

Appendix B

Right to Due Process

What is due process

Due process is a procedural safeguard to ensure that life, liberty, or property is not taken without a fair process or procedure. It is required by both the United States and California Constitutions. (U.S. Constitution, Amendments V and XIV; California Constitution, Article 1, Declaration of Rights) It requires, at a minimum, that the government give notice of the charges to the accused person and give that person an opportunity to be heard by a fair and impartial decisionmaker.

How does the Commissioner assure due process?

Due process begins with the Commissioner's Notice of Proposed Action (NOPA). Due process is assured by giving adequate notice of the charges against the person so that the person can respond to or defend against the charges and by giving the person an opportunity to be heard to defend against the charges before an impartial Hearing Officer prior to receiving a fine.

New evidence

Any evidence that is relevant to the violation(s) charged in the NOPA can be introduced at the hearing. The evidence does not have to be listed or included in the NOPA. The Respondent has a right to review all evidence before the hearing, and the case file must be ready when the NOPA is signed.

The County cannot introduce evidence at a hearing to prove a violation that has not been charged in the NOPA. The County would have to prepare a new NOPA for that violation.

Translation services during the hearing

The fundamental requirement of due process is the opportunity for a fair and meaningful hearing. If the Respondent has difficulty understanding English, appropriate translation should be offered and/or provided. The Respondent may decline the use of a translator. Providing the opportunity to use a translator is sufficient to satisfy the due process requirement. The Hearing Officer is not under a constitutional obligation to compel the Respondent to use a translator after declining it.

It is a best practice for the County to arrange for translation beforehand, if possible. If it becomes apparent the Respondent requires a translator at the hearing, the Hearing Officer should stop the hearing until a translator can be found.

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