Take a Walk Through Procedural Safeguards Part 2
Matrix Parent Network

We **empower** families of children with special needs to successfully understand and access the systems that serve them.

We want **you** to become successful advocates and role models for your children.

www.matrixparents.org
Who are we and Who are You?
You will leave here knowing:

- What is the Notice of Procedural Safeguards
- How disputes are resolved: Mediation, Alternative Dispute Resolution, Due Process, State Complaints
- School discipline and placement for students with disabilities
- Private school placement issues
- How to be a more informed member of your child’s IEP team
Demystifying the Notice of Procedural Safeguards – What is it?
Make sure you have a copy

- You received a copy with the materials from this workshop registration or online
- You can get a copy from the CDE website
- You may have several copies already!

Any version you receive should have identical language, but they may be formatted slightly differently. In this presentation we will be referring to page number from the CDE online version.
It is an overview of your rights

What is the Notice of Procedural Safeguards?

This information provides you as parents, legal guardians, and surrogate parents of children with disabilities from three (3) years of age through age twenty-one (21) and students who have reached age eighteen (18), the age of majority, with an overview of your educational rights or procedural safeguards.
When you must be given a copy

The Notice of Procedural Safeguards is required under the Individuals with Disabilities Education Act (in English, referred to as IDEA) and must be provided to you:

- When you ask for a copy
- The first time your child is referred for a special education assessment
- Each time you are given an assessment plan to evaluate your child
- Upon receipt of the first state or due process complaint in a school year, and
- 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])
How Disputes are Resolved
Steps to take before considering due process.

1. Talk with your child’s classroom teacher and/or service providers.

2. Call an IEP team meeting. Be organized, bring evidence, and make your best case. Matrix can help you prepare.

3. Make school administrators aware of serious concerns.

4. Ask the SELPA for assistance and possibly Alternative Dispute Resolution (ADR)

5. Consult the Procedural Safeguards and Referral Services (PSRS) Unit of CDEs Special Ed Division.

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Making Decisions About Procedural Safeguards

Building and maintaining good relationships is the best way to support students. While times may change, and diagnoses can happen, and procedures can be modified or overlooked. Formal legal battles, however, are usually costly in terms of both time and money, and they typically harm relationships. Working to resolve issues by finding a reasonable compromise that honors the concern of family members, reports the challenges that educators face, and works towards a mutually acceptable solution is generally the best strategy for everyone.

Alternative Dispute Resolution (ADR) offered by many SELPAs across California, is designed to support the best results for students involved, to minimize disruption related to special education, and to find mutually acceptable solutions for student services before a disagreement becomes contentious and litigious. ADR can accomplish the following:

- Preserve relationships between parents and educators
- Enhance reputations by helping everyone in the procedural safeguards process
- Remove barriers for outcomes
- Resolve disputes in an efficient manner

If disputes cannot be resolved informally or through ADR, parents and students can always file a due process complaint.

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When the IEP Doesn’t Seem to Be Working

When the steps outlined above have not resulted in your child receiving an appropriate education, or if you feel the IEP process is struggling to improve, you may need to consider due process. Here are some steps you can take:

1. Talk with your child’s classroom teacher and/or service providers.

2. Call an IEP team meeting. Be organized, bring evidence, and make your best case. Matrix can help you prepare.

3. Make school administrators aware of serious concerns.

4. Ask the SELPA for assistance and possibly Alternative Dispute Resolution (ADR)

5. Consult the Procedural Safeguards and Referral Services (PSRS) Unit of CDEs Special Ed Division.

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California Department of Education
Special Education Division
Procedural Safeguards Referral Service
1430 N Street, Suite 2401
Sacramento, CA 95814
Telephone: 800.926.0648
Fax: 916.327.3704

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Due Process Hearing
If you feel you’ve exhausted other avenues to resolve conflict involving your child’s

- Identification (eligibility for special education),
- Assessment,
- Placement, or
- FAPE (Free Appropriate Public Education)

Then you have the right to ask for an impartial due process hearing to resolve the conflict.
How Disputes are Resolved

On the CDE version, due process rights are described starting on page 7.

