be reported pursuant to state law adopted before November 19, 1974.

(E) Parents of a pupil 18 years of age or older who is a dependent as defined in Section 152 of Title 26 of the United States Code.

(F) A pupil 16 years of age or older or having completed the 10th grade.

(G) A district attorney who is participating in or conducting a truancy mediation program pursuant to Section 48263.5 of this code or Section 601.3 of the Welfare and Institutions Code, or participating in the presentation of evidence in a truancy petition pursuant to Section 681 of the Welfare and Institutions Code.

(H) A district attorney's office for consideration against a parent or guardian for failure to comply with the Compulsory Education Law (Chapter 2 (commencing with Section 48200)) or with Compulsory Continuation Education (Chapter 3 (commencing with Section 48400)).

(I)(i) A probation officer, district attorney, or counsel of record for a minor for purposes of conducting a criminal investigation or an investigation in regards to declaring a person a ward of the court or involving a violation of a condition of probation.

(ii) For purposes of this subparagraph, a probation officer, district attorney, and counsel of record for a minor shall be deemed to be local officials for purposes of Section 99.31(a)(5)(i) of Title 34 of the Code of Federal Regulations.

(iii) Pupil records obtained pursuant to this subparagraph shall be subject to the evidentiary rules described in Section 701 of the Welfare and Institutions Code.

(J) A judge or probation officer for the purpose of conducting a truancy mediation program for a pupil, or for purposes of presenting evidence in a truancy petition pursuant to Section 681 of the Welfare and Institutions Code. The judge or probation officer shall certify in writing to the school district that the information will be used only for truancy purposes. A school district releasing pupil information to a judge or probation officer pursuant to this subparagraph shall inform, or provide written notification to, the parent or guardian of the pupil within 24 hours of the release of the information.

(K) A county placing agency when acting as an authorized representative of a state or local educational agency pursuant to subparagraph (C). School districts, county offices of education, and county placing agencies may develop cooperative agreements to facilitate confidential access to and exchange of the pupil information by email, facsimile, electronic format, or other secure means, if the agreement complies with the requirements set forth in Section 99.35 of Title 34 of the Code of Federal Regulations.

(L) A pupil 14 years of age or older who meets both of the following criteria:

(i) The pupil is a homeless child or youth, as defined in paragraph (2) of Section 725 of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)).

(ii) The pupil is an unaccompanied youth, as defined in paragraph (6) of Section 725 of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(6)).

(M) An individual who completes items 1 to 4, inclusive, of the Caregiver's Authorization Affidavit, as provided in Section 6552 of the Family Code, and signs the affidavit for the purpose of enrolling a minor in school.

(N)(i) An agency caseworker or other representative of a state or local child welfare agency, or tribal organization, as defined in Section 450b of Title 25 of the United States Code, that has legal responsibility, in accordance with state or tribal law, for the care and protection of the pupil.

ii) The agency or organization specified in clause (i) may disclose pupil records, or the personally identifiable information contained in those records, to an individual or entity engaged in addressing the pupil's educational needs, if the individual or entity is authorized by the agency or organization to receive the disclosure and the information requested is directly related to the assistance

provided by that individual or entity. The records, or the personally identifiable information contained in those records, shall not otherwise be disclosed by that agency or organization, except as provided under the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g), state law, including paragraph (3), and tribal law.

(O) A foster family agency with jurisdiction over a currently enrolled or former pupil, a short-term residential treatment program staff responsible for the education or case management of a pupil, and a caregiver who has direct responsibility for the care of the pupil, including a certified or licensed foster parent, an approved relative or nonrelated extended family member, or a resource family, as defined in Section 1517 of the Health and Safety Code and Section 16519.5 of the Welfare and Institutions Code, pursuant to Section 49069.3 of this code.

(2) School districts may release information from pupil records to the following:

(A) Appropriate persons in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of a pupil or other persons. Schools or school districts releasing information pursuant to this subparagraph shall comply with the requirements set forth in Section 99.32(a)(5) of Title 34 of the Code of Federal Regulations.

(B) Agencies or organizations in connection with the application of a pupil for, or receipt of, financial aid. However, information permitting the personal identification of a pupil or his or her parents may be disclosed only as may be necessary for purposes as to determine the eligibility of the pupil for financial aid, to determine the amount of the financial aid, to determine the conditions that will be imposed regarding the financial aid, or to enforce the terms or conditions of the financial aid.

(C) Pursuant to Section 99.37 of Title 34 of the Code of Federal Regulations, a county elections official, for the purpose of identifying pupils eligible to register to vote, or for conducting programs to offer pupils an opportunity to register to vote. The information shall not be used for any other purpose or given or transferred to any other person or agency.

(D) Accrediting associations in order to carry out their accrediting functions.

(E) Organizations conducting studies for, or on behalf of, educational agencies or institutions for purposes of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if the studies are conducted in a manner that will not permit the personal identification of pupils or their parents by persons other than representatives of the organizations, the information will be destroyed when no longer needed for the purpose for which it is obtained, and the organization enters into a written agreement with the

educational agency or institution that complies with Section 99.31(a)(6) of Title 34 of the Code of Federal Regulations.

(F) Officials and employees of private schools or school systems where the pupil is enrolled or intends to enroll, subject to the rights of parents as provided in Section 49068 and in compliance with the requirements in Section 99.34 of Title 34 of the Code of Federal Regulations. This information shall be in addition to the pupil's permanent record transferred pursuant to Section 49068.

(G)(i) A contractor or consultant with a legitimate educational interest who has a formal written agreement or contract with the school district regarding the provision of outsourced institutional services or functions by the contractor or consultant.

(ii) Notwithstanding the authorization in Section 99.31(a)(1)(i)(B) of Title 34 of the Code of Federal Regulations, a disclosure pursuant to this subparagraph shall not be permitted to a volunteer or other party.

(3) A person, persons, agency, or organization permitted access to pupil records pursuant to this section shall not permit access to any information obtained from those records by another person, persons, agency, or organization, except for allowable exceptions contained within the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and state law, including this section, and implementing regulations, without the written consent of the pupil's parent. This paragraph shall not require prior parental consent when information obtained pursuant to this section is shared with other persons within the educational institution, agency, or organization obtaining access, so long as those persons have a legitimate educational interest in the information pursuant to Section 99.31(a)(1) of Title 34 of the Code of Federal Regulations.

