

# Take a Walk Through Procedural Safeguards Part 2

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# Matrix Parent Network

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

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



# Who are we and Who are You?

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# You will leave here knowing:

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- 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?

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# 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](https://www.cde.ca.gov/qa/pseng.asp)
- 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.



## Notice of Procedural Safeguards

Special Education Rights of Parents and Children Under the Individuals with Disabilities Education Act, Part B, and the California Education Code.

Revised October 2016

Note: The term school district is used throughout this document to describe any public education agency responsible for providing your child's special education program. The term assessment is used to mean evaluation or testing. Federal and state laws are cited throughout this notice using English abbreviations, which are explained in a [glossary](#) on the last page of this notification.

### 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.

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])

### What is the Individuals with Disabilities Education Act (IDEA)?

IDEA is a federal law that requires school districts to provide a "free appropriate public education" (in English, referred to as FAPE) to eligible children with disabilities. A free appropriate public education means that special education and related services are to be provided as described in an individualized education program (in English, known as IEP) and under public supervision to your child at no cost to you.

### May I participate in decisions about my child's education?



# It is an overview of your rights

12/3/2020

Notice of Procedural Safeguards - Quality Assurance Process (CA Dept of Education)



Home / Specialized Programs / Special Education / Quality Assurance Process

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# How Disputes are Resolved

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# Steps to take before considering due process.

1. Talk with you 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.

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



[www.matrixparents.org](http://www.matrixparents.org)



## Making Decisions About Procedural Safeguards

Building and maintaining good relationships is the best way to support students. Yet mistakes and disagreements happen, and procedures can be misunderstood or overlooked. Formal legal battles, however, are always costly in terms of both time and money; and they typically harm relationships. Working to resolve issues by finding a reasonable compromise—one that honors the concerns of family members, respects the challenges that educators face, and works reasonably within available resources—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 everyone involved, settle disagreements related to special education, and find mutually agreed-upon solutions for student services before a disagreement becomes contentious and litigious.

ADR can accomplish the following:

- ✓ Preserve relationships between parents and educators
  - ✓ Enhance opportunities to resolve issues early in the procedural safeguard process
  - ✓ Increase positive outcomes for students
  - ✓ Reduce the number of due process mediations and hearings
- If disputes cannot be resolved informally or through ADR, parents and students can always file a state complaint or due process complaint.

## State Complaint

A state complaint is a formal request to the California Department of Education (CDE) to investigate allegations of noncompliance with federal or state special education laws. The CDE conducts an investigation into the allegations and then, if violations of law are found to have occurred, issues corrective actions to the LEA. More information about the state complaint process can be found at <https://www.cde.ca.gov/sp/se/qa/complaintproc.asp>.

## Due Process

When disagreements about what is contained in the IEP cannot be informally resolved, IDEA gives parents the right to file a due process complaint and ask for an administrative hearing. In California, the Office of Administrative Hearings contracts with the CDE to conduct hearings. In particular:

- ✓ Due process includes **mediation and other complaint-resolution strategies**.
  - ✓ Due process is a **formal approach** to resolving disputes with a school about a child's education.
  - ✓ A parent can file a due process complaint **only for special education disputes**, not for general education issues.
  - ✓ Due process has four primary steps: (1) It begins with a written due process complaint; (2) is followed by a resolution session held by the LEA when a parent files a due process complaint; (3) if no resolution is reached, moves forward to a mediation session; and (4), if no resolution is reached during mediation, concludes with an administrative hearing.
  - ✓ The plaintiff has the right to an impartial hearing officer and to present evidence and witnesses at the due process hearing.
- Read more about due process hearings and associated procedures at <http://www.dgs.ca.gov/oah/SpecialEducation.aspx>.

## A Closer Look at What Parents Should Do

What are the steps parents should take if their child with a disability continues to struggle in school?

1. Parents will first want to talk with their child's **classroom teacher** and share their specific concern. A conversation with a special education service provider (e.g., speech therapist, resource specialist, occupational therapist) also can help a parent understand what additional supports could be put in place.
2. Parents can call an Individualized Education Program (IEP) team meeting to collaboratively discuss why their child continues to struggle and to assess whether or not the IEP plan is as appropriate and effective as it might be given the student's needs.
3. Parents will also want to make school administrators aware of any serious concern. For example, whether or not the principal is directly involved in resolving the issue, both

parents and staff who are communicating about the concern should copy the principal on any formal communications, including emails, and keep him or her informed. As well, the school district's **director of special education** can provide the next level of support and guidance if an IEP team is having difficulty coming to agreement about a student's program.

