

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION

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

Before requesting a state mediation conference or due process hearing, parties may ask to meet informally to resolve the issue(s). The District Superintendent/Principal or designee shall conduct this informal meeting and shall have the authority to resolve the problem(s).

Attorneys may participate only in those mediation conferences that are scheduled after the filing of a request for due process hearing. (Education Code 56500.3, 56501)

This conference shall be scheduled if both parties agree to mediate and are willing to extend the 45-day limit for issuing a hearing decision for a period equal to the length of the mediation process. (Education Code 56501)

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)

At least five business days prior to a 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. (20 USC 1415)

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Due Process Hearing Rights

Due process hearing rights include: (Education Code 56501, 56506)

1. The right to a state pre-hearing mediation conference pursuant to Education Code 56500.3.
2. The right to request a mediation conference at any point during the hearing process.
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 initiate referral of a child for special education pursuant to Education Code 56303.
8. The right to obtain an independent educational assessment pursuant to Education Code 56329.
9. The right to participate in the development of the individualized education program and be informed of the availability under state and federal law of free appropriate public education and of all available alternative programs, both public and nonpublic
10. The right to obtain written parental consent pursuant to Education Code 56321 before any assessment of the student is conducted unless the District or SELPA prevails in a due process hearing relating to such assessment.

Informed parental 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.

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11. The right to obtain written parental consent pursuant to Education Code 56321 before the student is placed in a special education program.

The parties shall also have the following rights: (5 CCR 3082)

1. The right to call witnesses, including adverse witnesses, and to cross-examine witnesses
2. The right to compel the attendance of witnesses, including the right to issue subpoenas
3. The right to have witnesses excluded from the hearing
4. 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
5. The right to have an attorney present as an observer to watch the proceedings and to advise his/her party at a later date; however, the attorney may not present oral argument, written argument or evidence, or consult in any manner in or out of the room, during the process hearing
6. The right of parents/guardians to determine whether the due process hearing will be open or closed to the public
7. 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

Notifications

Students with disabilities and their parents/guardians will 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 prescribed by Education Code 56341. (Education Code 56341, 56506)

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

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A procedural safeguards notice shall be made available to parents/ guardians of students with a disability upon: (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

This notice shall include information on the procedures for requesting an informal meeting, pre-hearing mediation conference, mediation conference, or due process hearing; the time lines 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 proceedings 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)

In addition, this notice shall include information 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. (20 USC 1415(d))

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

Regulation
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BREA OLINDA UNIFIED SCHOOL DISTRICT
Brea, California