

**SANTA CLARA COUNTY
NORTH WEST SPECIAL EDUCATION LOCAL PLAN AREA**

PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

4.1 PURPOSE AND SCOPE

Individuals with disabilities and their parents are afforded rights and procedural safeguards to ensure that all individuals with disabilities are provided a free and appropriate public education (FAPE).

Parents can obtain assistance in understanding their rights and procedural safeguards from the Special Education Director of their child's district of attendance, the SELPA Director, or the California Department of Education.

4.2 OVERVIEW

Local Education Agencies (LEA) have an obligation to seek out children with disabilities between birth and age 21. A child with a disability is one who has been identified by an Individualized Education Program (IEP) Team as having one or more of the thirteen disabling conditions that are defined in federal regulation. Also, the child is one, who because of the disability, needs special education and related services to benefit from education and meets state eligibility criteria.

Children, with disabilities, are offered programs that provide for maximum interaction with children with typically developing peers in a manner that is appropriate to the needs of both.

4.3 PARENTAL RIGHTS AND PROCEDURAL SAFEGUARDS

The Parental Rights and Procedural Safeguards for Special Education is at the end of this chapter (Appendix A).

4.4 TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

When a child with a disability reaches age 18 (unless determined to be incompetent by appropriate authorities), the school district shall provide any notice of procedural safeguards to both the individual with disabilities and the parents. All rights accorded to the parent shall transfer to the child at the age of majority. (EC §56041.5)

The school district must notify the individual and the parents of this transfer at least one year before.

If a child with a disability has reached age 18 and has not been determined to be incompetent but is determined not to have the ability to provide informed consent, the school district shall follow the state procedures for appointing an appropriate individual to represent the educational interests of the child.

All rights of youth incarcerated in adult or juvenile federal, state, or local correctional institutions transfer to the child.

(EC 56000-56524; 34 CFR 300.500-300.537)

4.5 PARENT REVOCATION OF CONSENT

Effective December 31, 2008, parents are able to revoke consent for special education services and school districts will not be able to challenge the decision through mediation or due process. Also clarified as part of these regulatory changes: (1) If parents revoke consent for special education, the school district is not required to amend the child's educational records to delete all references to the child's prior receipt of special education services (34 C.F.R. 300.9(c)(3)); and (2) If parents revoke consent for special education, the school district will not be considered to be in violation of its obligation to provide FAPE to the child during the period of time when the parents refuse to consent to services (34 C.F.R. 300.300(b)(4)(iii)), and is not required to convene an IEP team meeting or develop an IEP for the child for further provision of services (34 C.F.R. 300.300(b)(4)(iv)).

Department of Education officials emphasize that when parents revoke consent for special education and related services, they must do so in writing, and although school officials cannot delay in ceasing to provide special education and related services to the child, they must provide the parent with prior written notice (and a copy of procedural safeguards) prior to stopping services.

NOTE:

Starting January 1, 2013, parents may elect to receive an electronic version of their school district's annual notice of parental rights and responsibilities, which is distributed at the beginning of each school year.

In an effort to cut down on printing and distribution costs, Education Code section 48981 allows a parent or guardian to opt to receive an electronic version of the annual notice. For parents or guardians who do not request this option, school districts must continue to provide the annual notice by regular mail or by any other method normally used to communicate in writing with parents or guardians.

Providing access electronically may be accomplished either by posting the annual notice on the school district website or sending it by e-mail. School districts will need to get written permission from parents before providing the annual notice electronically. To accomplish this purpose, we recommend having parents sign and return an electronic notice opt-in form every year. School districts potentially could combine the opt-in form with the acknowledgment of receipt of the annual notice form that is required by Education Code section 48982.

As required by Education Code section 48985, the electronic version of the annual notice also needs to be translated into other languages if 15% or more of the students enrolled in a district school speak a single primary language other than English.

Approved by Executive Council:

<i>SELPA I</i>	<i>10/26/23</i>
<i>SELPA II</i>	<i>10/27/23</i>
<i>SELPA III</i>	<i>10/26/23</i>
<i>SELPA IV</i>	<i>10/27/23</i>
<i>SELPA VII</i>	<i>10/25/23</i>