

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION

Note: In California, due process hearings required by the federal Individuals with Disabilities Education Act (IDEA) (20 USC 1400-1482) are held only at the state level. Related rights and procedures are set forth in Education Code 56501-56506 and 5 CCR 3080-3089. Note that in cases where state law provides greater protections, state law supersedes federal law.

Note: Pursuant to Education Code 56501, due process hearing rights extend to the student only if he/she is an emancipated student or a ward or dependent of the court with no available parent or surrogate parent. See AR 6159.3 - Appointment of Surrogate Parent for Special Education Students.

Informal Process/Pre-Hearing Mediation Conference

Before requesting a due process hearing, the Charter Chief Executive Officer or designee of the Charter LEA and a parent/guardian may agree to meet informally to resolve any issue(s) relating to the identification, assessment or education and placement of a student with disabilities. The Charter Chief Executive Officer or designee shall have the authority to resolve the issue(s). (Education Code 56502)

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. Based on the mediation conference, the Charter Chief Executive Officer or designee may resolve the issue(s) in a manner that is consistent with state and federal law and is to the satisfaction of both parties. (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. (Education Code 56500.3, 56501)

If either of these processes fails to resolve the issue(s), either party may file for a state-level due process hearing.

Due Process Complaint Notice and Hearing Procedures

A parent/guardian, the Charter LEA, and/or a student who is emancipated or a ward or dependent of the court may initiate due process hearing procedures whenever: (20 USC 1415(b); 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
4. There is a disagreement between a parent/guardian and the Charter LEA regarding the availability of a program appropriate for the student, including the question of financial responsibility, as specified in 34 CFR 300.403(b)

Note: Pursuant to 20 USC 1415(b), as amended by P.L. 108-446, effective July 1, 2005, and 34 CFR 300.507, the Charter LEA is mandated to adopt procedures (1) requiring either party (the Charter LEA or the parent/guardian) or their attorney to provide notice of the request for a due process hearing to the other party and (2) containing the requirement that the party may not have a due process hearing until the notice specified in items #1-5 below has been filed. The CDE is required to develop a model form to assist parents in filing a complaint and due process complaint notice.

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 notice, which shall remain confidential, specifying: (20 USC 1415(b); 34 CFR 300.507

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

Note: The IDEA 2004 Reauthorization made significant changes to the (1) timelines for filing a due process complaint, (2) procedures for amending the complaints, and (3) rules regarding the sufficiency of the complaint notice; see 20 USC 1415(b) and (f). 20 USC 1415(f)(3)(C), as amended, specifies that a due process complaint must be filed within two years of the date that the parent/guardian or Charter LEA knew or should have known about the situation that forms the basis of the complaint. However, federal regulations 34 CFR 300.662, set a different timeline and require a one year statute of limitations for filing a complaint. As amended by AB 1662 (Ch. 653, Statutes of 2005), Education Code 56500.2 reflects the federal regulations and states that a complaint must be filed within one year of the alleged violation. It is likely that federal regulations will be amended to clarify the inconsistency. In the meantime, Charter LEAs should consult with legal counsel as to the appropriate timeline.

Note: 20 USC 1415(c)(1) requires the Charter LEA to provide the following notice upon receipt of the due process complaint.

If the Charter LEA has not sent a prior written notice to the parent/guardian regarding the subject matter contained in the parent/guardian's due process complaint notice, the Charter LEA shall

send a response to the parent/guardian within 10 days of receipt of the complaint specifying:
(20 USC 1415(c)(1))

1. An explanation of why the Charter LEA proposed or refused to take the action raised in the complaint
2. A description of other options that the individualized education program (IEP) team considered and the reasons that those options were rejected
3. A description of each evaluation procedure, assessment, record, or report the Charter LEA used as the basis for the proposed or refused action
4. A description of the factors that are relevant to the Charter LEA's proposal or refusal

If the Charter LEA has sent prior written notice to the parent/guardian regarding the subject matter of the parent/guardian's due process complaint, the Charter LEA shall, within 10 days of receipt, send a response specifically addressing the issues in the complaint. (20 USC 1415(c)(1))

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)

Prior Written Notice

The Charter Chief Executive Officer or designee shall send to parents/guardians of any student with a disability a prior written notice within a reasonable time before: (Education Code 56500.4, 56500.5; 20 USC 1415(c); 34 CFR 300.503)

1. The Charter LEA initially refers the student for assessment
2. The Charter LEA proposes to initiate or change the student's identification, evaluation, educational placement or the provision of a free, appropriate public education
3. The Charter LEA refuses to initiate or change the identification, evaluation or educational placement of the student or the provision of a free and appropriate public education
4. The student graduates from high school with a regular diploma

This notice shall include: (20 USC 1415(c); 34 CFR 300.503)

1. A description of the action proposed or refused by the Charter LEA
2. An explanation as to why the Charter LEA proposes or refuses to take the action
3. A description of any other options that the IEP team considered and why those options were rejected
4. A description of each evaluation procedure, test, record or report the Charter LEA used as a basis for the proposed or refused action
5. A description of any other factors relevant to the Charter LEA's proposal or

- refusal
6. A statement that the parents/guardians of the student have protection under procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the description of procedural safeguards can be obtained
 7. Sources for parents/guardians to obtain assistance in understanding these provisions

Students with disabilities and their parents/guardians shall 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 rights prescribed by Education Code 56341. (Education Code 56341, 56506; 34 CFR 300.503)

If the native language or other mode of communication of the parent/guardian is not a written language, the Charter LEA shall take steps to ensure that: (34 CFR 300.503)

1. The notice is translated orally or by other means to the parent/guardian in his/her 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

Procedural Safeguards Notice

A procedural safeguards notice shall be made available to parents/guardians of students with a disability once a year and upon: (Education Code 56301; 20 USC 1415(d)(1))

1. Initial referral for evaluation
2. Each notification of an IEP meeting
3. Reevaluation of the student
4. Registration of a complaint
5. Filing for a pre-hearing mediation conference or a due process hearing

This notice shall include information on the procedures for requesting an informal meeting, pre-hearing 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; and the right of the parent/guardian and/or the Charter LEA 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. (20 USC 1415(d)(2); Education Code 56321, 56321.5)

In addition, this notice shall include a full explanation of the procedural safeguards relating to independent educational evaluation; prior written notice; parental consent; access to educational

records; opportunity to present complaints to initiate due process hearings; 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; attorney's fees, and the state's complaint procedure. (20 USC 1415(d)(2); 34 CFR 300.504)