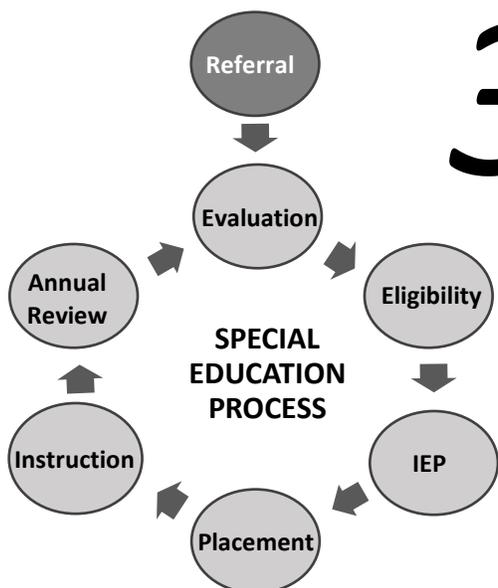


3

Procedural Safeguards

A notice of your rights and protections.



THIS CHAPTER WILL DISCUSS

- When a Procedural Safeguard Notice must be given to you.
- The legal rights and protections that a Procedural Safeguards Notice includes.

What are Procedural Safeguards? Legal obligations and procedures the district is required to follow to help promote parent involvement and protect the rights of students and parents under IDEA.

What is a Procedural Safeguard Notice? The legal obligations and procedures under IDEA are complex. To help ensure parents are aware of these, IDEA requires that the district provide parents with a copy of **Procedural Safeguards Notice**—a formal document that describes your rights and protections.

When do Procedural Safeguards Apply? If your child is eligible for special education, the procedural Safeguards will apply **throughout the special education process**. However, if your child is not eligible, the safeguards will still apply while the district performs the **initial evaluation** (see chapter 2) and through any hearing regarding eligibility.



Understanding special education procedures will enable parents to act in the best interest of their child during each phase of the special education process.

The Procedural Safeguard Notice must be provided at specific points along the special education process, including:

- Upon initial referral or request for evaluation.

If your child is found eligible for special education, it must also be provided:

- Once each school year;
- When parents file a complaint;
- If your student is subject to a change of placement (disciplinary or otherwise); and
- Whenever a parent requests a copy (which you can do anytime).

20 U.S.C. Sec. 1415(d); 34 C.F.R. Sec. 300.504;
Cal. Ed. Code Secs. 56301(d)(2), 56341.1(g) (1)



Prior Written Notice (to Facilitate Parent Participation)

Because the IDEA promotes parent involvement, there are certain actions the district cannot take without notifying you first. Remember, parents are an **equal member** of the IEP team. Therefore, parents must be notified before the district:

Proposes to	Refuses your request to
Evaluate your child or	Evaluate your child or
Hold a meeting about your child's: (1) Eligibility or (2) Placement.	Make changes to your child's: (1) IEP or (2) Placement.

Prior Written Notice must include all of the following:

- ✓ A description of the actions proposed or refused;
- ✓ An explanation of why the action was proposed or refused;
- ✓ A description of each assessment procedure, record, or report used to make the decision;
- ✓ A description of other options considered and the reasons they were rejected; and
- ✓ A description of any other relevant factors.

20 U.S.C. Secs. 1414(b)(1), 1415(b)(3) and (4), (c)(1); 34 C.F.R. Sec. 300.503



These notice requirements must be met whenever the district must obtain your consent.
← Look for this symbol

Parental Consent

The district must obtain your written, informed consent before they can:

- Evaluate your child or
- Begin to provide special education services to your child.



Until you give your written consent, the district is not required to, and in fact cannot, provide special education services unless they file for and win a due process hearing.

You may consent to:

- all services offered OR
- only some of the services.



20 U.S.C. Secs 1414(a)(1)(D) and (c); 34 C.F.R. Sec. 300.300;
Cal. Ed. Code Secs. 56506(e), 56321(c), [d], and 56346

Independent Educational Evaluation (IEE)

If you disagree with the results of the district's initial or a reevaluation of your child, you can ask the district to pay for an Independent Educational Evaluation (IEE). Some of the reasons you may feel the evaluation was inadequate include:

- The evaluation did not cover all areas of educational need;
- The evaluator was not qualified;
- The instruments used were inappropriate or outdated; or
- Other factors—such as time, place, or administration—were not appropriate and resulted in findings that do not accurately reflect your child. (See Chapter 2.)

Parents should inform the district of their request for an IEE in writing, stating the evaluation was invalid.

 **Sample: IEE Request Letter, page 91.**

Once parents inform the district of their IEE request, the district only has two choices, either:

- (1) fund the IEE or
- (2) file for due process claiming their evaluation was appropriate.

The district must either fund or file “without unnecessary delay.” This permits a flexible period of time to accommodate good faith discussions over the need and arrangements for, an IEE.

