

FRESNO COUNTY SUPERINTENDENT OF SCHOOLS

Instruction**PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION**Prior Written Notice

Written notice must be provided to parents/guardians of a student with a disability a reasonable time before the County Superintendent: (Education Code 56346, 56500.4, 56500.5; 20 USC 1415; 34 CFR 300.102, 300.300, 300.503)

1. Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE) to the student; or,
2. Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

Prior written notice must also be given by the County Superintendent:

1. With an assessment plan upon initial referral for assessment;
2. Within a reasonable time before the student graduates from high school with a regular diploma which constitutes a change in placement;
3. Upon receipt of the parent/guardian's written revocation of consent for the continued provision of special education and related services to the student; and,
4. As a response to a due process hearing request if prior written notice has not yet been provided.

Prior written notice shall include: (Education Code 56500.4; 20 USC 1415; 34 CFR 300.503)

1. A description of the action proposed or refused by the County Superintendent;
2. An explanation of why the County Superintendent proposes or refuses to take the action;
3. A description of each assessment procedure, assessment, record, or report the County Superintendent used as a basis for the proposed or refused action;
4. A statement that the parents/guardians of the student with a disability have protection under special education procedural safeguards and, if this notice is not 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 their procedural safeguards;
6. A description of other options that the individualized education program (IEP) team considered and why those options were rejected; and,
7. A description of any other factors relevant to the County Superintendent's proposal or refusal.

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A parent/guardian of a student with disabilities may elect to receive the prior written notice via an electronic mail communication. (34 CFR 300.505)

Procedural Safeguards Notice

Parents/guardians shall be given a copy of their special education rights and procedural safeguards only one time a school year, except that a copy all shall be given to the parents/guardians: (Education Code 56301; 20 USC 1415; 34 CFR 300.504)

1. Upon initial referral or parent/guardian request for assessment;
2. Upon receipt of the first state compliance complaint in a school year, filed in accordance with the section "State Compliance Complaints" below;
3. Upon receipt of the first special education due process hearing request in a school year;
4. When a decision is made to make a removal that constitutes a change in placement of an individual with exceptional needs because of a violation of a code of student conduct in accordance with 34 CFR 300.530(h); and,
5. Upon request by a parent/guardian.

The procedural safeguards notice shall include a full explanation of all of the procedural safeguards available under 34 CFR 300.148, 300.151-300.153, 300.300, 300.502-300.503, 300.505-300.518, 300.520, 300.530-300.536, and 300.610-300.625 relating to: (Education Code 56301; 20 USC 1415; 34 CFR 300.504)

1. Independent educational evaluation;
2. Prior written notice;
3. Parental consent, including a parent/guardian's right to revoke consent, in writing, to the student'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 request and state compliance complaint procedures, including the time period in which to file a complaint; the opportunity for the County Superintendent to resolve the complaint; and, the difference between a due process request 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 request;
8. Procedures for students who are subject to placement in an interim alternative educational setting;

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9. Requirements for unilateral placement by parents/guardians of students in private schools at public expense;
10. Hearings on due process requests, including requirements for disclosure of assessment results and recommendations;
11. Civil actions, including the time period in which to file those actions; and,
12. Availability of attorneys' fees pursuant to 34 CFR 300.517.

This notice shall also include the rights and procedures contained in Education Code 56500-56509, including: (Education Code 56321, 56321.5, 56321.6)

1. Information on the procedures for requesting an informal meeting, prehearing mediation conference, mediation conference, or due process hearing
2. The timelines for completing each process
3. Whether the process is optional
4. The type of representative who may be invited to participate
5. The right of the parent/guardian and/or the County Superintendent to electronically record the proceedings of IEP meetings in accordance with Education Code 56341.1
6. 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. At each IEP meeting, the County Superintendent or designee shall inform the parent/guardian of the federal and state procedural safeguards that were provided in the notice. (Education Code 56321, 56500.1)

Format of Parent/Guardian Notices

The parents/guardians of a student with a disability shall be provided written notice of their rights in 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. (Education Code 56341, 56506; 34 CFR 300.503, 300.504)

If the native language of other mode of communication of the parent/guardian is not a written language, the County Superintendent shall take steps to ensure that the notice is translated orally or by other means in the parent/guardian's native language or other mode of communication and that the parent/guardian understands the contents of the notice. (34 CFR 300.503)

The County Superintendent may place a copy of the procedural safeguards notice on the County Superintendent's web site. (20 USC 1415)

A parent/guardian of a student with disabilities may elect to receive procedural safeguards notice via an electronic mail communication. (34 CFR 300.505)

FRESNO COUNTY SUPERINTENDENT OF SCHOOLSFiling Due Process Requests

A parent/guardian and/or the County Superintendent may initiate due process hearing procedures whenever: (Education Code 56501; 20 USC 1415)

1. There is a proposal to initiate or change the identification, assessment, or educational placement of the student or the provision of FAPE 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 FAPE to the student;
3. The parent/guardian refuses to consent to an assessment of the student; and/or,
4. There is a disagreement between a parent/guardian and the County Superintendent regarding the availability of a program appropriate for the student, including the question of financial responsibility, as specified in 34 CFR 300.148.

