Information Sheet – 11/10/2020 - Board of Trustees Meeting

TO: Board of Trustees Item: 8.4

FR: Celli Coeville

DATE: November 2, 2020

RE: Revised Board Policy and Administrative Regulation, BP/AR 6159.1, Procedural Safeguards and Complaints for Special Education, Consider for Adoption

Board Policy 6159.1, Procedural Safeguards and Complaints for Special Education, has been updated to encourage early, informal resolution of any dispute regarding special education services. The policy also reflects New State Regulations (Register 2020, No. 21) which establish a complaint process, separate from UCP, for complaints alleging noncompliance with federal or state laws related to the provision of FAPE to students with disabilities, such as the district's violation of the federal Individuals with Disabilities in Education Act or state law on special education, violation of a settlement agreement, failure to implement a due process hearing order, or physical safety concerns that interfere with the provision of FAPE.

The Administrative Regulation has been updated to clarify that due process complaints should be filed with the state Office of Administrative Hearings and that such complaints must generally be filed within two years of the date the parent/guardian or district knew or should have known about the alleged violation. The regulation also adds a new section on "State Compliance Complaints" reflecting New State Regulations (Register 2020, No. 21) which establish a complaint process, separate from UCP, for complaints alleging noncompliance with federal or state laws related to the provision of FAPE to students with disabilities, such as the district's violation of the federal Individuals with Disabilities Education Act or state law on special education, violation of a settlement agreement, failure to implement a due process hearing order, or physical safety concerns that interfere with the provision of FAPE.

I've highlighted the proposed changes and indicated the differences in red font.

Recommended Action: Approve Revised BP/AR 6159.1, Procedural Safeguards and Complaints for Special Education

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION

Note: The following mandated policy reflects the federal Individuals with Disabilities Education Act (20 USC 1400-1482), implementing federal regulations (34 CFR 300.1-300.818, and conforming state legislation. Note that in cases where state law provides greater protections to students, state law supersedes federal law.

Education Code 56195.8 and 20 USC 1415 mandate all entities providing special education to adopt policy on procedural safeguards, and Education Code 56500.1 requires entities providing special education to establish and maintain all procedural safeguards granted by federal law. For California law related to due process rights and due process hearing rights and procedures, see Education Code 56501-56509 and 5 CCR 3082. For federal due process procedure requirements, see 34 CFR 300.500-300.520.

This policy and accompanying administrative regulation should be revised for consistency with the policy and regulations of the Special Education Local Plan Area (SELPA) in which the district participates

The Governing Board ~~desires to protect the rights of students with disabilities in accordance with the procedural safeguards set forth in state and federal law.~~ Recognizes its obligation to provide a free appropriate public education (FAPE) to students with disabilities and to uphold the rights of parents/guardians to be involved in educational decisions regarding their child. Parents/guardians of students with disabilities shall receive written notice of their rights under the federal Individuals with Disabilities Education Act. ~~in accordance with law, Board policy, and administrative regulation.~~

(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))
(cf. 5145.6 - Parental Notifications)
(cf. 6159 - Individualized Education Program)
(cf. 6159.2 - Nonpublic Nonsectarian School and Agency Services for Special Education ~~Students~~)
(cf. 6159.3 - Appointment of Surrogate Parent for Special Education Students)
(cf. 6159.4 - Behavioral Interventions for Special Education Students)
(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)

Whenever there is a dispute between the district and the parent/guardian of a student with disabilities regarding the identification, assessment, or educational placement of the student or the provision of FAPE to the student, the Superintendent or designee shall encourage the early, informal resolution of the dispute at the school level to the extent possible. The district or parent/guardian may also request mediation and/or a due process hearing in accordance with law, Board policy, and administrative regulation.

Note: Education Code 56195.8 authorizes the Governing Board to adopt policy for the involvement of Board members in any due process hearing procedure activities. However, a best practice is to designate the Superintendent or designee to serve as the district representative at the hearing. The following optional paragraph may be revised to reflect district practice.

The Superintendent or designee shall represent the district in any due process hearing conducted with regard to district students and shall inform the Board ~~of Trustees~~ about the result of the hearing.

