

25. DUE PROCESS PROCEDURES

The parent has many options when there is a disagreement between the school and parent that cannot be easily resolved.

Disagreements can happen regarding:

- Identification and Assessment—When the parent feels a child qualifies for special services because of a disability and the school refuses to assess the child, refuses to conduct additional assessments or consider independent assessments when making decisions.

When the school wants to assess the child and the parent disagrees/refuses to give permission for assessments

- Eligibility—When the parent feels a child should be eligible for services and the school fails to qualify the child for services under IDEA or Section 504 of the Rehabilitation Act.

Or if the parent disagrees with the child's qualification as a disabled child.

- Program development—When the parent feels proposed or provided services are inadequate to address the child's needs, inappropriate or harmful to the child
- Placement—When the parent feels placement and/or services are inappropriate and school refuses to make requested changes or if the child's services are changed or stopped without parental consent
- Free appropriate public education—When the parent feels conditions exist that prevent the child from fully benefiting or accessing their educational program



Suspected violations of state and federal law are handled under separate procedures outlined in COMPLAINTS

Options

Informal meetings: The advocate should begin here if the school administrator is open and willing to listen and respond to concerns. The advocate should document all concerns, prior attempts to fix the problem, and how the advocate wants the situation resolved. The advocate can submit the documentation or request a meeting with the administrator to present the complaint.

The parent should initiate formal procedures if he or she believes the current situation is harming the child or cannot be resolved informally.

For many problems, an informal meeting may be all that is necessary.

Mediation

Mediation is used to resolve issues in dispute in a nonadversarial atmosphere at the local level. The parent, school district administrator/representative and others involved meet with a mediator, who is trained to help parties work together to resolve differences. Mediators used for special education disputes must also be familiar with the laws and regulations governing special education. The mediator may not be a school district, or service provider employee and must not have a personal or professional conflict of interest.

If the parent chooses not to use mediation, the school may require them to meet, at a convenient time and location, with a disinterested party who would explain the benefits of the mediation process and encourage the parents to use the process.

Mediation cannot be used to deny or delay a due process hearing.

Due Process Hearing

The parent can request a due process hearing when the problem is significant or it is unlikely the dispute can be resolved informally.

A request for a due process hearing must be submitted directly to:

Special Education Hearing Office

McGeorge School of Law - UOP

3200 Fifth Ave. • Sacramento, CA 95817

(916) 739-7053; (916) 739-7066 (fax)

A copy of this request must also be sent to the school district or other agencies that are parties to the hearing.

The parent can request mediation to try to resolve differences. The school district must also offer mediation whenever a formal hearing is requested but it is a voluntary process.

The request for a due process hearing must include:

- The name of the child
- The child's address
- The name of the school the child is attending
- A description of the nature of the problem, including all relevant facts
- A proposed resolution of the problem
- Parent contact information

The state will offer an opportunity for mediation whenever a due process hearing is requested. The purpose of the “hearing request mediation” is to resolve the dispute without using more formal procedures. Parents may use an attorney in this process.

The school can also request a due process hearing if the parent refuses to allow assessments or recommended placement/services.

The student should remain in his or her current placement until the dispute is resolved, unless both the parent and the school district agree otherwise.

If the hearing request mediation resolves the dispute, no due process hearing is necessary. If the problem cannot be resolved through mediation, the state must conduct a due process hearing.

The hearing must be held within 45 days of the request for a due process hearing.

Recommended procedures for a due process hearing are beyond the scope of this publication. For additional information/assistance, please refer to the resources section in the Appendix.

Disputes regarding Section 504 compliance

The Office of Civil Rights is responsible for investigating complaints regarding allegations of discrimination that may be in violation of Section 504 of the Rehabilitation Act of 1973. This includes any situation where the disabled child is excluded from participating in his or her education because of a disability-related barrier (i.e. the child cannot access the music room because there is no wheelchair ramp and the school claims non-academic programs do not need to be accessible).

To file a complaint with the OCR, the parent should contact OCR and ask for a copy of the complaint form and instruction sheet for filing such a complaint.

A student does not have to be in special education in order to file a discrimination complaint. A discrimination complaint must be filed within 180 days of the date of the discrimination.

U.S. Department of Education
Office of Civil Rights, Region IX Office
Old Federal Building
50 United Nations Plaza, Room 239
San Francisco, CA 94102
(415) 556-7000; TDD (415) 556-6806

The public agency must inform the parent of any free or low-cost legal services available in the area whenever the parent requests the information or initiates a due process hearing.

For more information:

California Department of Education

Special Education Division
515 L. Street, Room 270
Sacramento, CA 95814
(916) 445-4613 /
FAX: (916) 327-3516 / TTD: (916) 327-3678
Parent Information Line: 1-800-434-2465
Procedural Safeguards 1-800-926-0648