

1 **CAPISTRANO UNIFIED SCHOOL DISTRICT SPECIAL EDUCATION LOCAL PLAN AREA**

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3 **Notice to Parent/Guardian/Surrogate of Procedural Safeguards**

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5 This notice is provided to you as parents, legal guardians, surrogate parents, or as a court appointed  
6 educational rights holder, because your child is receiving special education services or has been referred  
7 for possible placement in special education. This information is your Notice of Procedural Safeguards  
8 (Notice) as required under the Individuals with Disabilities Education Act (IDEA). The IDEA is a federal  
9 law that requires school districts to provide a “free appropriate public education” (FAPE) to eligible  
10 children with disabilities, as defined further below. This Notice will also be provided to students who are  
11 entitled to these rights at age eighteen (18). The purpose of this Notice is to explain to you your rights as  
12 a parent of a child with disabilities under federal and state laws. In California, special education is  
13 provided to disabled students between birth and the student’s twenty-second (22<sup>nd</sup>) birthday. Federal and  
14 state laws protect you and your child throughout the procedures for evaluation and identification of  
15 special education placement and services. Parents of children with disabilities have the right to  
16 participate in the individualized education program (IEP) process, including development of the IEP, and  
17 be informed of the availability of FAPE and of all available alternate programs, including public and  
18 nonpublic programs.

19  
20 A copy of this Notice will be given to you only one time a school year; except that a copy must also be  
21 given to you upon (1) initial referral or your request for evaluation; (2) upon the receipt of the first filing  
22 of a state complaint or due process complaint in a school year; (3) when a decision is made to make a  
23 disciplinary change of placement; or (4) upon your request. You have a right to receive this Notice in  
24 your primary/native language or other mode of communication, unless to do so is clearly not feasible.  
25 This Notice may also be translated orally to you if your primary/native language or other mode of  
26 communication is not a written language. The definitions below will help you understand the Notice of  
27 rights provided herein. (20 U.S.C. section 1415(d); 34 C.F.R. sections 300.29 and 300.504; Education  
28 Code sections 56021.1(a), 56301(d)(2), 56321(b), and 56506(a).)

29  
30 **DEFINITIONS**

31  
32 **Children With Disabilities** also referred to as individuals with exceptional needs is defined by federal  
33 and state law as including children with intellectual disabilities, hearing impairments (including deafness),  
34 speech or language impairments, visual impairments (including blindness), emotional disturbance,  
35 orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning  
36 disabilities, deaf-blindness, or multiple disabilities; and who by reason thereof, need special education and  
37 related services. (20 U.S.C. section 1402(3); 34 C.F.R. section 300.8; Education Code section 56026; 5  
38 California Code of Regulations (CCR) section 3030.)

39  
40 **Evaluation** means the assessment of your child using various tests and measures in accordance with state  
41 and federal laws to determine whether your child has a disability and the nature and extent of special  
42 education and related services needed by your child for his or her educational benefit. The assessment  
43 tools are individually selected for your child and are administered by trained and knowledgeable  
44 professionals employed or contracted by the school district. These tests do not include the basic tests  
45 given to all children in the school setting. (34 C.F.R. sections 300.15, 300.304 – 300.311; Education  
46 Code sections 56302.5 and 56320.)

47  
48 **Individualized Education Program (IEP)** is defined as a written document developed by your child’s  
49 IEP team that includes at least all of the following: (1) present levels of academic achievement and  
50 functional performance; (2) measurable annual goals; (3) a description of how the child’s progress toward  
51 meeting the annual goals will be measured and when periodic reports on progress the child is making

1 toward meeting the annual goals will be provided; (4) a statement of the special education and related  
2 services and supplementary aids and services to be provided to the child; (5) an explanation of the extent  
3 to which the child will not participate with non-disabled children in the general education programs; (6) a  
4 statement of any individual appropriate accommodations that are necessary to measure the academic  
5 achievement and functional performance of the child on state and district wide assessments; and (7) the  
6 projected date for initiation and the anticipated duration, frequency and location of the programs, services  
7 and modifications included in the IEP. (20 U.S.C. section 1414(d); 34 C.F.R. sections 300.22, 300.320-  
8 300.324; Education Code section 56345.)  
9

10 **Free Appropriate Public Education (FAPE)** is defined as special education and related services that:  
11 (1) are provided at public expense, under public supervision and direction, and without charge to you; (2)  
12 meet the standards of the California Department of Education (CDE); (3) are provided in conformity with  
13 a written IEP developed for your child to confer an educational benefit; and (4) are provided in an  
14 appropriate preschool, elementary or secondary school program of the State, or in a nonpublic school if  
15 there is no appropriate program available in a school district. (20 U.S.C. section 1402(9); 34 C.F.R.  
16 section 300.17; Education Code section 56040.)  
17

18 **Least Restrictive Environment (LRE)** means that to the maximum extent appropriate, children with  
19 disabilities will be educated with children who are not disabled, and that special classes, separate  
20 schooling, or other removal of children with disabilities from the regular education environment will  
21 occur only when the nature or severity of the disability is such that education in regular classes with the  
22 use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. section 1412(a)(5);  
23 34 C.F.R. section 300.114; Education Code section 56040.1.)  
24

25 **Related Services** means transportation and such developmental, corrective and supportive services that  
26 may be required to assist a child with a disability to benefit from special education, including the early  
27 identification and assessment of disabling conditions. Related services may also include:  
28

- 29 1. Speech-language pathology and audiology services.
- 30 2. Interpreting services.
- 31 3. Psychological services.
- 32 4. Physical and occupational therapy.
- 33 5. Recreation, including therapeutic recreation.
- 34 6. Counseling services, including rehabilitation counseling.
- 35 7. Orientation and mobility services.
- 36 8. School health services and school nurse services.
- 37 9. Medical services for diagnostic or evaluation purposes only.
- 38 10. Social work services.
- 39 11. Parent counseling and training.