Note: 5 CCR 3200-3205, as added by Register 2020, No. 21, require complaints alleging a violation of federal or state law or regulation related to the provision of FAPE to students with disabilities to be submitted to the California Department of Education rather than being addressed through the district's uniform complaint procedures as described in BP/AR 1312.3 - Uniform Complaint Procedures. For further information regarding state compliance complaints, see the accompanying administrative regulation.

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~~The Superintendent or designee shall address a complaint concerning compliance with state or federal law regarding special education in accordance with the district's uniform complaint procedures.~~ Any complaint alleging the district's noncompliance with federal or state laws or regulations related to the provision of a free appropriate public education to students with disabilities shall be filed in accordance with 5 CCR 3200-3205.

~~*(cf. 1312.3 - Uniform Complaint Procedures)*~~

Legal Reference:

EDUCATION CODE
56000 Education for individuals with disabilities
56001 Provision of the special education programs
56020-56035 Definitions
56195.7 Written agreements
56195.8 Adoption of policies for programs and services
56300-56385 Identification and referral, assessment
56440-56447.1 Programs for individuals between the ages of three and five years
56500-56509 Procedural safeguards, including due process rights
56600-56606 Evaluation, audits and information
CODE OF REGULATIONS, TITLE 5
3000-3100 Regulations governing special education, especially:
3080-3089 Procedural safeguards
3200-3205 Special education compliance complaints
~~*4600-4671 Uniform complaint procedures*~~
UNITED STATES CODE, TITLE 20
1232g Family Educational Rights and Privacy Act
1400-1482 Individuals with Disabilities Education Act
UNITED STATES CODE, TITLE 29
794 Section 504 of the Rehabilitation Act
UNITED STATES CODE, TITLE 42
11434 Homeless assistance
CODE OF FEDERAL REGULATIONS, TITLE 34
99.10-99.22 Inspection, review and procedures for amending education records
104.36 Procedural safeguards
300.1-300.818 Assistance to states for the education of students with disabilities, especially:
300.150-300.153 State compliance complaints
300.500-300.520 Procedural safeguards and due process for parents and students
COURT DECISIONS
Winkelman v. Parma City School District, (2007) 550 U.S. 516

Management Resources:

~~*FEDERAL REGISTER*~~
~~*Final Regulations, December 1, 2008, Vol. 73, No. 231, pages 73006-73029*~~
WEB SITES
California Department of Education, Special Education: http://www.cde.ca.gov/sp/se
Office of Administrative Hearings, Special Education Division: https://www.dgs.ca.gov/OAH/Case-Types/Special-Education
U.S. Department of Education, Office of Special Education Programs: http://www.ed.gov/about/offices/list/osers/osep

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION

Note: The following mandated administrative regulation reflects the federal Individuals with Disabilities Education Act (20 USC 1400-1482), implementing federal regulations (34 CFR 300.1-300.818, and conforming state legislation. Note that in cases where state law provides greater protections to students, state law supersedes federal law.

Both federal and state law give parents/guardians of students with disabilities the right to due process and require the district to provide procedural safeguards, as specified below. Education Code 56501 extends these rights to the student only if the student is an emancipated minor or a ward or dependent of the court with no available parent/guardian or surrogate parent. See AR 6159.3 - Appointment of Surrogate Parent for Special Education Students. As part of these rights, districts must provide two different notices, the prior written notice and the procedural safeguards notice, to parents/guardians at specified times detailed below.

Prior Written Notice

Note: Pursuant to 20 USC 1415 districts are mandated to adopt procedures that include prior written notice to parents/guardians of students with disabilities under the circumstances described below.

The Superintendent or designee shall send to the parents/guardians of any student with disabilities a prior written notice ~~within a reasonable time~~: (20 USC 1415(c); 34 CFR 300.102, 300.300, 300.503~~; Education Code 56500.4, 56500.5~~)

1. Before the district initially refers the student for assessment

2. Within a reasonable time b~~B~~efore the district proposes to initiate or change the student's identification, assessment, educational placement, or the provision of a free appropriate public education (FAPE) to the student

3. Within a reasonable time b~~B~~efore the district refuses to initiate or change the student's identification, assessment, or educational placement or the provision of FAPE to the student

4. Within a reasonable time b~~B~~efore the student graduates from high school with a regular diploma thus resulting in a change in placement

Note: 34 CFR 300.300 states that a parent/guardian may revoke consent for the continued provision of special education and related services at any time. Upon receipt of this written revocation, 34 CFR 300.300 requires the district to provide prior written notice and, within a reasonable period of time, discontinue all services to the student. See AR 6159 - Individualized Education Program.