4. The school district's **Special Education Local Plan Area (SELPA)** can also provide informal assistance for resolving differences of opinion about issues of evaluation, placement, and the services and supports the school can or should provide for the student. Every local educational agency belongs to a SELPA in order to receive funding under IDEA.

5. The **Procedural Safeguards and Referral Services (PSRS)** Unit of CDE's Special Education Division provides information and resources about the educational rights of children from ages 3 through 21 (phone 800-926-0648; or email [specialeducation@cde.ca.gov](mailto:specialeducation@cde.ca.gov)). Because

the CDE can sometimes make phone calls to school district personnel to review and resolve differences, families will want to contact this office if they have questions and concerns that they feel have not been answered locally.

6. The **Office of Administrative Hearings** manages due process hearings for disagreements between the families and the LEA regarding assessment, identification, or placement of a student that cannot be resolved locally through relationship building, dispute resolution, or mediation (phone 916-263-0880 or visit <http://www.dgs.ca.gov/oah/SpecialEducation/AboutUs.aspx>).

7. For general support and information, parents of children with disabilities, or those who suspect their child may have a disability, will want to contact their local **Family Resource Center, Family Empowerment Center, or Parent Training and Information Center**. A list of these centers in California is at <https://www.cde.ca.gov/sp/se/qa/captrng.asp>.

# Due Process Hearing

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# How Disputes are Resolved

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

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.

If you disagree with the results of the assessment conducted by the school district, you have the right to ask for and obtain an independent educational assessment for your child from a person qualified to conduct the assessment at public expense.

The parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

The school district must respond to your request for an independent educational assessment and provide you information about where to obtain an independent educational assessment.

If the school district believes that the district's assessment is appropriate and disagrees that an independent assessment is necessary, the school district must request a due process hearing to prove that its assessment was appropriate. If the district prevails, you still have the right to an independent assessment but not at public expense. The IEP team must consider independent assessments.

District assessment procedures allow in-class observation of students. If the school district observes your child in his or her classroom during an assessment, or if the school district would have been allowed to observe your child, an individual conducting an independent educational assessment must also be allowed to observe your child in the classroom.

If the school district proposes a new school setting for your child and an independent educational assessment is being conducted, the independent assessor must be allowed to first observe the proposed new setting. (20 USC 1415[b][1] and [d][2][A]; 34 CFR 300.502; EC 56329[b] and [c])

## Access to Educational Records

### May I examine my child's educational records?

You have a right to inspect and review all of your child's education records without unnecessary delay, including prior to a meeting about your child's IEP or before a due process hearing. The school district must provide you access to records and copies, if requested, within five (5) **business** days after the request has been made orally or in writing. (EC 49060, 56043[n], 56501[b][3], and 56504)

## 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])

### 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.

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4/2/2020

Notice of Procedural Safeguards - Quality Assurance Process (CA Dept of Education)

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# 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

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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

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# 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?

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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.

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, 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)



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## Due Process Rights

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

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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])
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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.

## 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, 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

12/3/2020

Notice of Procedural Safeguards - Quality Assurance Process (CA Dept of Education)

hearing.

## 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.

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])
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# Due Process Rights, continued

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

12/3/2020

Notice of Procedural Safeguards - Quality Assurance Process (CA Dept of Education)

business days before a hearing (*EC 56505[e][7]* and *56043[v]*)

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*)

## Filing a Written Due Process Complaint

How do I request a due process hearing?


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# Pair Share

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Wow!



Really?

**TURN & TALK**

# Filing a Written Due Process Complaint

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# 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 in the middle of page 8.



[www.matrixparents.org](http://www.matrixparents.org)

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## 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]*)

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*)

# Filing a Written Due Process Complaint

12/3/2020

Notice of Procedural Safeguards - Quality Assurance Process (CA Dept of Education)

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# 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)

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# Where does my Child go to School while Due Process is going on?

## “Stay Put”

12/3/2020

Notice of Procedural Safeguards - Quality Assurance Process (CA Dept of Education)

### 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[j][2] and [3][A], 1415[l]; 34 CFR 300.516; EC 56505[h] and [k], EC 56043[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 conclusion of the administrative hearing with the agreement of the parties. (20 USC 1415[f][3])

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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 I Appeal a Decision?

## May the decision be appealed?

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### Who pays for my attorneys' fees?

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)

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)

To obtain more information or to file for mediation or a due process hearing, contact:

Office of Administrative Hearings  
Attention: Special Education Division  
2349 Gateway Oaks Drive, Suite 200

# Who pays for my attorneys' fees?

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# Who pays for my attorneys' fees?

On the CDE version, information about attorney's fees is given on page 9.

