

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION**Procedural Safeguards/Due Process Hearings**

~~In order to protect the rights of students with disabilities and their parents/guardians, the District shall follow all procedural safeguards as set forth in law.~~

~~Parents/guardians shall receive written notice of their rights, including the right to a due process hearing for any dispute related to the identification, assessment or educational placement of a child or the provision of a free, appropriate public education to the child.~~

The Board of Education recognizes its obligation to provide a free appropriate public education (FAPE) to students with disabilities and to uphold the rights of parents/guardians to be involved in educational decisions regarding their child. Parents/guardians of students with disabilities shall receive written notice of their rights under the federal Individuals with Disabilities Education Act.

Whenever there is a dispute between the district and the parent/guardian of a student with disabilities regarding the identification, assessment, or educational placement of the student or the provision of FAPE to the student, the Superintendent or designee shall encourage the early, informal resolution of the dispute at the school level to the extent possible. The district or parent/guardian may also request mediation and/or a due process hearing in accordance with law, Board policy, and administrative regulation.

Any complaint alleging the district's noncompliance with federal or state laws or regulations related to the provision of a free appropriate public education to students with disabilities shall be filed in accordance with 5 CCR 3200-3205.

(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))

(cf. 5145.6 - Parental Notifications)

(cf. 6159 - Individualized Education Program)

(cf. 6159.2 - Nonpublic, Nonsectarian School and Agency Services for Special Education)

(cf. 6159.3 - Appointment of Surrogate Parent for Special Education Students)

(cf. 6159.4 - Behavioral Interventions for Special Education Students)

(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)

The Superintendent or designee shall represent the District in any due process hearings conducted with regard to District students and shall provide the Board of Education with the results of these hearings.

Complaints for Special Education

Complaints concerning compliance with state or federal law or regulations regarding special education shall be addressed in accordance with the District's uniform complaint procedures, except that the timeline for resolution of such complaints shall be 60 days, including any state involvement.

(cf. 1312.3 - Uniform Complaint Procedures)

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Legal References:

EDUCATION CODE

56000 Education for individuals with exceptional needs

56001 Provision of the special education programs

56020-56035 Definitions

56195.7 Written agreements

56195.8 Adoption of policies for programs and services

56300-56381 Identification and referral, assessment, instructional planning, implementation and review

56440-56447.1 Programs for individuals between the ages of three and five years

56500-56507 Procedural safeguards, including due process rights

56600-56606 Evaluation, audits and information

CODE OF REGULATIONS, TITLE 5

~~3000-3089 Regulations governing special education~~

3000-3100 Regulations governing special education, especially:

3080-3089 Procedural safeguards

3200-3205 Special education compliance complaints

~~4600-4671 Uniform complaint procedures~~

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act

1400-1491 Individuals with Disabilities Education Act

UNITED STATES CODE, TITLE 29

794 Section 504 of the Rehabilitation Act

CODE OF FEDERAL REGULATIONS, TITLE 34

99.10-99.22 Inspection, review and procedures for amending education records

104.36 Procedural safeguards

300.500-300.517 Due process procedures for parents and children

UNITED STATES CODE, TITLE 42

11434 Homeless assistance

300.1-300.818 Assistance to states for the education of students with disabilities, especially:

300.150-300.153 State compliance complaints

300.500-300.520 Procedural safeguards and due process for parents and students

COURT DECISIONS

Winkelman v. Parma City School District, (2007) 550 U.S. 516

Management Resources:

WEB SITES

~~CDE: <http://www.cde.ca.gov>~~

California Department of Education, Special Education: <http://www.cde.ca.gov/sp/se>

Office of Administrative Hearings, Special Education Division:

<http://www.dgs.ca.gov/OAH/Case-Types/Special-Education>

U.S. Department of Education, Office of Special Education Programs:

<http://www.ed.gov/about/offices/list/osers/osep>

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Policy amended: Date Pending

Policy adopted: November 1, 2001

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION**Due Process Hearing Procedures*****Filing Due Process Complaints***

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: (20 USC 1415(b); 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 public education to the student.
3. The parent/guardian refuses to consent to an assessment of his/her child.
4. There is a disagreement between a parent/guardian and the district regarding the availability of a program appropriate for the student, including the question of financial responsibility, as specified in 34 CFR 300.148 (formerly 300.403).

