

SECTION 6

Procedural Safeguards

Resolutions Sessions

Mediations

Due Process Hearings



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Procedural Safeguards

The procedural safeguards notice must be given to parents/guardians at least once a year and upon the occurrence of any of the events specified below. Federal regulations clarify that "once a year" means "one time a school year".

A procedural safeguards notice shall be made available to parents/guardians of students with a disability once a school year and:

1. Upon request from a parent/guardian
2. The first time a child is referred for a special education assessment
3. Each time the parents are given an assessment plan to evaluate the child
4. Upon receipt of the first state or due process complaint in a school year, and
5. When the decision is made to make a removal that constitutes a change of placement

(20 *USC* 1415[d]; 34 *CFR* 300.504; *EC* 56301[d] [2], *EC* 56321, and 56341.1 [g] [1])

The procedural safeguards notice used in the San Joaquin County SELPA is available online in the SEIS document Library under Parent Rights as well as on CDE's website: <https://www.cde.ca.gov/sp/se/qa/pseng.asp>. Procedural Safeguards are also available in different translations and can be found at the following website:

<https://inet2.cde.ca.gov/cmd/translatedparentaldoc.aspx?docid=759-768>.





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More information regarding parents' rights can be found at the California Department of Education website: <https://www.cde.ca.gov/sp/se/qa/>.

Due Process Rights

To access the information in relation to helpful guides, tools, and tips for understanding and navigation of Special Education due process hearings and mediations, please see the Office of Administrative Hearings website at: <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help>

What is OAH?

The Office of Administrative Hearings (OAH) provides a neutral forum for fair and independent resolution of matters while ensuring due process and respecting the dignity of all. OAH is divided into two statewide divisions: General Jurisdiction and Special Education Division. OAH's Special Education Division provides Administrative Law Judges (ALJ) to hear disputes as well as to provide mediation and settlement services throughout the state to school districts and parents of students with exceptional needs. OAH's Special Education Division is divided into two regions – Northern California and Southern California – with the main office located in Sacramento. OAH Special Education Division does have other regional offices located in Oakland, Los Angeles, and San Diego.

What happens when there is a disagreement about the special education needs of a student or whether a student needs special education and services?

When a disagreement arises about a child who has (or is suspected of having) special education needs, a request for due process hearing may be filed. The request, often called a "complaint", for due process must be in writing, such as a letter. Additionally, a parent, student or education agency may use a form that has been developed by OAH and CDE in order to submit a request for due process.





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Where can these forms be obtained?

OAH and CDE have developed a form entitled “Request for Due Process Hearing and Mediation” to assist parties in filing a request for hearing. Another form for mediation only has also been developed and is entitled “Request a Mediation Only.” You can obtain these forms on OAH’s website at <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms> or by writing or telephoning the Office of Administrative Hearings, Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833, (916) 263-0880. Forms may also be obtained by contacting the California Department of Education at (916) 319-0800 or by visiting their website at <https://www.cde.ca.gov/sp/se/qa/>.

How do I ask for a due process hearing or a mediation only?

To begin the process, a “Request for Due Process Hearing Only” or a “Request for a Mediation Only” form must be filed with the OAH. Although OAH has regional offices, all due process requests must be filed electronically through OAH’s Secure e-File Transfer (SFT) System. OAH only accepts and sends electronic documents via SFT, and no longer accepts documents by fax or email. The party requesting a due process hearing must, at the same time, send or deliver a copy of the request to all of the other party or parties either listed in the “complaint” through first class mail, messenger or overnight delivery such as UPS, FedEx, or other courier service, personal delivery to the person or agency listed in the “complaint”, facsimile transmission, also referred to as a fax, or email to the person or agency named in the “complaint”.

What is the difference between mediation and a due process hearing?

Mediation is a voluntary, confidential, informal meeting at which the parties and an experienced, impartial mediator attempt to resolve the dispute in a cooperative, nonadversarial atmosphere. The mediator does not provide advocacy or legal advice to either side, but facilitates communication between the parties. The participation of the neutral





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mediator makes it more likely that the parties will reach a mutually satisfactory resolution. Most mediations successfully resolve the dispute. Most mediations occur as part of the due process hearing procedures. However, as noted, a parent or school district can request a "mediation only," which is a mediation that takes place without also requesting a due process hearing. A hearing is a more formal, trial-like legal proceeding in which all parties are given a chance to present evidence and arguments before an impartial Administrative Law Judge (ALJ). The ALJ then issues a written decision which is the final administrative decision resolving the matter.

Who may request a due process hearing or mediation only?

A parent or legal guardian of a student with exceptional needs (or suspected of having a disability) may request a hearing or mediation. A school district or other educational agency may also make such a request. In some cases, the student may make a request. Each side of the disagreement is referred to as a "party."

