

DUE PROCESS HEARING AND MEDIATION PROCEDURES

What is Due Process?

The Sacramento City Unified School District (District) is committed to supporting school sites in the assessment, identification, and placement of students with special needs in the appropriate and least restrictive environment (LRE) to provide them with a free appropriate public education (FAPE). The District is required by the Individuals with Disabilities Education Act (IDEA) to follow procedures to provide access to due process proceedings, as well as the protections conferred by procedural safeguards, which are required by federal law. Under the IDEA, due process proceedings are a principal vehicle for resolving disputes between parents of children with disabilities concerning identification, evaluation, placement or provision of a FAPE. (34 C.F.R. § 300.511) Parents/guardians, students who have reached the age of majority, and the District may all initiate due process proceedings.

When May Due Process be Initiated?

A parent/guardian, adult student and/or the District may initiate due process proceedings under any of the following circumstances:

- There is a proposal to initiate or change the identification, assessment, or educational placement of the child or the provision of a FAPE to the child;
- There is a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a FAPE to the child;
- The parent or guardian refuses to consent to an assessment of the child; and/or
- There is a disagreement between a parent or guardian and a local educational agency regarding the availability of a program appropriate for the child, including the question of financial responsibility. (34 C.F.R. § 300.148).

What are Due Process Protections?

Due process protections include the option of a mediation conference, the right to examine pupil records, and the right to a fair and impartial administrative hearing at the state level before a person knowledgeable in the laws governing special education and administrative hearings. Specific procedures and timelines are delineated in the following pages.

How is a Request for Due Process Hearing Filed and What Must it Contain?

To initiate due process proceedings, a parent/guardian, adult student, or the District files a written request with the Office of Administrative Hearings (OAH). Under the IDEA there is no right to a due process hearing without a valid complaint. In order to be considered valid, a due process complaint must contain the following:

1. The child's name, address and school of attendance;
2. A description of the problem with specific related facts; and

3. A proposed resolution with specific related facts.

The requesting party (i.e., the Petitioner) must also provide a copy of the hearing request to the other party (i.e., the Respondent.) The hearing must be completed, and a decision reached within 45 days of receipt of the request, unless a continuance has been granted. Timelines for due process proceedings begin when the party named in the complaint receives the complaint from the filer. To file for mediation or a due process request, contact:

Office of Administrative Hearings Special Education Division
2349 Gateway Oaks, Suite 200
Sacramento, CA 95833-4231

Telephone: 926-263-0880
Fax: 916-263-0890

A due process request shall be deemed sufficient unless the party receiving it notifies the OAH in writing that the complaint does not meet the requirements. The Respondent may file a notice of insufficiency as to a complaint that does not meet requirements per the IDEA. Such notice must be filed within 15 days of receipt of the complaint. If the Respondent chooses not to file a notice of insufficiency based on the contents of the complaint, it is assumed that the Respondent accepts the complaint as is. Therefore, it is important that the Respondent evaluate each new complaint as it is received. A party may amend a due process complaint only for two reasons:

1. The other party consents in writing to the amended complaint, and/or
2. The OAH grants permission for the amended complaint.

It is important to note that due process timelines start over with an amended complaint.

What Happens After a Due Process Request is Filed?

Once a valid due process request is received, the Respondent must, within 10 calendar days of receipt, provide a written response to the complaint. It is important that the parties comply with this requirement to respond within the timeline.

If the District receives a complaint, it must be date stamped on the date of receipt and a copy must be sent to the SELPA immediately upon receipt.

The District is required to convene a resolution session within 15 days of its receipt of a complaint. Attendees at a resolution session may include the parent(s)/guardian, District representative(s) who has the authority to make decisions, and the facilitator. The purpose of this session is to foster early resolution of the concerns prompting the request for due process hearing. The meeting shall not include an attorney for the District, unless the parent is accompanied by an attorney. If a parent brings an attorney, that attorney is not entitled to recover fees from the District for attending the resolution session. The resolution session is similar to mediation, but without the assistance of a formally trained mediator. Any information discussed at that meeting should be treated as confidential, and it is recommended that the parties sign a simple confidentiality agreement.

The District also implements a local process in alternative dispute resolution (ADR) as an alternative to formal mediation and due process, prior to a complaint being filed. Due process includes the conducting of a similar resolution session, and the District uses the ADR process to this end. This ADR process is facilitated by District personnel who have received training in the ADR process, seek to build positive relationships, encourage flexibility and creative problem solving, and promote a sense of ownership in the outcome. This process does not preclude the option of filing a complaint, or requesting mediation or a hearing, but is offered as a positive alternative. For more information on the ADR process, contact the District Office. Nothing in the due process procedures described in this chapter is to be construed as prohibiting or preventing the parent(s)/guardian and the District from meeting informally and resolving any issue(s) of concern. Reaching solutions at a local level is encouraged, whenever possible. A facilitated IEP may also be suggested and/or attempted prior to moving forward to access more formal avenues of disagreement resolution.

Mediation

Mediation is a voluntary process through which parties seek mutually agreeable solutions to educational disputes with the help of an impartial mediator. Mediation is not used to delay the parents' right to a due process hearing.