The Office of Special Education Programs (OSEP) has approved some **limits on IEEs**, including that the District may establish criteria that:

- Requires assessor have certain qualifications. The district must provide a list of preapproved evaluators that presumably meet the district’s criteria. However, parents may select an evaluator who is not on the list but who meets the district minimum criteria. 
Letter to Parker, 41 IDELR 155 (2004)
- Imposes geographical limits. “The district may impose limitations on the number of miles an evaluation can be conducted away from the district, as long as this does not prevent the parent from getting the appropriate evaluation.” Letter to Bluhm, 211 IDELR 227A (OSEP July 2, 1980)
- Imposes a cost cap, so long as it does not interfere with the parents ability to obtain an IEE. **It is important to note that the district does NOT have to pay to have the independent evaluator to attend the IEP meeting.** The IEP team only has to include an individual who can interpret the instructional implications of evaluation results. Ask your IEE evaluator if their fee includes attendance at the IEP meeting.

An independent assessor must be (1) qualified and (2) not employed by the district.

34 C.F.R. Sec. 300.502; Cal Ed. Code Sec. 56329(b)

Parents are entitled to one IEE at district’s expense each time the district conducts an evaluation that they disagree with, unless the evaluation is found appropriate through a due process hearing.

And remember, parents can always fund their own IEE.

- The district must *consider* the results of outside evaluations.
- The results may also be presented as evidence at a due process hearing.



The California Diagnostic Center is a division of the California Dep’t of Education (CDE) designed to assist districts that do not have the expertise to do a particular assessment. While they are independent for IEE purposes, its assessment may be more limited in its recommendations because they have a continuing relationship with the districts.

Access to Educational Records

Parents have the right to:

- See their child’s educational records;
- Have copies of their child’s educational record; and
- Have the records explained to them by school officials.

 California law gives parents the right to examine and receive copies of all school records of their child within **five business days** from the date of an oral or written request. 

This is an example of a state law providing greater rights than federal. Federal Regulations require districts to provide records without unnecessary delay and in no more than 45 days.
34 C.F.R. Sec. 300.613

The school district can ask parents to pay for the copies, however:

- They may charge no more than the actual cost of reproducing the records.
- If the charge effectively prevents a parent from getting copies, they must be provided at no cost.

34 C.F.R. Sec. 300.617; Cal. Ed. Code Sec. 56504

If you believe a part of your child’s record is inaccurate or misleading, you have the right to:

- Ask the district to change that information and
- Take steps to challenge the district if they refuse to amend the record.

34 C.F.R. Sec. 300.618

Other Procedural Safeguards

The Procedural Safeguards Notice must also inform parents of the following rights. Most of these are covered in more detail in a subsequent chapter.

Present and Resolve a Complaint

The Procedural Safeguards Notice must also inform parents of the procedures for resolving complaints against the district, which include:

- Mediation;
- Resolution meetings;
- Due process hearings; and
- Appeals to state or federal courts.

This is covered in Chapter 10: Dispute Resolution, which explains:

- The time period parents have in which to make a complaint;
- How the school district or state may resolve the complaint;
- The difference between the due process and state complaint procedures;
- The availability of mediation services;
- The student’s educational placement while the complaint is being resolved; and
- How parents can get reimbursement of attorney’s fees.

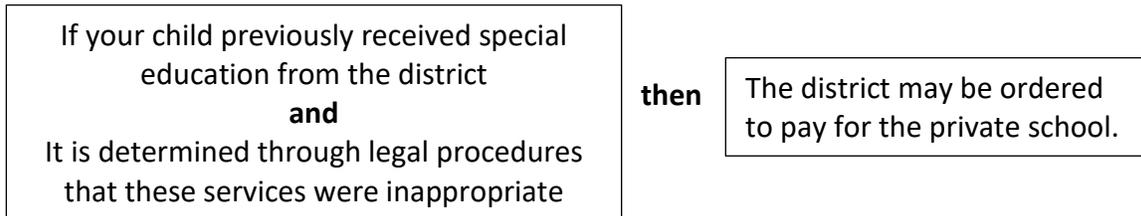
Student Discipline

The Procedural Safeguards Notice must also inform parents of the students' rights when they are facing disciplinary measures. This is covered in Chapter 7, which explains the process districts must use to determine if the student can be placed in an interim alternative educational setting, including:

- Manifestation Determination;
- Functional Behavioral Analysis; and
- Behavior Intervention Plan.

Students in Private School

Parents may place their child in a private school without the consent of the district. However, the district will not be required to pay for the cost of the private school except under certain circumstances, including:



For more information visit the U.S. Department of Education's publication, "Provisions Related to Children with Disabilities Enrolled by Their Parents in Private Schools," at <http://www2.ed.gov/admins/lead/speced/privateschools/idea.pdf>



"The greatest enemy of knowledge is not ignorance, it is the illusion of knowledge." -Stephen Hawking