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Disclaimer

All materials have been prepared for general information purposes only. The information presented is not legal advice, is not to be acted on as such, may not be current and is subject to change without notice.

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Disputes can arise during any phase of the Special Education Process

**How are disputes resolved?**  
 Depending on the subject matter of the disagreement, the dispute resolution process begins by filing either:

- a Compliance Complaint
- or
- for a Due Process Hearing

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Sometimes even your best advocacy efforts do not yield the results you feel your child is entitled to.

Prior Written Notice (PWN) is a powerful tool that will explain to you the legal reasoning behind the District's refusal(s).

However, if you feel the District is correct in their position, you have rights to present your case in a Due Process Hearing and/or have the situation investigated by the California Department of Education (CDE)

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73 How does a Compliance Complaint differ from a Due Process Hearing?

	Due Process Hearing	Compliance Complaint
<b>General Purpose</b>	To settle disagreements over what a student's program should include.	To correct the district's failure to follow the rules or do what has already been agreed to in the IEP.

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73 How does a Compliance Complaint differ from a Due Process Hearing?

	Due Process Hearing	Compliance Complaint
<b>When it should be used?</b>	The parents and the district disagree about the student's <ul style="list-style-type: none"> <li>• Eligibility</li> <li>• Placement</li> <li>• Program needs or</li> <li>• Related services.</li> </ul>	The district appears to have violated a part of special education law or procedure. For example, failure to: <ul style="list-style-type: none"> <li>• Implement an IEP as written</li> <li>• Assess/refer a student to special education</li> <li>• Follow timelines for assessment &amp; referral</li> <li>• Inform parents of an IEP meeting and</li> <li>• Implement a due process hearing decision or mediation agreement.</li> </ul>

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73 How does a Compliance Complaint differ from a Due Process Hearing?

	Due Process Hearing	Compliance Complaint
Who can file?	Parents or the District.	Parents, an individual...anyone.
How are facts made known?	Both sides present evidence by calling witnesses and submitting any reports that support their position.	A complaint is filed with the California State Department of Education (CDE) and an investigation is conducted. The complaint may concern a single student, a group of students or a local district policy.

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73 How does a Compliance Complaint differ from a Due Process Hearing?

	Due Process Hearing	Compliance Complaint
How is a decision made?	A state hearing officer, called an <b>Administrative Law Judge (ALJ)</b> , decides whose witnesses and documents are correct and what program is appropriate. The ALJ then issues a due process hearing decision.	An <b>investigator from the CDE</b> investigates the allegations and makes a determination. If a district is found "out of compliance," they should be ordered to come back into compliance. In addition, the CDE may order the district to submit a "corrective action plan" —a document describing the steps the district has taken, or will take, to assure the problem does not occur again, as well as the timelines for taking those steps. CDE must approve or modify the plan.

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Steps to filing a compliance complaint with the CDE

- (1) Write the complaint
- (2) Send the complaint to CDE (email or snail mail)
- (3) Forward a copy of the complaint to the school district at the same time the complaint is filed with the CDE

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

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Written state complaints must include the following details:

Allegation	Supporting Information	Your Information
<ul style="list-style-type: none"> <li>A statement that a named LEA has not followed a requirement of federal or state special education law.</li> </ul>	<ul style="list-style-type: none"> <li>The supporting facts on which the statement is based.</li> </ul>	<ul style="list-style-type: none"> <li>The signature and contact information for the person or organization filing the complaint</li> </ul>

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If the complaint concerns a specific child, the following information must also be included:

- The child's name and address
- The name of the child's school
- A description of how the alleged violation affected the student, including facts relating to the problem
- A proposed resolution of the problem

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Written state complaints must include the following details:

Allegation	Supporting Information	Your Information
<ul style="list-style-type: none"> <li>A statement that a named LEA has not followed a requirement of federal or state special education law.</li> </ul>	<ul style="list-style-type: none"> <li>The supporting facts on which the statement is based.</li> </ul>	<ul style="list-style-type: none"> <li>The signature and contact information for the person or organization filing the complaint</li> </ul>

- The child's name and address
- The name of the child's school
- A description of how the alleged violation affected the student, including facts relating to the problem
- A proposed resolution of the problem

