

## **Procedural Safeguards**

### **Intent of Policy**

The intent of this policy is to ensure that Encore complies with Procedural Safeguards, and that parents of students with disabilities are properly notified regarding their rights and responsibilities under federal and state special education laws.

### **“Procedural Safeguards”**

The federal Individuals with Disabilities Education Act (“IDEA”), California special education law, and their accompanying regulations, include “Procedural Safeguards” which protect the rights of the parents/guardians of students with disabilities, define various responsibilities of school districts, and provide a comprehensive system for resolving special education related disputes between parents and school districts.

### **Definition of “Parent” and Who is Entitled to the Procedural Safeguards**

For purposes of this policy, “parent” refers to parents, legal guardians, and surrogate parents of students with disabilities from three (3) years of age through age twenty-one (21) and to students who have reached age eighteen (18), the age of majority in California.

Procedural Safeguards are available to all parents as defined herein.

### **“Notice of Procedural Safeguards”**

The “Notice of Procedural Safeguards” refers to a specific document which Encore is required to provide to parents of students with disabilities. The document describes in detail each of the procedural safeguards, and how a parent may exercise their rights and responsibilities under the law. The California Department of Education (“CDE”) maintains information on Procedural Safeguards and provides guidance on the development of the Notice of Procedural Safeguards used by school districts. (See <https://www.cde.ca.gov/sp/se/qa/pseng.asp>; or for various languages (<http://inet2.cde.ca.gov/cmd/translatedparentaldoc.aspx?docid=759-768> )

Encore shall develop, and update as needed, a Notice of Procedural Safeguards which shall be used throughout Encore.

A copy of the Notice of Procedural Safeguards shall be placed on Encore’s website at [www.encorehighschool.com](http://www.encorehighschool.com)

(20 USC § 1415 subd. (d); 34 CFR § 300.504; Ed. Code §§ 56301 subd. (d)(2), 56321.)

### **When a “Notice of Procedural Safeguards” Must be Provided to Parents**

At each IEP meeting convened by Encore, Encore shall inform the parent and pupil of the federal and state procedural safeguards that were provided in the notice of parent rights.

In addition, the Notice of Procedural Safeguards shall be provided to parents at all of the following times:

1. When a parent requests a copy;
2. When a student is referred for an initial special education assessment;
3. Whenever Encore provides a parent with an assessment plan;
4. Upon receipt of a parent's first state level or due process complaint in a school year; and
5. When Encore makes a decision to remove a student and that removal would legally constitute a change of placement.

(20 USC § 1415 subd. (d); 34 CFR § 300.504; Ed. Code §§ 56301 subd. (d)(2), 56321.)

### **Encore Staff Shall Follow Procedural Safeguards**

Encore shall ensure that Encore staff members adhere to the Procedural Safeguards for students with disabilities as set forth in state and federal law and regulations, and in the policies of Encore and the Desert Mountain Charter SELPA special education local plan area.

Encore staff requiring additional guidance and information on Procedural Safeguards shall, as needed, refer to one or more of the following:

1. The specific statute(s) or regulations(s) governing the procedural safeguards referenced in this policy;
2. Encore's Notice of Procedural Safeguards or any related information developed and updated by the CDE;
3. Encore Special Education Director, and/or the case manager or program specialist for the student.

### **List of Procedural Safeguards**

This section lists each of the Procedural Safeguards including a summary of the parents and students rights and responsibilities in each area, and the corresponding legal references.

#### **1. Prior Written Notice**

Prior Written Notice is a notice which must be sent to the parent of a student with a disability whenever Encore:

- a.** Proposes to initiate a change in the identification, assessment, or educational placement of the student or the provision of a free appropriate public education ("FAPE") to that student; **or**



- b. Refuses to initiate a change in the identification, assessment, or educational placement of the student or the provision of FAPE to that student.