12/3/2020

Notice of Procedural Safeguards - Quality Assurance Process (CA Dept of Education)

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## 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])

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# Who pays for my attorneys' fees? continued

12/3/2020

Notice of Procedural Safeguards - Quality Assurance Process (CA Dept of Education)

## 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])

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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[i]; 34 CFR 300.516; EC 56505[h] and [k], EC 56043[w])

## Who pays for my attorneys' fees?

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

12/3/2020

Notice of Procedural Safeguards - Quality Assurance Process (CA Dept of Education)

## Does my child's placement change during the proceedings?

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## 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

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)

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To obtain more information or to file for mediation or a due process hearing, contact:

Office of Administrative Hearings  
Attention: Special Education Division  
2349 Gateway Oaks Drive, Suite 200

<https://www.cde.ca.gov/sp/se/qa/pseng.asp>

9/13



# Where do you file for mediation or due process hearing?

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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

[illegible]

parent network  
+ resource center  
[www.matrixparents.org](http://www.matrixparents.org)

916-263-0880

FAX 916-263-0890

### School Discipline and Alternative Interim Educational Settings

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

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?



Sacramento, CA 95833-4231  
916-263-0880  
FAX 916-263-0890

## School Discipline and Placement Procedures for Students with Disabilities

### School Discipline and Alternative Interim Educational Settings

#### 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

#### 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.

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12/3/2020

Notice of Procedural Safeguards - Quality Assurance Process (CA Dept of Education)

Sacramento, CA 95833-4231  
916-263-0880  
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## School Discipline and Placement Procedures for Students with Disabilities

### School Discipline and Alternative Interim Educational Settings

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# May my child be suspended or expelled? continued – “Manifestation Determination” & BIP/FBA

12/3/2020

Notice of Procedural Safeguards - Quality Assurance Process (CA Dept of Education)

Sacramento, CA 95833-4231  
916-263-0880  
FAX 916-263-0890

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

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.

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<https://www.cde.ca.gov/sp/se/qa/pseng.asp>

10/13



# May my child be suspended or expelled? continued – “Manifestation Determination” & BIP/FBA

12/3/2020

Notice of Procedural Safeguards - Quality Assurance Process (CA Dept of Education)

Sacramento, CA 95833-4231  
916-263-0880  
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#### 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

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

12/3/2020

Notice of Procedural Safeguards - Quality Assurance Process (CA Dept of Education)

Sacramento, CA 95833-4231  
916-263-0880  
FAX 916-263-0890

## School Discipline and Placement Procedures for Students with Disabilities

### School Discipline and Alternative Interim Educational Settings

#### 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.

## 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)

## 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)

<https://www.cde.ca.gov/sp/se/qa/pseng.asp>

10/13

# Children Attending Private School

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# Children Attending Private School

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

12/3/2020

Notice of Procedural Safeguards - Quality Assurance Process (CA Dept of Education)

If you disagree with the IEP team's decision, you may request an expedited due process hearing, which must occur within twenty (20) school days of the date on which you requested the hearing. (20 USC 1415[k][2]; 34 CFR 300.531[c])

Regardless of the setting the school district must continue to provide FAPE for your child. Alternative educational settings must allow the child to continue to participate in the general curriculum and ensure continuation of services and modifications detailed in the IEP. (34 CFR 300.530; EC 48915.5[b])

## Children Attending Private School

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

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

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# Children Attending Private School – “Unilateral Placement”

12/3/2020

Notice of Procedural Safeguards - Quality Assurance Process (CA Dept of Education)

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Regardless of the setting the school district must continue to provide FAPE for your child. Alternative educational settings must allow the child to continue to participate in the general curriculum and ensure continuation of services and modifications detailed in the IEP. (34 CFR 300.530; EC 48915.5[b])

## Children Attending Private School

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

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.

12/3/2020

Notice of Procedural Safeguards - Quality Assurance Process (CA Dept of Education)

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### Children Attending Private School

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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)

<https://www.cde.ca.gov/sp/se/qa/pseng.asp>

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# Children Attending Private School – “Unilateral Placement”

12/3/2020

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<https://www.cde.ca.gov/sp/se/qa/pseng.asp>

11/13

# Pair Share

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Wow!



Really?

