Procedural Safeguards & Complaints for Special Education

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Prior Written Notice

The Superintendent or designee shall send to the parents/guardians of any student with disabilities a prior written notice:

1. Before the district initially refers the student for assessment
2. Within a reasonable time 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. Within a reasonable time 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. Within a reasonable time before the student graduates from high school with a regular diploma thus resulting in a change in placement
5. Upon receipt of the parent/guardian's written revocation of consent for the continued provision of special education and related services to the student

This prior written 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 each assessment procedure, assessment, 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
7. A description of any other factors relevant to the district's proposal or refusal

Procedural Safeguards Notice

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

1. Upon initial referral or parent/guardian request for assessment
2. Upon receipt of the first state compliance complaint in a school year, filed in accordance with the section "State Compliance Complaints" below
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 removal of a student because of a violation of a code of conduct constitutes a change of placement
5. 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:

1. Independent educational evaluation
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
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. Availability of attorneys' fees pursuant to 34 CFR 300.517

This notice shall also include the rights and procedures contained in Education Code 56500-56509, including:

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.

Format of Parent/Guardian Notices

The parents/guardians of a student with a disability shall be provided written notice of their rights in 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.

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 the notice is translated orally or by other means in the parent/guardian's native language or other mode of communication and that the parent/guardian understands the contents of the notice.

The district may place a copy of the procedural safeguards notice on the district's web site.

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.

Filing Due Process Complaints

A parent/guardian and/or the district may initiate due process hearing procedures whenever:

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 the student
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

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:

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

Parties filing a due process complaint shall file their request with the state Office of Administrative Hearings, Special Education Division.

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.

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.

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:

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 assessment 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.

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, 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 state Office of Administrative Hearings for a mediation conference.

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.

Attorneys may attend or otherwise participate only in those mediation conferences that are scheduled after the filing of a request for due process hearing.

State Compliance Complaints

Any individual, including a person's duly authorized representative or an interested third party, public agency, or organization may file with the California Department of Education (CDE) a written and signed statement alleging that, within the previous year, any of the following occurred:

1. The district violated Part B of the Individuals with Disabilities Education Act (20 USC 1411-1419) and its implementing regulations (34 CFR 300.1-300.818)
2. The district violated Part 30 of the Education Code (Education Code 56000-56865) and 5 CCR 3200-3205
3. The district violated the terms of a settlement agreement related to the provision of FAPE, excluding any allegation related to an attorney fees provision in a settlement agreement
4. The district failed or refused to implement a due process hearing order to which the district is subject
5. Physical safety concerns interfered with the provision of FAPE

The complaint shall include:

1. A statement that the district has violated or failed to comply with any provision set forth in 5 CCR 3201
2. The facts on which the statement is based
3. The signature and contact information for the complainant
4. If alleging violations with respect to a specific student, the student's name and address (or other available contact information for a homeless student), the name of the school that the student is attending, a description of the nature of the student's problem and facts related to the problem, and a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed

The complainant shall forward a copy of the complaint to the Superintendent or designee at the same time the complaint is filed with CDE.

Within 30 days of the date of CDE's investigation report, the district or complainant may request reconsideration of the decision in accordance with 5 CCR 3204. Pending CDE's response, any corrective actions set forth in the report shall remain in effect and enforceable, unless stayed by a court.

Policy Reference Disclaimer:
These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the Board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

Legal References:

STATE

CALIFORNIA CODE OF REGULATIONS

5 CCR 3000-3100 Regulations governing special education
5 CCR 3080-3089 Procedural safeguards
5 CCR 3200-3205 Special education compliance complaints

EDUCATION CODES

56000 Special education; legislative findings and declarations
56001 Provision of the special education programs
56020-56035 Definitions
56195.7 Written agreements
56195.8 Adoption of policies
56300-56385 Identification and referral; assessment, instructional planning
56360-56369 Implementation of special education
56440-56447.1 Programs for individuals between the ages of three and five years
56500-56509 Procedural safeguards
56600-56606 Evaluation, audits and information

FEDERAL

UNITED STATES CODES

20 USC 1232g Family Educational Rights and Privacy Act (FERPA) of 1974
20 USC 1400-1482 Individuals with Disabilities Education Act
29 USC 794 Rehabilitation Act of 1973; Section 504
42 USC 11434 Homeless assistance

CODE OF FEDERAL REGULATIONS

34 CFR 104.36 Procedural safeguards
34 CFR 300.1-300.818 Assistance to states for the education of students with disabilities
34 CFR 300.150-300.153 State compliance complaints
34 CFR 300.500-300.520 Procedural safeguards and due process for parents and students
34 CFR 99.10-99.22 Inspection, review and procedures for amending education records

MANAGEMENT RESOURCES

COURT DECISION

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

WEBSITE

CSBA District and County Office of Education Legal Services https://legalservices.csba.org/
Office of Administrative Hearings, Special Education Division https://www.dgs.ca.gov/OAH/Case-Types/Special-Education
California Department of Education, Special Education http://www.cde.ca.gov/sp/se
U.S. Department of Education, Office of Special Education Programs
http://www2.ed.gov/about/offices/list/osers/osep

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