

CVUSD

Administrative Regulation

AR 6159.1

Instruction

Procedural Safeguards And Complaints For Special Education

Note: The following mandated administrative regulation reflects the federal Individuals with Disabilities Education Act (IDEA) (20 USC 1400-1482), implementing federal regulations (34 CFR 300.1-300.818, as amended by 73 Fed. Reg. 231), and conforming state legislation. Note that in cases where state law provides greater protections to students, state law supersedes federal law.

***Note: Both federal and state law give parents/guardians the right to due process and require the district to provide procedural safeguards, as specified below. Education Code 56501 extends these rights to the student only if he/she is an emancipated minor or a ward or dependent of the court with no available parent/guardian or surrogate parent. See AR 6159.3 - Appointment of Surrogate Parent for Special Education Students. As part of these rights, districts must provide two different notices, the prior written notice and the procedural safeguards notice, to parents/guardians at specified times detailed below. ***

Prior Written Notice

Note: Pursuant to 20 USC 1415(b)(1), districts are mandated to adopt procedures relative to the prior written notice as specified in 20 USC 1415(c)(1) and listed below.

The Superintendent or designee shall send to the parents/guardians of any student with disabilities a prior written notice within a reasonable time: (20 USC 1415(c); 34 CFR 300.102, 300.300, 300.503; Education Code 56500.4, 56500.5)

1. Before the district initially refers the student for assessment
2. Before 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
3. Before the district refuses to initiate or change the student's identification, assessment, or educational placement or the provision of FAPE to the student
4. Before the student graduates from high school with a regular diploma thus resulting in a change in placement

***Note: As amended by 73 Fed. Reg. 231, 34 CFR 300.300 states that a parent/guardian may revoke consent for the continued provision of special education and related services to his/her child at any time. Upon receipt of this written revocation, 34 CFR 300.300 requires the district to provide prior written notice and, within a reasonable period of time, discontinue all services to the student. See BP 6164.4 - Identification and Evaluation of Individuals for Special Education. ***

5. 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

This notice shall include: (20 USC 1415(c); 34 CFR 300.503; Education Code 56500.4)

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 each assessment procedure, test, record, or report the district used as a basis for the proposed or refused action
4. 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
5. Sources for parents/guardians to obtain assistance in understanding these provisions
6. A description of any other options that the individualized education program (IEP) team considered and why those options were rejected

(cf. 6159 - Individualized Education Program)

7. A description of any other factors relevant to the district's proposal or refusal

(cf. 5145.6 - Parental Notifications)

Procedural Safeguards Notice

***Note: 20 USC 1415(d)(1), 34 CFR 300.504, and Education Code 56501 specify that the procedural safeguards notice must be given to parents/guardians once per school year and upon the occurrence of any of the events specified below. A sample procedural safeguards notice is available on the California Department of Education's (CDE) web site. ***

A procedural safeguards notice shall be made available to parents/guardians of students with disabilities once each 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 in a school year

(cf. 1312.3 - Uniform Complaint Procedures)

3. Upon receipt of the first due process hearing request in a school year

4. 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 constituting a change of placement

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

5. Upon request by a parent/guardian

Note: 34 CFR 300.504 requires the procedural safeguards notice to include a full explanation of the safeguards available to parents/guardians under the laws listed below, including 34 CFR 300.300 regarding parent/guardian consent. 73 Fed. Reg. 231 amended 34 CFR 300.300 to authorize a parent/guardian to revoke consent to his/her child's continued receipt of special education and related services; thus, the procedural safeguards notice must include a full explanation of that right to revocation.

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; Education Code 56301)

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

Note: In addition to the requirements of federal law listed in items #1-13 above, Education Code 56321 requires that the procedural safeguards notice contain the additional information specified below. Education Code 56321 also requires that the notice be attached to any assessment plan which is developed whenever an assessment is to be conducted for the development or revision of the IEP.

Note: As added by AB 2555 (Ch. 245, Statutes of 2008), Education Code 56321.6 requires that the procedural safeguards notice also include information regarding the state special schools for students who are deaf or blind, as specified below.

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; 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. (Education Code 56321, 56321.5, 56321.6)

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

***Note: 20 USC 1415(b) mandates that districts adopt procedures to ensure that the parent/guardian notice is in the native language of the parent/guardian, unless it is clearly not feasible to do so. 34 CFR 300.29 defines "native language" as the language normally used by

the individual and, for a child, the language regularly used in the home environment. Pursuant to 34 CFR 300.503 and 300.504, the notice must be in an "understandable language" as specified below.***

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. (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

Note: In California, due process hearings required by federal law are held only at the state level. Related rights and procedures are set forth in Education Code 56501-56506 and 5 CCR 3080-3089. Note that in cases where state law provides greater protection, state law supersedes federal law. 20 USC 1415(f)(3)(C) and Education Code 56505, effective October 9, 2006, specify that a due process complaint must be filed within two years of the date that the parent/guardian or district knew or should have known about the situation that forms the basis of the complaint. Both federal law (34 CFR 300.507 and 300.511) and state law (Education Code 56505) provide exceptions to that filing timeline and allow parents/guardians to file a complaint past the two-year deadline if the district has made specific misrepresentations or withheld information.

***Note: When a parent/guardian has revoked consent for the continued provision of special education services to his/her child, 34 CFR 300.300, as amended by 73 Fed. Reg. 231, specifies that a district may not use the due process hearing procedures to obtain an agreement or a ruling to require that services be provided. In the Analysis of Comments and Changes, 73 Fed. Reg. 231, page 73016, the U.S. Department of Education clarifies that this revocation of consent to discontinue services is different from a discontinuation of services based on the determination that the student is no longer a child with a disability. If a district believes that a student is no longer a child with a disability, then 34 CFR 300.305 requires the district to evaluate the child

before making such a determination. If the parent/guardian disagrees with the eligibility determination, then he/she may challenge the decision using the due process procedures.***

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

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.

Note: Pursuant to 20 USC 1415(b) and 34 CFR 300.508, the district is mandated to adopt procedures (1) requiring either party (the district or the parent/guardian) or their attorney to provide a due process complaint notice to the other party and (2) requiring that the party may not have a due process hearing until that complaint notice has been filed. The CDE has developed model forms to assist parties in filing a complaint and due process complaint notice.

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

(cf. 6173 - Education for Homeless Children)

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

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

District's Response to Due Process Complaints

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 of the complaint, send a response specifically addressing the issues in the complaint. (20 USC 1415(c)(1); 34 CFR 300.508)

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 containing: (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

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

Note: As an alternative to a due process hearing, Education Code 56500.3 provides that the parties may voluntarily participate in a mediation process conducted by a person under contract with the CDE. In addition, Education Code 56502 authorizes an informal meeting process conducted at the local level, as described in the following paragraph.

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, education and placement, or provision of FAPE for 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)

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