(4) Notwithstanding any other law, a school district, including a county office of education or county superintendent of schools, may participate in an interagency data information system that permits access to a computerized database system within and between governmental agencies or school districts as to information or records that are nonprivileged, and where release is authorized as to the requesting agency under state or federal law or regulation, if each of the following requirements is met:

(A) Each agency and school district shall develop security procedures or devices by which unauthorized personnel cannot access data contained in the system.

(B) Each agency and school district shall develop procedures or devices to secure privileged or confidential data from unauthorized disclosure.

(C) Each school district shall comply with the access log requirements of Section 49064.

(D) The right of access granted shall not include the right to add, delete, or alter data without the written permission of the agency holding the data.

(E) An agency or school district shall not make public or otherwise release information on an individual contained in the database if the information is protected from disclosure or release as to the requesting agency by state or federal law or regulation.

(b) The officials and authorities to whom pupil records are disclosed pursuant to subdivision (e) of Section 48902 and subparagraph (I) of paragraph (1) of subdivision (a) shall certify in writing to the disclosing school district that the information shall not be disclosed to another party, except as provided under the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and state law, without the prior written consent of the parent of the pupil or the person identified as the holder of the pupil's educational rights.

(c)(1) A person or party who is not permitted access to pupil records pursuant to subdivision (a) or (b) may request access to pupil records as provided for in paragraph (2).

(2) A local educational agency or other person or party who has received pupil records, or information from pupil records, may release the records or information to a person or party identified in paragraph (1) without the consent of the pupil's parent or guardian pursuant to Section 99.31(b) of Title 34 of the Code of Federal Regulations, if the records or information are deidentified, which requires the removal of all personally identifiable information, if the disclosing local educational agency or other person or party has made a reasonable determination that a pupil's identity is not personally identifiable, whether through single or multiple releases, and has taken into account other pertinent reasonably available information.

(Amended by Statutes of 2017, Chapter 829, Section 3. Effective January 1, 2018.)

California Education Code Section 56028

(a) "Parent" means any of the following:

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

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

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

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

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

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

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

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

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

(Amended by Statutes of 2008, Chapter 223, Section 12. Effective January 1, 2009.)

California Education Code Section 56050

(a) For the purposes of this article, "surrogate parent" shall be defined as it is defined in Section 300.519 of Title 34 of the Code of Federal Regulations.

(b) A surrogate parent may represent an individual with exceptional needs in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in other matters relating to the provision of a free appropriate public education to the individual. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. The surrogate parent may sign any consent relating to individualized education program purposes.

(c) A surrogate parent shall be held harmless by the State of California when acting in his or her official capacity except for acts or omissions that are found to have been wanton, reckless, or malicious.

(d) A surrogate parent shall also be governed by Section 7579.5 of the Government Code.

(Amended by Statutes of 2007, Chapter 56, Section 14. Effective January 1, 2008.)

California Education Code Section 56156

(a) Each court, regional center for the developmentally disabled, or public agency that engages in referring children to, or placing children in, licensed children's institutions shall report to the special education administrator of the special education local plan area in which the licensed children's institution is located any referral or admission of a child who is potentially eligible for special education.

(b) At the time of placement in a licensed children's institution or foster family home, each court, regional center for the developmentally disabled, or public agency shall identify all of the following:

(1) Whether the courts have specifically limited the rights of the parent or guardian to make educational decisions for a child who is a ward or dependent of the court.

(2) The location of the parents, in the event that the parents retain the right to make educational decisions.

(3) Whether the location of the parents is unknown.

(c) Each person licensed by the state to operate a licensed children's institution, or his or her designee, shall notify the special education administrator of the special education local plan area in which the licensed children's institution is located of any child potentially eligible for special education who resides at the facility.

(d) The Superintendent shall provide each county office of education with a current list of licensed children's institutions in that county at least biannually. The county office shall maintain the most current list of licensed children's institutions located within the county and shall notify each district and special education local plan area within the county of the names of licensed children's institutions located in the geographical area of the county covered by the district and special education local plan area. The county office shall notify the director of each licensed children's institution of the appropriate person to contact regarding individuals with exceptional needs.

(Amended by Statutes of 2007, Chapter 56, Section 22. Effective January 1, 2008.)

California Education Code Section 56366

It is the intent of the Legislature that the role of a nonpublic, nonsectarian school or agency shall be maintained and continued as an alternative special education service available to a local educational agency and parents.

(Amended by Statutes of 2015, Chapter 386, Section 26. Effective January 1, 2016.)

California Government Code

California Government Code Section 7579

(a) Prior to placing a disabled child or a child suspected of being disabled in a residential facility, outside the child's home, a court, regional center for the developmentally disabled, or public agency other than an educational agency, shall notify the administrator of the special education local plan area in which the residential facility is located. The administrator of the special education local plan area shall provide the court or other placing agency with information about the availability of an appropriate public or nonpublic, nonsectarian special education program in the special education local plan area where the residential facility is located.

(b) Notwithstanding Section 56159 of the Education Code, the involvement of the administrator of the special education local plan area in the placement discussion, pursuant to subdivision (a), shall in no way obligate a public education agency to pay for the residential costs and the cost of noneducational services for a child placed in a licensed children's institution or foster family home.

(c) It is the intent of the Legislature that this section will encourage communication between the courts and other public agencies that engage in referring children to, or placing children in, residential facilities, and representatives of local educational agencies. It is not the intent of this section to hinder the courts or public agencies in their responsibilities for placing disabled children in residential facilities when appropriate.

(d) Any public agency other than an educational agency that places a disabled child or a child suspected of being disabled in a facility out of state without the involvement of the school district, special education local plan area, or county office of education in which the parent or guardian resides, shall assume all financial responsibility for the child's residential placement, special education program, and related services in the other state unless the other state or its local agencies assume responsibility.

(Amended by Statutes of 2002, Chapter 585, Section 3. Effective January 1, 2003.)

California Government Code Section 7579.1

(a) Prior to the discharge of any disabled child or youth who has an active individualized education program from a public hospital, proprietary hospital, or residential medical facility pursuant to Article 5.5 (commencing with Section

56167) of Chapter 2 of Part 30 of the Education Code, a licensed children's institution or foster family home pursuant to Article 5 (commencing with Section 56155) of Chapter 2 of Part 30 of the Education Code, or a state hospital or developmental center, the following shall occur:

(1) The operator of the hospital or medical facility, or the agency that placed the child in the licensed children's institution or foster family home, shall, at least 10 days prior to the discharge of a disabled child or youth, notify in writing the local educational agency in which the special education program for the child is being provided, and the receiving special education local plan area where the child is being transferred, of the impending discharge.

