

AR 6159.1 PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION

Due Process Hearing Procedures

Due process hearing procedures are available when:

1. There is a proposal to initiate or change the identification, evaluation 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 evaluation of his/her child or to the provision of services.
4. There is a refusal to honor the request of a parent to amend a record under 4 AAC 52.520.

Hearing Request

A party shall make a request for a due process hearing not later than 12 months after the date the parent or district knew or should have known of the alleged violation:

1. With respect to any matter relating to the identification, evaluation, or educational placement of the student.
2. The provision of a free appropriate public education to the student.

Upon requesting a due process hearing, the parent/guardian or attorney representing the child, or the district, shall provide notice to the other, which shall remain confidential, specifying: (20 USC 1415(b); 34 CFR 300.508)

1. The child's name.
2. The child's address, or in the case of a homeless child, available contact information for the child.
3. The name of the school the child attends.
4. A description of the issue, including the related facts.
5. A proposed resolution to the problem to the extent known and available to the party at the time.

A parent or district may not have a due process hearing until the party, or attorney representing the party, files a signed request that includes the above information.

Note: Parties are to send signed, written requests to:

Special Education Dispute Resolution

Alaska Department of Education & Early Development Teaching and Learning Support, Special Education

P.O. Box 110500

Juneau, Alaska 99811-0500

Or fax to: (907) 465-2806

Attention: Special Education Dispute Resolution

Response to Request

The non-complaining party shall within 10 days of receiving the notice of due process hearing request send the other party a response that specifically addresses the issues raised in the due process hearing request. The response shall include:

1. an explanation of why the district proposed or refused to take action;
2. a description of other offers that the IEP Team considered and the reasons why those options were rejected;
3. a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; and
4. a description of the other factors that are relevant to the agency's proposed or refused action.

A party requesting a due process hearing shall not be allowed to raise issues at the hearing that were not raised in the notice of request for the due process hearing, unless the other party agrees to allow any new issues.

Resolution Session

Before any due process hearing requested by parents is held, the district shall convene a meeting with the parents and relevant members of the IEP team who have specific knowledge of the facts identified in the complaint. The resolution meeting must:

1. occur within 15 days of receiving notice of the parents' hearing request;
2. include a district representative with decision-making authority;
3. may not include an attorney for the district unless the parents are accompanied by an attorney at the meeting;
4. discuss the request and the facts that form the basis of the request; and

5. provide the district with an opportunity to resolve the complaint.

The parents and district can agree in writing to waive a resolution meeting, or agree to use the mediation process instead.

If the district has not resolved the complaint to the satisfaction of the parents within 30 days of receiving the complaint, the due process hearing may occur and all applicable timelines for the hearing shall commence.

Setting the Hearing

Parties requesting a due process hearing shall file their request with the Superintendent or designee or the Special Education Director. The district shall then contact the Department and request the appointment of a hearing officer. Both the district and the parent have the right to reject one hearing officer, and no reason for rejection is required.

At least five business days prior to a due process hearing, each party shall disclose to all other parties all evidence to be offered at the hearing other than for rebuttal purposes, including 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(f))

Due Process Rights

Due process rights include:

1. The right to a mediation conference.
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, including evaluation tests and procedures.
4. The right to be informed on the results of evaluation.
5. (cf. 5125 - Student Records)
6. The right to a fair and impartial administrative hearing before a qualified hearing officer appointed by the Department, and the right to exercise a single objection to the proposed hearing officer.
7. The right to have the student who is the subject of the hearing present at the hearing.
8. The right to open the hearing to the public.
9. The right to initiate referral of a child for special education.
10. The right to obtain an independent educational evaluation.

11. The right to participate in the development of the individualized education program (IEP) and be informed of the availability under state and federal law of free and appropriate public education (FAPE) and of all available alternative programs, both public and nonpublic.
12. (cf. 6159 - Individualized Education Program)
13. The right to obtain written parental consent before any assessment of the student is conducted unless the district prevails in a due process hearing relating to such assessment.
14. The right to obtain written parental consent before the student is placed in a special education program.

The parties shall also have the following hearing rights: (4 AAC 52.550;34 CFR 300.512)

1. The right to call witnesses, including adverse witnesses, and to cross-examine witnesses.
2. The right to compel the attendance of witnesses.
3. The right of parents/guardians to determine whether the due process hearing will be open or closed to the public.
4. The right to object to the introduction of any evidence at the hearing that has not been disclosed to the other party at least five days before the hearing.
5. The right to be accompanied and advised by counsel and/or other individuals with special knowledge or training with respect to the problems of children with disabilities.
6. The right to obtain a written or, at the option of the parent/guardian, electronic verbatim recording of the hearing.
7. The right to obtain written, or, at the option of the parents, electronic findings of facts and decisions.

Prior Written Notice

The Superintendent or designee shall send parents/guardians a prior written notice whenever there is a proposal or refusal to initiate or change the identification, evaluation or educational placement of the student or the provision of a free and appropriate public education. The notice shall include: (20 USC 1415(c); 34 CFR 300.503)

1. A description of the action proposed or refused by the district.
2. An explanation as to why the district proposes or refuses to take the action.

3. A description of any other options that the district considered and why those options were rejected.
4. A description of each evaluation procedure, test, record or report the district used as a basis for the proposed or refused action.
5. A description of any other factors that are relevant to the district's proposal or refusal.
6. A statement that the parents/guardians of the student have protection under procedural safeguards and 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.

Procedural Safeguard Notice

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

1. Initial referral for evaluation.
2. Each notification of an IEP meeting.
3. Reevaluation of the student.
4. Filing of a complaint or hearing request.

This notice shall include information on the procedures for requesting an informal meeting, prehearing 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 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, 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 hearing; state-level appeals; civil action; and attorney's fees. (20 USC 1415(d);34 CFR 300.504).

Notice Regarding Legal and Other Services

The Procedural Safeguards notice must inform the parent/guardian of any free or low-cost legal or other relevant services available in the area if the parent/guardian:

1. requests the information; or
2. is a party to a due process hearing or administrative complaint.

(cf. 5144.2 - Suspension and Expulsion (Individuals with Exceptional Needs (cf. 6164.4 - Child Find

Revised 2/2010

9/92

Adopted 10/23