How Disputes Are Resolved

Due Process Hearing

When is a due process hearing available?

You have the right to request an impartial due process hearing regarding the identification, assessment, and educational placement of your child or the provision of FAPE. The request for a due process hearing must be filed within two years from the date you knew or should have known about the alleged action that forms the basis of the due process complaint. (20 USC 1415(b)(6); 34 CFR 300.507; EC 56501 and 56505(I))
Two Important Limitations

• Due process is generally for disputes about your child’s educational rights, not technical violations.

• You must request a due process hearing within two years from the date you knew, or should have known about the action.
Mediation and Alternative Dispute Resolution
Mediation and Alternative Dispute Resolution

On the CDE version, mediation and ADR are described starting near the bottom of page 6.
Mediation and Alternative Dispute Resolution

May I request mediation or an alternative way to resolve the dispute?

A request for mediation may be made either before or after a request for a due process hearing is made.

You may ask the school district to resolve disputes through mediation or alternative dispute resolution (ADR), which is less adversarial than a due process hearing. The ADR and mediation are voluntary methods of resolving a dispute and may not be used to delay your right to a due process hearing.

On the CDE version, mediation and ADR are described starting near the bottom of page 6.
Alternative Dispute Resolution

Forms of ADR include informal mediation or a “facilitated” IEP or any session where the district and parents meet to discuss the issues and try to reach agreement.

More info on ADR can be found at Center for Appropriate Dispute Resolution in Special Education (CADRE)
Additional CADRE Resources

IDEA Dispute Resolution Parent Guides and Companion Videos:

- Dispute resolution Process Comparison Chart
- IEP Facilitation
- Mediation
- Written State Complaints

Due Process Complaints:

- Resolution meetings
- Expedited Due Process Complaints
Pre-Hearing Mediation Conference

On the CDE version, pre-hearing mediation described starting at the top of page 7.

What is a pre-hearing mediation conference?

You may seek resolution through mediation prior to filing a request for a due process hearing. The conference is an informal proceeding conducted in a nonadversarial manner to resolve issues relating to the identification, assessment, or educational placement of a child or to a FAPE.
Pre-Hearing Mediation Conference

On the CDE version, pre-hearing mediation described starting at the top of page 7.

At the prehearing mediation conference, the parent or the school district may be accompanied and advised by nonattorney representatives and may consult with an attorney prior to or following the conference. However, requesting or participating in a prehearing mediation conference is not a prerequisite to requesting a due process hearing.
All requests for a prehearing mediation conference shall be filed with the Superintendent. The party initiating a prehearing mediation conference by filing a written request with the Superintendent shall provide the other party to the mediation with a copy of the request at the same time the request is filed.
The prehearing mediation conference shall be scheduled within fifteen (15) days of receipt by the Superintendent of the request for mediation and shall be completed within thirty (30) days after receipt of the request for mediation unless both parties agree to extend the time. If a resolution is reached, the parties shall execute a legally binding written agreement that sets forth the resolution. All discussions during the mediation process shall be confidential. All prehearing mediation conferences shall be scheduled in a timely manner and held at a time and place reasonably convenient to the parties. If the issues fail to be resolved to the satisfaction of all parties, the party who requested the mediation conference has the option of filing for a due process hearing. (EC 56500.3 and 56503)
Due Process Rights
Due Process Rights

On the CDE version, listing of due process rights starts at the bottom of page 7.
Due Process Rights

1. Have a fair and impartial administrative hearing at the state level before a person who is knowledgeable of the laws governing special education and administrative hearings (20 USC 1415[f][1][A], 1415[f][3][A]-[D]; 34 CFR 300.511; EC 56501[b][4]).

2. Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities (EC 56505[e][1]).