(2) The operator or placing agency, as part of the written notification, shall provide the receiving special education local plan area with a copy of the child's individualized education program, the identity of the individual responsible for representing the interests of the child for educational and related services for the impending placement, and other relevant information about the child that will be useful in implementing the child's individualized education program in the receiving special education local plan area.

(b) Once the disabled child or youth has been discharged, it shall be the responsibility of the receiving local educational agency to ensure that the disabled child or youth receives an appropriate educational placement that commences without delay upon his or her discharge from the hospital, institution, facility, or foster family home in accordance with Section 56325 of the Education Code. Responsibility for the provision of special education rests with the school district of residence of the parent or guardian of the child unless the child is placed in another hospital, institution, facility, or foster family home in which case the responsibility of special education rests with the school district in which the child resides pursuant to Sections 56156.4, 56156.6, and 56167 of the Education Code.

(c) Special education local plan area directors shall document instances where the procedures in subdivision (a) are not being adhered to and report these instances to the Superintendent of Public Instruction.

(Amended by Statutes of 2014, Chapter 144, Section 20. Effective January 1, 2015.)

California Government Code Section 7579.5

(a) In accordance with Section 1415(b)(2)(B) of Title 20 of the United States Code, a local educational agency shall make reasonable efforts to ensure the appointment of a surrogate parent not more than 30 days after there is a determination by the local educational agency that a child needs a surrogate parent. A local educational agency shall appoint a surrogate parent for a child in accordance with Section 300.519 of Title 34 of the Code of Federal Regulations under one or more of the following circumstances:

(1)(A) The child is adjudicated a dependent or ward of the court pursuant to Section 300, 601, or 602 of the Welfare and Institutions Code upon referral of the child to the local educational agency for special education and related services, or if the child already has a valid individualized education program, (B) the court specifically has limited the right of the parent or guardian to make educational decisions for the child, and (C) the child has no responsible adult to represent him or her pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055 of the Education Code.

(2) No parent for the child can be identified.

(3) The local educational agency, after reasonable efforts, cannot discover the location of a parent.

(b) When appointing a surrogate parent, the local educational agency, as a first preference, shall select a relative caretaker, foster parent, or court-appointed special advocate, if any of these individuals exists and is willing and able to serve. If none of these individuals is willing or able to act as a surrogate parent, the local educational agency shall select the surrogate parent of its choice. If the child is moved from the home of the relative caretaker or foster parent who has been appointed as a surrogate parent, the local educational agency shall appoint another surrogate parent if a new appointment is necessary to ensure adequate representation of the child.

(c) For purposes of this section, the surrogate parent shall serve as the child's parent and shall have the rights relative to the child's education that a parent has under Title 20 (commencing with Section 1400) of the United States Code and pursuant to Part 300 of Title 34 (commencing with Section 300.1) of the Code of Federal Regulations. The surrogate parent may represent the child in matters relating to special education and related services, including the identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in all other matters relating to the provision of a free appropriate public education of the child. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to this chapter.

(d) The surrogate parent is required to meet with the child at least one time. He or she may also meet with the child on additional occasions, attend the child's individualized education program team meetings, review the child's educational records, consult with persons involved in the child's education, and sign any consent relating to individualized education program purposes.

(e) As far as practical, a surrogate parent should be culturally sensitive to his or her assigned child.

(f) The surrogate parent shall comply with federal and state law pertaining to the confidentiality of student records and information and shall use discretion in the necessary sharing of the information with appropriate persons for the purpose of furthering the interests of the child.

(g) The surrogate parent may resign from his or her appointment only after he or she gives notice to the local educational agency.

(h) The local educational agency shall terminate the appointment of a surrogate parent if (1) the person is not properly performing the duties of a surrogate parent or (2) the person has an interest that conflicts with the interests of the child entrusted to his or her care.

(i) Individuals who would have a conflict of interest in representing the child, as specified in Section 300.519(d) of Title 34 of the Code of Federal Regulations, shall not be appointed as a surrogate parent. "An individual who would have a conflict of interest," for purposes of this section, means a person having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure that the child has a free appropriate public education.

(j) Except for individuals who have a conflict of interest in representing the child, and notwithstanding any other law or regulation, individuals who may serve as surrogate parents include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers who are not employees of the State Department of Education, the local educational agency, or any other agency that is involved in the education or care of the child.

(1) A public agency authorized to appoint a surrogate parent under this section may select a person who is an employee of a nonpublic agency that only provides noneducational care for the child and who meets the other standards of this section.

(2) A person who otherwise qualifies to be a surrogate parent under this section is not an employee of the local educational agency solely because he or she is paid by the local educational agency to serve as a surrogate parent.

(k) The surrogate parent may represent the child until (1) the child is no longer in need of special education, (2) the minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by a court to be incompetent, (3) another responsible adult is appointed to make educational decisions for the minor, or (4) the right of the parent or guardian to make educational decisions for the minor is fully restored.

(l) The surrogate parent and the local educational agency appointing the surrogate parent shall be held harmless by the State of California when acting in their official capacity except for acts or omissions that are found to have been wanton, reckless, or malicious.

(m) The State Department of Education shall develop a model surrogate parent training module and manual that shall be made available to local educational agencies.

(n) Nothing in this section may be interpreted to prevent a parent or guardian of an individual with exceptional needs from designating another adult individual to represent the interests of the child for educational and related services.

(o) If funding for implementation of this section is provided, it may only be provided from Item 6110-161-0890 of Section 2.00 of the annual Budget Act.

(Amended by Statutes of 2007, Chapter 56, Section 99. Effective January 1, 2008.)

California Government Code Section 7585

(a) Whenever a department or local agency designated by that department fails to provide a related service or designated instruction and service required pursuant to Section 7575, and specified in the pupil's individualized education program, the parent, adult pupil, if applicable, or a local educational agency referred to in this chapter, shall submit a written notification of the failure to provide the service to the Superintendent of Public Instruction or the Secretary of California Health and Human Services.

(b) When either the Superintendent or the secretary receives a written notification of the failure to provide a service as specified in subdivision (a), a copy shall immediately be transmitted to the other party. The Superintendent, or his or her designee, and the secretary, or his or her designee, shall meet to resolve the issue within 15 calendar days of receipt of the notification. A written copy of the meeting resolution shall be mailed to the parent, the local educational agency, and affected departments, within 10 days of the meeting.

(c) If the issue cannot be resolved within 15 calendar days to the satisfaction of the Superintendent and the secretary, they shall jointly submit the issue in writing to the Director of the Office of Administrative Hearings, or his or her designee, in the Department of General Services.

