

Instruction

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION

Informal Process/Pre-Hearing Mediation Conference

Before requesting a due process hearing, the Superintendent or designee and a parent/guardian may 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). (Education Code 56502)

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. Based on the mediation conference, the Superintendent or designee may resolve the issue(s) in a manner that is consistent with state and federal law and is to the satisfaction of both parties. (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)

If either of these processes fails to resolve the issue(s), either party may file for a state-level due process hearing.

Due Process Complaint Notice and 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: (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 refused 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 300.403(b).

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Due Process Complaint Notice and Hearing Procedures (continued)

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 notice, which shall remain confidential, specifying:

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.

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 notice, the District shall send a response to the parent/guardian within 10 days of receipt of the complaint specifying:

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 individualized education program (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.

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.

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)

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Prior Written Notice

The Superintendent or designee shall send to parent/guardian of any student with a disability a prior written notice within a reasonable time before:

1. The District initially refers the student for assessment;
2. The District proposes to initiate or change the student's identification, evaluation, 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.

This notice shall include:

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 IEP team 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 relevant to the District's proposal or refusal;
6. A statement that the parent/guardian 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 description of procedural safeguards can be obtained;
7. Sources for parent/guardian to obtain assistance in understanding these provisions.

Student with disabilities and their parents/guardian 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.

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Prior Written Notice (continued)

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:

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.

Procedural Safeguards Notice

A procedural safeguards notice shall be made available to parent/guardian of students with a disability once a year and upon:

1. Initial referral for evaluation
2. Each notification of and IEP meeting
3. Reevaluation of the student
4. Registration of a complaint
5. Filing for a prehearing mediation conference or a due process hearing

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 IEP meetings in accordance with Education Code 56341. A copy of this notice shall be attached to the student's assessment plan and referred to each IEP meeting.

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 to initiate due process hearings; 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; attorney's fees, and the state's complaint procedure.