

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION

Procedural Safeguards/Due Process Hearings

In order to protect the rights of students with disabilities and their parent/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.

(cf. 5145.6 – Parental Notifications)
(cf. 6159 – Individualized Education Program)

The Superintendent or designee shall represent the district in any due process hearings conducted with regard to district students and shall provide the Governing Board with the results of these 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. 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
56300-56381 – 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

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

Management Resources:

WEB SITES
CDE: <http://www.cde.ca.gov>

Policy adopted: December 7, 2004

EL RANCHO UNIFIED SCHOOL DISTRICT
Pico Rivera, California

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 the student. 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 as described below.

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 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 300.403(b).

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

1. The student's name
2. The student's address
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 parents/guardians at the time

At 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. (20USC 1415(f))

Due Process Hearing Rights

Due processing hearing rights include: (34 CFR 300.509; Education Code 56501, 56505, 56506, 5 CCR 3082)

1. The right to a mediation conference pursuant to Education Code 56500.3.
2. The right to request a mediation conference at any point during the hearing process.

The mediation process shall not be used to deny or delay a parent/guardian's right to a due process hearing or to deny any other rights afforded under the Individuals with Disabilities Education Act.

3. The right to examine student records and receive copies within five days of request.

(cf. 5125 – Student Records)

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 call witnesses, including adverse witnesses, and to cross-examine witnesses.

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8. The right to compel the attendance of witnesses, including the right to issue subpoenas.
9. The right to have witnesses excluded from the hearing.
10. 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.
11. At the hearing, 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.
12. 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.
13. The right to written, or at the option of the parent, guardian, electronic findings of facts and decisions.

The district shall provide this record and findings of fact to the parent/guardian at no cost.
14. The right to be informed by the other parties to the hearing, at least 10 days prior to the hearing, as to what those parties believe are the issues to be decided at the hearing and their proposed resolution of the issues.

Parents/guardians or emancipated students have the following additional due process rights: (Education Code 56506, 5CCR 3082)

1. The right to receive written notice of parent/guardian rights pursuant to Education Code 56506.
2. The right to initiate referral of a child for special education pursuant to Education Code 56303.
3. The right to obtain an independent educational assessment pursuant to Education Code 56329.
4. 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 and of all available alternative programs, both public and nonpublic.

(cf. 6159 – Individualized Education Program)

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5. The right to provide written parental consent pursuant to Education Code 56321 before any assessment of the student is conducted unless the district or Special Education Local Plan Area prevails in a due process hearing relating to such assessment.

Informed parent 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.

6. The right to provide written parental consent pursuant to Education Code 56321 before the student is placed in a special education program.
7. The right to determine whether the due process hearing will be open or closed to the public.

Prior Written Notice

The Superintendent or designee shall send to parents/guardians of a student with a disability, a prior written notice within a reasonable time before: (Education Code 56500.4, 56500.5, 20 USC 1415(c); 34 CFR 300.503)

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.
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 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 parent/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.

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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; 34CFR 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.

Procedural Safeguards Notice

A procedural safeguards notice shall be made available to parents/guardians of students with a disability upon: (Education Code 56301, 20 USC 1415(d))

1. Initial referral for evaluation
2. Each notification of an 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 proceeding 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 at each IEP meeting. (Education Code 56321, 56321.5)

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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.

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