(d) The Director of the Office of Administrative Hearings, or his or her designee, shall review the issue and submit his or her findings in the case to the Superintendent and the secretary within 30 calendar days of receipt of the case. The decision of the director, or his or her designee, shall be binding on the departments and their designated agencies who are parties to the dispute.

(e) If the meeting, conducted pursuant to subdivision (b), fails to resolve the issue to the satisfaction of the parent or local educational agency, either party may appeal to the director, whose decision shall be the final administrative determination and binding on all parties.

(f) Whenever notification is filed pursuant to subdivision (a), the pupil affected by the dispute shall be provided with the appropriate related service or designated instruction and service pending resolution of the dispute, if the pupil had been receiving the service. The Superintendent and the secretary shall ensure that funds are available for the provision of the service pending resolution of the issue pursuant to subdivision (e).

(g) This section does not prevent a parent or adult pupil from filing for a due process hearing under Section 7586.

(h) The contract between the State Department of Education and the Office of Administrative Hearings for conducting due process hearings shall include payment for services rendered by the Office of Administrative Hearings which are required by this section.

(Amended by Statutes of 2011, Chapter 43, Section 40. Effective June 30, 2011.)

California Welfare and Institutions Code

California Welfare and Institutions Code Section 245.5

In addition to all other powers granted by law, the juvenile court may direct all such orders to the parent, parents, or guardian of a minor who is subject to any proceedings under this chapter as the court deems necessary and proper for the best interests of or for the rehabilitation of the minor. These orders may concern the care, supervision, custody, conduct, maintenance, and support of the minor, including education and medical treatment.

(Amended by Statutes of 1990, Chapter 182, Section 6.)

California Welfare and Institutions Code Section 300

A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted non-accidentally upon the child by the child's parent or guardian. For purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks if there is no evidence of serious physical injury.

(b)(1) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. A child shall not be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the child posed by the course of treatment or nontreatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.

(2) The Legislature finds and declares that a child who is sexually trafficked, as described in Section 236.1 of the Penal Code, or who receives food or shelter in exchange for, or who is paid to perform, sexual acts described in Section 236.1 or 11165.1 of the Penal Code, and whose parent or guardian failed to, or was unable to, protect the child, is within the description of this subdivision, and that this finding is declaratory of existing law. These children shall be known as commercially sexually exploited children.

(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. A child shall not be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or

guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

(e) The child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child shall not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332.

(f) The child's parent or guardian caused the death of another child through abuse or neglect.

(g) The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code and the child has not been reclaimed within the 14-day period specified in subdivision (g) of that section; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

(j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition

of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

It is the intent of the Legislature that this section not disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, this section is not intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control. The Legislature further declares that a child whose parent has been adjudged a dependent child of the court pursuant to this section shall not be considered to be at risk of abuse or neglect solely because of the age, dependent status, or foster care status of the parent.

As used in this section, "guardian" means the legal guardian of the child.

(Amended by Statutes of 2015, Chapter 303, Section 566. Effective January 1, 2016.)

California Welfare and Institutions Code Section 361(a)

(a)(1) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent, guardian, or Indian custodian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent, guardian, or Indian custodian to make educational or developmental services decisions for the child shall be specifically addressed in the court order. The limitations may not exceed those necessary to protect the child. If the court specifically limits the right of the parent, guardian, or Indian custodian to make educational or developmental services decisions for the child, or, for the nonminor dependent, if the court finds the appointment of a developmental services decisionmaker to be in the best interests of the nonminor dependent, the court shall at the same time appoint a responsible adult to make educational or developmental services decisions for the child or nonminor dependent until one of the following occurs:

(A) The minor reaches 18 years of age, unless the child or nonminor dependent chooses not to make educational or developmental services decisions for himself or herself, or is deemed by the court to be incompetent.

(B) Another responsible adult is appointed to make educational or developmental services decisions for the minor pursuant to this section.

(C) The right of the parent, guardian, or Indian custodian to make educational or developmental services decisions for the minor is fully restored.

(D) A successor guardian or conservator is appointed.

(E) The child is placed into a planned permanent living arrangement pursuant to paragraph (5) of subdivision (g) of Section 366.21, Section 366.22, Section 366.26, or subdivision (i) of Section 366.3, at which time, for educational decision-making, the foster parent, relative caretaker, or nonrelative extended family member as defined in Section 362.7, has the right to represent the child in educational matters pursuant to Section 56055 of the Education Code, and for decisions relating to developmental services, unless the court specifies otherwise, the foster parent, relative caregiver, or nonrelative extended family member of the planned permanent living arrangement has the right to represent the child or nonminor dependent in matters related to developmental services.

(2) An individual who would have a conflict of interest in representing the child or nonminor dependent shall not be appointed to make educational or developmental services decisions. For purposes of this section, "an individual who would have a conflict of interest" means a person having any interests that might restrict or bias his or her ability to make educational or developmental services decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorney's fees for the provision of services pursuant to this section. A foster parent shall not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.

(3) Regardless of the person or persons currently holding the right to make educational decisions for the child, a foster parent, relative caregiver, nonrelated extended family member, or resource family shall retain rights and obligations regarding accessing and maintaining health and education information pursuant to Sections 49069.3 and 49076 of the Education Code and Section 16010 of this code.

(4)(A) If the court limits the parent's, guardian's, or Indian custodian's educational rights pursuant to this subdivision, the court shall determine whether there is a responsible adult who is a relative, nonrelative extended family member, or other adult known to the child who is available and willing to serve as the child's educational representative before appointing an educational representative or surrogate who is not known to the child.

(B) If the court cannot identify a responsible adult who is known to the child and available to make educational decisions for the child, subparagraphs (A) to (E), inclusive, of paragraph (1) do not apply, and the child has either been referred to

the local educational agency for special education and related services, or has a valid individualized education program, the court shall refer the child to the local educational agency for appointment of a surrogate parent pursuant to Section 7579.5 of the Government Code.

(C) If the court cannot identify a responsible adult to make educational decisions for the child, the appointment of a surrogate parent as defined in subdivision (a) of Section 56050 of the Education Code is not warranted, and there is no foster parent to exercise the authority granted by Section 56055 of the Education Code, the court may, with the input of any interested person, make educational decisions for the child.

(5)(A) If the court appoints a developmental services decisionmaker pursuant to this section, he or she shall have the authority to access the child's or nonminor dependent's information and records pursuant to subdivision (u) of Section 4514 and paragraph (23) of subdivision (a) of Section 5328, and to act on the child's or nonminor dependent's behalf for the purposes of the individual program plan process pursuant to Sections 4646, 4646.5, and 4648 and the fair hearing process pursuant to Chapter 7 (commencing with Section 4700) of Division 4.5, and as set forth in the court order.