40 (20 U.S.C. section 1402(26); 34 C.F.R. section 300.34; Education Code section 56363.)  
41

42 **Special Education** means specially designed instruction, at no cost to parents, to meet the unique needs  
43 of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and  
44 institutions, and in other settings, and instruction in physical education. (20 U.S.C. section 1402(29); 34  
45 C.F.R. section 300.39; Education Code section 56031.)  
46

## 47 CONFIDENTIALITY AND ACCESS TO EDUCATIONAL RECORDS

48

49 All parents of a child enrolled in the school district have the right to inspect their child's educational  
50 records under the federal Family Educational Rights and Privacy Act (FERPA), and the California  
51 Education Code. Under the federal and state laws, parents of a child with disabilities (including

1 noncustodial parents whose rights have not been limited) are presumed to and have the right to inspect  
2 and review all educational records regarding their child unless the school district has been advised that the  
3 parent does not have the authority to do so under applicable state laws. This includes the right to inspect  
4 and review all educational records with respect to the identification, evaluation, educational placement  
5 and the provision of a FAPE, as well as to receive an explanation and interpretation of the records without  
6 unnecessary delay, including prior to a meeting regarding your child's IEP or before a resolution session  
7 or due process hearing. Under California statutes, parents have the right to review and to receive copies  
8 of educational records. You also have the right to have a representative inspect and review the records in  
9 accordance with FERPA. These rights transfer to a pupil upon their eighteenth (18<sup>th</sup>) birthday unless the  
10 pupil has had a conservator appointed by a court to assume the educational rights of the pupil.

11  
12 Educational records are those records that are directly related to your child and maintained by the school  
13 district, or an agency, or institution acting for the school district that collects, maintains, or uses  
14 personally identifiable information, or from which information is obtained. Both federal and state laws  
15 further define an educational record or pupil record as any item of information directly related to an  
16 identifiable pupil, other than directory information, which is maintained by a school district, whether  
17 recorded by handwriting, print, computer media, video or audio tape, film, microfilm, microfiche or by  
18 other means. If records contain information about more than one child, you have access only to that  
19 portion of the record pertaining to your child. The school district must keep a record of parties obtaining  
20 access to educational records collected, maintained, or used under the IDEA, other than school district  
21 employees in accordance with FERPA.

22  
23 The school district must protect the confidentiality of personally identifiable information at collection,  
24 storage, disclosure and destruction stages. All persons collecting or using personally identifiable  
25 information must receive training or instruction regarding the state's policies and procedures under the  
26 IDEA and FERPA. Each school district must maintain, for public inspection, a current listing of the  
27 names and positions of those employees who may have access to personally identifiable information.

28  
29 The school district must inform you when personally identifiable information is collected, maintained or  
30 used under the IDEA is no longer needed to provide educational services to your child. Upon receiving  
31 notice that the records are no longer necessary to the school district, you may request destruction of the  
32 records, which will take place either by physical destruction or by removing personal identifiers from the  
33 records so that the information is no longer personally identifiable. However, the school district is  
34 obligated to keep a permanent record for each child.

35  
36 Personally identifiable information may include: (1) the name of the child, the child's parent or family  
37 member; (2) the address of the child; (3) a personal identifier such as the child's social security number,  
38 student number, court file number, or biometric record; (4) other indirect identifiers such as the child's  
39 date of birth, place of birth and mother's maiden name; (5) a list of personal characteristics or other  
40 information that would make it possible to identify the child with a reasonable certainty. Parental consent  
41 must be obtained before personally identifiable information is disclosed to parties other than school  
42 district employees and in accordance with FERPA.

43  
44 The custodian of records at each school site is the principal of the school. The district custodian  
45 of records is Don Mahoney, Assistant Superintendent, CUSD SELPA, Special Education Services.  
46 Pupil records may be kept at the school site or the district office, but a written request for records at  
47 either site will be treated as a request for records from all sites. The custodian of records will provide  
48 you with a list of the types and locations of pupil records (if requested). A request for a copy of your  
49 child's special education records may be made to the District's Director of Special Education.

1 A review and/or copies of educational records will be provided to the parent within five (5) business days  
2 after the request is made by the parent, either orally or in writing. A fee for copies, but not the cost to  
3 search and retrieve, is determined by local policy and will be charged unless charging the fee would  
4 effectively prevent the parent from exercising the right to receive the copies. Once a complete copy of  
5 the records has been provided, a fee will be charged for additional copies of the same records.  
6

7 If you believe that information in the education records collected, maintained or used by the school  
8 district is inaccurate, misleading or violates the privacy or other rights of the child, you may request in  
9 writing that the school district amend the information. If the school district agrees with your request, the  
10 record will be amended and you will be informed within a reasonable time after receipt of the request.  
11 Should the school district refuse to amend the information as requested, the school district will notify you  
12 of the right to a hearing to determine whether the challenged information is inaccurate, misleading, or  
13 otherwise in violation of the privacy or other rights of your child. If you request a hearing, the school  
14 district will provide a hearing, within a reasonable time, which must be conducted according to the  
15 procedures for such hearings under FERPA.  
16

17 If as a result of the hearing the school district decides the record will not be amended, you have a right to  
18 provide what you believe is a corrective written statement, which will be permanently attached to the  
19 contested record and also provided if the contested record is disclosed to any party. Additional  
20 information regarding your right to access and challenge educational records is available in the District's  
21 Annual Notice of Parent Student Rights and Responsibilities. (20 U.S.C. section 1232g; 34 C.F.R.  
22 sections 99.1-99.67; 34 C.F.R. sections 300.610-300.625, 300.613; Education Code sections 48980,  
23 49060-49079; Education Code sections 56041.5, 56043(n) and 56504; 5 CCR section 432(b)(1).)  
24