3. Present evidence, written arguments, and oral arguments (EC 56505[e][2]).

4. Confront, cross-examine, and require witnesses to be present (EC 56505[e][3]).

Due Process Rights

What are my due process rights?

You have a right to:

1. Have a fair and impartial administrative hearing at the state level before a person who is knowledgeable of the laws governing special education and administrative hearings (20 USC 1415[f][1][A], 1415[f][3][A]-[D]; 34 CFR 300.511; EC 56501[b][4]).

2. Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities (EC 56505[e][1]).

3. Present evidence, written arguments, and oral arguments (EC 56505[e][2]).

4. Confront, cross-examine, and require witnesses to be present (EC 56505[e][3]).

5. Receive a written or electronic verbatim record of the hearing, including findings of fact and decisions (EC 56505[e][4]).

6. Have your child present at the hearing (EC 56501[c][1]).

7. Have the hearing be open or closed to the public (EC 56501[c][2]).

8. Receive a copy of all documents, including assessments completed by that date and recommendations, and a list of witnesses and their general area of testimony within five (5) days.
Due Process Rights

What is a pre-hearing mediation conference?

You may seek resolution through mediation prior to filing a request for a due process hearing. The conference is an informal proceeding conducted in a nonadversarial manner to resolve issues relating to the identification, assessment, or educational placement of a child or a FAPE.

At the prehearing mediation conference, the parent or the school district may be accompanied and advised by nonattorney representatives and may consult with an attorney prior to or following the conference. However, requesting or participating in a prehearing mediation conference is not a prerequisite to requesting a due process hearing.

All requests for a prehearing mediation conference shall be filed with the Superintendent. The party initiating a prehearing mediation conference by filing a written request with the Superintendent shall provide the other party to the mediation with a copy of the request at the same time the request is filed.

The prehearing mediation conference shall be scheduled within fifteen (15) days of receipt by the Superintendent of the request for mediation and shall be completed within thirty (30) days after receipt of the request for mediation unless both parties agree to extend the time. If a resolution is reached, the parties shall execute a legally binding written agreement that sets forth the resolution. All discussions during the mediation process shall be confidential. All prehearing mediation conferences shall be scheduled in a timely manner and held at a time and place reasonably convenient to the parties. If the issues fail to be resolved to the satisfaction of all parties, the party who requested the mediation conference has the option of filing for a due process hearing (EC 56500.3 and 56503).

Due Process Rights

What are my due process rights?

5. Receive a written or, at the option of the parent, an electronic verbatim record of the hearing, including findings of fact and decisions (EC 56505[e][4])
6. Have your child present at the hearing (EC 56501[c][1])
7. Have the hearing be open or closed to the public (EC 56501[c][2])
8. Receive a copy of all documents, including assessments completed by that date and recommendations, and a list of witnesses and their general area of testimony within five (5)
Due Process Rights, continued

On the CDE version, listing of due process rights continue on the top of page 8.

9. Be informed by the other parties of the issues and their proposed resolution of the issues at least ten (10) calendar days prior to the hearing (EC 56505[e][6])
10. Have an interpreter provided (CCR 3082[d])
11. Request an extension of the hearing timeline (EC 56505[f][3])
12. Have a mediation conference at any point during the due process hearing (EC 56501[b][2]), and
13. Receive notice from the other party at least ten days prior to the hearing that the other party intends to be represented by an attorney (EC 56507[a]). (20 USC 1415[e]; 34 CFR 300.506, 300.508, 300.512 and 300.515)
Pair Share

TURN & TALK

Wow!

Really?
Filing a Written Due Process Complaint

COMPLAINTS
Types of Due Process Proceedings

You can file for:

• Mediation only
• Mediation and Hearing
• Hearing only

Before filing for due process, visit the website of the Office of Administrative Hearings, Special Education Division to learn more about the ways you can file.
Filing a Written Due Process Complaint

On the CDE version, instructions for filing start in the middle of page 8.
Filing a Written Due Process Complaint

How do I request a due process hearing?

