

**CLASSIFICATION: Instruction****ADOPTED: 12/13/95****REVISED: 7/13/16****REVIEWED: 6/21/16****SUBJECT: Procedural Safeguards and Complaints,  
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PRIOR WRITTEN NOTICE

Parental rights under the Individuals with Disabilities Education Act include the right to receive prior written notice from the local education agency (LEA) each time that the LEA proposes to take (or refuses to take) certain actions with respect to a student with disabilities.

The administrator responsible for directing the special education program under the jurisdiction of the County Superintendent of Schools, or his/her designee, (special education administrator or designee) shall send to the parents/guardians of any student with disabilities a prior written notice within a reasonable time:

1. Before the student is initially referred for assessment
2. Before initiating or changing the student's identification, assessment, educational placement, or the provision of a free appropriate public education (FAPE) to the student
3. Before refusing 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
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 the following information:

1. A description of the action proposed or refused
2. An explanation for the proposed or refused action

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3. A description of each assessment procedure, test, record, or report 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, except in the case of 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 the reason those options were rejected
7. A description of any other factors relevant to the proposed or refused action

**PROCEDURAL SAFEGUARDS NOTICE**

A procedural safeguards notice shall be made available to parents/guardians of students with disabilities once each school year and upon the occurrence of any of the events specified below:

1. Upon initial referral or parent/guardian request for assessment
2. Upon receipt of the first state compliance complaint in a school year
3. Upon receipt of the first due process hearing request in a school year
4. In accordance with the discipline procedures pursuant to Title 34, Code of Federal Regulations, section 300.530, when a decision is made to remove a student because of a violation of a code of conduct constituting a change of placement
5. Upon request by a parent/guardian

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The procedural safeguards notice shall include a full explanation of all of the procedural safeguards specified in Title 34, Code of Federal Regulations, section 300.530 and Education Code, section 56301 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 his/her child'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 special education administrator or designee 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

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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

This notice shall also include the rights and procedures contained in Education Code sections 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 LEA to electronically record the proceedings of IEP meetings in accordance with Education Code section 56341; and 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 and referred to at each IEP meeting.

#### FORMAT OF PARENT/GUARDIAN NOTICES

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.

If the native language or other mode of communication of the parent/guardian is not a written language, steps shall be taken to ensure that:

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1. The notice is translated orally or by other means in the parent's/guardian's 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.

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.

A copy of the procedural safeguards notice may be made available on the San Diego County Office of Education website.

#### DUE PROCESS COMPLAINTS

A parent/guardian and/or the special education administrator or designee may initiate due process hearing procedures under any of the following circumstances:

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 the parent/guardian and the special education administrator or designee regarding the availability of a program appropriate for the student, including the question of financial responsibility.

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. The due process complaint shall specify:

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1. The student's name
2. The student's address or, in the case of a student identified as homeless pursuant to Title 42, United States Code, section 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 Superintendent of Public Instruction or designated contracted agency.

#### RESPONSE TO DUE PROCESS COMPLAINTS

If the special education administrator or designee has sent prior written notice to the parent/guardian regarding the subject matter of the parent/guardian's due process complaint, the county office shall, within 10 days of receipt of the complaint, send a response specifically addressing the issues in the complaint.

If the special education administrator or designee has not sent a prior written notice to the parent/guardian regarding the subject matter contained in the parent/guardian's due process complaint, he/she shall send a response to the parent/guardian within 10 days of receipt of the complaint containing:

1. An explanation of the reason the special education administrator or designee proposed or refused to take the action raised in the complaint

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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 used as the basis for the proposed or refused action
4. A description of the factors that are relevant to the proposal or refusal

Upon the filing of a due process complaint by either party or upon request of the parent/guardian, the special education administrator or designee 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 special education administrator 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 special education administrator 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.

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 section 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.

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Board Policy No.: 1312, 6159.1

Administrative Regulations No: 1312.3, 5125

Legal Reference: Education Code

56000, 56001, 56020 – 56035, 56195.7, 56195.8, 56300 – 56385, 56440 – 56447.1,  
56500 – 56509, 56600 – 56606

California Code of Regulations, Title 5

3000 – 3100, 4600 – 4671

United States Code, Title 20

1232g *Family Educational Rights and Privacy Act of 1974*

1400 *et seq. Individuals with Disabilities Education Act*

United States Code, Title 29

794 *Section 504 of the Rehabilitation Act of 1973*

United States Code, Title 42

11434

Code of Federal Regulations, Title 34

99.10 – 99.22, 104.36, 300.1 – 300.818, 300.500 – 300.520

Management Resources:

California Department of Education: [www.cde.ca.gov](http://www.cde.ca.gov)

U.S. Department of Education, Office of Special Education and Rehabilitative

Services: [www.ed.gov/about/offices/list/osep](http://www.ed.gov/about/offices/list/osep)