(B) If the court cannot identify a responsible adult to make developmental services decisions for the child or nonminor dependent, the court may, with the input of any interested person, make developmental services decisions for the child or nonminor dependent. If the child is receiving services from a regional center, the provision of any developmental services related to the court's decision must be consistent with the child's or nonminor dependent's individual program plan and pursuant to the provisions of the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

(6) All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child. If an educational representative or surrogate is appointed for the child, the representative or surrogate shall meet with the child, shall investigate the child's educational needs and whether those needs are being met, and shall, prior to each review hearing held under this article, provide information and recommendations concerning the child's educational needs to the child's social worker, make written recommendations to the court, or attend the hearing and participate in those portions of the hearing that concern the child's education.

(7) Nothing in this section in any way removes the obligation to appoint surrogate parents for students with disabilities who are without parental representation in special education procedures as required by state and federal law, including Section 1415(b)(2) of Title 20 of the United States Code, Section 56050 of the

Education Code, Section 7579.5 of the Government Code, and Rule 5.650 of the California Rules of Court.

(Amended by Statutes of 2018, Chapter 833, Section 27. Effective January 1, 2019.)

California Welfare and Institutions Code Section 726

(a) In all cases in which a minor is adjudged a ward or dependent child of the court, the court may limit the control to be exercised over the ward or dependent child by any parent or guardian and shall, in its order, clearly and specifically set forth all those limitations, but no ward or dependent child shall be taken from the physical custody of a parent or guardian, unless upon the hearing the court finds one of the following facts:

(1) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor.

(2) That the minor has been tried on probation while in custody and has failed to reform.

(3) That the welfare of the minor requires that custody be taken from the minor's parent or guardian.

(b) Whenever the court specifically limits the right of the parent or guardian to make educational or developmental services decisions for the minor, the court shall at the same time appoint a responsible adult to make educational or developmental services decisions for the child until one of the following occurs:

(1) The minor reaches 18 years of age, unless the child chooses not to make educational or developmental services decisions for himself or herself, or is deemed by the court to be incompetent.

(2) Another responsible adult is appointed to make educational or developmental services decisions for the minor pursuant to this section.

(3) The right of the parent or guardian to make educational or developmental services decisions for the minor is fully restored.

(4) A successor guardian or conservator is appointed.

(5) The child is placed into a planned permanent living arrangement pursuant to paragraph (5) or (6) of subdivision (b) of Section 727.3, at which time, for educational decision-making, the foster parent, relative caretaker, or nonrelative extended family member, as defined in Section 362.7, has the right to represent the child in educational matters pursuant to Section 56055 of the Education Code, and for decisions relating to developmental services, unless the court specifies otherwise, the foster parent, relative caregiver, or nonrelative extended family

member of the planned permanent living arrangement has the right to represent the child in matters related to developmental services.

(c) An individual who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed to make educational decisions. The limitations applicable to conflicts of interest for educational rights holders shall also apply to authorized representatives for developmental services decisions pursuant to subdivision (b) of Section 4701.6. For purposes of this section, "an individual who would have a conflict of interest" means a person having any interests that might restrict or bias his or her ability to make educational or developmental services decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorneys' fees for the provision of services pursuant to this section. A foster parent may not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.

(1) If the court limits the parent's educational rights pursuant to subdivision (a), the court shall determine whether there is a responsible adult who is a relative, nonrelative extended family member, or other adult known to the child and who is available and willing to serve as the child's educational representative before appointing an educational representative or surrogate who is not known to the child.

If the court cannot identify a responsible adult who is known to the child and available to make educational decisions for the child and paragraphs (1) to (5), inclusive, of subdivision (b) do not apply, and the child has either been referred to the local educational agency for special education and related services or has a valid individualized education program, the court shall refer the child to the local educational agency for appointment of a surrogate parent pursuant to Section 7579.5 of the Government Code.

(2) All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child. If an educational representative or surrogate is appointed for the child, the representative or surrogate shall meet with the child, shall investigate the child's educational needs and whether those needs are being met, and shall, before each review hearing held under Article 10 (commencing with Section 360), provide information and recommendations concerning the child's educational needs to the child's social worker, make written recommendations to the court, or attend the hearing and participate in those portions of the hearing that concern the child's education.

(3) Nothing in this section in any way removes the obligation to appoint surrogate parents for students with disabilities who are without parental representation in

special education procedures as required by state and federal law, including Section 1415(b)(2) of Title 20 of the United States Code, Section 56050 of the Education Code, Section 7579.5 of the Government Code, and Rule 5.650 of the California Rules of Court.

If the court appoints a developmental services decisionmaker pursuant to this section, he or she shall have the authority to access the child's information and records pursuant to subdivision (u) of Section 4514 and subdivision (y) of Section 5328, and to act on the child's behalf for the purposes of the individual program plan process pursuant to Sections 4646, 4646.5, and 4648 and the fair hearing process pursuant to Chapter 7 (commencing with Section 4700) of Division 4.5, and as set forth in the court order.

(d)(1) If the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.

(2) As used in this section and in Section 731, "maximum term of imprisonment" means the longest of the three time periods set forth in paragraph (3) of subdivision (a) of Section 1170 of the Penal Code, but without the need to follow the provisions of subdivision (b) of Section 1170 of the Penal Code or to consider time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the Penal Code, plus enhancements which must be proven if pled.

(3) If the court elects to aggregate the period of physical confinement on multiple counts or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the "maximum term of imprisonment" shall be the aggregate term of imprisonment specified in subdivision (a) of Section 1170.1 of the Penal Code, which includes any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1 of the Penal Code, and Section 11370.2 of the Health and Safety Code.

(4) If the charged offense is a misdemeanor or a felony not included within the scope of Section 1170 of the Penal Code, the "maximum term of imprisonment" is the longest term of imprisonment prescribed by law.

(5) "Physical confinement" means placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Justice.

(6) This section does not limit the power of the court to retain jurisdiction over a minor and to make appropriate orders pursuant to Section 727 for the period permitted by Section 607.

(Amended by Statutes of 2014, Chapter 71, Section 183. Effective January 1, 2015.)

California Welfare and Institutions Code Section 827

(a)(1) Except as provided in Section 828, a case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) The minor's parent or guardian.

(E) The attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action.

(G) The superintendent or designee of the school district where the minor is enrolled or attending school.

(H) Members of the child protective agencies as described in Section 11165.9 of the Penal Code.