Mediation Only

A parent/guardian, adult student, or the District may request a Mediation Only conference. Requests for Mediation Only are filed with the OAH. All parties must voluntarily agree to participate. Attendees at a Mediation Only session should include the parent(s)/guardian, District representative(s) who has the authority to make decisions, and a mediator. An interpreter may be required if a parent requests one. Either party may be accompanied and advised by non-attorney representatives. Attorneys or other independent contractors utilized to provide legal advocacy services may not participate in a Mediation Only conference.

A Mediation Only conference is scheduled by an OAH Administrative Law Judge (ALJ) and at a time and place reasonably convenient to both parties. If a resolution is reached, both parties execute a legally binding written agreement, which also states that conference discussions are confidential and may not be used in any subsequent request for due process hearing. If the issues fail to be resolved to the satisfaction of all parties, the party who requested the Mediation Only conference has the option of filing a request for due process hearing. The mediator may assist the parties in specifying any unresolved issues to be included in the hearing request.

Mediation and Due Process Hearing

Either party can propose scheduling mediation as a means of resolving the complaint. Should the parties agree to mediate, written confirmation shall be sent indicating the time and place of the mediation conference.

Both attorneys and advocates are permitted to participate in these mediation conferences. A qualified, impartial mediator is appointed by the OAH when mediation is agreed upon. This person will be trained in effective mediation techniques. During the mediation session, the

neutral mediator facilitates communication between the parent(s)/guardian and the District. All parties are involved in the decision making.

If mediation yields an agreement by both parties, the mediation results are documented in a binding settlement agreement and signed by the involved parties. All discussions in mediation sessions are automatically confidential and cannot be used as evidence in any subsequent due process hearing or civil proceeding.

If mediation (either Mediation Only or mediation as part of a request for due process hearing) does not yield an agreement by both parties, either party may move forward with the formal due process hearing request.

Elements and Timeline of a Request for Due Process Hearing

1. Initiation of Due Process Hearing

- a. If a parent/guardian or adult student desires a due process hearing to dispute any educational decision by the District which is covered under due process guidelines, they shall submit a written hearing request to the OAH and the District. The OAH will confirm receipt of request, and inform the parties of the relevant dates, including mediation (if applicable), prehearing conference, and the hearing dates.
- b. After receipt of the complaint, the District determines if they believe the request for due process hearing meets the requirements of the IDEA, which include
 - i. Child's name, address and school of attendance;
 - ii. A description of the problem with specific related facts; and
 - iii. A proposed resolution with specific related facts.
- c. If a request for due process hearing is determined by the District to be valid, the District must, within 10 calendar days, provide a written response to the complaint to the parent(s)/guardian which specifically addresses:
 - i. Why the action subject to dispute was proposed or rejected;
 - ii. Includes a description of the other options considered and the reason for rejection;
 - iii. The basis of the action; and
 - iv. All relevant factors related to the decision.
- d. The District may file a notice of insufficiency or motion to dismiss the request for due process hearing if the District deems the complaint to be insufficient.
- e. Following receipt of the complaint, the District should schedule a resolution session within 15 days. Additionally, the parties have the option to waive the resolution session and propose scheduling mediation instead.

2. **Resolution Session**

- a. The District is required to offer a resolution session to be held within 15 days of its receipt of the complaint. If the request is for Mediation Only, a resolution session is not required to be offered, but may still be scheduled.
- b. If agreement is reached at the resolution session, the OAH must be notified to remove the matter from hearing.
 - i. Sample forms may be found at:
<http://www.documents.dgs.ca.gov/oah/SE/Forms/OAH%2068.%20rev.%2007-08.pdf>
- c. An IEP team meeting may be scheduled as needed to document any changes to the IEP document agreed upon in the resolution session.
- d. If concern(s) remain(s) unresolved after the resolution session is held, the administrator or designee may inform the parent that either:
 - i. The District will participate in a mediation conference; or
 - ii. The District waives the mediation conference and is proceeding directly to the due process hearing.

3. **Mediation**

- a. The parents and the District have the right to request mediation prior to the deadline to do so, which will be set forth in the scheduling order issued by the OAH following the filing of the complaint. Mediation is voluntary, and both parties have to agree to participate.
- b. If the parties attending mediation come to an agreement, the decisions are documented in an agreement. Attorneys and advocates are permitted to participate in mediation.

4. **Due Process Hearing**

- a. A due process hearing must begin within 30 days of mediation or within 45 days of receipt of a request for due process hearing if the mediation is not requested.
- b. The OAH assigns an ALJ who is knowledgeable of administrative hearing procedures.
- c. All evidence (written documentation and list of witnesses) shall be exchanged by the parties 5 days prior to due process hearing. The Petitioner shall not be allowed to raise issues that were not raised in the request for due process hearing, unless the other party agrees otherwise.
- d. During the hearing proceedings, the student is to remain in his or her last agreed upon educational placement, including agreed upon services and setting, unless the parties agree otherwise.
- e. Hearing proceedings will be recorded verbatim and both parties will be given access to the recording. All testimony shall be given under oath or affirmation. A

hearing is conducted in English with an interpreter provided when necessary. The decision of the OAH hearing officer shall be written in English and, as appropriate, the primary language of the parent and mailed to both parties involved in the hearing. Both parties are given notice of rights and an explanation of the procedure for appealing the hearing decision to a court of competent jurisdiction.

- f. The District must continue to meet IEP timelines and FAPE obligations during the period of any due process proceedings and until resolution is reached. This means that the District must continue to offer a FAPE by convening IEP meetings during due process proceedings.