

Instruction

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION

Procedural Safeguards/Due Process Hearings

In order to protect the rights of students with disabilities the district shall follow all procedural safeguards as set forth in law. Parents/guardians shall receive written notice of their rights in accordance with law, Board Policy, and administrative regulation.

The Superintendent or designee shall represent the district in any due process hearings conducted with regard to district students and shall inform the Board of Trustees with the result of the hearings.

Complaints for Special Education

Complaints concerning compliance with state or federal law regarding special education shall be addressed in accordance with the district's uniform complaint procedures.

(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 Students)

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

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

(cf. 6164.4 – Identification of Individuals for Special Education)

(cf. 1312.3 – Uniform Complaint Procedures)

Legal Reference:

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

56300-56385 Identification and referral, assessment

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

56500-56509 Procedural safeguards, including due process rights

56600-56606 Evaluation, audits and information

CODE OF REGULATIONS, TITLE 5

3000-3100 Regulations governing special education

4600-4671 Uniform complaint procedures

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act

1400-1482 Individuals with Disabilities Education Act

UNITED STATES CODE, TITLE 29

794 Section 504 of the Rehabilitation Act

UNITED STATES CODE, TITLE 42

11434 Homeless assistance

CODE OF FEDERAL REGULATIONS, TITLE 34

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

104.36 Procedural safeguards

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

300.500-3..-520 Procedural safeguards and due process for parents and students

Management Resources:

FEDERAL REGISTER

Rules and Regulations, August 14, 2006, Vol. 71, Number 156, pages 46539-46845

WEBSITES

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

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

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

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Instruction

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION

Prior Written Notice

The Superintendent or designee shall send to the parents/guardians of any student with disabilities a prior written notice within a reasonable time before: (20USC 1415(c); 34 CFR 300.503; 56500.5)

1. The district initially refers the student for assessment
2. The district proposes to initiate or change the student's identification, educational placement or the provision of a free, appropriate public education
3. The district refuses to initiate or change the identification, evaluation or educational placement of the student or the provision of a free and appropriate public education (FAPE) to the student
4. The student graduates from high school with a regular diploma

This notice shall include: (20 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
3. A description of any other options that the individualized education program (IEP) team considered and why those options were rejected
4. A description of each assessment procedure, test, record or report the district used as a basis for the proposed or refused action
5. A description of any other factors 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 assessment, 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

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 1414(d)(1)34 CFR 300.504; Education Code 56301)

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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.
3. In accordance with the discipline procedures pursuant to 34 CFR 300530(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
4. Upon request by a parent/guardian

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: (20 USC 1415(d)(2); 34 CFR 300.504)

1. Independent educational evaluation
2. Prior written notice
3. Parental consent
4. Access to educational 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 procedures
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

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12. Civil actions, including the time period in which to file those actions
13. Attorney's fees

This notice shall also include the rights and procedures contained in Education Code 56500-56509 including 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 IEP meetings in accordance with Education Code 56341. (Education Code 56321, 56321.5)

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)

Format of Parent/Guardian Notices

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

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)

Due Process Complaints

A parent/guardian and/or the district may initiate due process hearing procedures whenever: (20 USC 1415(b); Education Code 56501)

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1. There is a proposal to initiate or change the student's identification, assessment, or educational placement or the provision of FAPE to the student.
2. There is a refusal to initiate or change the student's identification, assessment, or educational placement or the provision of FAPE 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).

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: (20 USC 1415(b); 34 CFR 300.508; Education Code 56502)

1. The student's name
2. The student's address or, in the case of a student identified as homeless pursuant to 42 USC 11434, available contact information for that student
3. The name of the school the student attends
4. A description of the nature of the student'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 complaining party at the time

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
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

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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

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)

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

(cf. 5145.6 - Parental Notifications)

(cf. 1312.3 – Uniform Complaint Procedures)

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

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

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

(cf. 6173 – Education for Homeless Children)

(cf. 6159 – Individualized Education Program)

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