In order to meet the legal requirements, the Prior Written Notice must be given within a reasonable amount of time before Encore's proposal or refusal, and must contain the following information:

- a. A description of the actions proposed or refused by Encore;
- b. An explanation of why the action was proposed or refused;
- c. A description of each assessment procedure, record, or report Encore used as a basis for the action proposed or refused;
- d. A statement that parents of a child with a disability have protection under the procedural safeguards;
- e. Sources for parents to contact to obtain assistance in understanding the provisions of this part;
- f. A description of other options that Encore and/or the District's IEP team considered and the reasons those options were rejected; and
- g. A description of any other factors relevant to the action proposed or refused.

(20 USC §§ 1415 subds. (b)(3) & (4), 1415 subd. (c)(1), 1414 subd. (b)(1); 34 CFR § 300.503.)

## **2. Parental Consent**

Encore is required to obtain the consent of the parent prior to taking certain actions with regard to a student with disabilities. Parental Consent requirements are as follows:

### Initial Referral for Special Education

A parent has the right to refer their child to Encore for special education. Encore cannot perform an initial assessment for special education until it receives written parental consent for the assessment.

### Initial IEP - Initiation of Services

If Encore finds a student eligible for special education, it may not initiate services until the parent provides informed written consent to the special education and related services set forth in their child's initial IEP.



(20 USC §§ 1414 subds. (a)(1)(D) & (c); 34 CFR § 300.300; Ed. Code §§ 56506 subd. (e), 56321 subds. (c) & (d), 56346.)

### Procedures When a Parent Withholds or Fails to Provide Consent

*Initial Assessment:* If a parent does not provide consent for an initial assessment or fails to respond to a request to provide the consent, Encore may elect to pursue the initial assessment by utilizing due process procedures.

*Initiation of Services:* If a parent refuses to consent to the initiation of services (initial IEP), Encore shall not provide special education and related services and shall not seek to provide services through due process procedures.

*Partial Consent:* If a parent consents in writing to the special education and related services for a student but does not consent to all of the components of the IEP, Encore shall, without delay, implement the components for which the parent provided consent. Also, if Encore determines that the program components which the parent consented to will not be sufficient to provide the student with FAPE, Encore must initiate a due process hearing.

*Reevaluations:* If a parent refuses to consent to a request to reevaluate a student, Encore must document its reasonable measures to obtain consent. If a parent fails to respond to Encore's efforts, Encore may proceed with the reevaluation without the parent's consent.

(20 USC §§ 1414 subds. (a)(1)(D) & (c); 34 CFR § 300.300; Ed. Code §§ 56321 subds. (c) & (d), 56346, 56506 subd. (e).)

### Procedures When a Parent Revokes Consent

If a parent of a student who has already provided consent for special education states in writing that they wish to revoke consent for the continued provision of special education Encore:

- a. May not continue to provide special education and related services to the student, but must provide prior written notice as described above, prior to ceasing all services;
- b. May not request a due process hearing or mediation in order to obtain an agreement or a ruling that the services may be provided to the student;
- c. Will not be considered to be in violation of the requirement to make a free appropriate public education ("FAPE") available to the student because of the failure to provide the student with further special education and related services; and
- d. Is not required to convene an IEP team meeting or develop an IEP for the child for further provision of special education and related services.



Note: These procedures only apply when a parent is opting out of special education in its entirety. They do not apply when a parent is either: (a) refusing to sign an IEP because they do not agree with Encore offer of FAPE; or (b) revoking consent for some, but not all of, the student's current program.

Note: When a parent revokes consent, Encore is not required to amend the student's records by removing any references to special education.

(34 CFR §§ 300.9 subd. (c)(3); 300.300 subd. (b)(4); Ed. Code. § 56346 subd.(d).)

### **3. Independent Educational Evaluation**

If a parent disagrees with the results of an assessment by Encore, they may request that Encore pay for an Independent Educational Evaluation ("IEE") as provided for under IDEA and state law. Encore must respond to the request by either:

- a. Agreeing to the IEE and providing information on how to obtain the IEE; or
- b. If Encore believes its assessment was appropriate and disagrees that an IEE is needed, Encore may request a due process hearing to show its assessments was appropriate.