5. Upon receipt of the parent/guardian's written revocation of consent for the continued provision of special education and related services to ~~his/her child~~ the student

This prior written notice shall include: (Education Code 56500.4; 20 USC 1415~~(c)~~; 34 CFR 300.503~~; Education Code 56500.4~~)

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

PROCEDURAL SAFEGUARDS AND COMPLAINTS FOR SPECIAL EDUCATION

3. A description of each assessment procedure, ~~test~~ assessment, record, or report the district used as a basis for the proposed or refused action

4. A statement that the parents/guardians of the student have protection under 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 these provisions

6. A description of any other options that the individualized education program (IEP) team considered and why those options were rejected

(cf. 6159 - Individualized Education Program)

7. A description of any other factors relevant to the district's proposal or refusal

(cf. 5145.6 - Parental Notifications)

~~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. The notice shall include, but not be limited to, those rights prescribed by Education Code 56341. (Education Code 56341, 56506; 34 CFR 300.503)~~

~~If the native language or other mode of communication of the parent/guardian is not a written language, the district shall take steps to ensure that: (34 CFR 300.503)~~

~~1. The notice is translated orally or by other means to the parent/guardian in his/her native language or other mode of communication~~

~~2. The parent/guardian understands the contents of the notice~~

~~3. There is written evidence that items #1 and #2 have been satisfied~~

~~*(cf. 5145.6 - Parental Notifications)*~~

Procedural Safeguards Notice

A procedural safeguards notice shall be made available to parents/guardians of students with disabilities once each school year and: (Education Code 56301; 20 USC 1415~~(d)(1);~~ 34 CFR 300.504~~; Education Code 56301~~)

1. Upon initial referral or parent/guardian request for assessment

Note: Pursuant to 34 CFR 300.504, the procedural safeguards notice must be provided upon receipt of the first state complaint filed against the district in a school year pursuant to 34 CFR 300.151-300.153. For complaint procedures addressing alleged violation of federal or state law or regulation related to the provision of a free

appropriate public education (FAPE), see the section "State Compliance Complaints" below.

2. Upon receipt of the first state compliance complaint in a school year, filed in accordance with the section "State Compliance Complaints" below

~~*(cf. 1312.3 - Uniform Complaint Procedures)*~~

3. Upon receipt of the first due process hearing request in a school year

4. In accordance with the discipline procedures pursuant to 34 CFR 300.530(h), when ~~a decision is made to remove~~ removal of a student because of a violation of a code of conduct ~~constituting~~ constitutes a change of placement

(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))

5. Upon request by a parent/guardian

Note: 34 CFR 300.504 lists the required content of the procedural safeguards notice. A sample procedural safeguards notice is available on the California Department of Education's (CDE) web site.

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~~(d)(2)~~; 34 CFR 300.504~~; Education Code 56301~~)

1. Independent educational evaluation

(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)

2. Prior written notice

3. Parental consent, including a parent/guardian's right to revoke consent, in writing, to ~~his/her child's~~ the student's continued receipt of special education and related services

4. Access to educational records

(cf. 5125 - Student Records)

5. Opportunity to present complaints and resolve complaints through the due process complaint and state compliance complaint procedures, including the time period in which to file a complaint, the opportunity for the district to resolve the complaint, and the difference between a due process complaint 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

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7. The student's placement during the pendency of any due process complaint

8. Procedures for students who are subject to placement in an interim alternative educational setting

9. Requirements for unilateral placement by parents/guardians of students in private schools at public expense

10. Hearings on due process complaints, including requirements for disclosure of assessment results and recommendations

11. State-level appeals

12. Civil actions, including the time period in which to file those actions

13. ~~Attorney's fees~~ Availability of attorney's fees pursuant to 340 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. ~~i~~Information on the procedures for requesting an informal meeting, prehearing mediation conference, mediation conference, or due process hearing~~;~~

2. tThe timelines for completing each process~~;~~

3. ~~w~~Whether the process is optional~~;~~

4. ~~t~~The type of representative who may be invited to participate;