(I) The State Department of Social Services, to carry out its duties pursuant to Division 9 (commencing with Section 10000) of this code and Part 5 (commencing with Section 7900) of Division 12 of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements, Section 10850.4, and paragraph (2).

(J)(i) Authorized staff who are employed by, or authorized staff of entities who are licensed by, the State Department of Social Services, as necessary to the performance of their duties related to resource family approval, and authorized staff who are employed by the State Department of Social Services as necessary to inspect, approve, or license, and monitor or investigate community care facilities or resource families, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate, and to ascertain compliance with the rules and regulations to which the facilities are subject.

(ii) The confidential information shall remain confidential except for purposes of inspection, approval or licensing, or monitoring or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code and Article 2 (commencing with Section 16519.5) of Chapter 5 of Part 4 of Division 9. The

confidential information may also be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and may not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services determines that no further action will be taken in the matter. Except as otherwise provided in this subdivision, confidential information shall not contain the name of the minor.

(K) Members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor.

(L) A judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, and the following persons, if actively participating in the family law case: a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code, a court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation, or assessment pursuant to Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code. Prior to allowing counsel appointed for the minor in the family law case to inspect the file, the court clerk may require counsel to provide a certified copy of the court order appointing him or her as the minor's counsel.

(M) When acting within the scope of investigative duties of an active case, a statutorily authorized or court-appointed investigator who is conducting an investigation pursuant to Section 7663, 7851, or 9001 of the Family Code, or who is actively participating in a guardianship case involving a minor pursuant to Part 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting within the scope of his or her duties in that case.

(N) A local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders.

(O) Juvenile justice commissions as established under Section 225. The confidentiality provisions of Section 10850 shall apply to a juvenile justice commission and its members.

(P) The Department of Justice, to carry out its duties pursuant to Sections 290.008 and 290.08 of the Penal Code as the repository for sex offender registration and notification in California.

(Q) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(R) A probation officer who is preparing a report pursuant to Section 1178 on behalf of a person who was in the custody of the Department of Corrections and Rehabilitation, Division of Juvenile Justice and who has petitioned the Board of Juvenile Hearings for an honorable discharge.

(2)(A) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or 602, that pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or which could identify another child, except for information about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing by a preponderance of evidence that release of the juvenile case file or any portion thereof is detrimental to the safety, protection, or physical or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

(B) This paragraph represents a presumption in favor of the release of documents when a child is deceased unless the statutory reasons for confidentiality are shown to exist.

(C) If a child whose records are sought has died, and documents are sought pursuant to this paragraph, no weighing or balancing of the interests of those other than a child is permitted.

(D) A petition filed under this paragraph shall be served on interested parties by the petitioner, if the petitioner is in possession of their identity and address, and on the custodian of records. Upon receiving a petition, the custodian of records shall serve a copy of the request upon all interested parties that have not been served by the petitioner or on the interested parties served by the petitioner if the custodian of records possesses information, such as a more recent address, indicating that the service by the petitioner may have been ineffective.

(E) The custodian of records shall serve the petition within 10 calendar days of receipt. If any interested party, including the custodian of records, objects to the petition, the party shall file and serve the objection on the petitioning party no later than 15 calendar days after service of the petition.

(F) The petitioning party shall have 10 calendar days to file any reply. The juvenile court shall set the matter for hearing no more than 60 calendar days from the date the petition is served on the custodian of records. The court shall render its decision within 30 days of the hearing. The matter shall be decided solely upon the basis of the petition and supporting exhibits and declarations, if any, the objection and any supporting exhibits or declarations, if any, and the reply and any supporting declarations or exhibits thereto, and argument at hearing. The court may solely upon its own motion order the appearance of witnesses. If no objection is filed to the petition, the court shall review the petition and issue its decision within 10 calendar days of the final day for filing the objection. Any order of the court shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ.

(3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 shall be limited as follows:

(A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (P), inclusive, of paragraph (1) and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition. This paragraph does not limit the ability of the juvenile court to carry out its duties in conducting juvenile court proceedings.

(B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due process, including a notice of and an opportunity to file an objection to the release of the record or report to all interested parties.

(4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(5) Individuals listed in subparagraphs (A), (B), (C), (D), (E), (F), (H), (I), and (J) of paragraph (1) may also receive copies of the case file. For authorized staff of entities who are licensed by the State Department of Social Services, the confidential information shall be obtained through a child protective agency, as defined in subparagraph (H) of paragraph (1). In these circumstances, the requirements of paragraph (4) shall continue to apply to the information received.

(6) An individual other than a person described in subparagraphs (A) to (P), inclusive, of paragraph (1) who files a notice of appeal or petition for writ challenging a juvenile court order, or who is a respondent in that appeal or real party in interest in that writ proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy any records in a juvenile case file to which the individual was previously granted access by the juvenile court pursuant to subparagraph (Q) of paragraph (1), including any records or portions thereof that are made a part of the appellate record. The requirements of paragraph (3) shall continue to apply to any other record, or a portion thereof, in the juvenile case file or made a part of the appellate record. The requirements of paragraph (4) shall continue to apply to files received pursuant to this paragraph. The Judicial Council shall adopt rules to implement this paragraph.

(b)(1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.

(2)(A) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal shall disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

(B) Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

(C) An intentional violation of the confidentiality provisions of this paragraph is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d)(1) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Unlawful Dissemination of This Information Is A Misdemeanor." Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches 18 years of age, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

(2) Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

(e) For purposes of this section, a "juvenile case file" means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

(f) The persons described in subparagraphs (A), (E), (F), (H), (K), (L), (M), and (N) of paragraph (1) of subdivision (a) include persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe.

(g) A case file that is covered by, or included in, an order of the court sealing a record pursuant to Section 781 or 786 may not be inspected, except as specified by Section 781 or 786.

(Amended by Statutes of 2018, Chapter 992, Section 1. Effective January 1, 2019.)

