

**FORMAL DUE PROCESS RESOLUTION**

**PROCESS  
AND  
RECOMMENDED GUIDELINES**

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## **Introduction**

Under federal law a Resolution Session is required when a parent files for due process. The intent of the Resolution Session is to clarify and resolve issues in order to reach an agreement. This meeting is required unless both parties agree in writing not to hold a meeting.

## **Contact Information**

All hearing requests will go to the:

Office of Administrative Hearings  
Special Education Client  
1102 Q Street 4<sup>th</sup> Floor  
Sacramento, CA 95814

Phone: (916)323-6876

FAX: (916)322-8014

Web Page: [www.oah.dgs.ca.gov](http://www.oah.dgs.ca.gov)

The following forms are available on the OAH Website:

*Request for Mediation and Due Process Hearing Form*

*Brief Summary of Reason for Request*

*Proposed Resolution of the Problem State Above*

## Due Process Timelines

### Resolution Period (30 Days)

- Parent submits due process complaint to the LEA and OAH
- The LEA provides a written response to the parent within 10 days (Prior Written Notice Form) which includes:
  - An explanation of why the agency proposed or refused to take the action raised in the complaint.
  - A description of other options that the IEP Team considered and the reasons why those options were rejected.
  - A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action.
  - A description of the factors that is relevant to the agency's proposal or refusal.
- If the due process complaint does not give the LEA sufficient notice of the nature of the problem(s) at issue and the proposed resolution(s), within 15 days of receiving the complaint, the LEA may file a Notice of Insufficiency (NOI) with OAH in an attempt to clarify the issues
- OAH notifies parent within 5 days of sufficiency of description of issues after receiving the NOI from the LEA
- The LEA will hold a Resolution Session within 15 days of receiving notice of the parents' due process complaint prior to the initiation of the due process hearing unless both parties agree otherwise in writing or agree to use the mediation process.
- Within 30 days: Issues must be resolved or Due Process Hearing will resume or state will offer state level mediation

### Due Process Period (45 Days)

- State Level Action
  - OAH will conduct a hearing or
- Written Order
  - A written order will be published unless the parties reach a written settlement agreement prior to publication, and
  - The Administrative Law Judge (ALJ) concurs that all issues have been addressed to satisfy the requirements of law

## Resolution Session

### *Pursuant to Regulations for IDEA 2004*

Within 15 days of receiving notice of parents' due process complaint, and prior to initiation of a due process hearing, the LEA must convene a Resolution Session with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint. The LEA may not include an attorney of the LEA unless the parent is accompanied by an attorney.

The purpose of the meeting is for the parents of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the complaint.

The Resolution Meeting need not be held if the parents and the LEA agree in writing to waive the meeting, or the parents and the LEA agree to use the State mediation process.

If a resolution to the dispute is reached in the Resolution Meeting, the parties execute a legally binding agreement that is signed by both parties and a representative of the LEA that has authority to bind the LEA. This agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.

There is an agreement review period of 3 business days. Either party may void the agreement within 3 business days of the agreement's execution.

### **Recommended Process for Resolution Sessions**

The Resolution Session should be a structured meeting controlled by a designated facilitator with the primary goal of clarifying issue(s), determining if solution(s) can be achieved, and designating the issue(s) for hearing if no agreement to solution(s) can be achieved.

It is recommended that LEAs use a neutral facilitator to lead the resolution session. This could be an administrator or program specialist from another LEA. The facilitator should be specifically trained in conducting this type of meeting and should not have prior involvement in the case. The neutral facilitator need not see or review information about the case except to review the Parent letter requesting a hearing or complaint process and the district's written response. Specific timelines are noted in the law and require prompt response. See the following section on timelines.

Every effort should be made by the facilitator to support the parties in improving their relationship and identifying better ways to communicate and resolve issues that may arise in the future. However, where parties are clearly committed to specific positions, the responsibility for resolution is with the due process complaint process.

The LEA is responsible for the implementation of any agreement and/or hearing/complaint activity.