How long do I have to request a due process hearing or mediation only?

Education Code section 56505, subdivision (l), provides that a request for a due process hearing under subdivision (a) of Section 56501 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 is typically referred to as the "statute of limitations." However, there are exceptions to the application of this two-year provision, and OAH recommends that parents, students, and school district obtain advice from legal counsel to determine the viability of a request for due process.





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What must be in a request for a due process hearing?

All requests for due process hearing and mediation are confidential. To be legally sufficient, a request for a due process hearing must contain all of the following information:

- 1) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending (20 U.S.C. § 1415 (b)(7)(A)(ii)(I));
- 2) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem (20 U.S.C. § 1415(b)(7)(A)(ii)(III)); and
- 3) a proposed resolution of the problem to the extent known and available to the party at the time (20 U.S.C. § 1415 (b)(7)(A)(ii)(IV)).

What do I do if I think a request for due process hearing is not legally sufficient?

The due process hearing request notice required shall be deemed to be sufficient unless the district or parent receiving the notice notifies the due process hearing officer and the other party in writing that the receiving party believes the due process hearing request notice has not met the notice requirements. The party providing a hearing officer notification shall provide the notification within 15 days of receiving the due process hearing request notice. Within five days of receipt of the notification, the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements and shall immediately notify the parties in writing of the determination.

What will happen to the student's education during the due process hearing process?

The law requires that the student remain in his or her present educational placement during the mediation and hearing process until the ALJ issues





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a written decision, unless the school district and the parents agree otherwise. This requirement is often referred to as the “stay put” provision of the law. There are some specific exceptions to the stay put requirement when discipline is involved. In addition, for students transitioning from Early Intervention Services (Known as IDEA Part C Services) to a school district program at the age of 3, districts are not required to provide the early intervention services the student was receiving for the purpose of stay put.

How will I know when my mediation and due process hearing have been scheduled?

You will receive a written document titled “Notice of Due Process Hearing and Mediation and Scheduling Order” approximately one week after filing a request for due process hearing. The notice will contain a date, time, and location of the mediation and due process hearing. It will also contain a date for a telephone or video prehearing conference. OAH is currently using Microsoft Teams to conduct its Prehearing Conferences and Hearings. For answers to the most commonly asked questions, please see the [FAQs page](#) for the virtual videoconference prehearing conferences and hearings.

When will the due process hearing be scheduled?

The hearing is initially scheduled approximately 55 days after the hearing request is received, to allow time for the 30-day resolution session and for a mediation to take place. The average hearing takes approximately 5 days to complete.

What happens in the first 30 days after the form is filed requesting a due process hearing?

Within the first 30 days after the request for hearing is made, the parties must have a meeting called a “resolution session.”





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What is a resolution session?

Once a school district receives notice that a due process hearing request has been filed by a parent, the district has 15 days to hold a meeting with the parents called a resolution session, unless an expedited request for due process has been received. In such a case, a district must convene the resolution session within 7 days. The resolution session must include someone from the district who has the power to make a decision for the district. The district's lawyer is not allowed to come to the resolution session unless the parent brings a lawyer. This session gives parties an opportunity to resolve the dispute. If the dispute is not resolved within 30 days after the district has received the due process hearing request, then the hearing proceeds as scheduled in the Scheduling Order. There is no requirement in the law for a resolution session if district filed requests for hearing.

Does the resolution session have to include the entire IEP team?

The law requires participation by "relevant" IEP members who have knowledge of the complaint.

What is the process for notification of the resolution session?

The school district, not OAH, is responsible for convening the resolution session and assembling the required participants.

May the resolution session be waived?

The parents and the school district may mutually agree to waive the resolution session. This agreement must be in writing. The parents and the district may also agree to use mediation instead of holding the resolution session. If OAH receives a written waiver of the resolution session signed by both parties, the period allotted for the resolution session ends, and the matter proceeds to mediation and hearing.





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What if the parents do not attend the resolution session?

If the parents refuse to attend the resolution session, they have not met the legal requirements to pursue a due process hearing, and the case may be dismissed.

What if the case is settled in the resolution session?

If the case is resolved at the resolution session, then both parties must sign a settlement agreement. The settlement agreement is a legal document that can be enforced by a state or federal court of competent jurisdiction. The parties have three business days after the settlement agreement is signed to cancel the agreement. If the agreement is cancelled, then the due process hearing goes forward. If the parties reach an agreement at the resolution session, they must notify OAH in writing.

If the resolution session is unsuccessful or cancelled, should the parties advise OAH?