You need to file a written request for a due process hearing. You or your representative needs to submit the following information in your request:

1. Name of the child
2. Address of the residence of the child
3. Name of the school the child is attending
4. In the case of a homeless child, available contact information for the child and the name of the school the child is attending, and
5. A description of the nature of the problem, including facts relating to the problem(s) and a proposed resolution of the problem(s)

Federal and state laws require that either party filing for a due process hearing must provide a copy of the written request to the other party. (20 USC 1415[b][7], 1415[c][2]; 34 CFR 300.508; EC 56502[c][1])
What is the Resolution Session?

Prior to filing for a due process hearing, the school district shall be provided the opportunity to resolve the matter by convening a resolution session, which is a meeting between the parents and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process hearing request. (20 USC 1415[f][1][B]; 34 CFR 300.510)
What does a resolution session include?

Resolution sessions shall be convened within fifteen (15) days of receiving notice of the parents’ due process hearing request. The sessions shall include a representative of the school district who has decision-making authority and not include an attorney of the school district unless the parent is accompanied by an attorney. The parent of the child may discuss the due process hearing issue and the facts that form the basis of the due process hearing request.

The resolution session is not required if the parent and the school district agree in writing to waive the meeting. If the school district has not resolved the due process hearing issue within thirty (30) days, the due process hearing may occur. If a resolution is reached, the parties shall execute a legally binding agreement. (20 USC 1415[f][1][B]; 34 CFR 300.510)
Where does my Child go to School while Due Process is going on? “Stay Put”

**Does my child’s placement change during the proceedings?**

The child involved in any administrative or judicial proceeding must remain in the current educational placement unless you and the school district agree on another arrangement. If you are applying for initial admission of your child to a public school, your child will be placed in a public school program with your consent until all proceedings are completed. (20 USC 1415[j]; 34 CFR 300.518; EC 56505[d])

May the decision be appealed?

The hearing decision is final and binding on both parties. Either party may appeal the hearing decision by filing a civil action in state or federal court within 90 days of the final decision. (20 USC 1415[f] and [3][A], 1415[j]; 34 CFR 300.516; EC 56505[e] and [b], EC 56543[w])

Who pays for my attorneys’ fees?

In any action or proceeding regarding the due process hearing, the court, in its discretion, may award reasonable attorneys’ fees as part of the costs to you as parent of a child with a disability if you are the prevailing party in the hearing. Reasonable attorneys’ fees may also be made following the hearing. (20 USC 1415[f]; 34 CFR 300.516; EC 56505[e])
May I Appeal a Decision?

May the decision be appealed?

The hearing decision is final and binding on both parties. Either party may appeal the hearing decision by filing a civil action in state or federal court within 90 days of the final decision. (20 USC 1415[i][2] and [3][A], 1415[l]; 34 CFR 300.516; EC 56505[h] and [k], EC 56043[w])

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Who pays for my attorneys’ fees?
Who pays for my attorneys’ fees?

In any action or proceeding regarding the due process hearing, the court, in its discretion, may award reasonable attorneys’ fees as part of the costs to you as parent of a child with a disability if you are the prevailing party in the hearing. Reasonable attorneys’ fees may also be made following the conclusion of the administrative hearing, with the agreement of the parties. (20 USC 1415[i][3][B]–[G]; 34 CFR 300.517; EC 56507[b])
Who pays for my attorneys’ fees? continued

Fees may be reduced if any of the following conditions prevail:

1. The court finds that you unreasonably delayed the final resolution of the controversy
2. The attorneys’ hourly fees exceed the prevailing rate in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience
3. The time spent and legal services provided were excessive, or
4. Your attorney did not provide to the school district the appropriate information in the due process request notice.