The party, or attorney representing the party, initiating a due process hearing by filing a written request with the California Office of Administrative Hearings shall provide the other party to the hearing with a copy of the request at the same time as the request is filed with the Office of Administrative Hearings. The request, which must remain confidential, shall include the following: (Education Code 56502; 20 USC 1415; 34 CFR 300.508)

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; and,
5. A proposed resolution to the problem to the extent known and available to the complaining party at the time.

The request shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. This statute of limitations shall not apply to the parent if the parent/guardian was prevented from requesting the due process hearing due to either a specific misrepresentation by the County Superintendent that it had solved the problem forming the basis for the due process hearing request or the County Superintendent withheld information required by special education law from the parent/guardian. (Education Code 56505; 20 USC 1415; 34 CFR 300.507, 300.511)

County Superintendent's Response to Due Process Requests

The County Superintendent shall provide a response to the due process hearing request that specifically addresses the issues raised in the due process hearing request within 10 days of receiving the request. If the County Superintendent has not sent a prior written notice to the parent/guardian regarding the subject matter contained in the parent/guardian's due process hearing request, the response shall include all of the following: (20 USC 1415; 34 CFR

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300.508):

1. An explanation of why the County Superintendent proposed or refused to take the action raised in the due process hearing request;
2. A description of other options that the IEP team considered and the reasons that those options were rejected;
3. A description of each assessment procedure, assessment, record, or report the County Superintendent used as the basis for the proposed or refused action; and,
4. A description of other factors that are relevant to the County Superintendent's proposed or refused action.

A response to the due process complaint by the County Superintendent shall not be construed to preclude the local educational agency from asserting that the due process request of the parent was insufficient, where appropriate.

Informal Process/Mediation Only

Notwithstanding any procedure set forth under special education law, a County Superintendent and a parent/guardian may meet informally to resolve the issue or issues relating to the identification, assessment, education and placement of the student, or provision of FAPE for a student to the satisfaction of both parties prior to the hearing. This meeting shall be conducted by the County Superintendent or designee. The County Superintendent or designee shall have the authority to resolve the issue or issues. (Education Code 56502)

In addition, either party may file a request for mediation only with the Office of Administrative Hearings. 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 56500.3(f). (Education Code 56500.3)

FRESNO COUNTY SUPERINTENDENT OF SCHOOLSState Compliance Complaints

Any individual, including a person's duly authorized representative or an interested third party, public agency, or organization may file with the California Department of Education (CDE) a written and signed (signature may be handwritten, typed, via email, or electronically-generated) statement alleging that, within the previous one calendar year, any of the following occurred: (5 CCR 3200, 3201)

1. The County Superintendent violated Part B of the Individuals with Disabilities Education Act (20 USC 1411-1419) and its implementing regulations (34 CFR 300.1-300.818);
2. The County Superintendent violated Part 30 of the Education Code (Education Code 56000-56865) and 5 CCR 3200-3205;
3. The County Superintendent violated the terms of a settlement agreement related to the provision of FAPE, excluding any allegation related to an attorney fees provision in a settlement agreement;
4. The County Superintendent failed or refused to implement a due process hearing order to which the County Superintendent is subject; or,
5. Physical safety concerns interfered with the provision of FAPE.

The complaint shall include: (5 CCR 3202; 34 CFR 300.153)

1. A statement that the County Superintendent has violated or failed to comply with any provision set forth in 5 CCR 3201;
2. The facts on which the statement is based;
3. The signature and contact information for the complainant; and,
4. If alleging violations with respect to a specific student, the student's name and address (or other available contact information for a homeless student), the name of the school that the student is attending, a description of the nature of the student's problem and facts related to the problem, and a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

The complainant shall forward a copy of the complaint to the County Superintendent at the same time the complaint is filed with CDE. (5 CCR 3202)

Within 30 days of the date of CDE's investigation report, the County Superintendent or complainant may request reconsideration of the decision in accordance with 5 CCR 3204. Pending CDE's response to a request for reconsideration, any corrective actions set forth in the report shall remain in effect and enforceable, unless stayed by a court. (5 CCR 3204)

Adopted: 11/19/2020