#### 25 **PRIOR WRITTEN NOTICE**

26  
27 The IDEA requires school districts to provide prior written notice to you as the parent of a child with  
28 disabilities when the school district proposes or refuses to initiate or change the identification, evaluation  
29 or educational placement of your child or the provision of a FAPE to your child or if you revoke consent  
30 in writing for the continued provision of special education and related services. The notice will be  
31 provided in your native language or other mode of communication you use, unless it is clearly not feasible  
32 to do so, and must be provided to you within a reasonable time.  
33

34 The prior written notice must include:

- 35 1. A description of the action proposed or refused by the school district.
- 36 2. An explanation of why the school district proposes or refuses to take the action.
- 37 3. A description of each evaluation procedure, assessment, record, or report the school district used as a  
38 basis for the proposed or refused action.
- 39 4. A description of other options that the IEP team considered and the reasons why those options were  
40 rejected.
- 41 5. A description of other factors that are relevant to the school district's proposal or refusal.
- 42 6. A statement that the parents of a child with a disability have protection under the procedural  
43 safeguards of the IDEA, and if this notice is not an initial referral for evaluation, the means by which a  
44 copy of a description of the procedural safeguards can be obtained.
- 45 7. Sources for parents to contact to obtain assistance in understanding the provisions of this part.  
46 (20 U.S.C. section 1415(c); 34 C.F.R. sections 300.503 and 300.300(b)(4); Education Code section  
47 56500.4.)

#### 48 **INFORMED PARENTAL CONSENT**

49  
50 The IDEA requires that school districts obtain informed consent from you before the commencement of  
51 an initial evaluation of your child to determine if your child qualifies as a child with disabilities.

1 Informed consent means you have been fully informed in your native language, or other mode of  
2 communication, of all information about the action for which you are giving consent and that you  
3 understand and agree in writing to the carrying out of the activity for which consent is sought, such as an  
4 evaluation or educational placement decision for your child. Your consent is voluntary and may be  
5 withdrawn at any time. Should you withdraw/revoke consent the revocation is not retroactive, it will not  
6 negate an action that has occurred after the consent was given and before the consent was revoked.

7  
8 Your consent for the initial evaluation does not imply or grant consent for placement and receipt of  
9 special education and related services. The school district will request your consent for special education  
10 and related services separately and at a later date. The school district will also obtain your informed  
11 consent for reevaluations of your child and will not conduct a reevaluation unless you fail to respond to  
12 requests for your consent.

13  
14 If you do not provide consent for an initial assessment or fail to respond to a request to provide the  
15 consent, the school district may pursue the initial assessment by using due process procedures.

16  
17 If you refuse to consent to the initiation of special education and related services, the school district must  
18 not provide special education and related services and shall not seek to provide services through due  
19 process procedures.

20  
21 If at any time after the initial provision of special education and related services, you revoke consent in  
22 writing for the continued provision of special education and related services after having consented to  
23 those services in the past, the school district must provide you prior written notice before ceasing the  
24 provision of special education and related services to your child and shall not seek to provide services  
25 through due process procedures. If you submit a written revocation of consent after the initial provision  
26 of special education and related services to your child, the school district is not required to amend the  
27 education records of your child to remove any reference of your child's receipt of special education and  
28 services.

29  
30 If you consent in writing to the receipt of special education and related services for your child but do not  
31 consent to all of the components of the IEP, those components of the program to which you have  
32 consented must be implemented so as not to delay providing instruction and services. If the school district  
33 determines that the proposed special education program component to which you do not consent is  
34 necessary to provide a free appropriate public education to your child, the school district must file a  
35 request for a due process hearing. If a due process hearing is held, the hearing decision shall be final and  
36 binding, unless appealed within 90 days from the date of the decision.

37  
38 In the case of reevaluations, the school district must document reasonable measures to obtain your  
39 consent. If you fail to respond, the school district may proceed with the reevaluation without your  
40 consent. (20 U.S.C. sections 1414(a)(1)(D), 1414(c) and 1415; 34 C.F.R. sections 300.9 and 300.300,  
41 300.514 and 300.516; Education Code sections 56021.1, 56321(c) and (d), 56346, 56381(f) and  
42 56506(e).)

43  
44 When a parent cannot be identified and the school district cannot locate the whereabouts of a parent to  
45 obtain consent, the school district must ensure that an individual is assigned to act as a surrogate for the  
46 parents of a child with a disability. A surrogate parent may also be appointed for unaccompanied  
47 homeless youth or a child who is a dependent or ward and an educational representative has not been  
48 appointed by the Court. (20 U.S.C. section 1415(b)(2); 34 C.F.R. section 300.519; Education Code  
49 section 56050; CA Rules of Court Rule 5.650.)



- 1 1. Review existing evaluation data on the child, including evaluations and information provided by you,  
2 current classroom-based assessments and observations, and teacher observation; and
- 3 2. On the basis of that review, and input from you, identify what additional data, if any, are needed to  
4 determine:
  - 5 a. Whether the child has a particular disability, or, in case of reevaluation of a child, whether the child  
6 continues to have such a disability and such educational needs;
  - 7 b. The present levels of performance and related developmental needs of the child;
  - 8 c. Whether the child needs special education and related services, or in the case of a reevaluation of a  
9 child, whether the child continues to need special education and related services; and
  - 10 d. Whether any additions or modifications to the special education and related services are needed to  
11 enable the child to meet the measurable annual goals set out in the IEP of the child and to participate,  
12 as appropriate, in the general curriculum.

13  
14 Generally, a reevaluation is required every three (3) years. However, if the IEP Team determines that no  
15 additional data is needed to determine whether your child continues to be a child with a disability and to  
16 determine the child's educational needs the school district will notify you as to the reasons the school  
17 district believes a reevaluation is not necessary. After receiving this notice, you may request a  
18 reevaluation of your child. If the school district does not receive a reevaluation request from you, the  
19 school district will not conduct a reevaluation of your child.