Attorneys’ fees will not be reduced, however, if the court finds that the State or the school district unreasonably delayed the final resolution of the action or proceeding or that there was a violation of this section of law. (20 USC 1415[i][3][B]–[G]; 34 CFR 300.517)
Who pays for my attorneys’ fees? continued

Attorneys’ fees relating to any meeting of the IEP team may not be awarded unless an IEP team meeting is convened as a result of a due process hearing proceeding or judicial action. Attorneys’ fees may also be denied if you reject a reasonable settlement offer made by the district/public agency ten (10) days before the hearing begins and the hearing decision is not more favorable than the offer of settlement. (20 USC 1415[i][3][B]–[G]; 34 CFR 300.517)
Where do you file for mediation or due process hearing?

Office of Administrative Hearings
Attention: Special Education Division
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833-4231
916-263-0880
FAX 916-263-0890
School Discipline – May my child be suspended or expelled?

School Discipline and Placement Procedures for Students with Disabilities

May my child be suspended or expelled?

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct from his or her setting:

- An appropriate interim alternative education setting, another setting, or suspension for not more than ten (10) consecutive school days, and
- Additional removals of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct.

What occurs after a removal of more than ten (10) days?

After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal the public agency must provide services to enable the child to continue to participate in the general education curriculum and progress toward meeting the goals set out in the child’s IEP. Also, a child will receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not recur.

If a child exceeds ten (10) days in such a placement, an IEP team meeting must be held to determine whether the child’s misconduct is caused by the disability. This IEP team meeting must take place immediately, if possible, or within ten (10) days of the school district’s decision to take this type of disciplinary action.

As a parent you will be invited to participate as a member of this IEP team. The school district may be required to develop an assessment plan to address the misconduct or, if your child has a behavior intervention plan, review and modify the plan as necessary.

What happens if the IEP team determines that the misconduct is not caused by the disability?

If the IEP team concludes that the misconduct was not a manifestation of the child’s disability, the school district may take disciplinary action, such as expulsion, in the same manner as it would for a child without a disability. (20 USC 1415[k][1] and [7]. 34 CFR 300.530)
School Discipline – May my child be suspended or expelled?

May my child be suspended or expelled?

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct from his or her setting to:

- An appropriate interim alternative education setting, another setting, or suspension for not more than ten (10) consecutive school days, and
- Additional removals of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct.
May my child be suspended or expelled? continued – “Manifestation Determination” & BIP/FBA

If a child exceeds ten (10) days in such a placement, an IEP team meeting must be held to determine whether the child’s misconduct is caused by the disability. This IEP team meeting must take place immediately, if possible, or within ten (10) days of the school district’s decision to take this type of disciplinary action.
May my child be suspended or expelled?

continued – “Manifestation Determination” & BIP/FBA

As a parent you will be invited to participate as a member of this IEP team. The school district may be required to develop an assessment plan to address the misconduct or, if your child has a behavior intervention plan, review and modify the plan as necessary.
May my child be suspended or expelled? continued – not a manifestation

What happens if the IEP team determines that the misconduct is not caused by the disability?

If the IEP team concludes that the misconduct was not a manifestation of the child’s disability, the school district may take disciplinary action, such as expulsion, in the same manner as it would for a child without a disability. (20 USC 1415(k)(1) and (7); 34 CFR 300.530)
Children Attending Private School
Children Attending Private School

On the CDE version, information about private schools is given on page 11.

May students who are parentally placed in private schools participate in publicly funded special education programs?

