

COMPLAINT AND DISPUTE OVERVIEWS

Local Intervention

Parents concerned about their child's education are encouraged to contact the child's teacher, school principal, or LEA special education administrator to discuss their concerns. Informal conversation often resolves the problem and helps maintain open and positive communication. The SELPA Program Specialists are also available to assist in developing solutions to difficult issues.

When disputes develop between the LEA and the parent regarding a student's educational program that cannot be resolved at the local level, it is sometimes necessary to utilize more formal procedures to resolve those disputes. There are three types of dispute resolution proceedings. Each proceeding is designed to address a different kind of dispute.

Due Process

When the parents of a student with disabilities and the educational agency disagree about the child's identification, assessment, educational placement, or provision of FAPE, either side can request a due process proceeding.

There are three levels to the hearing process.

1. Resolution Session

When a parent files a due process hearing request, the district is required to schedule a resolution meeting within 15 days of receipt of the complaint with the parents and the relevant members of the IEP team. The purpose of the meeting is to attempt to reach resolution at an early stage.

2. Mediation Conference

If resolution is not reached or is waived by either party, a mediation conference that is an informal meeting between the district, parent, and an administrative law judge is conducted. The mediation conference must be scheduled by the state within 15 days of receiving the request for due process hearing.

3. Formal Administrative Fair Hearing

If the mediation conference is not successful or is waived by either party, an administrative fair hearing is scheduled. This is a formal hearing conducted by an administrative judge from the Office of Administrative Hearings. At the hearing, both sides present evidence through submitting documents and by calling witnesses. The administrative law judge evaluates the evidence, determines the prevailing party, and

directs corrective action, if any. This step must be held and a decision made within 45 days of the State's receipt of the request for a hearing.

Either party may request to have only a mediation conference instead of requesting a formal administrative fair hearing. If the issue is not resolved through mediation, a formal hearing can then be requested.

(E.C. §§ 56501-56507)

Mediation and hearing requests must be made in writing and sent to:

Office of Administrative Hearings
 Special Education Division
 2349 Gateway Oaks Drive, Suite 200
 Sacramento, CA 95833-4231
 Phone: (916) 263-0880
 Fax: (916) 263-0890

Compliance Complaint

When it is believed that the LEA may have violated any part of special education law, a parent, individual, public agency, or organization can file a complaint with the California Department of Education (CDE). The party filing the complaint must forward a copy of the complaint to the other party at the same time it is filed with the CDE. Within 5 days of receiving the complaint, the CDE must review it to decide if it is a matter for state or local investigation.

For complaints involving issues **not** covered by federal or state special education laws or regulations, the district's uniform complaint procedures are followed.

If it is determined to be an appropriate complaint for state investigation, an investigator interviews both sides, reviews documentation, and then decides whether the complaint is justified and what corrective action (if any) must be taken. A report of that investigation must be made within 60 days. (34 C.F.R. § 300.153)

Complaint forms are available online at <http://cde.ca.gov/sp/se/qu/documents/cmplntinvsrqst.doc> and may be filed with the superintendent of the local agency or sent directly to:

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

Phone: 1-800-926-0648
 Fax: (916) 327-3704
 Email: speceducation@cde.ga.gov

Legal Basis for State Compliance Complaints

- The California Department of Education shall directly intervene without waiting for local educational agency investigation in certain situations. For complaints relating to special education, any one of the following shall be a condition for direct state intervention: The complainant alleges that a public agency, other than a local educational agency fails or refuses to comply with an applicable law or regulation relating to the provision of free appropriate public education to individuals with disabilities;
- The complainant alleges that the local educational agency or public agency fails or refuses to comply with the due process procedures established pursuant to federal and state law and regulation; or has failed or refused to implement a due process hearing order;
- The complainant alleges facts that indicate that the child or group of children may be in immediate physical danger or that the health, safety or welfare of a child or group of children is threatened.
- The complainant alleges that an individual with a disability is not receiving the special education or related services specified in his or her individualized educational program (IEP).
- The complaint involves a violation of federal law governing special education or its implementing regulations.

The complaint shall identify the basis for filing the complaint directly to the Department. The Complainant must present the Department with clear and verifiable evidence that supports for the direct filing.

Civil Rights Issues

It is the responsibility of the Office of Civil Rights (OCR) in the Department of Education and the Office of Civil Rights in the Department of Health and Human Services to enforce federal laws prohibiting discrimination against persons on the basis of race, color, national origin, sex, age or mental and physical handicaps and to investigate discrimination complaints.

(Title VI, Civil Rights Act of 1964; Title IX, Civil Rights Act of 1972; Section 504 of the Rehabilitation Act of 1973; and Title II of the Americans with Disabilities Act of 1990)

If a parent or other individual believes that his or her rights have been violated because of his or her disability, or his or her child's disability, by an educational institution receiving federal assistance, a complaint can be submitted to:

Regional Director, Office of Civil Rights, Region IX
50 Beale Street, Suite 7200
San Francisco, CA 94105
Phone: (415) 486-5555 or TDD (877) 521-2172

Email: ocr.sanfrancisco@ed.gov
Fax: (415) 486-5570