20  
21 Before determining that your child is no longer a child with a disability, the school district must conduct  
22 an assessment in accordance with the procedures discussed above. (20 U.S.C. sections 1414, 1415; 34  
23 C.F.R. sections 300.301 – 300.306; Education Code sections 56320, 56321, 56329, and 56381; 5 CCR  
24 section 3022.)

### 25 26 **INDEPENDENT EDUCATIONAL EVALUATION**

27  
28 After the school district has completed its evaluation, if you disagree with the school district's evaluation  
29 of your child and notify the school district of your disagreement, you have the right to request an  
30 independent educational evaluation at school district expense. Upon your request for an independent  
31 educational evaluation, the school district will provide you with information about where to obtain an  
32 independent educational evaluation and the district's criteria applicable for independent educational  
33 evaluations. A parent is entitled to only one (1) independent educational evaluation at public expense  
34 each time the district conducts an evaluation with which the parent disagrees. However, if the school  
35 district disagrees that an independent educational evaluation is necessary, the school district must request  
36 a hearing before a due process hearing officer to dispute your request for an independent educational  
37 evaluation and to show that the school district's assessment is appropriate. If the school district prevails,  
38 you still have the right to an independent evaluation but not at public expense. If you choose to obtain an  
39 independent educational evaluation at your own expense, the results of the assessment must be considered  
40 by the district. The independent educational evaluation must comply with all of the requirements that  
41 apply to school district evaluations.

42  
43 If the school district observes your child in his or her classroom during an assessment, or if the school  
44 district procedures provide for in-class observations, an equivalent opportunity must be provided for any  
45 independent educational evaluation in the current and any proposed educational placement.

46  
47 If you unilaterally place your child in a nonpublic school and you propose the placement in the nonpublic  
48 school to be publicly financed, the school district must be given the opportunity to first observe the  
49 proposed placement and your child in the proposed placement. (20 U.S.C. section 1415(b)(1); 34 C.F.R.  
50 section 300.502; Education Code section 56329.)

## IEP MEETINGS

1  
2  
3 As the parent of a special education student, you have the right to be a part of the IEP Team and  
4 participate in any meeting regarding the identification, assessment and educational placement of your  
5 child. The term IEP or Individualized Education Program means a written document for each child with a  
6 disability that is developed, reviewed and revised in accordance with federal and state law. The IEP  
7 includes the child's present levels of academic achievement and functional performance and must  
8 consider your concerns as a parent for improving the education of your child. As a parent, you have the  
9 right to be a member of any group that makes decisions with respect to the educational placement of your  
10 child. You also have the right to bring individuals who have knowledge or special expertise regarding  
11 your child to an IEP meeting. The school district will provide you with a copy of the IEP in your primary  
12 language upon request. If you are a parent of a child age three through five years, the individualized  
13 family service plan (IFSP) may serve as the IEP if agreed to by the parent and the school district.  
14

15 Federal and state law requires that the first IEP to be in effect beginning at age sixteen include a statement  
16 of the transition service needs of the child and that the IEP be updated annually thereafter. Beginning at  
17 age sixteen or younger, if determined appropriate by the IEP Team, appropriate measurable  
18 postsecondary goals related to training, education, employment, and where appropriate, independent  
19 living skills, a statement of needed transition services for the child, including, when appropriate, a  
20 statement of the interagency responsibilities or linkages between the agencies is required. Beginning at  
21 least one year before the child reaches age eighteen (18), a statement must be included in the IEP that the  
22 child has been informed of his or her rights that will transfer to the child on reaching the age of majority.  
23 Under California law, when a child turns age eighteen (18), he or she is considered an adult and unless the  
24 parent obtains a conservatorship or guardianship over the child through court proceedings, the child may  
25 make decisions regarding his or her education.  
26

27 In developing an IEP for your child, the IEP Team must include positive behavioral intervention  
28 strategies and supports in cases where the child's behavior prevents the child from learning and consider,  
29 when appropriate, strategies, including positive behavioral intervention strategies and supports to address  
30 the child's behavior. The regular education teacher of your child, as a member of the IEP Team, must to  
31 the extent appropriate, participate in the development of the IEP of your child, including the  
32 determination of appropriate, positive behavioral intervention strategies and the determination of  
33 supplementary agency services, program modifications and support for the school personnel.  
34

35 The IEP will be reviewed by the IEP Team at least annually in order to determine whether the annual  
36 goals for your child are being achieved and revise the IEP as appropriate to: (1) address any lack of  
37 anticipated progress toward the annual goals and in the general curriculum, where appropriate, (2) to  
38 address the results of any reevaluation conducted, (3) to address information about your child provided by  
39 you, and 4) to address your child's anticipated needs, if necessary. Your child will also receive report  
40 cards in the same manner as regular education students. You and the school district may agree in writing  
41 that the attendance of an IEP Team member is not necessary because the member's area of curriculum or  
42 related service is not being modified or discussed at the meeting. In addition, if you and the school  
43 district agree in writing to excuse a member of the IEP team from the IEP Team meeting, in whole or in  
44 part, when the meeting involves a modification to or discussion of the member's area or the curriculum or  
45 related service, the member must submit in writing to you and the IEP Team, input into the development  
46 of the IEP prior to the meeting. Under state law, you have the right to electronically record IEP  
47 meetings by audio tape if you give 24 hours notice to other members of the IEP Team. After the annual  
48 IEP meeting for a school year, you and the school district may agree in writing not to convene an IEP  
49 meeting to make changes to the annual IEP, and instead may develop a written document to amend or  
50 modify the current IEP. (20 U.S.C. section 1414(d); 34 C.F.R. sections 300.320-300.324; Education  
51 Code sections 56032, 56304, 56341, 56341.1, 56341.5, 56342.5 and 56345; 5 CCR section 3040.)

