

Due Process Protections

In order to protect the rights of children with disabilities, the IDEA provides significant procedural due process protections. Notice and hearing rights are provided throughout the special education process, from initial identification and consideration of eligibility through completion of the special education program or a determination of ineligibility. The procedural safeguards in the IDEA, 20 U.S.C. § 1415 (2004), include:

- (1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;
- (2) Procedures to protect the rights of the child whenever the parents of the child are not known;
- (3) Written prior notice to the parents of the child whenever such agency--
 - (A) Proposes to initiate or change; or
 - (B) Refuses to initiate or change;the identification, evaluation, or educational placement of the child . . . or the provision of a free appropriate public education to the child.
- (4) Procedures designed to ensure that the notice required . . . is in the native language of the parents, unless it clearly is not feasible to do so;
- (5) An opportunity for mediation;
- (6) An opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

Under 20 U.S.C. § 1415 (2004) the written prior notice referred to in the above section must include:

- (1) A description of the action proposed or refused by the agency;
- (2) An explanation of why the agency proposes or refuses to take the action;
- (3) A statement that the parents . . . have protection under the procedural safeguards . . . and . . . the means by which a copy of the description of the procedural safeguards can be obtained;
- (4) Sources for the parents to contact to obtain assistance in understanding the provisions;
- (5) A description of other options considered by the IEP Team and the reason why those options were rejected; and
- (6) A description of the factors that are relevant to the agency's proposal or refusal.

A document describing these procedural safeguards must be given to parents upon initial referral of the child for evaluation, upon the first occurrence of filing a complaint, and upon request by a parent. The school must also have a model form available to assist parents in filing an IDEA complaint. The document describing these procedural safeguards must be written in the native language of the parents, unless it is not feasible to do so, and written in an easily