Surrogate Parents in California: Appendix B
(https://www.cde.ca.gov/sp/se/sr/documents/surrogateparents.pdf)

Sample Forms

Forms used in California in the Surrogate Parent program:

- Request for Surrogate Parent Volunteer: a sample form is made available online by the Los Angeles Unified School District at the link below. https://achieve.lausd.net/cms/lib08/CA01000043/Centricity/Domain/351/Request%20for%20a%20Surrogate%20Parent%20Form.pdf
- Sacramento County Special Education Local Plan Area Surrogate Parent Agreement: see page 56
- Sacramento County Special Education Local Plan Area Notification of Surrogate Parent Authorization: see page 58

Superior Court of California Surrogate Parent Appointment Forms:

- Order Designating Educational Rights Holder (JV-535) - https://www.courts.ca.gov/documents/jv535.pdf
- Local Educational Agency Response to JV-535 - Appointment of Surrogate Parent (JV-536) - https://www.courts.ca.gov/documents/jv536.pdf

SACRAMENTO COUNTY - SPECIAL EDUCATION LOCAL PLAN AREA

SURROGATE PARENT AGREEMENT

This Surrogate Parent Agreement ("Agreement") is made and entered into effective <date here>, between the Sacramento County SELPA and <name of surrogate parent here> with respect to the following recitals:

A. District desires to fulfill its obligation to appoint a surrogate parent to represent a special education student to ensure that the student obtains a free and appropriate education under the Individuals with Disabilities Education Act ("IDEA") and state law.

B. Surrogate Parent has expressed a desire and willingness to act as the Student's Surrogate Parent for educational purposes.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Appointment: SELPA hereby appoints Surrogate Parent to act as the surrogate parent for <student name here>, D.O.B. <student's date of birth here>.Surrogate Parent agrees to act as the "Parent" and educational representative for Student in accordance with 34 Code of Federal Regulations Section 300.519,Education Code 56050, Government Code 7579.5, and other applicable provisions of state and federal law.

2. Representations: Surrogate Parent represents that he or she has no interest that conflicts with the interest of the Student and that Surrogate Parent is not an employee of any agency involved in the care, custody or education of Student. Surrogate Parent further agrees to act on behalf of Student and to advocate for the education of Student in all ways necessary to ensure that Student receives a free and appropriate public education.

   Surrogate Parent agrees to meet with Student, as appropriate, and others and to review Student's educational records to develop knowledge and understanding of Student's disability and Student's individual needs for special education and related services.

   If at any time during the term of this Agreement, Surrogate Parent develops an interest which may conflict with the interests of Student or becomes an employee of an agency involved in the care, custody or education of Student, Surrogate Parent agrees to immediately notify the SELPA. Upon verification, the SELPA shall terminate this Agreement.

3. Training: Surrogate Parent acknowledges that the SELPA has provided training regarding Student's disability, the laws applicable to Surrogate Parent responsibilities, and the continuum of program placements and opportunities available in the Sacramento County SELPA.

4. Term: SELPA hereby appoints Surrogate Parent for a term of two (2) years.

5. Termination: Either party may terminate this Agreement for any reason upon thirty (30) days written notice to the other party.

6. No Assignment: Surrogate Parent agrees that this Agreement shall be a personal contract and shall not be assignable, in whole or in part, in any manner whatsoever.

7. Student Records: Surrogate Parent agrees to maintain all records of Student reviewed or maintained by Surrogate Parent in a confidential manner and agrees that, upon termination of this Agreement, all such records shall be returned to the Student's district of residence.

<surrogate parent's name here>	***<surrogate parent's signature here>***	***<date here>***
Surrogate Parent (Print)	Surrogate Parent (Signature)	Date

<surrogate parent's address here>	***<surrogate parent's email address here>***
Address (Line 1)	Email Address

<surrogate parent's address here>	***<surrogate parent's telephone number here>***
Address (Line 2)	Telephone Number

<Sacramento County SELPA here>	***<Sacramento County SELPA signature>***	***<date here>***
SELPA (Print)	SELPA Representative (Signature)	Date

Special Education Local Plan Areas (SELPAs) Representing: San Juan, Sacramento City, Elk Grove, Folsom Cordova and Sacramento County

NOTIFICATION OF SURROGATE PARENT AUTHORIZATION

In accordance with AB 1528 (Chapter 182, Statutes of 1990), and General Regulation Sections 300.514 of the Code of Federal Regulations, the Sacramento County SELPA shall ensure that the rights of the child are protected.

In compliance, ***<Name of Surrogate Parent here>***, has been appointed and has agreed to act as a surrogate parent for: ***<Name of Child here>***.

The appointed surrogate must represent the child in all matters relating to identification, assessment, instructional planning and development, educational placement, review and revision of the individualized education program, and provision of a free and appropriate education for the child.

<surrogate parent's name here>	***<surrogate parent's full address here>***	***<date here>***
Surrogate Parent	Surrogate Parent's Address	Date

<surrogate parent's telephone number here>	***<surrogate parent's alternate phone here>***
Telephone Number	Alternate Contact Phone

<SELPA/District Designee Name here>	***<Applicable SELPA Name here>***	***<date here>***
SELPA/District Designee	SELPA Name	

Surrogate Parents in California: Appendix C
(https://www.cde.ca.gov/sp/se/sr/documents/surrogateparents.pdf)

Directory of Special Education Local Plan Areas

The CDE website at http://www.cde.ca.gov/sp/se/as/caselpas.asp provides the names and locations of the special education local plan areas in California.

Surrogate Parents in California: Appendix D

(https://www.cde.ca.gov/sp/se/sr/documents/surrogateparents.pdf)

California Court-Appointed Special Advocates

In 1977 a Seattle Superior Court Judge named David Soukup was concerned about trying to make decisions on behalf of abused and neglected children without enough information. He conceived the idea of appointing community volunteers to speak up for the best interests of these children in court. He made a request for volunteers; 50 citizens responded, and that was the start of the Court Appointed Special Advocates (CASA) movement. Today there are thousands of advocates serving in California alone.

The mission of the California CASA Association is to enhance and strengthen CASA in California and support individual programs in their efforts to provide quality advocacy services to all abused and neglected children in the juvenile courts through the use of trained CASA volunteers. These volunteers build close relationships with and serve as one-on-one advocates for children in foster care. Over 40 CASA programs in California recruit and specially train these volunteers from the community, who are then appointed as advocates by a juvenile court.

For the most current information and details about the CASA program in your area, visit California CASA's website at http://www.californiacasa.org.

APPENDIX D: Frequently Asked Questions (FAQs) – Mediation and Due Process

Frequently Asked Questions and Answers Regarding Mediation

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

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

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

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

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

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

Pre-Hearing Request Mediations

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

1. **Question: How does one request a mediation conference?**

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

a. Name of the child

b. Date of birth of the child

c. Child's grade level

d. Address where the child resides

e. School district where the child attends

f. School district where the child resides

g. Parent or guardian's name, address, and telephone number

h. Any other school district or public agency that is responsible for providing services that should be a party in the mediation

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

2. **Question: How will the parties, parents, and school be notified that mediation has been requested?**

   Answer: Upon receipt of a request for a mediation conference, the superintendent will promptly notify all parties regarding the date scheduled for the conference.