<https://www.cde.ca.gov/sp/se/qa/documents/sedcomplaintform.pdf>

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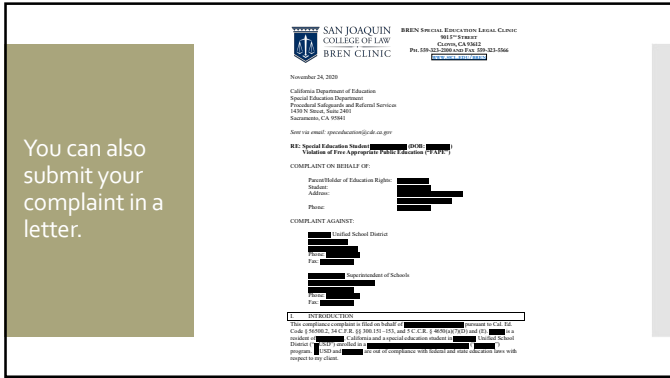
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You can also submit your complaint in a letter.

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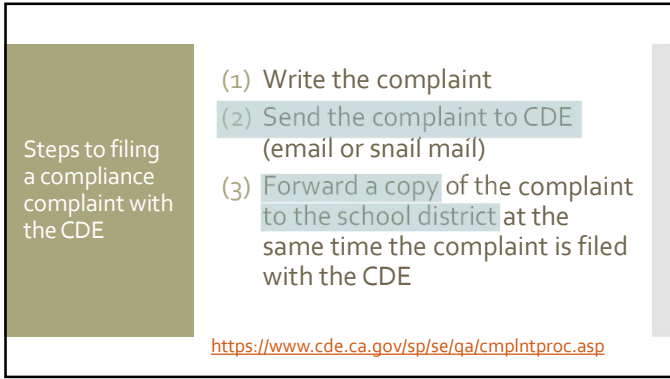
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Steps to filing a compliance complaint with the CDE

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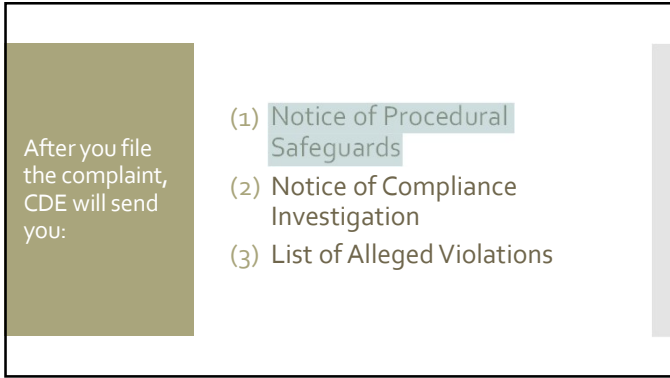
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After you file the complaint, CDE will send you:

- (1) Notice of Procedural Safeguards
- (2) Notice of Compliance Investigation
- (3) List of Alleged Violations

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**Special Education Rights of Parents and Children**  
**Under the Individuals with Disabilities Education Act, Part B, and the**  
**California Education Code**  
**Notice of Procedural Safeguards**  
 Revised October 2016

**Notice of Procedural Safeguards**

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 law 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 96301(d)(2); EC 96321; and 96341.1(d)(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.

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**After you file the complaint, CDE will send you:**

- (1) Notice of Procedural Safeguard
- (2) Notice of Compliance Investigation
- (3) List of Alleged Violations

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**Notice of Compliance Investigation**



**CALIFORNIA DEPARTMENT OF EDUCATION**  
 1430 N STREET, SACRAMENTO, CA 95814-5901 • 916-319-0800 • WWW.CDE.CA.GOV

December 03, 2020

TONY THURMOND  
 STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

Jodie Howard  
 001 5th Street  
 Clovis, CA 95312

Superintendent  
 [Redacted]

Superintendent  
 Office of Education  
 [Redacted]

Dear Ms. Howard, Superintendent [Redacted] and Superintendent [Redacted]  
 COMPLIANCE INVESTIGATION NOTIFICATION: Case # S-0309-2021  
 STUDENT NAME: [Redacted]

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**Notice of Compliance Investigation**

This letter provides notification that the Compliant Investigation Unit, formerly known as Procedural Safeguards Referral Service, of the California Department of Education Special Education Division (SED) received correspondence (a signed complaint request or letter) alleging violations of special education laws and/or regulations. We have reviewed this correspondence and have opened a compliance investigation according to the provisions of Code of Federal Regulations, Title 34, sections 300.151-300.153 and California Code of Regulations, Title 5, sections 4600-4671. We will investigate the alleged violations on the attached allegations listing.