Yes. OAH may be able to advance the scheduling of a hearing date. If no communication is received, OAH will assume after 30 days that the resolution session was unsuccessful and the matter will proceed to mediation and hearing, and the applicable 45-day timeline begins. The 45-day timeline may begin earlier if: (1) the parties agree in writing to waive the resolution meeting and appropriately notify OAH; (2) the parties agree in writing that resolution is not possible after either the mediation or resolution session has begun; (3) the parties agree in writing to continue a mediation that started within the 30-day timeline to a date after the 30-day timeline, but one of the parties later withdraws from the mediation process. If one of these three situations occur, then the 45-day timeline begins to run the day after the triggering event, so long as OAH is provided with appropriate notice.

Except where the parties jointly agree to waive the resolution session, the failure of a parent to participate in a resolution session will delay the timelines for the resolution process and due process hearing until the





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meeting is held. If the school district is unable to obtain parental participation in the resolution session after documenting reasonable efforts (phone calls to home and workplace, written correspondence, and/or visits to the home or workplace), it may seek a dismissal of the complaint at the conclusion of the 30-day time period.

If the school district fails to hold a resolution session within the 15-day timeline or fails to participate in a resolution session, then the parent may seek intervention from OAH to begin the 45-day hearing timeline.

If the parties resolve the issues during the resolution session, they must execute a legally binding agreement that is: (1) signed by both parties; and (2) enforceable in state or federal court. The parties have up to three business days to void an agreement reached during a resolution session.

Do the parties have to wait 30 days before notifying OAH that they can't resolve issues in a resolution session and therefore need to proceed to hearing?

If the parties have reached an impasse prior to expiration of the 30-day period and submit to OAH a written statement to that effect, signed and dated by both parties, the matter will proceed to mediation and hearing. OAH will not consider the resolution period terminated based on one party's assertion that the parties are at impasse.

What happens after the first 30 days has passed?

The parties will attend the pre-scheduled mediation.

What is mediation?

Mediation is a way of settling a disagreement through facilitated discussion. At mediation, the parties have the help of a trained mediator, who is unbiased and independent. The mediator will help the parties try to find a solution that is acceptable to both parties. In mediation, the parties work together to try to find a solution that will satisfy both parties.





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The parties decide whether or not the dispute is settled. If the parties try mediation but can't reach an agreement, they still have the right to continue to a due process hearing.

What if one of the parties does not want to participate in mediation?

Mediation is a voluntary process. It is encouraged because it is more likely to lead to a settlement of the dispute, but participation in mediation is voluntary. If one of the parties declines the opportunity to mediate, the dispute will proceed to hearing.

What if I need an interpreter at the mediation?

If you need a language interpreter or an interpreter for the hearing impaired, you must notify OAH before the mediation. OAH will provide the interpreter at state expense. When you ask for an interpreter, be sure to say what language or kind of interpreter you need.

Am I allowed to have an attorney represent me?

You may have an attorney represent you at mediation which is scheduled as a part of your due process hearing. You do not have the right to have an attorney appointed for you.

Where can I get assistance in finding an attorney or other representative?

OAH maintains a list of persons and organizations that can provide representation on a free or reduced cost basis. This list is available upon request and is on OAH's website at <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Page-Content/Special-Education-Services-List-Folder/Obtain-List-of-Low-Cost-or-Free-Attorneys-and-Advocates-for-Special-Education>. Other resources for obtaining legal representation may be available through the local school districts or the internet.





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Why should the parties participate in mediation?

Both federal and state law encourage the use of mediation for all special education disputes. The majority of special education disputes are resolved through mediation. Mediation is a preferred method for resolving disputes for a number of reasons, including the following:

1. The parties are more likely to maintain a cooperative relationship in the future if the settlement of the dispute is by mutual agreement.
2. Through mediation, the parties have a great deal of flexibility in reaching a mutually acceptable settlement. When the dispute goes to hearing, the ALJ makes the final decision, which may not be completely satisfactory to either party.
3. If the parties reach an agreement in mediation, the agreement is written and signed that same day and can be implemented immediately. If the case goes forward to hearing, the ALJ must take time to consider the evidence presented at the hearing and then write a decision informing the parties of his or her determination.
4. Mediation is less costly than a hearing in terms of time, money, and personal stress.

Is mediation confidential?

Except for enforcement purposes, any agreement reached and everything said in a mediation are confidential and are protected by law from being revealed in any other place. This provision is to encourage the parties to discuss their dispute candidly without fear of the later consequences of what they say.

What happens during mediation?

While all mediators have different ways of approaching mediation, most mediators begin with all of the parties in the same room. The mediator will explain how the mediation will proceed and will usually ask the parties to explain their positions regarding the dispute. The mediator will summarize the issues and invite discussion. Then the mediator may





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suggest that the parties adjourn to separate rooms. This practice is called “caucusing.” During caucusing, the mediator goes back and forth between the parties trying to develop a basis for common ground and a written agreement. Sometimes the parties are brought back together; sometimes they are not.

How will the parties be notified of the mediation?