5. ~~t~~The right of the parent/guardian and/or the district to electronically record the proceedings of IEP meetings in accordance with Education Code 56341.1~~; and~~

6. ~~i~~Information regarding the state special schools for students who are deaf, hard of hearing, blind, visually impaired, or deaf-blind~~.~~ ~~(Education Code 56321, 56321.5, 56321.6)~~

A copy of this notice shall be attached to the student's assessment plan ~~and referred to at each IEP meeting~~. At each IEP meeting, the Superintendent or designee shall inform the parent/guardian of the federal and state procedural safeguards that were provided in the notice. (Education Code 56321, ~~56321.5~~ 56500.1)

Format of Parent/Guardian Notices

Note: 20 USC 1415 mandates that districts adopt procedures to ensure that the parent/guardian notice is in the native language of the parent/guardian, unless it is clearly not feasible to do so. 34 CFR 300.29 defines "native language" as the language normally used by the individual and, for a child, the language regularly used in the

home environment. Pursuant to 34 CFR 300.503 and 300.504, the notice must be in an "understandable language" as specified below. Districts that subscribe to CSBA's GAMUT Policy Plus may use the program's web-based translator to translate policy documents uploaded into the district's GAMUT web site.

The parents/guardians of a student with a disability shall be provided written notice of their rights in ~~a~~ 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~~; Education Code 56341, 56506~~)

If the native language or other mode of communication of the parent/guardian is not a written language, the district shall take steps to ensure that~~: (34 CFR 300.503)~~

~~1. T~~the notice is translated orally or by other means ~~to the parent/guardian~~ in ~~his/her~~ the parent/guardian's native language or other mode of communication~~.~~ and that

~~2. T~~the parent/guardian understands the contents of the notice. (34 CFR 300.503)

~~3. There is written evidence that items #1 and #2 have been satisfied.~~

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

Note: The following optional paragraph is for use by districts that wish to grant parents/guardians the option to receive notices electronically pursuant to 34 CFR 300.505.

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

Filing Due Process Complaints

Note: In California, due process hearings required by federal law are held only at the state level. Related rights and procedures are set forth in Education Code 56501-56506 and 5 CCR 3080-3089. Note that in cases where state law provides greater protection, state law supersedes federal law.

When a parent/guardian has revoked consent for the continued provision of special education services to the student, 34 CFR 300.300, specifies that a district may not use the due process hearing procedures to obtain an agreement or a ruling to require that services be provided.

20 USC 1415(b) mandates that the district adopt procedures regarding a party's right to initiate a due process hearing concerning the issues specified in items #1-4 below.

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

1. There is a proposal to initiate or change the student's identification, assessment, or educational placement or the provision of FAPE to the student.

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2. There is a refusal to initiate or change the student's identification, assessment, or educational placement or the provision of FAPE to the student.

3. The parent/guardian refuses to consent to an assessment of ~~his/her child~~ the student.

4. There is a disagreement between a parent/guardian and the district regarding the availability of a program appropriate for the student, including the question of financial responsibility, as specified in 34 CFR 300.148.

Note: Pursuant to 20 USC 1415 and 34 CFR 300.508, the district is mandated to adopt procedures (1) requiring either party (the district or the parent/guardian) or their attorney to provide a due process complaint notice to the other party and (2) requiring that the party may not have a due process hearing until that complaint notice has been filed. CDE has developed model forms to assist parties in filing a complaint and due process complaint notice.

Prior to having a due process hearing, the party requesting the hearing, or the party's attorney, shall provide the opposing party a due process complaint, which shall remain confidential, specifying: (Education Code 56502; 20 USC 1415~~(b)~~; 34 CFR 300.508~~; Education Code 56502~~)

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

(cf. 6173 - Education for Homeless Children)

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

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

Note: Although Education Code 56502 states that all requests for a due process hearing must be filed with the Superintendent of Public Instruction, according to CDE's web site, due process hearing requests should be filed with the Special Education Division of the Office of Administrative Hearings.

Parties filing a due process complaint shall file their request with the state Office of Administrative Hearings, Special Education Division. ~~Superintendent of Public Instruction or designated contracted agency. (Education Code 56502)~~

Note: 20 USC 1415 mandates that the district's procedures include an opportunity to file a complaint about an alleged violation that occurred not more than two years before the parent/guardian or district knew or should have known about the alleged violation, unless an exception specified in law applies.