#### **Purpose of Resolution Session**

- Articulate and Clarify Issues
- Explore the LEA response
- Identify Options for Resolution
- Where agreement is reached, write a settlement agreement
- Develop an Action Plan and assign responsibility
- Communicate the outcome to Office of Administrative Hearings (OAH)

#### **Recommended Agenda for Resolution Sessions**

- I. Introductions
- II. Opening Comments
- III. Description of Process
- IV. Ground Rules
- V. Resolution Process
  - A. Nature of the Problem - Ask: What is the issue?
    - Address FAPE issues first
  - B. Proposed Resolution - Explore specific concerns, examples, and expectations for resolution
  - C. Response - Ask: What is the LEA's response?

- D. Agreement - Seek opportunity to resolve issue
- E. Repeat sequence for each issue

VI. Closure

- a. Written Agreements
- b. Written notice to CDE or OAH
- c. Follow Up with Action Plan to assign staff to complete agreement( Action Plan Form)

## RESOLUTION SESSION CHART

Nature of the Problem	Proposed Resolution	Response	Agreements



## Writing Agreements

A written settlement agreement signed by both parties becomes a binding contract. After the three (3) business day review period for either party to rescind the agreement, it becomes binding on both parties.

The agreement belongs to the parties and should reflect wording that the parties clearly understand and represent their interests in accepting the agreement. If a facilitator is used during this session, the facilitator should support the writing of the agreement to ensure that both parties understand the components of the agreement. It is important that the parties review both the substantive components of the agreement those that are technically required, and agree to the language.

Districts are encouraged to use the *Settlement and Release Agreement Template*. Use only the sections that apply to the issues that are in dispute. For example, language addressing "Assessment" should be deleted if assessment is not at issue during the complaint or resolution process.

## SAMPLE

## LETTER TO PROPOSE RESOLUTION SESSION

Dear \_\_\_\_\_:

On **[insert]** the **[insert]** School District received a copy of your complaint requesting a due process hearing regarding **student name**.

When a parent initiates a complaint for a due process hearing, a district must schedule a preliminary resolution meeting within 15 days of receipt of the complaint, per 20 U.S.C. 1415. The purpose of the meeting is to give a parent an opportunity to discuss the due process complaint and the facts on which the complaint is based with the district; and to give the district an opportunity to resolve issues early in the process.

At the resolution conference, a district must have a representative present with authority to resolve the complaint. Further, at this meeting, the district cannot have legal counsel present, unless the parent decides to bring legal counsel. If an agreement is reached at the resolution conference, the parent and/or the district will have 3 business days to void the agreement. If an agreement is not reached within 30 days, the due process hearing may proceed and the applicable timelines will begin. A district and a parent may also agree to waive this conference. This meeting is NOT an IEP meeting.

We have scheduled a resolution conference for **[insert]** at the District Special Education Office. Please confirm your attendance or your intention to waive this meeting by completing the information below and returning it to me in the enclosed stamped, self-addressed envelope, or by faxing it to (951) 826-6943. Please also indicate whether or not you will attend this meeting with legal counsel so that the District can make appropriate plans.

I look forward to meeting and discussing your complaint on **[insert]**.

Sincerely,

Enclosure: Prior Written Notice

INTENT REGARDING RESOLUTION CONFERENCE  
SCHEDULED BY [insert] SCHOOL DISTRICT  
[Date & time]  
District Special Education

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I, \_\_\_\_\_parent/guardian of \_\_\_\_\_

\_\_\_\_\_ will attend the resolution conference

\_\_\_\_\_ waive the requirement of a resolution conference

If you are attending the resolution conference scheduled for \_\_\_\_\_ District Special Education Office, please indicate whether you plan on attending the scheduled resolution conference accompanied by legal counsel.

I, \_\_\_\_\_parent/guardian of \_\_\_\_\_

\_\_\_\_\_ will not bring an attorney to the resolution conference scheduled for \_\_\_\_\_, at \_\_\_\_\_ am/pm, District Special Education Office

\_\_\_\_\_ will bring an attorney to the resolution conference scheduled for \_\_\_\_\_, at \_\_\_\_\_ am/pm District Special Education Office

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

### Interim Settlement and Release Agreement

This Settlement and Release Agreement (“Agreement”) is between \_\_\_\_\_, parents of \_\_\_\_\_, a minor who has received services through the \_\_\_\_\_ Unified School District collectively referred to as “Parties”. Parents and the District, in consideration of the promises made herein, agree as follows:

