

Resolving Disagreements in Special Education

Sometimes parents disagree with the school district about something related to their child and Special Education. When you disagree or feel that the school is not following the law, there are several ways for parents to resolve these disagreements.

There are federal and state laws in Special Education called “Procedural Safeguards” that spell out a parent’s or a student’s rights and how you can use these rights.

It is usually best for everyone involved to work out differences at the lowest possible level with the least amount of conflict. This saves time and helps save relationships that you have with the professionals who work with your child. In the end, the outcome can be better for your child as well as your family.



When there is a disagreement, emotions can run high. Information can help balance out emotions.

This packet has information about:

- Informal ways to resolve differences
- Formal options offered by the State
- Preparing and communicating your concerns

Related Matrix Packets:

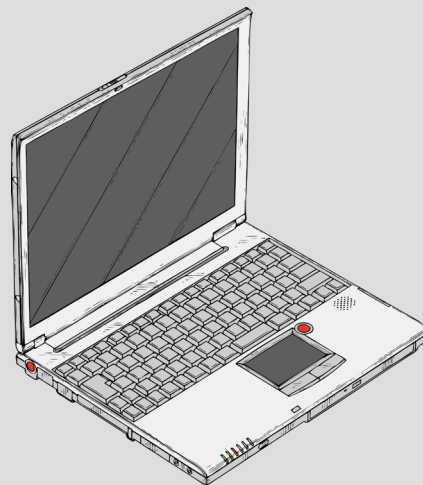
- Getting Organized (Early Years & School Age)
- Individual Education Plan (IEP)
- IEP Toolkit
- Advocating for Your Child with Special Needs
- Understanding Your Child’s IEP Document
- Assessments – School Age Years

Resources

- **California Department of Education:**
<http://www.cde.ca.gov/sp/se/>
- **CADRE – Consortium for Appropriate Dispute Resolution in Special Education,**
<http://www.directionservice.org/cadre>
- ***Special Education Rights and Responsibilities,***
<http://www.disabilityrightsca.org>
- ***Special Education Rights of Parents and Children: Notice of Procedural Safeguards – California Department of Education,***
<http://www.cde.ca.gov/sp/se/qa/pseng.asp>
(parents should receive this document from their IEP team at least annually)
- ***Wrightslaw: All About IEPs:***
www.wrightslaw.com
- ***Wrightslaw: From Emotions to Advocacy, 2nd Edition:*** <http://www.wrightslaw.com>
- ***The Complete Guide to Special Education: Expert Advice on Evaluations, IEPs and Helping Kids Succeed,*** Wilmshurst Ph.D and Brue, PhD, 2010.
- ***A Guide to Collaboration for IEP Teams,*** Martin, 2005
- ***How to Compromise with Your School District Without Compromising Your Child,*** Mayerson, 2004
- ***The Complete IEP Guide: How to Advocate for Your Special Ed Child, 9th edition,*** Siegel, Lawrence, 2017

Special Education Local Plan Area (SELPA) offices have information on Alternative Dispute Resolution (ADR) resources.

- **Marin SELPA**
415.499.5850
<http://www.marinselpa.org>
- **Napa SELPA**
707.253.6807
<https://www.napacoe.org/programs-schools-districts/selpa/>
- **Solano (upper county) SELPA**
707.399.4468
<http://ww.solanocoe.net>
- **Sonoma SELPA**
707.524.2750
<http://www.sonomaselpa.org>
- **Vallejo SELPA**
707.556.8921 ext. 50158
<http://www.vallejo.k12.ca.us>



Overview:

Handling Disagreements in Special Education

Disagreements can happen in a variety of ways. For example:

As a parent, you signed in agreement to your child's IEP either at the Annual Meeting or during a meeting to amend the IEP. Now something isn't working from your point of view. You ask for a change, and the district doesn't agree.

OR

You don't agree with a district change to the current IEP or the proposed annual IEP.

