
Procedural Safeguards

Policy 3-402f

Purpose

The intent of this policy is to ensure the District complies with the Procedural Safeguards required by law.

Parents of students with disabilities are entitled to notice regarding their rights and responsibilities under federal and state special education laws.

Scope

The federal IDEA, California special education law, and their accompanying regulations, include “Procedural Safeguards” which protect the rights of the parents/guardians of students with disabilities, define various responsibilities of school districts, and provide a comprehensive system for resolving special education related disputes between parents and school districts.

1. Definitions

- **“Parent” and/or Who is Entitled to the Procedural Safeguards**

For purposes of this policy, “parent” refers to parents, legal guardians, and surrogate parents of students with disabilities from three (3) years of age through age twenty-one (21) and to students who have reached age eighteen (18), the age of majority in California

Procedural Safeguards are available to all parents as defined herein.

- **“Notice of Procedural Safeguards”**

The “Notice of Procedural Safeguards” refers to a specific document the District shall provide to parents of students with disabilities. The document describes in detail each of the procedural safeguards, and how a parent may exercise their rights and responsibilities under the law. The California Department of Education (“CDE”) maintains information on Procedural Safeguards and provides guidance on the development of the Notice of Procedural Safeguards used by school districts.

The District shall develop, and update as needed, a Notice of Procedural Safeguards which shall be used throughout the District and placed on the District’s website.

2. Notice of Procedural Safeguards

- **When a “Notice of Procedural Safeguards” Must be Provided to Parents**

At each IEP meeting convened by the District, the District shall inform the parent and pupil of the federal and state procedural safeguards that were provided in the notice of parent rights.

In addition, the Notice of Procedural Safeguards shall be provided to parents at all of the following times:

1. When a parent requests a copy;
2. When a student is referred for an initial special education assessment;
3. Whenever the District provides a parent with an assessment plan;
4. Upon receipt of a parent’s first state level or due process complaint in a school year; and
5. When the District makes a decision to remove a student and that removal would legally constitute a change of placement

- **District Staff Shall Follow Procedural Safeguards**

The District shall ensure that District staff members adhere to the Procedural Safeguards for students with disabilities as set forth in state and federal law and regulations, the policies of the District, and the SELPA special education local plan area.

District staff requiring additional guidance and information on Procedural Safeguards shall, as needed, refer to one or more of the following:

1. The specific statute(s) or regulations(s) governing the procedural safeguards referenced herein.
2. The District's Notice of Procedural Safeguards or any related information developed and updated by CDE.
3. The District's Special Education Director, and/or the case manager or program specialist for the student.

In addition to the Notice of Procedural Safeguards, the District shall ensure that Parents receive all procedural safeguards that are required by law.

Administrative Regulations

1. List of Procedural Safeguards

This section lists each of the Procedural Safeguards including a summary of the parents' rights and responsibilities in each area.

Prior Written Notice

Prior Written Notice is a notice which must be sent to the parent of a student with a disability whenever the District:

- Proposes to initiate a change in the identification, assessment, or educational placement of the student or the provision of a free appropriate public education ("FAPE") to that student; or
- Refuses to initiate a change in the identification, assessment, or educational placement of the student or the provision of FAPE to that student.

In order to meet the legal requirements, the Prior Written Notice must be given within a reasonable amount of time before the District's proposal or refusal, and must contain the following information:

- A description of the actions proposed or refused by the District;
- An explanation of why the action was proposed or refused;
- A description of each assessment procedure, record, or report the District used as a basis for the action proposed or refused;
- A statement that parents of a child with a disability have protection under the procedural safeguards;
- Sources for parents to contact to obtain assistance in understanding the provisions of this part;
- A description of other options that the District's and/or the District's IEP team considered and the reasons those options were rejected; and
- A description of any other factors relevant to the action proposed or refused.

Parental Consent

The District is required to obtain the consent of the parent prior to taking certain actions with regard to a student with disabilities. Parental Consent requirements are as follows:

- **Initial Referral for Special Education**

- A parent has the right to refer their child to the District for special education. The District cannot perform an initial assessment for special education until it receives written parental consent for the assessment, except as identified below.

- **Initial IEP - Initiation of Services**

- If the District finds a student eligible for special education, it may not initiate services until the parent provides informed written consent to the special education and related services set forth in their child's initial IEP, except as identified below.

- **Procedures When a Parent Withholds or Fails to Provide Consent**

- Initial Assessment: If a parent does not provide consent for an initial assessment or fails to respond to a request to provide the consent, the District may elect to pursue the initial assessment by utilizing due process procedures.
- Initiation of Services: If a parent refuses to consent to the initiation of services, the District shall not provide special education and related services and shall not seek to provide services through due process procedures. The District shall provide prior written notice as required by law.
- Partial Consent: If a parent consents in writing to the special education and related services for a student but does not consent to all of the components of the IEP, the District shall, without delay, implement the components for which the parent provided consent. Also, if the District determines that the program components which the parent consented to will not be sufficient to provide the student with FAPE, the District must initiate a due process hearing
- Reevaluations: If a parent refuses to consent to a request to reevaluate a student, the District must document its reasonable measures to obtain consent. If a parent fails to respond to the District's efforts, the District may proceed with the reevaluation without the parent's consent.

