

Due Process

Due Process Defined

Procedural due process is defined as, “A course of formal proceedings (as legal proceedings) carried out regularly and in accordance with established rules and principles.” (Merriam-Webster 2014)

The 5th Amendment to the Constitution of the United States states that “no person shall...be deprived of life, liberty, or property, without due process of law.” This right was extended to the states by the 14th Amendment (1868). Fundamental to procedural due process are adequate notice before the government can deprive one of life, liberty, or property, and the opportunity to be heard and defend one's rights. The boundaries of due process are not fixed and are the subject of endless judicial interpretation and decision making. (Merriam-Webster 2014)

Parents have certain legal rights which must be protected, including an opportunity to be heard within a reasonable time period when parental rights have been impacted. Specifically, procedural due process "requires rigorous adherence to procedural safeguards anytime the state seeks to alter, terminate, or suspend a parent's right" to the care, custody, and management of his or her children. *Mccurdy v. Dodd*, 352 F.3d 820, 827 (3d Cir. 2003) (emphasis added); see also *Isbell v. Bellino*, 2013 WL 4516475 (M. D. Penn).

When is due process required?

Due process is required any time a separation occurs within the family and in other situations in which a deprivation of rights occurs, including, but not limited to:

- Any altering of parental capacity;
- Separation of a parent from a child;
 - Removal of a parent;
 - Removal of a child;
- Interference with custody;
- Interference with decision making authority;
- Interference with parental visitation, such as limiting unsupervised contact with a child.

As further stated in *Isbell* and in *Starkey v. York*, 2012 U.S. Dist. LEXIS 189055 (M. D. Penn.), no level of due process is required *prior* to the deprivation associated with a Safety Plan.

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What are the Key Components of Due Process?

1. Notice

When the CCYA is recommending that a Safety Plan is necessary, the agency should immediately provide notice to parents of their due process rights and give parents the opportunity to provide informed consent to the Safety Plan.

2. Opportunity to be Heard

There should be an **offer** for a review of the Safety Plan and a forum in which the parents are afforded an opportunity to be heard if there is a deprivation of the parents' rights.

3. Elements of the Review

- A. Timing
- B. Standard/Scope of Review
- C. Type of Review
- D. Potential Outcomes of Review

It is important to understand that the manner in which each of these components is carried out is unique to each county. There are no standards or procedures established for due process as it relates to deprivation of parental rights. It is essential that you consult your supervisor regarding due process procedures in your county.