When a hearing or mediation is requested, OAH sends a notice to all the parties setting the mediation date. A mediator will be assigned shortly before the mediation. The identity of the mediator can be obtained by either calling the Sacramento OAH office or through the online calendar at <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Calendar>.

Where will the mediation take place?

The mediation is usually held at the school district or a nearby OAH office.

**As of Monday, March 23, 2020, mediations are held exclusively by telephone or video conference. As of April 15, 2020, all prehearing conferences and hearings are also conducted by videoconference. More information regarding this notice can be found here: <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/News/Page-Content/Special-Education-News-List-Folder/Special-Education-News/Special-Ed-Mediations-For-March-18-20-Cancelled>.*

What happens if the mediation is successful?

The parties enter into a written agreement resolving their dispute. OAH then closes the matter because the dispute has been resolved.

Is the process different when “mediation only” is requested?

The process is basically the same, except that attorneys and advocates cannot attend a mediation only based on California Education Code





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Section 56500.3(a). However, the parties may consult with attorneys prior to or following a Mediation Only Conference. Parties may also bring non-attorney representatives to such conferences. A party requesting Mediation Only must provide the other party with a copy of the request. If parties are unable to resolve the dispute at the mediation only, the matter is closed. However, either party retains the option of filing a due process hearing request if the case is not resolved during mediation.

If mediation is unsuccessful, will the same ALJ be assigned to the due process hearing?

The mediation and hearing functions of OAH are kept separate, so that the parties in mediation will feel free to discuss their dispute candidly. A mediator never discusses the case with anyone else in the office. He or she only reports whether the mediation was successful or not. In addition, all documents that result from mediation are sealed in an envelope marked confidential.

What happens after an unsuccessful mediation when a party has requested a due process hearing?

The case will proceed to due process hearing before an ALJ on the date scheduled in the scheduling order unless postponed (see information on continuances below). A telephone or video prehearing conference, also scheduled in the scheduling order, will be conducted prior to the hearing.

Who conducts the prehearing conference and the due process hearing?

An ALJ from OAH is in charge of the due process hearing, just like a judge is in charge of a trial. The ALJ does not take the side of either party and is independent of the school district and the California Department of Education. The ALJ rules on all procedural matters, runs the hearing, listens to the evidence and arguments of the parties, and writes a final decision. The ALJ will have telephone conferences or meetings before the





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hearing, give written orders, and generally control the hearing process. All ALJs are licensed California attorneys who have received specialized training in the area of Special Education law and in the conduct of administrative hearings.

What should a district do when they receive a Due Process “complaint”?

Once a District receives a Due Process “complaint” from the Office of Administrative Hearings, they should notify the SELPA office. OAH does not inform the SELPA of filings, and it is important to date stamp the date of receipt and fax a copy to the SELPA. The District will respond to the parent’s complaint in writing. The District may also notify the due process hearing officer and the other party in writing if the district believes the due process hearing request notice has not met the notice requirements. The District will offer a Resolution session and the parents can choose to accept or waive. **When a District files for Mediation or Hearing, a Resolution session is not required.**

How will the SELPA assist the District when a Due Process Complaint has been filed?

The SELPA Director will assist a district with their responses to the parent and/or OAH. If a Resolution Session is required, SELPA staff and other trained administrators from the SELPA districts can serve as the neutral facilitator. The SELPA Director will work with the district to locate an available facilitator. If agreement is reached at the Resolution Session, OAH must be notified to remove the matter from hearing. If agreement is not reached, the matter will proceed to mediation and or hearing. Suggested forms (some via website links) and formats are included in this section.





Due Process Timelines

The following are critical timelines from the date the LEA receives a copy of the Hearing request from parents' attorney (do not wait to receive a notice from OAH):

WITHIN 10 DAYS send prior written notice to parent (unless this has previously been provided) which includes:

1. A description of the action proposed or refused by the school district;
2. An explanation of why the school district proposes or refuses to take the action;
3. A description of each evaluation procedure, assessment, record, or report that the school district used as a basis for the proposed or refused action;
4. A statement that the parent of a student with a disability (or an adult student) has protection under the procedural safeguards of Part B of the Individuals with Disabilities Act (IDEA) and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
5. Sources to contact to obtain assistance in understanding the provisions of Part B of IDEA;
6. A description of other options that the IEP team considered and the reasons why those options were rejected; and





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

WITHIN 15 DAYS send notice to OAH if LEA is alleging the Complaint notice is insufficient.

WITHIN 15 DAYS LEA shall convene a Resolution Conference, not an IEP, with the parent to include:

- participation by “relevant” IEP members who have knowledge of the complaint and the LEA representative with decision-making authority; and
- an attorney only if parent has an attorney present.

WITHIN 30 DAYS issues must be resolved or the Hearing process will resume.