Getting Started:

- Organize the information you have about the situation.
- Work to understand the district's perspective.
- Think about effective ways to communicate, prepare to share your concerns, and provide supporting evidence. Take care of yourself so you can remain calm and focused.
- Review the Procedural Safeguards document.
- Know your rights and protections. Here are a few:

Individual Education Plan (IEP) Meeting

This must happen within 30 days of your written request. Make sure the school district invites people who are important in making decisions regarding your child.

Prior Written Notice

This is the notice that school districts are required to give you whenever they propose or refuse to initiate or change any of the following in your child's IEP: identification, evaluation, educational placement, and provision of a Free and Appropriate Public Education (FAPE).

Stay Put

During a disagreement with the school district, the last signed IEP that was put into place stays in effect. Your student "stays put" in the current placement and with current services.

Independent Educational Evaluation (IEE)

If you disagree with any special education assessment, you can ask for an IEE. The district needs to provide one unless they take you to a Due Process Hearing to prove that their assessment is appropriate. Ask for the district policy on IEEs before getting a private assessment that you want them to pay for.

Revoking consent

If you revoke your consent to part of the IEP, the school district could take you to a Due Process Hearing to prove that this part of the IEP is needed for your child to have FAPE (free and appropriate education).

If you revoke your consent to all special education services, make this decision very carefully and seek advice before doing so. Revoking your full consent means your child will no longer receive any Special Education services. Your child will NOT have any protections for students with disabilities under the law related to school discipline. This also means if later you want Special Education back, you have to start the eligibility process all over again with no guarantees of eligibility.

Alternative Dispute Resolution (ADR)

These are methods at the local level that are alternatives to formal Due Process. ADR methods can include a facilitated IEP, Independent Child Advocates, mediation through your local SELPA, or Resolution Panels.

State Mediation and/or Due Process

In California, these dispute resolution methods are provided through the State Office of Administrative Hearing. Lawyers are typically involved.



Effective Advocacy

You believe your child's education is not going well. What should you do? How can you make a difference? Become an advocate for your child's education.

Key points for advocacy and problem-solving:

- ✓ To help brainstorm, have someone write down all ideas in a way that others can see them, without passing judgment.
- ✓ Describe situations as if you are describing a photograph. This keeps your descriptions objective. Instead of saying "Susan hates to write" say "During free writing time, Susan sits at her desk and looks out the window. She will write no more than one sentence."
- ✓ Ask questions to help others be more specific. Often when others use general statements such as "Ben is a delight," we miss a chance for more detailed information. By asking follow-up questions, the other person may then give a more descriptive answer about how Ben is successful in the classroom.
- ✓ Listen carefully to the ideas of others and keep an open mind. Let others finish speaking.
- ✓ With a common interest in your child's needs, look at ways to agree to some ideas, rule out others, or combine parts of two ideas into one.
- ✓ Work hard to avoid "Yes, but..." thinking. Instead, try "Yes, and..." For example, say "I like that idea. Can we also...?"

Bonus Advocacy Tip:

Manage your emotions so they do not get in the way of what you are trying to accomplish. Separating emotions from advocacy is difficult but necessary. If you react based only on your emotions, your concern might be ignored or dismissed.

What Does Effective Advocacy Involve?

Knowledge: Your child's special needs and Special Education

Organization: Paperwork and priorities

Communication: Clear, concise, non-judgmental

Point of View: Take the perspective of others to support problem-solving

Self-Care: Well-rested, clear, and level-headed

Flexibility: Position vs. Interest

You must also be prepared to be flexible and encourage flexibility. To do this, focus on your critical areas of concern, your "interest" instead of your "position."

A position (fixed):

- is one way to solve a problem
- has a narrow focus
- Example: wanting a one-on-one aide, a particular reading program, or a specific amount of time in speech therapy

An interest (flexible):

- is a broadly defined need
- can be met in several ways
- Example: wanting your child to be respected, master skills, or be safe

When the team can abandon positions and identify interests, the result is creative solutions that meet everyone's needs.