Children who are enrolled by their parents in private schools may participate in publicly funded special education programs. The school district must consult with private schools and with parents to determine the services that will be offered to private school students. Although school districts have a clear responsibility to offer FAPE to students with disabilities, those children, when placed by their parent in private schools, do not have the right to receive some or all of the special education and related services necessary to provide FAPE. (20 USC 1415[a][10] [A]; 34 CFR 300.137 and 300.138; EC 56173)
Children Attending Private School – “Unilateral Placement”

If a parent of an individual with exceptional needs who previously received special education and related services under the authority of the school district enrolls the child in a private elementary school or secondary school without the consent of or referral by the local educational agency, the school district is not required to provide special education if the district has made FAPE available. A court or a due process hearing officer may require the school district to reimburse the parent or guardian for the cost of special education and the private school only if the court or due process hearing officer finds that the school district had not made FAPE available to the child in a timely manner prior to that enrollment in the private elementary school or secondary school and that the private placement is appropriate. (20 USC 1412[a][10][C]; 34 CFR 300.148; EC 56175)
Children Attending Private School – “Unilateral Placement”

When may reimbursement be reduced or denied?

The court or hearing officer may reduce or deny reimbursement if you did not make your child available for an assessment upon notice from the school district before removing your child from public school. You may also be denied reimbursement if you did not inform the school district that you were rejecting the special education placement proposed by the school district, including stating your concerns and intent to enroll your child in a private school at public expense.

When may reimbursement be reduced or denied?

The court or hearing officer may reduce or deny reimbursement if you did not make your child available for an assessment upon notice from the school district before removing your child from public school. You may also be denied reimbursement if you did not inform the school district that you were rejecting the special education placement proposed by the school district, including stating your concerns and intent to enroll your child in a private school at public expense.

Your notice to the school district must be given either:

- At the most recent IEP team meeting you attended before removing your child from the public school, or
- In writing to the school district at least ten (10) business days (including holidays) before removing your child from the public school. (20 USC 1412[a][10][C], 34 CFR 300.140, EC 56176)
Children Attending Private School – “Unilateral Placement”

Your notice to the school district must be given either:

- At the most recent IEP team meeting you attended before removing your child from the public school, or
- In writing to the school district at least ten (10) business days (including holidays) before removing your child from the public school. (20 USC 1412[a][10][C]; 34 CFR 300.148; EC 56176)
Pair Share

Wow!

TURN

&

TALK

Really?
State Complaint Procedures
State Compliance
Complaint Procedures

On the CDE version, compliance complaint procedures are described on page 12.

When may I file a state compliance complaint?

You may file a state compliance complaint when you believe that a school district has violated federal or state special education laws or regulations. Your written complaint must specify at least one alleged violation of federal and state special education laws. The violation must have occurred not more than one year prior to the date the complaint is received by the California Department of Education (CDE). When filing a complaint, you must forward a copy of the complaint to the school district at the same time you file a state compliance complaint with the CDE. (34 CFR 300.151–153; 5 CCR 4600)
Where do you file a state compliant complaint?

California Department of Education
Special Education Division
Procedural Safeguards Referral Service
1430 N Street, Suite 2401
Sacramento, CA 95814
800-926-0648
Skills Checklist

What have you learned?
Do you need more resources?
Do you need more support?
Q&A

The ability to ask the right question is the most important skill

www.matrixparents.org
Matrix Parent Network & Resource Center

We are parent advisors not attorneys or advocates

We do not give legal advice or advise a course of action. We provide support and information to help parents learn about their rights and options, find referrals and resources and help parents become the best advocate they can be for their child

1-800-578-2592

www.matrixparents.org
Matrix Parent Network & Resource Center

Federal Parent Training & Information Center
designated by the *Office of Special Education, US Department of Education*, serving families of children birth through 26 in Marin, Napa, Sonoma & Solano counties

California Family Resource Center
designated by *CA Department of Developmental Services*, serving families of infants and toddlers

California Family Empowerment Center
designated by *CA Department of Education*, serving the underserved in Solano and Sonoma Counties

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This workshop was developed in part under a grant from the US Department of Education, the Office of Special Education and the California Department of Education.

Matrix is grateful for the Federal and State funding it receives, but it’s not enough. We rely on other grants and on donations from people like you!

Please consider supporting Matrix in any way you can! Thank you.
Matrix Parent Network & Resource Center

Please consider supporting Matrix in any way you can!

Help Us Help You: Donate

Thank you!!