~~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 300.508 Education Code 56502)~~

Prior to having a due process hearing, the party requesting the hearing, or the party's attorney, shall provide the opposing party a due process complaint, which shall remain confidential, specifying: (Education Code 56502; 20 USC 1415; 34 CFR 300.508)

1. The ~~child's~~ *student's* name
2. The ~~child's~~ *student's* address or, in the case of a student identified as homeless pursuant to 42 USC 11434, available contact information for that student

(cf. 6173 – Education for Homeless Children)

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

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The request shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. This timeline shall not apply if the district misrepresented that it had solved the problem or withheld required information from the parent/guardian. (Education Code 56505; 20 USC 1415; 34 CFR 300.507, 300.511)

***District's* Response to Due Process Complaints**

If the district has not sent a prior written notice to the parent/guardian regarding the subject matter contained in the parent/guardian's due process complaint, the district shall send a response to the parent/guardian within 10 days of receipt of the complaint specifying: (20 USC 1415(c)(1); 34 CFR 300.508):

1. An explanation of why the district proposed or refused to take the action raised in the complaint
2. A description of other options that the IEP team considered and the reasons that those options were rejected

(cf. 6159 - Individualized Education Program)

3. A description of each evaluation procedure, assessment, record, or report the district used as the basis for the proposed or refused action
4. A description of the factors that are relevant to the district's proposal or refusal

If the district has sent prior written notice to the parent/guardian regarding the subject matter of the parent/guardian's due process complaint, the district shall, within 10 days of receipt, send a response specifically addressing the issues in the complaint. (20 USC 1415~~(c)(1)~~; 34 CFR 300.508)

Parties filing a due process complaint shall file their request with the Superintendent of Public Instruction or designated contracted agency. (Education Code 56502)

Upon the filing of a due process complaint by either party or upon request of the parent/guardian, the district shall inform the parent/guardian of any free or low-cost legal and other relevant services available in the area. (34 CFR 300.507)

Informal Process/Pre-Hearing Mediation Conference

Before requesting a state mediation conference or due process hearing, or when a due process hearing is pending, parties may ask to meet informally to resolve the issue(s). In addition, parties may choose to utilize the SELPA's alternative dispute resolution (ADR) Solutions Pane

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Prior to or upon initiating a due process hearing, the Superintendent or designee and a parent/guardian may, if the party initiating the hearing so chooses, agree to meet informally to resolve any issue(s) relating to the identification, assessment, or education and placement of a student with disabilities. The Superintendent or designee shall have the authority to resolve the issue(s). In addition, either party may file a request with the Superintendent of Public Instruction for a mediation conference to be conducted by a person under contract with the California Department of Education. (Education Code 56502)

If resolution is reached that resolves the due process issue(s), the parties shall enter into a legally binding agreement that satisfies the requirements of Education Code 56500.3. (Education Code 56500.3)

In addition, either party may file a request with the state Office of Administrative Hearings for a mediation conference. (Education Code 56500.3)

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)

A mediation 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)

At least five business days prior to a due process hearing, the 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 and Due Process Rights

Due process hearing rights include: (Education Code 56501)

1. The right to a 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

(cf. 5125 - Student Records)

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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

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

1. The right to call witnesses, including adverse witnesses, and to cross-examine witnesses
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 and by 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. This record and findings of fact shall be provided to the parent/guardian at no cost. (34 CFR 300.509)

In addition to the due process hearing right above, the following due process rights extend to the student and the parent/guardian: (Education Code 56506)

1. The right to initiate referral of a child for special education pursuant to Education Code 56303

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2. The right to obtain an independent educational assessment pursuant to Education Code 56329
3. 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)

Further written parental consent pursuant to Section 56321 shall be obtained before any assessment of the student is conducted unless the District prevails in a due process hearing relating to the assessment. Informed parental consent need not be obtained in the case of a reassessment of the student if the District can demonstrate that it has taken reasonable measures to obtain consent and the student's parent/guardian has failed to respond.

Written parental consent pursuant to Section 56321 shall also be obtained before the student is placed in a special education program.