**TURN & TALK**

# State Complaint Procedures

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# 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)

12/3/2020

Notice of Procedural Safeguards - Quality Assurance Process (CA Dept of Education)

### When may reimbursement not be reduced or denied?

A court or hearing officer must not reduce or deny reimbursement to you if you failed to provide written notice to the school district for any of the following reasons:

- The school prevented you from providing notice
- You had not received a copy of this Notice of Procedural Safeguards or otherwise been informed of the requirement to notify the district
- Providing notice would likely have resulted in physical harm to your child
- Illiteracy and inability to write in English prevented you from providing notice, or
- Providing notice would likely have resulted in serious emotional harm to your child

(20 USC 1412[a] [10] [C]; 34 CFR 300.148; EC 56177)

### State Compliance Procedures

#### When may I file a state compliance complaint?

You may file a state compliance complaint when you believe that a school district has violated

# Where do you file a state compliant complaint?

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

# Skills Checklist

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What have you learned?

Do you need more resources?

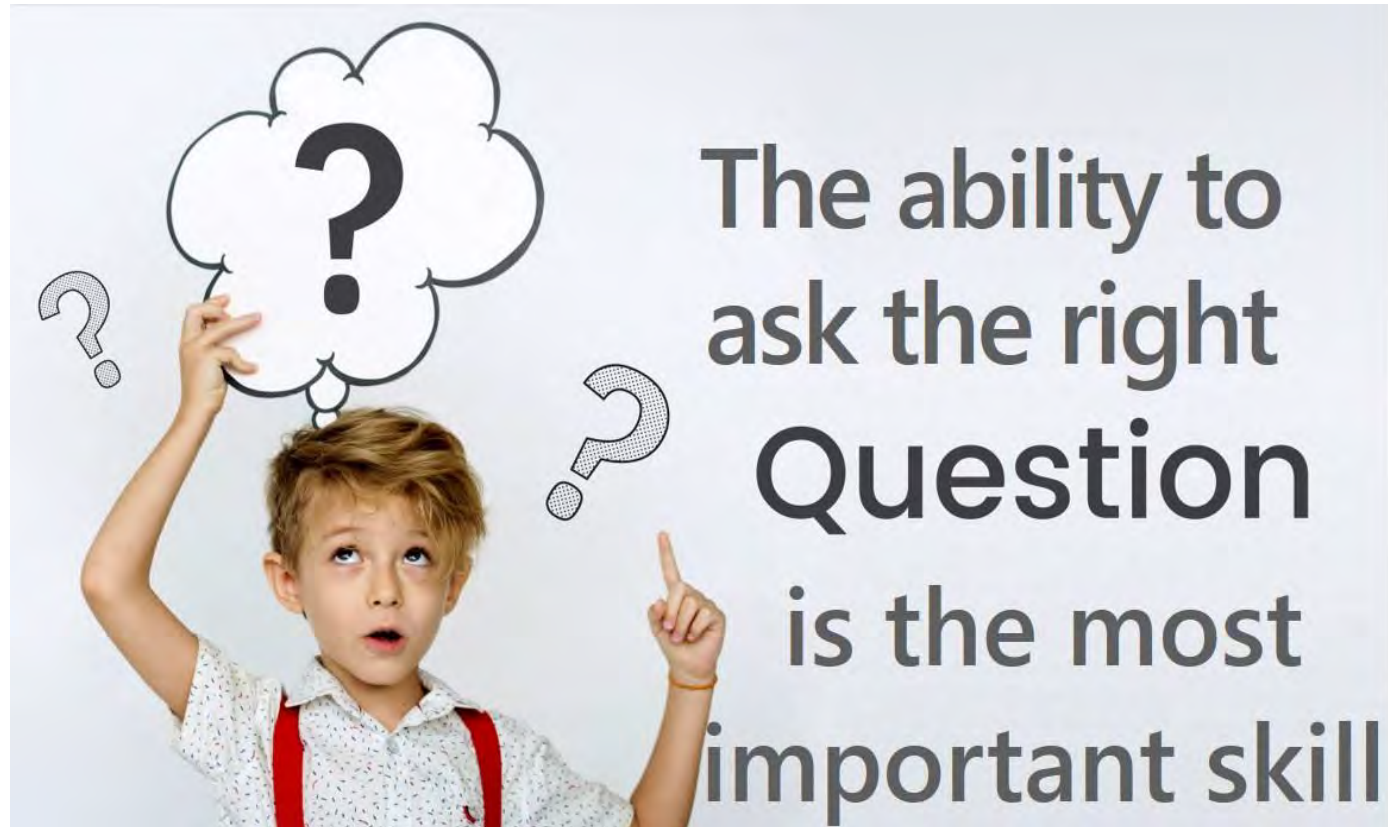
Do you need more support?





# Q&A

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# Matrix Parent Network & Resource Center

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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](http://www.matrixparents.org)

# Matrix Parent Network & Resource Center

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## **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



# Matrix Parent Network & Resource Center

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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!!