1 **PLACEMENT (“STAY-PUT”) DURING THE PENDENCY OF DUE PROCESS PROCEDURES**

2  
3 As a parent of a child with disabilities, should you get involved in a disagreement with the school district  
4 over the identification, evaluation or placement of your child and you file a request for a due process  
5 hearing, your child will remain (“stay-put”) in the current educational placement during the pendency of  
6 the proceedings. Unless you and the school district agree to a change in placement, or the school district  
7 obtains a court order or an order from a hearing officer, your child will remain in his or her current  
8 educational placement during the pendency of the proceedings. For initial admission to school, your child  
9 will be placed in a public school program, with parental consent, until the proceedings have been  
10 completed. There are exceptions to this general rule which allow the school district to place your child in  
11 an alternative educational setting for a limited period of time. These exceptions will be discussed in the  
12 next section on interim alternative educational settings. (20 U.S.C. section 1415(j); 34 C.F.R. section  
13 300.518; Education Code section 56505(d).)

14  
15 **INTERIM ALTERNATIVE EDUCATIONAL SETTINGS, DISCIPLINE PROCEDURES**

16  
17 School personnel may change the placement of your child if he or she violates a code of student conduct  
18 to (1) an appropriate interim alternative educational setting; (2) another educational setting, or (3) suspend  
19 your child for not more than ten (10) consecutive school days (to the extent such alternatives would be  
20 applied to children without disabilities) and for additional removals of not more than ten (10) consecutive  
21 school days in that same school year for separate incidents of misconduct. If school personnel seek a  
22 change in placement that exceeds more than ten (10) school days in the same school year, school  
23 personnel must determine if the behavior that gave rise to the violation of the code of student conduct is a  
24 manifestation of your child’s disability. If a determination is made that the behavior is not a  
25 manifestation of your child’s disability, school personnel may discipline your child under the same  
26 procedures applicable to children without disabilities.

27  
28 In order to determine if the behavior that gave rise to the violation of the code of student conduct is a  
29 manifestation of your child’s disability, the school district, you and relevant members of the IEP Team  
30 must review all relevant information in your child’s file, including the IEP, any teacher observations, and  
31 any relevant information provided by you to determine if the conduct in question was caused by, or had a  
32 direct and substantial relationship to your child’s disability. This meeting must take place within ten (10)  
33 school days of any decision to take disciplinary action. If the IEP Team determines that the conduct is a  
34 manifestation of your child’s disability, the IEP Team must either conduct a functional behavioral  
35 assessment, and implement a behavioral intervention plan for your child, or review and modify as  
36 necessary the existing behavioral intervention plan.

37  
38 School personnel may also place your child in an interim alternative educational setting for up to forty-  
39 five (45) school days without regard to whether the behavior is determined to be a manifestation of your  
40 child’s disability, in cases where: (1) your child carries or possesses a weapon to or at school, on school  
41 premises, or to or at a school function or activity; (2) your child knowingly possesses or uses illegal  
42 drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or a  
43 school function or activity; or (3) your child inflicts serious bodily injury upon another person while at  
44 school, on school premises, or at a school function or activity. The IEP team determines the interim  
45 alternative education setting for services.

46  
47 After a child with a disability has been removed from his or her current placement for ten (10) school  
48 days in the same school year, during any subsequent days of removal the school district must provide  
49 services to enable the child to continue to participate in the general education curriculum, although in  
50 another setting, and to progress toward meeting the IEP goals. If appropriate, the child may receive a

1 functional behavioral assessment and behavior intervention services and modifications designed to  
2 address the behavior violation so that it does not recur.

3  
4 No later than the date on which the decision to take disciplinary action against your child is made, the  
5 school district must notify you of that decision and notify you of your procedural safeguards. If you  
6 disagree with any decision regarding placement, or the manifestation determination of your child, you  
7 may request an expedited due process hearing which must occur within twenty (20) school days of the  
8 date of the hearing request. During the pendency of the due process hearing, your child will remain in the  
9 interim alternative education setting pending the decision of the hearing officer or for forty-five (45)  
10 school days, whichever occurs first, unless you and the school district agree otherwise. If the school  
11 district believes it is dangerous for your child or others for your child to return to the current educational  
12 placement, the school district may request an expedited hearing.

13  
14 A hearing officer may order a change in the placement of your child to an appropriate interim alternative  
15 educational setting for not more than forty-five (45) days, if the hearing officer determines that  
16 maintaining your child in his or her current placement is substantially likely to result in injury to your  
17 child or to others. (20 U.S.C. section 1415(k); 34 C.F.R section 300.530; Education Code section  
18 48915.5.)

#### 19 20 **CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOL**

21  
22 A school district's obligation to children with disabilities enrolled in private schools is limited. Under the  
23 IDEA "*no parentally-placed private school child with a disability has an individual right to receive some*  
24 *or all of the special education and related services that the child would receive if enrolled in a public*  
25 *school.*" School districts must locate, identify and assess all private school children with disabilities,  
26 including religiously affiliated school age children, who have disabilities and are in need of special  
27 education and related services, referred to as "child find". The school district in which the private school  
28 is located, also referred to as the "District of Location" is responsible for conducting child find activities  
29 for children enrolled by their parents in private schools. If the District of Location is not the same school  
30 district in which the parents of the private school student reside, then the District of Location may  
31 contract with the school district of residence to assess the child.

32  
33 Children with disabilities enrolled in private school may receive equitable special education services as  
34 determined through consultation with private schools and parents. In order to receive such equitable  
35 services, a "Service Plan" must be developed for the private school student and consented to by the  
36 parents. The school district in which the private school is located, the District of Location, is responsible  
37 for developing and implementing the Service Plan.