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 within a reasonable time before: ~~(20 USC 1415(e); 34 CFR 300.503; Education Code 56500.4, 56500.5)~~ *(Education Code 56346, 56500.4, 56500.5; 20 USC 1415; 34 CFR 300.102, 300.300, 300.503)*

1. The district initially refers the student for assessment
- ~~2. The district proposes to initiate or change the student's identification, assessment, educational placement, or the provision of a free appropriate public education (FAPE) to the student~~
2. The district refuses to initiate or change the student's identification, assessment, or educational placement or the provision of FAPE to the student
3. The student graduates from high school with a regular diploma thus resulting in a change of placement
4. Upon receipt of the parent/guardian's written revocation of consent for the continued provision of special education and related services to his/her child

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~~This notice shall include: (20 USC 1415[e]; 34 CFR 300.503)~~

This prior written notice shall include: (Education Code 56500.4; 20 USC 1415; 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
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)

Format of Parent/Guardian Notices

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 items #1 and #2 have been satisfied

The district may place a copy of the procedural safeguards notice on the district's web site. (20 USC 1415(d))

A parent/guardian of a student with disabilities may elect to receive the prior written notice or procedural safeguards notice by an electronic mail communication. (34 CFR 300.505)

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Procedural Safeguards Notice

A procedural safeguards notice shall be made available to parents/guardians of students with a disability once a school year and: (20 USC 1415(d)(1); 34 CFR 300.504; Education Code 56301)

1. Upon initial referral or parent/guardian request for assessment
2. Upon receipt of the first state compliance complaint and upon receipt of the first due process complaint in a school year

(cf. 1312.3 - Uniform Complaint Procedures)

3. In accordance with the discipline procedures pursuant to 34 CFR 300.530(h), when a decision is made to remove a student because of a violation of a code of conduct which constitutes a change of placement

(cf. 5144.1 - Suspension and Expulsion/Due Process (Students with Disabilities))

4. Upon request by a parent/guardian

~~This notice shall include information on the procedures for requesting an informal meeting alternative dispute resolution, 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; the right of the parent/guardian and/or the District to electronically record the proceedings of IEP meetings in accordance with Education Code 56341; and information regarding the state special schools for students who are deaf, hard of hearing, blind, visually impaired, or deaf blind. 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 of 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)*~~

The procedural safeguards notice shall include a full explanation of all of the procedural safeguards available under 34 CFR 300.148, 300.151-300.153, 300.300, 300.502-300.503, 300.505-300.518, 300.520, 300.530-300.536, and 300.610-300.625 relating to: (Education Code 56301; 20 USC 1415; 34 CFR 300.504)

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1. *Independent educational evaluation*

(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)

2. *Prior written notice*

3. *Parental consent, including a parent/guardian's right to revoke consent, in writing, to the student's continued receipt of special education and related services*

4. *Access to educational records*

(cf. 5125 - Student Records)

5. *Opportunity to present complaints and resolve complaints through the due process complaint and state compliance complaint procedures, including the time period in which to file a complaint, the opportunity for the district to resolve the complaint, and the difference between a due process complaint and the state compliance complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedure*

6. *The availability of mediation*

7. *The student's placement during the pendency of any due process complaint*

8. *Procedures for students who are subject to placement in an interim alternative educational setting*

9. *Requirements for unilateral placement by parents/guardians of students in private schools at public expense*

10. *Hearings on due process complaints, including requirements for disclosure of assessment results and recommendations*

11. *State-level appeals*

12. *Civil actions, including the time period in which to file those actions*

13. *Availability of attorneys' fees pursuant to 34 CFR 300.517*

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This notice shall also include the rights and procedures contained in Education Code 56500-56509, including: (Education Code 56321, 56321.5, 56321.6)

- 1. Information on the procedures for requesting an informal meeting, prehearing mediation conference, mediation conference, or due process hearing*
- 2. The timelines for completing each process*
- 3. Whether the process is optional*
- 4. The type of representative who may be invited to participate*
- 5. The right of the parent/guardian and/or the district to electronically record the proceedings of IEP meetings in accordance with Education Code 56341.1*
- 6. Information regarding the state special schools for students who are deaf, hard of hearing, blind, visually impaired, or deaf-blind*

A copy of this notice shall be attached to the student's assessment plan. At each IEP meeting, the Superintendent or designee shall inform the parent/guardian of the federal and state procedural safeguards that were provided in the notice. (Education Code 56321, 56500.1)