

Notice, Assessments, Independent Educational Assessments, Due Process Hearings, And Proposals For Publicly Financed Non-Public Placements

IEP Team Meeting Upon Completion of Assessment

Upon completion of a special education assessment of your child, an individualized education program (known as an IEP) team meeting, including you as the parent or guardian and your representatives, shall be scheduled to determine whether your child is an individual with exceptional needs as defined in Section 56026, and to discuss the assessment, the educational recommendations, and the reasons for these recommendations. (EC 56329[a][1])

Limiting Factors on Special Education Eligibility

In making a determination of eligibility for special education and related services, a pupil shall not be determined to be an individual with exceptional needs if the determinant factor for the determination is one of the following:

1. Lack of appropriate instruction in reading, including the essential components of reading instruction as defined in Section 6368(3) of Title 20 of the United States Code.
2. Lack of appropriate instruction in mathematics.
3. Limited-English proficiency.
4. If the pupil does not otherwise meet the eligibility criteria under Section 300.8(a) of Title 34 of the Code of Federal Regulations.

(EC 56329[a][2])

Copy of Assessment Report and Documentation of Determination of Eligibility

A copy of the assessment report and the documentation of determination of eligibility must be given to the parent or guardian. (EC 56329[a][3])

Independent Educational Assessments

In addition to the information provided to you in the Notice of Procedural Safeguards under the heading "Independent Educational Assessments" your educational rights or procedural safeguards includes the following:

If the parent or guardian obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the school district with respect to the provision of free appropriate public education to the child, and may be presented as evidence at a due process hearing regarding the child. (EC 56329[c].)

Procedures When a Parent or Guardian Proposes a Publicly Financed Placement in a Nonpublic School

If a parent or guardian proposes a publicly financed placement of the pupil in a nonpublic school, the following requirements will apply:

1. The school district shall have an opportunity to observe the proposed placement and the pupil in the proposed placement, if the pupil has already been unilaterally placed in the nonpublic school by the parent or guardian.
2. An observation conducted pursuant to this subdivision shall only be of the pupil who is the subject of the observation and shall not include the observation or assessment of any other pupil in the proposed placement.
3. The observation or assessment by a school district of a pupil other than the pupil who is the subject of the observation pursuant to this subdivision may be conducted, if at all, only with the consent of the parent or guardian pursuant to this article.
4. The results of an observation or assessment of any other pupil in violation of this subdivision shall be inadmissible in a due process or judicial proceeding regarding the free appropriate public education of that other pupil.

(EC 56329[d])

Due Process Hearing

When is a due process hearing available?

You have the right to request an impartial due process hearing regarding the identification, assessment, and educational placement of your child or the provision of FAPE. The request for a due process hearing must be filed within two years from the date you knew or should have known about the alleged action that forms the basis of the due process complaint. (20 USC 1415[b][6]; 34 CFR 300.507; EC 56501 and 56505[l])

Are there any exceptions to the two-year timeline for filing a request for due process hearing?

Yes. The two-year timeline for filing a request for due process hearing does not apply to a parent if the parent was prevented from filing a due process complaint due to either of the following:

1. Specific misrepresentations by the school district that it resolved the problem forming the basis of the due process complaint; or
2. The school district's withholding of information from the parent that was required under Title 34 Code of Federal Regulations, Subpart E "Procedural Safeguards Due Process Procedures for Parents and Children" (Sections 300.500-300-538).

(20 USC 1415[f][3][D]; 34 CFR 300.507 and 300.511[f]; EC 56501 and 56505[l])

Are there model forms available to assist parents in filing a request for due process complaint?

Yes. Each state educational agency must develop model forms to assist parents and school districts in filing a due process complaint and due process complaint notice. However, the state educational agency or the school district may not require the use of the model forms. Parents and school districts may use the appropriate model form, or another form or other document, so long as the form or document that is used meets the content requirements for filing a due process complaint. (20 USC 1415[b][8]; 34 CFR 300.509[a] and [b]; ED 56502[b])

For more information and who to contact regarding due process rights and filing a due process complaint, see the Notice of Procedural Safeguards under the headings “How Disputes are Resolved” and “Filing a Written Due Process Complaint”.

GLOSSARY OF ABBREVIATIONS USED IN THIS NOTIFICATION

ADR:	Alternative Dispute Resolution
CFR:	Code of Federal Regulations
EC:	California Education Code
FAPE:	Free Appropriate Public Education
IDEA:	Individuals with Disabilities Education Act
IEP:	Individualized Education Program
OAH:	Office of Administrative Hearings
SELPA:	Special Education Local Plan Area
USC:	United States Code