38  
39 A parent of a child enrolled by that parent in a private school has the right to file a due process complaint  
40 only regarding the school district's child find activities. A due process complaint must be filed with the  
41 school district in which the private school is located, the District of Location, and the California  
42 Department of Education (CDE). However, because there is no individual right to services for children  
43 enrolled by their parents in private school, any complaints regarding a Service Plan can only be filed in  
44 accordance with the CDE's compliance complaint procedures. (20 U.S.C. section 1412(a)(10)(A); 34  
45 C.F.R. section 300.130-300.144; Education Code sections 56170-56177.)

#### 46 **UNILATERAL PLACEMENT BY PARENTS IN PRIVATE SCHOOL**

47  
48 If you decide to unilaterally enroll your child in a private school after the school district made a free  
49 appropriate public education available to your child, the school district is not required to pay for the cost  
50 of your child's education. In order to obtain reimbursement for the cost of the private school from the  
51 school district, including special education and related services, you must first attempt to obtain the

1 consent of the school district, and establish that the school district does not have an appropriate program  
2 for your child. Reimbursement may be denied or reduced if: 1) at the most recent IEP meeting that you  
3 attended prior to removal of your child from the public school, you did not inform the IEP Team that you  
4 were rejecting the placement proposed by the school district to provide a free appropriate public  
5 education to your child, including a statement of your concerns and your intent to enroll your child in a  
6 private school at public expense; or 2) at least 10 business days prior to the removal of your child from  
7 the public school, you did not give written notice to the school district of your concerns regarding the  
8 school district's proposed placement and your intent to enroll your child in a private school at public  
9 expense.

10 If the school district notifies you prior to the removal of your child from the public school that the school  
11 district wishes to evaluate your child and indicates the purpose of the evaluation, you should make your  
12 child available for the evaluation. If you have not complied with these requirements, a court or hearing  
13 officer may find that you acted unreasonably in unilaterally removing your child from the public school  
14 and in placing your child in a private school. The court or hearing officer may deny you reimbursement  
15 unless you can show one or more of the following: 1) you are illiterate and cannot write in English, or 2)  
16 the school district's placement would result in physical or serious emotional harm to your child.

17 (20 U.S.C. section 1412(a)(10)(C); 34 C.F.R. section 300.148; Education Code sections 56175-56177.)  
18

## 19 **OPPORTUNITY TO PRESENT AND RESOLVE COMPLAINTS**

### 20 **A. STATE COMPLAINT PROCEDURES**

21  
22 The IDEA grants parents an opportunity to present and resolve complaints with respect to any matter  
23 relating to the identification, evaluation or educational placement of your child or the provision of a free  
24 appropriate public education to your child. Written complaints may be filed with the school district or the  
25 state or federal agencies at the addresses listed below. Compliance complaints must allege a violation  
26 that occurred not more than one (1) year prior to the date the complaint is received. A copy of the written  
27 complaint must also be provided to the school district serving the child at the same time it is filed with the  
28 state agency. The school district, state or federal agency has sixty (60) days from the date of receipt of the  
29 complaint to render a decision in the matter. For complaints filed with the school district, within fifteen  
30 (15) days of receiving the school district's decision, you may appeal the school district's decision to the  
31 California Department of Education (CDE). Complaints may also be filed directly with the CDE.  
32

33 You may also avail yourself of the compliance complaint process to report an instance of discrimination,  
34 harassment, intimidation or bullying. A complaint must be filed with the school district no later than six  
35 months from the date the incident occurred, or the date you first obtained knowledge that the incident  
36 occurred. The timelines for conducting and completing an investigation of the complaint and rendering a  
37 decision are listed in the previous paragraph.  
38

39 Capistrano Unified School District  
40 Special Education Department  
41 33122 Valle Rd.  
42 San Juan Capistrano, California 92675  
43 Phone: 949-234-9270  
44 Fax: 949-240-9047  
45

46 California Department of Education  
47 Special Education Division  
48 Procedural Safeguards Referral Service  
49 1430 N Street, Suite 2401  
50 Sacramento, California 95814  
51 Phone: 1-800-926-0648

1 Fax: (916) 327-3704  
2 <http://www.cde.ca.gov/re/cp/uc/index.asp>  
3

4 United States Department of Education  
5 Office for Civil Rights  
6 50 Beale Street, Suite 7200  
7 San Francisco, CA 94105  
8 Phone: (415) 486-5555  
9 Fax: (415) 486-5570  
10 TDD: (800) 877-8339  
11 <http://www2.ed.gov/about/offices/list/ocr/index.html>  
12

13 The school district encourages you to file your complaint with the school district. We will meet with you  
14 and investigate your complaint in a timely manner and attempt to resolve any concerns. The school  
15 district has established confidential procedures for the filing of complaints. A complaint form is available  
16 from the school district. (20 U.S.C. Section 1415(b)(6); 34 C.F.R. section 300.153; Education Code  
17 section 56500.2; 5 CCR section 4600.)  
18

### 19 **B. MEDIATION AND DUE PROCESS HEARING PROCEDURES**

20  
21 The IDEA requires states to establish procedures for mediation and impartial due process hearings  
22 regarding the identification, assessment, and educational placement of your child or the provision of a  
23 FAPE. You or the school district may file a request for mediation-only or a due process hearing  
24 complaint.  
25

26 Your request for mediation-only or a due process hearing must include the name and address of the child,  
27 date of birth, grade level and name of the school the child is attending, parent information, parties to the  
28 mediation, a description of the nature of the problem, including facts relating to such problem, and a  
29 proposed resolution of the problem. The CDE has developed model forms to assist you in filing a request  
30 for mediation-only or a due process hearing. You may access these model forms at:  
31 <http://www.dgs.ca.gov/oah/home/forms.aspx>  
32

33 You must serve the mediation-only or due process hearing complaint on the school district and file a copy  
34 with the Office of Administrative Hearings at the address listed below:  
35

