

SPECIAL EDUCATION DUE PROCESS HEARINGS PROCEDURAL SAFEGUARDS

DUE PROCESS HEARING RIGHTS INCLUDE THE FOLLOWING:

1. The right to request a mediation conference at any point during the hearing process. The mediation process is not to be used to deny or delay a parent(s) or guardian(s) right to a due process hearing, or to deny any other rights afforded to parties. Attorneys and advocates are permitted to participate in mediation conferences scheduled after the filing of a request for due process hearing. (20 U.S.C. § 1415(e) (1); 34 C.F.R. § 300.506; Ed. Code § 56501, subd. (b)(2).)
2. The parent has the right to examine all school records of the child, and to receive copies of the records within five days of an oral or written request by the parent. A public educational agency¹ may charge no more than the actual cost of reproducing the records, but if the cost effectively prevents the parent from exercising this right, then the parent is entitled to receive a copy or copies at no cost. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(a)(1)(i); Ed. Code § 56501, subd. (b)(3).)
3. The parents' right to have the pupil who is the subject of the state hearing present at the hearing. (34 C.F.R. § 300.509(c)(1)(i); Ed. Code § 56501, subd. (c)(1).)
4. The parents' right to open the state hearing to the public. (34 C.F.R. § 300.509(c)(1)(ii); Ed. Code § 56501, subd. (c)(2).)
5. The parents' right to an interpreter at no cost if their primary language or mode of communication is other than English. (20 U.S.C. § 1415 (b)(4); 34 C.F.R. § 300.501(c)(5).)

MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT (STAY PUT)

A child shall remain in his/her current educational placement while due process hearing proceedings are pending, unless the parents and the State or local educational agency, agree to a different placement. This provision is subject to certain exceptions in disciplinary matters involving the child. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.514; Ed. Code § 56505 subd. (d).)

¹ Public educational agency includes, but is not limited to, a school district, SELPA or LEA.

RESOLUTION SESSION

Prior to the setting or conduct of any due process hearing, and within 15 days of receiving notice of the complaint, the public educational agency shall convene a resolution meeting. The meeting shall include the parent(s), a public educational agency representative, and relevant member(s) of the IEP team who have specific knowledge of the facts of the complaint. The purpose of the meeting is to provide an opportunity for the parent(s) to discuss their complaint and its factual basis, and to provide the public educational agency an opportunity to resolve the complaint. If the complaint is unresolved 30 days after its receipt by the public educational agency, a due process hearing may be held and the applicable timelines shall begin. (20 U.S.C. § 1415(f)(1)(B)(i-iv).)

The resolution session may be waived only under two circumstances; (1) a written waiver signed by the parent(s) and public educational agency representative, or (2) agreement by the parties to participate in mediation. (20 U.S.C. § 1415(f)(1)(B)(i)(IV).)

CONDUCT OF THE HEARING AND RIGHTS OF PARTIES AT HEARING:

1. The hearing shall be held at a time and place reasonably convenient to the parent or guardian and the pupil. (Ed. Code § 56505, subd. (b).)
2. All parties to the hearing have the following rights consistent with state and federal statutes and regulations:
 - A. The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of children with disabilities. (20 U.S.C. § 1415(h)(1); 34 C.F.R. § 300.509(a)(1); Ed. Code § 56505, subd. (e)(1).)
 - B. The right to present evidence, as well as written and oral argument. (20 U.S.C. § 1415(h)(2); 34 C.F.R. § 300.509(a)(3).)
 - C. The right to confront, cross-examine, and compel the attendance of, witnesses. (20 U.S.C. § 1415(h)(2); 34 C.F.R. § 300.509(a)(2); Ed. Code § 56505, subd. (e)(3).)
 - D. At their option, parent(s) or guardian(s) have the right to receive a written or electronic verbatim record of the proceeding at no cost to the parent or guardian. (20 U.S.C. § 1415(h)(3); 34 C.F.R. § 300.509(a)(4); Ed. Code § 56505, subd. (e)(4).)
 - E. At their option, parent(s) or guardian(s) have the right to receive the written or electronic findings of fact and decision, at no cost to the parent(s) or guardian(s). The findings and decision shall be made available to the public after any personally identifiable information has been deleted consistent with confidentiality requirements. (20 U.S.C. §

1415(h)(4)(A); Ed. Code § 56505, subd. (e)(5); 34 C.F.R. § 300.509(a)(5).)

- F. The right to receive from the other parties, **at least five (5) business days prior to the hearing**, a copy of all documents and a list of all witnesses and their general area of testimony, which the parties intend to present at the hearing. This shall include all assessments completed by that date and any recommendations based on those assessments that the parties intend to use at the hearing. (20 U.S.C. § 1415(f)(2)(A); 34 C.F.R. § 300.509(b)(1); Ed. Code § 56505, subd. (e)(7).)
- G. The right to prohibit the introduction of any evidence at the hearing not disclosed **at least five (5) business days prior to the hearing**. (20 U.S.C. § 1415(f)(2)(B); 34 C.F.R. § 300.509(a)(3); Ed. Code § 56501, subd. (f).)

REPRESENTATION AT DUE PROCESS HEARING

If either party to a due process hearing intends to be represented by an attorney at the state hearing, notice of that intent shall be given to the other party **at least ten (10) calendar days prior to the hearing**. Failure to provide the required notice shall constitute good cause to grant a continuance. (Ed. Code § 56507, subd. (a).)

WRITTEN DECISION UPON COMPLETION OF HEARING

Upon completion of the due process hearing, the Administrative Law Judge shall prepare a written, reasoned decision. The decision shall include reason(s) for any nonpublic school placement or agency services or reimbursement for any nonpublic school placement or agency services. The decision shall be mailed to all parties to the hearing within 45 days from the receipt of the request for a hearing. (20 U.S.C. § 1415(g)(2); 34 C.F.R. § 300.511(a).)

Either party to a hearing may request an extension from the Administrative Law Judge, which request shall be granted upon a showing of good cause. Any extension shall extend the time for rendering a final administrative decision for a period only equal to the length of the extension. (34 C.F.R. § 300.511(c).)