(20 USC § 1415 subd. (d)(2)(A); 34 CFR § 300.502; Ed. Code § 56329 subds. (b) & (c).)

### **4. Access to Educational Records**

Encore shall ensure that parents are granted the right to inspect and review all of their child's educational records without unnecessary delay, and that requested copies are provided within five (5) business days of the request. Parent access to records shall comply with applicable law and Encore policy.

(Ed. Code §§ 49060, 56043 subd. (n), 56501 subd. (b)(3), and 56504)

### **5. Due Process Hearings**

Parents have the right to request an impartial due process hearing regarding the identification, assessment, and educational placement their child or the provision of FAPE to that child.

#### Two –Year Period for Filing Complaints

The request for a due process hearing must be filed within (2) two years from the date the parent knew or should have known about the alleged action that forms the basis of the due process complaint.

(20 USC § 1415 subd. (b)(6); 34 CFR § 300.507; Ed. Code §§ 56501, 56505 subd. (l).)

### Process for Filing Complaints

All due process complaints must be in writing, and a copy must be provided to the other party at the time the complaint is filed. A due process complaint is only sufficient if it contains specific and detailed information regarding the nature of the problem as required by law.

(20 USC §§ 1415 subd. (b)(7), 1415 subd. (c)(2); 34 CFR § 300.508; Ed. Code § 56502 subd. (c)(1).)

### Resolution Session

When a parent files a due process complaint against Encore, Encore is granted the opportunity to resolve the dispute by convening a “Resolution Session” within 15 days of the date it received notice of the complaint. A Resolution Session is a meeting between the parents and designated Encore members of the IEP team who are familiar with the information in the complaint. Encore and parent may agree in writing to waive the Resolution Session. Encore has 30 days to resolve the dispute by entering a legally binding agreement or the matter will proceed.

(20 USC § 1415 subd. (f)(1)(B); 34 CFR § 300.510.)

### Due Process Rights

Due process rights are the rights provided to the parents of students with disabilities whenever a due process complaint is filed by the parent or Encore. The due process rights that follow are granted to the parents though many are also granted to Encore or any other party to a due process case:

Parents have the right to:

- a. Have 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; (20 USC §§ 1415 subd. (f)(1)(A) & (f)(3)(A)-(D); 34 CFR § 300.511; Ed. Code § 56501 subd. (b)(4).)
- b. Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities; (Ed. Code § 56505 subd. (e)(1).)
- c. Present evidence, written arguments, and oral arguments; (Ed. Code § 56505 subd. (e)(2))
- d. Confront, cross-examine, and require witnesses to be present; (Ed. Code § 56505 subd. (e)(3).)
- e. Receive a written or, at the option of the parent, an electronic verbatim record of the hearing, including findings of fact and decisions; (Ed. Code § 56505 subd. (e)(4).)

- f. Have the child present at the hearing; (Ed. Code § 56501 subd. (c)(1).)
- g. Have the hearing be open or closed to the public; (Ed. Code § 56501 subd. (c)(2).)
- h. 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 within five (5) business days before a hearing; (Ed. Code §§ 56505 subd. (e)(7) and 56043 subd. (v).)
- i. Be informed by the other parties of the issues and their proposed resolution of the issues at least ten (10) calendar days prior to the hearing; (Ed. Code § 56505 subd. (e)(6).)
- j. Have an interpreter provided; (5 CCR § 3082 subd. (d).)
- k. Request an extension of the hearing timeline; (Ed. Code § 56505 subd. (f)(3).)
- l. Have a mediation conference at any point during the due process hearing; (Ed. Code § 56501 subd. (b)(2).), and
- m. Receive notice from the other party at least ten days prior to the hearing that the other party intends to be represented by an attorney; (Ed. Code § 56507 subd. (a)).

(20 USC § 1415 subd. (e); 34 CFR §§ 300.506, 300.508, 300.512, 300.515.)