36 Office of Administrative Hearings  
37 Attn: Special Education Division  
38 2349 Gateway Oaks Drive, Suite 200  
39 Sacramento, CA 95833-4231  
40 Phone: (916) 263-0880  
41 Fax: (916) 376-6319  
42 [SEFilings@dgs.ca.gov](mailto:SEFilings@dgs.ca.gov)  
43

44 In California, mediation is voluntary. You may request a due process hearing or mediation-only.  
45 Mediation-only means you are asking for mediation without asking for a due process hearing. Mediation  
46 is an informal proceeding conducted in a non-adversarial manner. If you request mediation-only you and  
47 the school district will receive a notice that mediation has been scheduled, and the notice will contain the  
48 time, date and location of the mediation as well as the name, address, and phone number of a  
49 knowledgeable and impartial mediator assigned to the case. The mediation must be scheduled within 15  
50 days of the Office of Administrative Hearing's receipt of the request. Attorneys cannot attend mediation-  
51 only. However, you or the school district may be accompanied and advised by non-attorney

1 representatives. Statements made by you and the school district during mediation are confidential and  
2 may not be used in a due process hearing or court action. Any agreement reached during mediation must  
3 be in writing and signed by all parties. You may also ask the school district to resolve disputes through  
4 alternative dispute resolution (ADR), which is also less adversarial than a due process hearing. ADR and  
5 mediation are voluntary methods of resolving a dispute. If the dispute is not resolved during mediation or  
6 through ADR, you may proceed to a due process hearing. Mediation or ADR are not prerequisites to  
7 requesting a due process hearing.

8  
9 A due process hearing is a formal proceeding where you and the school district are given the opportunity  
10 to present witnesses, documentary evidence, and oral and written argument in support of your respective  
11 positions on disputed special education issues. You may request a mediation conference at any point  
12 during the due process hearing. A request for a due process hearing must be filed within (2) years from  
13 the date you or the school district knew or should have known about the alleged action that forms the  
14 basis of the due process hearing complaint. Upon receiving a request for a due process hearing, you and  
15 the school district will receive a notice from the Office of Administrative Hearings with the time, date and  
16 location of the due process hearing. If your primary language is other than English, or other mode of  
17 communication, an interpreter will be provided for you at the hearing.

18  
19 Prior to the opportunity for an impartial due process hearing, within fifteen (15) days of receiving your  
20 due process hearing complaint, the school district is required to convene a mandatory resolution meeting  
21 with you and the relevant members of the IEP Team who have specific knowledge of the facts raised in  
22 your complaint, where you can discuss your complaint and the facts that form the basis of your complaint,  
23 and the school district is provided the opportunity to resolve the complaint. The resolution meeting must  
24 include a representative from the school district who has decision making authority on behalf of the  
25 school district, but may not include an attorney for the school district unless the parent is also  
26 accompanied by an attorney. Attorneys' fees may not be awarded relating to a resolution meeting.  
27 Unless the school district agrees, you may not waive the mandatory resolution meeting. If resolution is  
28 reached to resolve the complaint at the mandatory resolution meeting, the parties must sign a legally  
29 binding agreement. If the school district has not resolved the complaint to your satisfaction within thirty  
30 (30) days of the receipt of the complaint, the due process hearing may move forward and all applicable  
31 timelines for a due process hearing shall commence.

32  
33 The due process hearing is limited to those issues raised in your due process hearing complaint. An  
34 impartial hearing officer presides over the due process hearing. You have the right to be accompanied  
35 and advised by an attorney and by individuals with special knowledge or training related to the problems  
36 of children with exceptional needs; the right to present evidence, written and oral arguments; the right to  
37 confront, cross-examine and compel attendance of witnesses; the right to a written or electronic verbatim  
38 record of the hearing; and the right to written findings of fact and decision.

39  
40 At least ten (10) days prior to the hearing you and the school district must inform each other of the issues  
41 to be decided at the hearing and the proposed resolution of those issues as well as whether the parties will  
42 be represented by an attorney at the hearing. At least five (5) business days prior to the hearing you and  
43 the school district must disclose all your witnesses and evidence you intend to introduce at the hearing  
44 including evaluations completed to the other party, or the witnesses, evidence or evaluations cannot be  
45 introduced as evidence at the hearing.

46  
47 In general, a hearing officer's decision should be made on substantive grounds based on a determination  
48 of whether your child received FAPE. The hearing officer must reach a final decision and mail a copy of  
49 the written decision to you and the school district within forty-five (45) days of the receipt of the request  
50 for a hearing by the Office of Administrative Hearings or State Superintendent of Public Instruction,  
51 unless a continuance has been granted for good cause. The decision made in a due process hearing is

1 final, except that any party involved in the hearing may appeal the decision by filing a civil action with  
2 respect to the findings and decision in the due process complaint.  
3 (20 U.S.C. sections 1415(b)(7)(a)–1415(j); 34 C.F.R. sections 300.506–300.518; Education Code sections  
4 56500.3, 56502–56507; 5 CCR section 3082.)

### 6 **CIVIL ACTIONS**

7  
8 Either you or the school district may appeal the hearing officer’s decision by filing a civil action. This  
9 appeal must be made within ninety (90) days after the date of the decision of the hearing officer. In a  
10 civil action, the records and transcription of the administrative proceedings shall be filed with the court.  
11 The court may hear additional evidence at the request of either party and must base its decision on the  
12 preponderance of the evidence. The action may be filed in the United States District Court or in Orange  
13 County Superior Court. (20 U.S.C. section 1415(i); 34 C.F.R. sections 300.514, 300.516; Education  
14 Code section 56505(k).)