3. **Question: How soon will the mediation conference be scheduled?**

   Answer: The mediation conference will be scheduled to take place within 15 days of the request for mediation.

4. **Question: How soon will the mediation conference be completed?**

   Answer: The law requires that the mediation be completed within 30 days of the request for mediation unless all parties to the mediation agree to extend this time limit.

5. **Question: Where will the mediation take place?**

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

6. **Question: Who will be the mediator?**

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

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

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

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

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

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

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

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

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

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

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

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

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

    The parent, student, and public education agency involved may initiate the due process hearing procedures prescribed in Education Code Sections 56500-56509 under any of the following circumstances:

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

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

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

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

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

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

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

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

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

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

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

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

b) Prepares the witnesses for their testimony

c) Presents the case in hearing

d) Assists the district staff in the implementation of the decision

Frequently Asked Questions and Answers Regarding the Hearing Process

1. **Question: How does one request a hearing?**

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

2. **Question: How will the parties be notified that a hearing has been requested?**

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

3. **Question: Will a mediation conference be scheduled even if the parties have already attempted mediation prior to requesting a hearing?**

   Answer: Yes. The law requires that the Special Education Hearing Office encourage mediation at all stages of the hearing process as a preferred method of resolving the dispute. Therefore, a mediation conference will automatically be scheduled whenever there is a hearing request, unless that request specifically waives mediation.

4. **Question: Will attorneys be able to participate in mediations that take place when a hearing request has been filed?**

   Answer: Yes. The law allows a party to be represented by an attorney at all stages of the hearing process. Any mediation that takes place when a hearing has been requested is considered part of the hearing process and, therefore, the parties have a right to be represented by attorneys during the mediation.

5. **Question: When will the mediation and hearing be scheduled?**

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

6. **Question: How long will the hearing process take?**

Answer: The law requires that the hearing be held and a written decision mailed within 45 days of the receipt of the request for hearing. However, the 45 days can be extended by a continuance or postponement of the hearing.

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

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

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

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

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

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

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

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

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

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

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

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

e) Order that an impartial assessment of the student be conducted, the cost of which to be paid by the Hearing Office;

f) Bar introduction of any documents or the testimony of any witnesses not disclosed to the hearing officer or the parties at least five business days prior to the hearing; and

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

11. **Question: Where will the hearing be held?**

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

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

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

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

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

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

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

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

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

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

- **Right to record of the hearing**. The hearing officer will record the hearing with a tape recorder. The parties have the right to a record of the hearing.

- **Right to written findings of fact and decision**. The hearing office must prepare a written decision setting forth his or her findings of fact, analysis of the law, and final decision.

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

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

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

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

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

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

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

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

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

Answer: All parties have the right to be represented at all stages of the hearing by an attorney or other representative of their choosing. That does not mean that the school or other public agency must pay for the parents' attorney. Parents may be entitled to have the cost of the attorney's fees reimbursed if they prevail as a consequence of initiating a due

process hearing. The federal court, in its discretion, may award reasonable attorney's fees to the parents or guardian of a disabled child or youth who is the prevailing party.

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

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

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

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

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

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

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

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

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

    Answer: The party requesting the presence of the witness should first contact the witness and ask him or her to come to the hearing voluntarily. Parents wishing to call a witness who is an employee of the school may contact the school representative and ask for assistance in making the witness available. If a witness refuses to attend the hearing and a

party believes that the witness is important to its case, the party may serve the person with a subpoena requiring his or her attendance. The subpoena may be requested by telephoning or writing the Office of Administrative Hearings. The Office of Administrative Hearings may ask for the name of the person to be served and an explanation of why that witness is needed.

19. **What law should one read and where can one locate it?**

Answer: There are four primary sources of law relating to special education and to hearings and mediations: California State statutes and regulations and federal statutes and regulations. Most of the state statutes relating to special education are contained in the Education Code. Part 30 of the Education Code from Section 56000 through Section 56885 contains the primary statutes relating to special education. Sections 56500-56509 contain the law relating to hearings and mediations. There are a number of sections in other state codes that also relate to special education, including the Administrative Procedure Act, found in the California Government Code.

Regulations of the State Board of Education relating to special education are contained in Title 5 of the California Code of Regulations (CCR), Sections 3000-3089.

The California Department of Education publishes A Composite of Laws relating to special education, which includes all relevant state statutes and regulations. A copy can be obtained by writing or calling the Special Education Hearing Office.

Federal statutes are contained in the United States Code, Volume 20, Sections 1400-1420. Also see the Individuals with Disabilities Education Improvement Act of 2004. The federal regulations on special education are contained in the Code of Federal Regulations (CFR). To review a copy of the United States Code or the Code of Federal Regulations, a person may need to visit his or her local library or county law library.

There are a number of court decisions that interpret the statutes and regulations. These court decisions can also be found at a county law library.

20. **Question: What if a party doesn't like the decision of the hearing officer?**

Answer: All parties have the right to appeal any hearing decision to a court of competent jurisdiction within 90 days of the receipt of the decision. Appeals can be made to either state or federal court. The hearing officer's decision is the final administrative determination and is binding on all parties unless a party successfully appeals to a court.

Additional Rights of Parents in Relation to Special Education

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

- The right to initiate a referral to special education. A parent has the right to request that a child be assessed and considered for special education services.

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

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

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

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

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

Tips on How to Avoid a Due Process Fair Hearing

- Follow all legal timelines. Waivers for time extension may only be used as an exception.
- Follow SELPA and district procedures for assessment and placement.
- Be professional and complete in the quality of your work. Explore all areas of concern and elicit feedback from all staff, parents, and other professionals who have had contact with the student.
- Listen to the parents. They know their children well and may or may not be able to articulate their concerns in language that is translated into educational needs. Restate their concerns and explore their solutions.
- Be flexible, open, and creative in developing program modifications and in discussing options.
- Keep communication open between staff members and parents.
- Request assistance in the assessment process and placement options from your district and SELPA colleagues. Engage in brainstorming and problem solving with peers to generate new ideas.

- Be a student advocate.
- Consult with the Regional Services Program Manager or Program Specialist for program or instructional concerns and support.
- Develop a classroom profile that includes the qualifications of staff, specialized training of staff, instructional programs available to students and other relevant data.
- Provide a summary of student goals and objectives, as well as success rate, for a period of two to three years.
- Contact your district director or Due Process Program Manager for legal and/or technical assistance.

APPENDIX E: Due Process Flowchart