#### 1. Nature and Status of Dispute

- a. Parents and the District disagreed about student’s special education FAPE related services. As a result, on date, Parents filed a due process compliant with the California Office of Administrative Hearings (“OAH”) regarding several issues related to student’s educational program for the 200\_/0\_ school year. The case was assigned a file number of #N\_\_\_\_\_.
- b. On \_\_\_\_\_, the Parties met for a resolution session to discuss Parents complaint, the facts that formed the basis of the complaint, and to provide the District with an opportunity to resolve the complaint.
- c. The purpose of this Agreement is to resolve any disputes caused by this action and claims between Parents and the District/Service Providers related to student’s education, including special education and related services, through the date of this interim agreement on issues before and within the jurisdiction of the Office of Administrative Hearings.

#### 2. Actions To Resolve Dispute

- a. [List the first issue of the parent per the OAH filing.]  
 [State what the parent is requesting for remedy of above issue per OAH filing.]  
**[State District’s response to Parent’s proposed resolution:]**
- b. [List the second issue of the parent per the OAH filing.]  
 [State what the parent is requesting for remedy of above issue per OAH filing.]  
**[State District’s response to Parent’s proposed resolution:]**

The parties, \_\_\_\_\_ USD and Parents, request Due Process complaint to be dismissed immediately upon receipt of this final agreement. Parents will notify OAH of the agreement to dismiss complaint. Parents and \_\_\_\_\_ USD representatives would like OAH to know that this issue was resolved at the Resolution Session on \_\_\_\_\_.

#### 3. Waiver and Release of Claims

Parents and the District hereby fully release and discharge each other from all claims, damages, liabilities, rights and complaints of whatever kind or nature arising from or related to student’s educational program, including claims arising under the California Education Code, the individuals with Disabilities Education Act (“IDEA”), 42 U.S.C. section 1983, the Americans with Disabilities Act, the Unruh Act, and Section 504 of the Rehabilitation Act of 1973, whether known or unknown, which either party now has or

holds, or at any time had or held against the other party, through the effective date of this Agreement.

Parents hereby withdraw, waive and relinquish their claim for reimbursement for attorneys' fees and costs incurred in connection with this meeting, mediation and/or due process hearings.

#### 4. **Unknown Claims**

Parents certify that they have read, and hereby waive the application of, the following provision of California Civil Code § 1542 TO ALL CLAIMS:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor.”

Acknowledging Civil Code section 1542, Parents agree to waive the protections of section 1542 in order to relinquish all claims described herein. Specifically, Parents understand and acknowledge the significance and consequence of this waiver of section 1542, as follows: (1) they may have additional causes of action, rights, or claims and attorneys' fees or costs arising or occurring up to the effective date of the Agreement, or which they are not aware; (2) they may not make a further demand for any such claims, fees, or costs upon each other or their predecessors, successors, board, employees, or agents.

#### 5. **Technical Provisions**

- a. **Conditions of Execution.** Each party acknowledges and warrants that the Parties' execution of this Agreement is free and voluntary.
- b. **Execution of Other Documents.** The Parties agree to cooperate fully in the execution of other documents and the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Interim Agreement.
- c. **Non-admission.** This Interim Agreement is not, and shall not be construed as, an admission by the District that it failed to provide or offer student a free appropriate public education.
- d. **Entire Agreement.** This agreement contains the entire agreement between the parties.
- e. **Effective Date.** This Interim Agreement is effective three (3) days following the date of signature by the Parties, if not rescinded by either party.
- f. **Governing Law.** This Interim Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California and the United States.
- g. **Severability.** If any portion of this Interim Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, that determination shall not invalidate or render unenforceable any other provision of this Interim Agreement.
- h. **Confidentiality.** The Parties agree to keep the terms of this Interim Agreement confidential. However, for purposes of implementation and enforcement of this

Interim Agreement, the Parties mutually consent to the disclosure and admissibility of this Interim Agreement.

- i. Execution by Facsimile or in Counterparts. This Interim Agreement may be signed in counterparts such that the signatures appear on separate signature pages. A copy, facsimile transmission or original of this document with all signature pages appended together shall be deemed a fully executed Interim Agreement.