Tips for a Smooth IEP Meeting

Before The IEP Meeting

- ✓ Learn what the law requires and how decisions are made.
- ✓ Gather information on your child and organize it.
- ✓ Keep written records of IEPs, assessments, correspondence, and phone calls.
- ✓ Review your child's last IEP and any assessments that you have.
- ✓ Ask key people to help you prepare and possibly attend the IEP meeting.
- ✓ Ask the district how the meeting will be structured and request an agenda.

At the IEP Meeting

- ✓ Take good notes to add to your IEP binder.
- ✓ Ask questions and listen for answers — it's ok to not know something.
- ✓ Be assertive, not aggressive — try to keep your emotions under control.
- ✓ Be a problem-solver — stay away from blame or accusations.
- ✓ Talk about your interests, not positions. When you discuss your concern (your interest) instead of demanding a single solution (your position), that opens the way for everyone to consider different options.
- ✓ Use facts, not assumptions; don't jump to conclusions.
- ✓ Find common interests. If behavior is your concern, it is probably also a concern of school staff. Everyone, including your child, will benefit from a solution that is well thought out instead of a "Band-Aid" action such as sending your child to the office.
- ✓ Propose solutions — don't rehash the past. Focus on what can be done today.
- ✓ Brainstorm, think outside the box, and make suggestions.
- ✓ Remember you do not need to give your written consent to the IEP at the meeting. You can sign only noting you attended the meeting. Take the IEP home to review, and then decide if you will sign in agreement or in disagreement.
- ✓ End by commenting on something positive and clearly state the next step, even if the next step is taking a few days to decide the next step!

After the IEP Meeting

- ✓ Put any new IEP papers or assessments in your IEP binder.
- ✓ Acknowledge good efforts and good intentions. Thank those who have worked with you. You are building a relationship with those who educate your child.
- ✓ If appropriate, send a thank you note or email to someone who was particularly helpful.
- ✓ Follow up with agreements that are made. This helps make sure the IEP is implemented the way it was written.

Some conflicts or disputes can be resolved by making IEP meetings run more smoothly. Parents don't lead an IEP meeting, but you can certainly help make the meeting more effective.

Informal Options

For Resolving Disputes in Special Education

For Compliance Issues

It is always best to solve problems as close to the source as possible. If you are concerned that something is not being done as required, first talk with the person responsible. If the two of you cannot agree, then you might talk with the school's principal or Special Education program manager. If that is not helpful, talk with the school's director of Special Education or someone at the Special Education Local Plan Area (SELPA) office. A Matrix Parent Advisor or other experienced parents or advocates can also help. Usually everyone benefits from concerns being aired and settled in an informal manner.

For Disagreements

If you disagree with the district about eligibility, assessments, services, or placement, ask for an IEP meeting. Ask that the people who can make decisions attend. It can be helpful to have a neutral person lead the meeting. Prepare for this meeting and go with an open mind. If the IEP meeting doesn't resolve the disagreement, there are other informal steps you can take.

Alternative Dispute Resolution (ADR)

Many SELPAs or school districts have services to help settle problems with as little conflict as possible: Facilitated IEP Meetings, Independent Child Advocates, and ADR Mediation. These options support cooperation and problem solving for a win-win result. They focus on student needs and smoothing out the relationships between parents and school staff. Both parent and district need to agree to use one of these options.

Facilitated IEP Meetings

A neutral facilitator leads the IEP meeting so it is orderly and communication is clear.

A facilitator:

- Develops a meeting agenda and helps set ground rules for the IEP team meeting
- Keeps team members focused on developing an IEP that meets student needs
- Encourages everyone to solve problems and come to agreement
- Helps the team talk about their interests instead of their positions

A facilitator does NOT:

- Make decisions for the group
- Take sides or place blame
- Work on disagreements that are not related to the IEP

Independent Child Advocates

Independent Child Advocates give intensive services. They can speak to both parents and districts, review records, observe in the classroom, and attend IEP meetings. The goal is to make sure that services meet student needs and that services follow the law.

ADR Mediation

Local mediators help resolve differences. These are trained people who help parents and the district work on an agreement.