### 15 **ATTORNEYS’ FEES**

16  
17 The United States District Court or the Orange County Superior Court has the authority to award you  
18 reasonable attorneys’ fees if you are the prevailing party in a due process hearing or civil action; or to  
19 award the school district reasonable attorneys’ fees if your attorney files a complaint or subsequent cause  
20 of action that is frivolous, unreasonable, or without foundation, or the complaint or subsequent action was  
21 filed to harass, cause unnecessary delay, or to needlessly increase the cost of litigation. The fees awarded  
22 are based on rates prevailing in the community in which the action or proceeding arose. No attorneys’  
23 fees may be awarded to you following a written offer of settlement from the school district made at least  
24 ten (10) days prior to hearing, if the court or hearing officer finds that the relief you ultimately obtained is  
25 not more favorable than the written offer of settlement. However, attorneys’ fees will not be reduced if  
26 you were substantially justified in rejecting the settlement offer, or the school district unreasonably  
27 prolonged the proceedings.

28  
29 You may not be awarded attorneys’ fees and related costs if you unreasonably prolonged the final  
30 resolution of the controversy or the amount of the fees requested is unreasonable. In addition, attorneys’  
31 fees or related costs may not be awarded for attorney time spent attending resolution meetings or IEP  
32 Team meetings, unless the IEP team meeting is convened as a result of an administrative proceeding or  
33 judicial action. (20 U.S.C. section 1415(i)(3); 34 C.F.R. section 300.517; Education Code section  
34 56507(b).)

### 35 **STATE SPECIAL SCHOOLS**

36  
37 The State Special Schools operated by CDE provide services to students who are deaf, hard of hearing,  
38 blind, visually impaired, or deaf-blind at each of its three facilities: the California Schools for the Deaf in  
39 Fremont and Riverside and at the California School for the Blind in Fremont. Residential and day school  
40 programs are offered to students from infancy to age 21 at both State Schools for the Deaf and from ages  
41 five through 21 at the California School for the Blind. The State Special Schools also offer assessment  
42 services and technical assistance. For more information about the State Special Schools, please visit the  
43 California Department of Education Web site at <http://www.cde.ca.gov/sp/ss/> or ask for more information  
44 from the members of your child’s IEP team. (Education Code section 56321.6.)

### 45 **NOTIFICATION OF RIGHTS REGARDING USE OF PUBLIC BENEFITS OR INSURANCE**

46  
47  
48 This notice is provided to you as parents, legal guardians, surrogate parents or court appointed  
49 educational rights holder, because your child is or may be receiving special education services under the  
50 IDEA. The IDEA requires school districts to provide prior written notice of your rights and protections  
51 when it seeks to use your child’s public benefits (i.e., Medi-Cal) or insurance to pay for special education

1 and related services. This notice will be given to you before the school district seeks to use your child's  
2 public benefits or insurance for the first time, and annually thereafter. With your written consent, the  
3 school district may submit claims to your child's public benefits or insurance program, such as the  
4 California Medi-Cal program.

5  
6 The school district cannot require you to sign-up for or enroll in a public benefits or insurance program in  
7 order for your child to receive FAPE under the IDEA. The school district cannot require you to pay out-  
8 of-pocket expenses such as the payment of a deductible or co-pay. The school district cannot use your  
9 child's benefits under a public benefits or insurance program if to do so would (1) decrease available life  
10 time coverage or any other insured benefit; (2) cause you to pay for services that would otherwise be  
11 covered by your public benefits or insurance program because your child also requires those services  
12 outside of the school day; (3) increase premiums or lead to the discontinuation of your public benefits or  
13 insurance; or (4) cause you to risk loss of eligibility for home and community based waivers based on  
14 your total health-related expenditures. (34 CFR Section 300.154(d)(1)(2)(i)-(v) and (e); Education Code  
15 section 56363.5.)

16  
17 **You Have The Right To:**

- 18  
19 • Voluntarily provide the school district with written consent to disclose educational records  
20 containing your child's personally identifiable information such as IEPs or assessment reports to  
21 Medi-Cal, or other public benefits or insurance programs for billing purposes.  
22  
23 • Withdraw your consent to the disclosure of your child's personally identifiable information to  
24 Medi-Cal, or other public benefits or insurance programs **at any time** in accordance with your  
25 rights under the Family Educational Rights and Privacy Act (FERPA; Title 20 of the United  
26 States Code, Section 1232 (g), Title 34 Code of Federal Regulations Part 99) and the IDEA (Title  
27 20 of the United States Code, Section 1400), Title 34 Code of Federal Regulations Part 300).  
28  
29 • Refuse to provide consent to the disclosure of your child's personally identifiable information to  
30 Medi-Cal, or other public benefits or insurance programs for billing purposes. Without your  
31 consent the school district may not use your or your child's public benefits or insurance.  
32  
33 • Have your child continue to receive a FAPE **at no cost to you**, if you withdraw consent or refuse  
34 to provide consent to disclose your child's personally identifiable information to Medi-Cal, or  
35 other public benefits or insurance programs for billing purposes.  
36

37 If you withdraw your consent or refuse to provide consent for the school district to use Medi-Cal or other  
38 public benefits or insurance programs to pay for eligible special education and related services, the school  
39 district must continue to ensure that all required special education and related services are provided **at no**  
40 **cost to you**.

41  
42 If you authorize the school district to disclose personally identifiable information, please sign and date the  
43 Consent to Disclose Personally Identifiable Information form below, and specify the personally  
44 identifiable information the school district may disclose, the purpose of the disclosure, and the agency to  
45 which the school district may disclose the information.  
46  
47  
48  
49  
50

**Consent to Disclose Personally Identifiable Information**

I understand and agree that the Capistrano Unified School District may use my or my child's public benefits or insurance to pay for special education and related services under the IDEA. I further provide consent for the Capistrano Unified School District to exchange and disclose my child's personally identifiable information contained in records or information about the services that may be provided to my child as well as information about those services, for billing purposes, to Medi-Cal. If you have questions, please contact the District's Coordinator, Special Education Programs (949.234.9200).

Parent/Guardian/Adult Student	Parent/Guardian/Adult Student	Date
Print Name	Signature	

Name of Child: \_\_\_\_\_ D.O.B. \_\_\_\_\_

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