**Parent Signature**

\_\_\_\_\_ Date: \_\_/\_\_/\_\_

**Parent Signature**

\_\_\_\_\_ Date: \_\_/\_\_/\_\_

**District Signature(s)**

\_\_\_\_\_ Date: \_\_/\_\_/\_\_

**District Representative Signature(s)**

\_\_\_\_\_ Date: \_\_/\_\_/\_\_

**Facilitator Signature**

\_\_\_\_\_ Date: \_\_/\_\_/\_\_

**SAMPLE**

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (“Agreement”) is between [PARENTS] (“Parents”), parents of [STUDENT], a minor, and the [INSERT] School district (“District”) (collectively referred to as “Parties”). Parents and the District, in consideration of the promises made herein, agree as follows:

**1. NATURE AND STATUS OF DISPUTE**

- A. Parents and the District disagreed about [STUDENT]’s special education program. As a result, on [INSERT DATE], Parents filed a due process complaint with the California Office of Administrative Hearings (“OAH”) regarding several issues related to [STUDENT’S] educational program for the [INSERT] school years, including the extended school year. The case was assigned a file number of #\_\_\_\_\_.
- B. Parents and the District disagreed about [STUDENT]’s special education program. As a result, on [INSERT DATE], Parents filed a complaint with the California Department of Education (CDE) regarding several issues related to [STUDENT’S] education program for the [INSERT] school years, including the extended school year. The case was assigned a file number of [INSERT FILE NUMBER].
- C. On [INSERT DATE], the Parties met for a resolution session to discuss Parents’ complaint, the facts that formed the basis of the complaint, and to provide the District with an opportunity to resolve the complaint.
- D. The purpose of this Agreement is to resolve any and all disputes, causes of action and claims between Parents and the District related to [STUDENT]’s education, including special education and related services, through the date of this agreement.

**2. ACTIONS TO RESOLVE DISPUTE**

[INSERT ANY OF THE FOLLOWING TERM(S), IF RELEVANT TO THE DISPUTE AND SETTLEMENT PROCESS]

**A. Assessment**

Parents agree to sign an Assessment Plan, to allow the District to conduct assessment(s) in the area(s) of [INSERT]. Parents will sign an Assessment Plan no later than [INSERT DATE] or a copy of the Assessment Plan, signed and consented to by Parents, is attached to this Agreement.

The Parties agree to fund an independent education evaluation in the area(s) of [INSERT]. This evaluation will be provided at no cost to Parents. The assessor will be chosen by the District from the District’s list of approved independent assessors.

- B. The Parties agree to the education goals drafted on [INSERT DATE].

## C. Placement and Services

The child will be placed in [INSERT] class at [INSERT] school.

Extended school year (“ESY”) will be provided for [INSERT] days, excluding holidays, from [INSERT DATE] to [INSERT DATE].

The District will provide the following related services during school days and including the extended school year:

[LIST ALL RELATED SERVICES (e.g. 1;1 AIDE, SPEECH THERAPY, TRANSPORTATION, etc.), INCLUDING FREQUENCY AND DURATION.]

The Parties agree to continue the educational goals drafted on [INSERT DATE].

The above placement and services are outlined on the IEP face sheet attached to this Agreement as Addendum 1. The Parties agree that the services outlined on the IEP face sheet attached to this Agreement as Addendum 1 constitute FAPE for [STUDENT] through [INSERT TERM OF AGREEMENT]. Unless mutually agreed to in writing by the Parties, there shall be no further modification of [STUDENT]’s placement or services during this period.

## D. Reimbursement and Compensatory Education

The District agrees to provide the following compensatory services:

[LIST ALL COMPENSATORY SERVICES, INCLUDING THE PROVIDER, FREQUENCY AND DURATION.]

The District agrees to reimburse Parents in the amount of \${INSERT} for [INSERT SERVICE] within 60 days of the District’s receipt of proof of costs incurred. Appropriate documentation of costs incurred includes copies of cancelled checks, credit card receipts, paid invoices, etc.

The District agrees to reimburse Parents in the amount of \${INSERT} to settle all claims related to [STUDENT]’s educational program through the date of this Agreement. A check in this amount shall be issued to “[INSERT NAME]” within 45 days of execution of this Agreement.