Formal Options

for Resolving Disputes in Special Education

The California Department of Education, Office of Special Education, provides formal options for resolving disagreements.

Compliance Complaint

If you believe that the school has not followed special education laws, you can file a Compliance Complaint with the California Department of Education. Your complaint is a request for an investigation. You will state what you think the school did wrong, whom you contacted about this, and what the results were. You must also say what you want the school to do to fix the violation. Copies of your child's IEP and any other papers that apply to your complaint should be included.

Compliance complaints must be filed within one year of a violation. A copy of your complaint must be sent to the district at the same time you send your complaint to the Department of Education. Sometimes complaints are settled without an investigation. Districts and families may agree on how to settle the complaint. In other cases, districts may be ordered to take corrective action. Investigations are usually finished within 60 days. The California Department of Education website offers a model form you can use to file a compliance complaint or you can write a letter.

State Mediation

This is an option if you think your child is not getting a Free and Appropriate Public Education (FAPE). You can ask for mediation when filing for due process or without filing for due process. The request is made with the California Office of Administrative Hearings, Special Education Unit.

For more information call the
**California Department of Education
Special Education Division, Procedural
Safeguards Referral Service at
800.926.0648 or visit
www.cde.ca.gov/sp/se/qa/cmplntproc.asp**

Mediation does NOT change the rights of parents or districts to ask for a due process hearing or to file a compliance complaint. Mediation can be started at any time.

In mediation, the Office of Administrative Hearings assigns a neutral person to work with parents and districts to find a settlement or a compromise. With the mediator's help, they talk about their differences in a way that may help them avoid a due process hearing. The mediator may meet with each side separately to encourage them to make offers that will be accepted by the other side. The mediator does not make decisions about who is right or what should happen. If there is an agreement, it is written down and all sides must agree in writing to follow it.

**If mediation does not result in an agreement,
then filing for Due Process is the next option.**

Due Process for Special Education

If you have tried informal methods and/or State Mediation and still cannot come to an agreement, you could ask for a Due Process Hearing. This is a formal proceeding that takes place in a trial-like setting. These hearings can last many days, and need a great deal of preparation. Both the parent and the school present evidence, testimony, and arguments. An administrative law judge makes a final decision that must be followed by both sides.

When you file for Due Process, you need to say what you did to try to resolve your disagreement and how that failed. You also need to have IEPs, assessments, letters, and other documents that can prove your case. There are no filing fees for Due Process. You may hire an attorney or represent yourself. Most people request both Mediation and a Due Process Hearing at the same time.

Filing for Due Process

It is important to fill out the "Request for Due Process Hearing and Mediation" completely. Be sure all information is correct and detailed. Include facts, dates, and exactly what was written in the IEP. Your request for a hearing may be delayed if this is not done. Your Request can be dismissed or returned for "insufficiency."

You must include a "Proposed Resolution". This is what you want the school to do to resolve your concern. Be clear, specific, and brief. You must also provide "proof of service" to prove that you have

To File for Due Process

Complete a "Request for Due Process Hearing and Mediation" form.

Send form to the **Office of Administrative Hearings Special Education Division**

2349 Gateway Oaks Drive
Suite 200
Sacramento, CA 95833
Tel. 916.263.0880
Fax 916.376.6319

You must also send a copy of your request to your school district. For more information and forms, go to the office's website: <http://www.dgs.ca.gov/oah>.

mailed, faxed, used a messenger service, or personally delivered the Request to the school district. When the Office of Administrative Hearings (OAH) receives your request:

1. You will receive a written "Notice of Due Process Hearing and Mediation and Scheduling Order" about one week after filing. It will give a date, time, and place for the mediation and due process hearing.

2. The hearing is scheduled about 55 days after the hearing request is received. The average hearing takes around five days to complete.

3. When a school district receives a Due Process Hearing Request filed by a parent, the

district has 15 days to hold a meeting with the parents. This is called a Resolution Session. It is required unless both sides agree it is not needed. If parents refuse to attend the Resolution Session, the case may be dismissed. If the district filed the Request for Due Process Hearing, a Resolution Session is not required.