- **Procedures When a Parent Revokes Consent**

- If a parent of a student who has already provided consent for special education states in writing that they wish to revoke consent for the continued provision of special education the District:
 - a. May not continue to provide special education and related services to the student, but must provide prior written notice as described above, prior to ceasing all services
 - b. May not request a due process hearing or mediation in order to obtain an agreement or a ruling that the services may be provided to the student
 - c. Will not be considered to be in violation of the requirement to make a free appropriate public education (“FAPE”) available to the student because of the failure to provide the student with further special education and related services; and
 - d. Is not required to convene an IEP team meeting or develop an IEP for the child for further provision of special education and related services

Note: These procedures only apply when a parent is opting out of special education in its entirety. They do not apply when a parent is either: (a) refusing to sign an IEP because they do not agree with the District’s offer of FAPE; or (b) revoking consent for some, but not all of, the student’s current program.

Note: When a parent revokes consent, the District is not required to amend the student’s records by removing any references to special education.

6. Independent Educational Evaluation

If a parent disagrees with the results of an assessment by the District, they may request that the District pay for an Independent Educational Evaluation (“IEE”) as provided for under IDEA and state law. The District must respond to the request by either:

- Agreeing to the IEE and providing information on how to obtain the IEE; or
- If the District believes its assessment was appropriate and disagrees that an IEE is needed, the District may request a due process hearing to show its assessments were appropriate.

7. Access to Educational Records

The District shall ensure that parents are granted the right to inspect and review all of their child's educational records without unnecessary delay, and that requested copies are provided within five (5) business days of the request. Parent access to records shall comply with applicable law and the District policy.

8. Due Process Hearings

Parents have the right to request an impartial due process hearing regarding the identification, assessment, and educational placement of their child or the provision of FAPE to that child.

- **Two –Year Period for Filing Complaints**

- The request for a due process hearing must be filed within (2) two years from the date the parent knew or should have known about the alleged action that forms the basis of the due process complaint.

- **Process for Filing Complaints**

- All due process complaints must be in writing, and a copy must be provided to the other party at the time the complaint is filed. A due process complaint is only sufficient if it contains specific and detailed information regarding the nature of the problem as required by law.

- **Resolution Session**

- When a parent files a due process complaint against the District, the District is granted the opportunity to resolve the dispute by convening a "Resolution Session" within 15 days of the date it received notice of the complaint. A Resolution Session is a meeting between the parents and designated District members of the IEP team who are familiar with the information in the complaint. The District and parent(s) may agree in writing to waive the Resolution Session. The District has 30 days to resolve the dispute by entering a legally binding agreement or the matter will proceed.

- **Due Process Rights**

- Due process rights are the rights provided to the parents of students with disabilities whenever a due process complaint is filed by the parent or the District. The due process rights that follow are granted to the parents though many are also granted to the District or any other party to a due process case:

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- ° Parents have the right to:
 - a. Have a fair and impartial administrative hearing at the state level before a person who is knowledgeable of the laws governing special education and administrative hearings;
 - b. Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities;
 - c. Present evidence, written arguments, and oral arguments;
 - d. Confront, cross-examine, and require witnesses to be present;
 - e. Receive a written or, at the option of the parent, an electronic verbatim record of the hearing, including findings of fact and decisions;
 - f. Have the child present at the hearing;
 - g. Have the hearing be open or closed to the public;
 - h. Receive a copy of all documents, including assessments completed by that date and recommendations, and a list of witnesses and their general area of testimony within five (5) business days before a hearing;
 - i. Be informed by the other parties of the issues and their proposed resolution of the issues at least ten (10) calendar days prior to the hearing;
 - j. Have an interpreter provided;
 - k. Request an extension of the hearing timeline;
 - l. Have a mediation conference at any point during the due process hearing; and
 - m. Receive notice from the other party at least ten days prior to the hearing that the other party intends to be represented by an attorney.
- **Placement During Due Process Proceedings - “Stay-Put”**
 - ° When a due process complaint or civil complaint in superior court has been filed regarding the provision of FAPE to a student, the student shall remain in his/her current educational placement unless the parent and the District agree to an alternative placement. This requirement is commonly referred to as “stay-put.”

- **Appeals**

- A due process hearing decision is final and binding on both the parent and the District. Either the parent or the District may appeal the hearing decision by filing a civil action in state or federal court within 90 days of the final hearing decision.

- **Attorneys' Fees**

- A parent who is a prevailing party in a due process hearing may be awarded some or all of their attorneys' fees and costs. Fee awards may be reduced based on various factors.

9. Mediation and Alternative Dispute Resolution

- A request for mediation may be made either before or after either the parent or District has requested a due process hearing. In addition, either party may request that any disputes or concerns be resolved through alternative dispute resolution ("ADR") provided by the SELPA or County.
- "Prehearing mediation" refers to mediation that is requested prior to the filing of a due process complaint. Requests for prehearing mediation are filed with the State Superintendent, Office of Administrative Hearings ("OAH"), and are subject to specific legal requirements. After a due process hearing is filed, the parties are also given the opportunity to participate in mediation.

10. Children Attending Private Schools

- The District shall ensure that it complies with all legally mandated procedures regarding children placed in private schools by their parents. The term "parentally placed private school students" refers to students placed in private schools by their parents without the consent of or referral by the District. While the District is responsible for making FAPE available to these students, it does not have to provide special education while they are parentally placed in a private school.
- A parent may reject the District's offer of FAPE and then seek reimbursement for a private school placement. However, the parent's request for reimbursement may be denied where the parent has not given proper notice to the District regarding their rejection of the District's placement offer. A parent's failure to provide notice may not result in a denial of their claim where the District failed to provide the parent with Notice of Procedural Safeguards, where notice would result in harm to the student, and other statutory grounds.

11. State Complaint Procedures

Parents may file a state compliance complaint against the District when they believe that the District has violated federal or state special education laws or regulation. There are legal requirements that must be met, covering the content and filing of these complaints.