## E. [INSERT] – [INSERT] School Year

The District will convene an IEP meeting by [INSERT DATE] to review [STUDENT]’s IEP and recommend a program and placement for the [INSERT] – [INSERT] school year.



[ALWAYS INCLUDE THE FOLLOWING PROVISIONS]

F. Stay Put

If disagreements arise regarding [STUDENT]'s current educational program, the Parties agree that placement and services outlined on the IEP face sheet, attached to this Agreement as Addendum 1, constitute [STUDENT]'s "stay put" placement during the pendency of any of any proceedings related to the dispute.

G. Relocation

Parents agree that if Parents/[STUDENT] no longer reside within the District, Parents will immediately inform the District. Parents further agree that if Parents/[STUDENT] no longer reside within the attendance boundaries of the District, the District's obligation to provide funding, programming or services under this Agreement terminate as of the date of relocation.

H. Dismissal of Due Process Complaint

Within 5 days of execution of this Agreement, Parents will notify OAH [CDE] of this Agreement and dismiss with prejudice their pending due process complaint.

**3. WAIVER AND RELEASE OF CLAIMS**

Parents and the District hereby fully release and discharge each other from all claims, damages, liabilities, rights and complaints of whatever kind or nature arising from or related to [STUDENT]'s educational program, including claims arising under the California Education Code, the Individuals with Disabilities Education Act ("IDEA"), 42 U.S.C. section 1983, the Americans with Disabilities Act, the Unruh Act, and Section 504 of the Rehabilitation Act of 1973, whether known or unknown, which either party now has or holds, or at any time had or held against the other party, through the effective date of this Agreement.

Parents hereby withdraw, waive and relinquish their claim for reimbursement for attorneys' fees and costs incurred in connection with this meeting, mediation and/or due process hearings.

Parents' initials

**4. UNKNOWN CLAIMS**

Parents certify that they have read, and hereby waive the application of, the following provision of California Civil Code § 1542 TO ALL CLAIMS:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor.”

Acknowledging Civil Code section 1542, Parents agree to waive the protections of section 1542 in order to relinquish all claims described herein. Specifically, Parents understand and acknowledge the significance and consequence of this waiver of section 1542, as follows: (1) they may have additional causes of action, rights, or claims and attorneys’ fees or costs arising or occurring up to the effective date of the Agreement, or which they are not aware; (2) they may not make a further demand for any such claims, fees, or costs upon each other or their predecessors, successors, board, employees, or agents.

Parent’s initials

## 5. TECHNICAL PROVISIONS

- A. *Conditions of Execution.* Each part acknowledges and warrants that the Parties’ execution of this Agreement is free and voluntary.
- B. *Execution of Other Documents.* The Parties agree to cooperate fully in the execution of other documents and the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
- C. *Non-admission.* This Agreement is not, and shall not be construed as, an admission by the District that it failed to provide or offer [STUDENT] a free appropriate public education.
- D. *Entire Agreement.* This Agreement contains the entire agreement between the parties.
- E. *Effective Date.* This Agreement is effective three (3) days following the date of signature by the Parties, if not rescinded by either party.
- F. *Governing Law.* This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California and the United States.
- G. *Severability.* If any portion of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, that determination shall not invalidate or render unenforceable any other provisions of this Agreement.
- H. *Confidentiality.* The Parties agree to keep the terms of this Agreement confidential. However, for purposes of implementation and enforcement of this Agreement, the Parties mutually consent to the disclosure and admissibility of this Agreement.
- I. *Execution by Facsimile or in Counterparts.* This Agreement may be signed in counterparts such that the signatures appear on separate signature pages. A copy, facsimile transmission or original of this document with all signature pages appended together shall be deemed a fully executed Agreement.

**PARENT(S) SIGNATURE**

**Dated:** \_\_\_/\_\_\_/\_\_\_

**[PARENT], Parent**

**Dated:** \_\_\_/\_\_\_/\_\_\_

**[PARENT], Parent**

**DISTRICT SIGNATURE**

**Dated:** \_\_\_/\_\_\_/\_\_\_

**[AUTHORIZED LEA REP], [TITLE]**