#### Placement During Due Process Proceedings- “Stay-Put”

When a due process complaint or civil complaint (court) has been filed regarding the provision of FAPE to a student, the student shall remain in his/her current educational placement unless the parent and Encore agree to an alternative placement. This requirement is commonly referred to as “stay-put.”

(20 § *USC* 1415 subd. (j); 34 *CFR* §300.518; Ed. Code § 56505 subd. (d).)

#### Appeals

A due process hearing decision is final and binding on both the parent and Encore. Either the parent or Encore may appeal the hearing decision by filing a civil action in state or federal court within 90 days of the final hearing decision.

(20 USC §§ 1415, subds. (i)(2) & (i)(3)(A), (l); 34 CFR § 300.516; Ed. Code §§ 56505, subds. (h) & (k), 56043 subd. (w).)

#### Attorneys’ Fees



A parent who is a prevailing party in a due process hearing may be awarded some or all of their attorneys' fees and costs. Fee awards may be reduced based on various factors.

(20 USC § 1415 subd. (i)(3)(B) - (G); 34 CFR § 300.517.)

## **6. Mediation and Alternative Dispute Resolution**

A request for mediation may be made either before or after either the parent or Encore has requested a due process hearing. In addition, either party may request that any disputes or concerns be resolved through alternative dispute resolution ("ADR") provided by the Desert Mountain Charter SELPA.

"Prehearing mediation" refers to mediation that is requested prior to the filing of a due process complaint. Requests for prehearing mediation are filed with the State Superintendent, Office of Administrative Hearings ("OAH"), and are subject to specific legal requirements. After a due process hearing is filed, the parties are also given the opportunity to participate in mediation.

(*Ed. Code §§ 56500.3, 56503.*)

## **7. School Discipline and Alternative Interim Educational Settings**

Encore shall ensure that it complies with all legally mandated procedures regarding the discipline of students with disabilities including, but not limited to, procedures for:

- a. Conducting manifestation determinations;
- b. Removing students from their current placement; and
- c. Placing students in an "interim alternative educational setting."

(20 USC § 1415 subd. (k); 34 CFR §§ 300.530, 300.531 subd. (c); Ed. Code § 48915.5 subd. (b).)

## **8. Children Attending Private Schools**

Encore shall ensure that it complies with all legally mandated procedures regarding children placed in private schools by their parents. The term "parentally placed private school students" refers to students placed in private schools by their parents without the consent of or referral by Encore. While Encore is responsible for making FAPE available to these students, it does not have to provide special education while they are parentally placed in a private school.

A parent may reject Encore's offer of FAPE and then seek reimbursement for a private school placement. However, the parent's request for reimbursement may be denied where the parent has not given proper notice to Encore regarding their rejection of Encore's placement offer. A





parent's failure to provide notice may not result in a denial of their claim where Encore failed to provide the parent with Notice of Procedural Safeguards, where notice would result in harm to the student, and other statutory grounds.

(20 USC § 1412 subd. (a)(10)(C); 34 CFR § 300.148; Ed. Code §§ 56176, 56177.)

## **9. Surrogate Parent Appointments**

Encore shall ensure that an individual is assigned to act as a “surrogate parent” for the parents of a student with a disability when a parent cannot be identified and Encore cannot discover the whereabouts of a parent, or as otherwise required by law.

(20 USC § 1415 subd. (b)(2); 34 CFR § 300.519; Ed. Code § 56050; Gov. Code §§ 7579.5, 7579.6.)

## **10. State Complaint Procedures**

Parents may file a state compliance complaint against Encore when they believe that Encore has violated federal or state special education laws or regulation. There are legal specific requirements covering the content and filing of these complaints.

Complaints alleging violations of federal and state special education laws or regulations may be mailed to:

California Department of Education  
Special Education Division  
Procedural Safeguards Referral Service  
1430 N Street, Suite 2401  
Sacramento, CA 95814

(34 CFR §§ 300.151–153; 5 CCR §§ 4600, 4640, 4660 et seq.)