- 4.** If there is not an agreement within 30 days, then the prescheduled mediation takes place. This is voluntary but strongly encouraged. Everything said in mediation is confidential.
- 5.** If mediation is successful, a written agreement is made.
- 6.** If mediation is not successful, there is a prehearing telephone conference.
- 7.** If necessary, the hearing then takes place as scheduled.

Prior Written Notice / Procedural Safeguards Notice

Prior written notice refers to the written notice that is required whenever the school district proposes or refuses to initiate or change any of the following in your child's IEP:

- identification
- evaluation
- educational placement
- provision of a Free and Appropriate Public Education (FAPE)

The content of the notice must include:

- proposed or refused action
- why the action is proposed or refused
- all records used by the district in reaching a decision
- where parents may obtain procedural safeguards
- who parents can contact to understand their rights
- options considered or rejected
- other factors relevant to the proposal or refusal

The notice must be in language that is understandable. This means:

- in language that the general public can understand
- in the parent's native language

NOTE: If you did NOT get a Prior Written Notice, let the school district know in writing that you are requesting this.

Procedural Safeguards Notice must be given:

- at least one time a year
- at initial referral for evaluation, or when a parent makes a request for an evaluation
- at receipt of request for due process hearing or compliance complaint
- when a parent is given an assessment plan
- whenever a parent requests one

The notice must explain in full the specific procedural safeguards for parents. It must also include the state complaint procedure.

For questions, call the
Procedural Safeguards
Referral Service at the
California Department
of Education, 800.926.0648

Information can also be found
at www.cde.ca.gov/sp/se/qa

This page is from the Matrix information packet about Individual Education Plans.

For the whole packet and more, go to :

<http://matrixparents.org/wp-content/uploads/2015/03/IEP-packet.11.14.English.pdf>

Glossary of Special Education Terms

Administrative Law Judge – An attorney who works for the California Office of Administrative Hearings. Has training in legal issues related to Special Education. Acts as mediator or judge in administrative hearings.

Alternative Dispute Resolution (ADR) – Non-adversarial services to resolve disagreements between parents and schools to the satisfaction of each party. An alternative to Due Process Hearings.

Compliance Complaint – A formal written complaint to the California Department of Education if it is believed the school district has not followed special education laws.

Due Process – A formal process with a state level hearing before an Administrative Law Judge. The Judge makes a decision which must be followed by all parties.

Facilitated IEP – A neutral facilitator, not part of the IEP team, who develops an agenda and helps keep the IEP team focused on working out differences and making agreements.

Free and Appropriate Public Education (FAPE) – Federal and state law require that special education services provided by public schools are both appropriate and free.

Mediation – A neutral person works with parents and school districts to reach an agreement without going to hearing. Mediators can be local or from the state. There can be mediation without filing for a Due Process Hearing or right before a Due Process Hearing. Mediators do not decide what the resolution should be.

Prior Written Notice – Required by law when the school district proposes or refuses to change identification, assessment, or educational placement. Specific items are required in this written notice.

Office of Administrative Hearings (OAH) – A state board with administrative law judges for many state agencies to resolve disputes through hearings or alternative dispute resolution services.

Procedural Safeguards – A written notice of student and parent rights and protections in Special Education law. This must be given to parents at least once a year as well as other times.

Resolution Session – A required meeting between parents and the school district to make another effort to work out differences before going forward with a Due Process Hearing.

Special Education Local Plan Area (SELPA) – Usually several or many school districts within a geographical area that coordinate services through a Local Plan for Special Education so that all students have access to the services they need no matter what the size of their district. Examples of SELPA services: assistance to districts, ADR, program development and monitoring. The Community Advisory Committee (CAC or SEAC) is part of SELPA activities.

Stay Put – The student “stays put” in the placement and with the services in the last signed IEP that was in effect when the disagreement was noted. Stay put is in place until the disagreement is resolved.

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