

Procedural Due Process

The procedure of due process as it applies to special education describes the legal procedures and requirements developed to protect the rights of children, parents and school districts. In respect to children suspected of having a disability, due process guarantees a free and appropriate public education in the least restrictive educational setting. For parents, due process protects their rights to have input into the educational program and placement of their child, and to have options in cases of disagreement with the recommendations of the school district. For school districts, due process offers recourse in cases of parent resistance with a request for evaluation, challenges to an independent evaluation sought by parents at public expense or unwillingness of parents to consent to the IEP Committee recommendation.

The components of due process include procedural safeguards such as:

Appropriate written notice - notice to parents is required in the following situations:

1. actions proposed by the IEP Committee to evaluate the existence of a suspected disability.
2. meetings by the IEP Committee to discuss the results of the evaluation to determine a suspected disability.
3. meetings to discuss the planning of an individual educational plan
4. proposed actions to review an individual educational plan
5. proposed actions to reevaluate the child's classification or placement
6. aging-out notification for disabled children no longer eligible for tuition free educational services.

Written consent from parents - written consent is required in four specific situations. They are:

1. consent for an initial evaluation on a child not previously classified as having a disability
2. consent allowing for the provisions recommended by the IEP Committee in regards to classification and special education placement
3. notification prior to providing services for the first time for a disabled child in a 12-month program
4. prior to the disabled child's aging out of public education

Confidentiality of records - a parent's confidentiality of records is protected under due process. Confidentiality ensures that only educational institutions or agencies that have legitimate interest in the child's education will be permitted to see the records. However, written consent from parents is required for the release of any information on their child other than the following:

1. staff members or school officials within the school district in which the child is a resident who must have a legitimate interest in the child's education.
2. release of information to other school districts in which the disabled child may enroll. In this case the parents are notified of the transfer of information, may request copies of the information sent and may contest through a hearing the content of the transferred information.

Surrogate parents - in most cases his/her parents at IEP Committee meetings represent the child with a suspected disability. However, if the parents are unknown, unavailable or the child is a ward of the state, the IEP Committee must determine if there is a need for the assignment of a surrogate parent to represent the child. When this happens, the case the Board of Education chooses a surrogate from list of eligible individuals.

Impartial hearings - An impartial hearing is a procedure used to resolve disagreements between parents and the school district. This procedure of due process can be utilized when:

1. a parent disagrees with an IEP Committee recommendation
2. a parent disagrees with a Board of Education determination
3. The IEP Committee fails to evaluate and recommend a program within 30 days of the signed consent by the parents.
4. The IEP Committee fails to implement its recommendations within the 30-day requirement period.
5. There is failure on the part of the school district to administer a triennial evaluation.
6. Failure on the part of the school district to hold an annual review on a child with a disability.
7. parent/parents is unwilling to give consent for an evaluation.
8. parents are unwilling to consent to the recommendations of the IEP Committee concerning the classification or special education placement of a disabled child.

Appeals to the Commissioner of Education - This option provides another level of resolution for parents and school districts when an impartial hearing cannot resolve the disagreement. This is a legal process and the procedures are usually outlined in state manuals on the Commissioners Regulations.