

Instruction

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION

Due Process Hearing Procedures

A parent/guardian, the District, and/or a student who is emancipated or a ward or dependent of the court may initiate due process hearing procedures whenever: (Education Code 56501)

1. There is a proposal to initiate or change the identification, assessment, or educational placement of the student or the provision of a free, appropriate public education to the student.
2. There is a refusal to initiate or change the identification, assessment, or educational placement of the student or the provision of a free, appropriate education to the student.
3. The parent/guardian refuses to consent to an assessment of his/her child.

Upon requesting a due process hearing, the parent/guardian or attorney representing the child shall provide notice, which shall remain confidential, to the District specifying: (20 USC 1415(b); 34 CFR 300.507)

1. The child's name.
2. The child's address.
3. The name of the school the child attends.
4. A description of the nature of the child's problem relating to the proposed or refused initiation or change, including facts relating to the problem.
5. A proposed resolution to the problem to the extent known and available to the parents/guardians at the time.

Before requesting a state mediation conference or due process hearing, parties may ask to meet informally to resolve the issue(s). The District Superintendent or designee shall conduct this informal meeting and shall have the authority to resolve the problem(s).

Attorneys may participate only in those mediation conferences that are scheduled after the filing of a request for due process hearing. (Education Code 56500.3, 56501)

This conference shall be scheduled if both parties agree to mediate and are willing to extend the 45-day limit for issuing a hearing decision for a period equal to the length of the mediation process. (Education Code 56501)

Parties requesting a due process hearing shall file their request with the Superintendent of Public Instruction or designated contracted agency and give a copy of the request, at the same time, to the other party. (Education Code 56502)

Instruction

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION
(continued)

A least five business days prior to a due process hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. (20 USC 1415(f))

Due Process Hearing Rights

Due process hearing rights include: (Education Code 56501, 56506)

1. The right to state prehearing mediation conference pursuant to Education Code 56500.3.
2. The right to request a mediation conference at any point during the hearing process.
3. The right to examine student records and receive copies within five days of request.
4. The right to a fair and impartial administrative hearing at the state level before a person knowledgeable and under contract in accordance with law.
5. The right to have the student who is the subject of the state hearing present at the hearing.
6. The right to open the state hearing to the public.
7. The right to initiate referral of a child for special education pursuant to Education Code 56303.
8. The right to obtain an independent educational assessment pursuant to Education Code 56329.
9. The right to participate in the development of the Individualized Education Program (IEP) and be informed of the availability under state and federal law of Free and Appropriate Public Education (FAPE) and of all available alternative programs, both public and nonpublic.
(cf. 6159 - Individualized Education Program)
10. The right to obtain written parental consent pursuant to Education Code 56321 before any assessment of the student is conducted unless the District or SELPA prevails in a due process hearing relating to such assessment. Informed parental consent need not be obtained in the case of a reassessment of the student if the District can demonstrate that reasonable measures have been taken to obtain consent and that the student's parent/guardian has failed to respond.
11. The right to obtain written parental consent pursuant to Education Code 56321 before the student is placed in a special education program.

Instruction

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION
(continued)

The parties shall also have the following rights: (5 CCR 3082)

1. The right to call witnesses, including adverse witnesses, including the right to issue subpoenas.
2. The right to compel the attendance of witnesses, including the right to issue subpoenas.
3. The right to have witnesses excluded from the hearing.
4. Because hearings are conducted in English, the right to an interpreter, when the primary language of a party to a hearing is other than English, or other mode of communication.
5. The right of parents/guardians to determine whether the due process hearing will be open or closed to the public.
6. If the hearing officer conducts all or part of a hearing by electronic means, the right of each participant in the hearing to participate in and hear the entire proceeding while it is taking place and to observe exhibits.

At the hearing, the parent/guardian shall have the right to be accompanied and advised by counsel individuals with special knowledge or training with respect to the problems of children with disabilities. (34 CFR 300.509)

The parent/guardian shall have the right to obtain a written or, at his/her option, electronic verbatim recording of the hearing. In addition, the parent/guardian shall have the right to obtain written, or, at his/her option, electronic findings of facts and decisions. The District shall provide this record and findings of fact to the parent/guardian at no cost.

Prior Written Notice

The Superintendent or designee shall send parents/guardians a prior written notice whenever there is a proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free and appropriate public education. This notice shall include: (30 USC 1415(c)); 34 CFR 300.503)

1. A description of the action proposed or refused by the District.
2. An explanation as to why the District proposes or refuses to take the action.

Instruction

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION
(continued)

3. A description of any other options that the District considered and why those options were rejected.
4. A description of each evaluation procedure, test, record or report the District used as a basis for the proposed or refused action.
5. A description of any other factors that are relevant to the District's proposal or refusal.
6. A statement that the parents/guardians of the student have protection under procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the description of procedural safeguards can be obtained.
7. Sources for parents/guardians to obtain assistance in understanding these provisions.

(cf. 5145.6 - Parental Notifications)

Students with disabilities and their parents/guardians shall be provided written notice of their rights in language easily understood by the general public and in the primary language of the parent/guardian or other mode of communication used by the parent/guardian, unless to do so is clearly not feasible. The notice shall include, but not be limited to, those rights prescribed by Education Code 56341. (Education Code 56341, 56506; 34 CFR 300.503)

If the native language or other mode of communication of the parent/guardian is not a written language, the District shall take steps to ensure that: (34 CFR 300.503)

1. The notice is translated orally or by other means to the parent/guardian in his/her native language or other mode of communication.
2. The parent/guardian understands the contents of the notice.
3. There is written evidence that #1 and #2 have been satisfied.

Procedural Safeguards Notice

A procedural safeguards notice shall be made available to parents/guardians of students with a disability upon: (20 USC 1415(d))

1. Initial referral for evaluation,
2. Each notification of an IEP meeting,
3. Reevaluation of the student, or
4. Registration of a complaint.

Instruction

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION
(continued)

This notice shall include information on the procedures for requesting an informal meeting, prehearing mediation conference, mediation conference, or due process hearing; the timelines for completing each process; whether the process is optional; the type of representative who may be invited to participate; and the right of the parent/guardian and/or the District to electronically record the proceedings of the IEP meeting in accordance with Education Code 56341. A copy of this notice shall be attached to the student's assessment plan and referred to at each IEP meeting. (Education Code 56321, 56321.5)

In addition, this notice shall include a full explanation of the procedural safeguards relating to: independent educational evaluation; prior written notice; parental consent; access to educational records; opportunity to present complaints; the student's placement while due process proceedings are pending; procedures for students who are subject to placement in an interim alternative educational setting; requirements for unilateral placement by parent/guardians or students in private schools at public expense; mediation; due process hearings; state-level appeals; civil action; and attorney's fees. (20 USC 1415(d); 34 CFR 300.504)

(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities)
(cf. 6164.4 - Identification of Individuals for Special Education)