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 timeline shall not apply if the district misrepresented that it had solved the problem or withheld required information from the parent/guardian. (Education Code 56505; 20 USC 1415; 34 CFR 300.507, 300.511)

District's Response to Due Process Complaints

If the district has sent prior written notice to the parent/guardian regarding the subject matter of the parent/guardian's due process complaint, the district shall, within 10 days of receipt of the complaint, send a response specifically addressing the issues in the complaint. (20 USC 1415~~(c)(1~~); 34 CFR 300.508)

If the district has not sent a prior written notice to the parent/guardian regarding the subject matter contained in the parent/guardian's due process complaint, the district shall send a response to the parent/guardian within 10 days of receipt of the complaint containing: (20 USC 1415~~(c)(1)~~; 34 CFR 300.508):

1. An explanation of why the district proposed or refused to take the action raised in the complaint

2. A description of other options that the IEP team considered and the reasons that those options were rejected

3. A description of each ~~evaluation~~ assessment procedure, assessment, record, or report the district used as the basis for the proposed or refused action

4. A description of the factors that are relevant to the district's proposal or refusal

Upon the filing of a due process complaint by either party or upon request of the parent/guardian, the district shall inform the parent/guardian of any free or low-cost legal and other relevant services available in the area. (34 CFR 300.507)

Informal Process/Pre-Hearing Mediation Conference

Note: 20 USC 1415 mandates that the district's due process procedures include an opportunity for mediation. Education Code 56500.3 establishes a state-level mediation process. In addition, Education Code 56502 authorizes an informal meeting process conducted at the local level, as described in the following paragraph.

Prior to or upon initiating a due process hearing, the Superintendent or designee and a parent/guardian may, if the party initiating the hearing so chooses, agree to meet informally to resolve any issue(s) relating to the identification, assessment, education and placement, or provision of FAPE for a student with disabilities. The Superintendent or designee shall have the authority to resolve the issue(s). ~~In addition, either party may file a request with the Superintendent of Public Instruction for a mediation conference to be conducted by a person under contract with the California Department of Education.~~
(Education Code 56502)

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

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. (Education Code 56500.3)

Attorneys may attend or otherwise participate only in those mediation conferences that are scheduled after the filing of a request for due process hearing. (Education Code 56500.3, 56501)

State Compliance Complaints

Note: 5 CCR 3200-3205, as added by Register 2020, No. 21, require complaints alleging violation of federal or state law or regulation related to the provision of FAPE to students with disabilities to be submitted to CDE rather than being addressed through the district's uniform complaint procedures as described in BP/AR 1312.3 - Uniform Complaint Procedures. State compliance complaints differ from the due process complaints described above and are investigated and resolved by CDE.

Pursuant to 34 CFR 300.152, if a written complaint is the subject of both a state compliance complaint and a due process complaint, or contains multiple issues which include one or more issues that are a part of a due process hearing, CDE must set aside any part of the state compliance complaint that is being addressed in the due process hearing until the conclusion of the hearing.

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 statement alleging that, within the previous year, any of the following occurred: (5 CCR 3200, 3201)

1. The district 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 district violated Part 30 of the Education Code (Education Code 56000-56865) and 5 CCR 3200-3205.

3. The district 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 district failed or refused to implement a due process hearing order to which the district is subject.

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 district has violated or failed to comply with any provision set forth in 5 CCR 3201

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2. The facts on which the statement is based

3. The signature and contact information for the complainant

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 Superintendent or designee at the same time the complaint is filed with CDE. (5 CCR 3202)

Note: Pursuant to 5 CCR 3203 and 34 CFR 300.152, CDE must complete its investigation of the state compliance complaint within 60 calendar days. This time limit may be extended only if (1) exceptional circumstances exist with respect to the particular complaint or (2) the complainant and the district agree to extend the time to engage in mediation. Within 30 days of the issuance of the investigation report, either the district or the complainant may request reconsideration of the decision. Within 60 days of receiving the request for reconsideration, CDE must respond in writing to the parties by either denying the request for reconsideration or modifying the investigative report.

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