It is possible some concerns in the original complaint request are not included on this list because they are outside our jurisdiction. The most common reasons for non-inclusion are: 1) the issue is not covered under special education rule; 2) the issue is outside of the one-year statute of limitations for investigation; 3) the issue is based on anticipated or future events that have not yet occurred, and/or 4) the issue is being (or has already been) investigated in a prior compliance complaint covering the same student, school district, and timeframe. If we learn that an issue requested in a complaint request is also currently part of a due process proceeding, we will set the matter aside with a letter forwarded to the parties.

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**DISTRICT'S LOCAL GOVERNING BOARD**  
The district's local governing board has authority over many *general* subjects and such complaints should be filed directly with the district for self-investigation.

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**CALIFORNIA DEPARTMENT OF EDUCATION**  
However, *special education* complaints require that the CDE directly intervene.

<https://www.sjcl.edu/>

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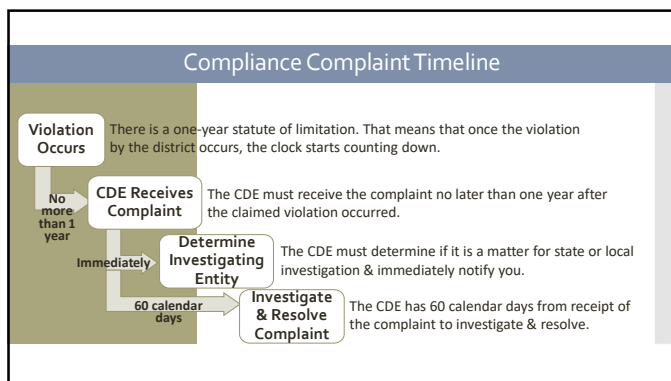
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**Notice of Compliance Investigation**

We also provide a copy of the complaint letter as submitted by the complainant to the public agency/local educational agency (LEA) named above, against which the complaint has been filed. Please carefully review the citations and allegations.

The Education Programs Consultant/Investigator assigned to this case is Robin Lund, of the SED Complaints Investigation Unit. Any documents related to the investigation must be sent to the investigator at:

Complaint Investigation Unit  
 Special Education Division  
 California Department of Education  
 1430 N Street, Suite 2401  
 Sacramento, CA 95814-5901  
 Fax: 916-327-8878  
 Phone: 916-445-4623

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**Notice of Compliance Investigation**

Complainants and LEA staff are encouraged to resolve this matter at the local level by using an **alternative dispute resolution process**, alternative resolution method, or any other local resolution option. A successful resolution at the local level **may lead to the withdrawal of the complaint, rendering further state investigation unnecessary.**

If you are interested in a local resolution of this case or any of the allegations in it, please contact your LEA or Special Education Local Plan Area. The complainant must submit a signed letter withdrawing the case or allegation, either to the investigator conducting the investigation, if the case is open and already being investigated or to the CSU unit (see address provided); if the complainant and the LEA agree to the resolution. While a local complaint resolution may be pending, the investigation itself must continue until the complainant notifies us with a signed letter of withdrawal.

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**Notice of Compliance Investigation**

As the investigation concludes, a report will be completed and made available to both the complainant and the LEA. If the LEA is found out of compliance with special education laws or regulations, the report will include steps that must be taken as corrective actions. SED staff then follows up to ensure completion of these corrective actions.

Remember that further inquiries as to new complaint requests, or requests for special education technical assistance, may also be made through our toll free special education information line, 800-926-0648 or submitted to:

Complaint Support Unit  
 Special Education Division  
 California Department of Education  
 1430 N Street, Suite 2401  
 Sacramento, CA 95814-5901  
 Fax: 916-327-3704

Please be sure also to include in all future related correspondence, the above complaint number.

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After you file the complaint, CDE will send you:

- (1) Notice of Procedural Safeguard
- (2) Notice of Compliance Investigation
- (3) List of Alleged Violations

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Attachment to Complaint Investigation Notification

Case # S-0309-20/21 Student Name(s): [REDACTED] 141675

District: [REDACTED] Unified

The Complainant alleges the District failed to comply with individualized education program (IEP) requirements set forth in 34 CFR 300.320-300.324 when the District did not provide the student's special education services as required by the IEP, in specialized academic instruction.

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The Complainant alleges the District failed to comply with IEP requirements set forth in 34 CFR 300.320-300.324 when the District did not provide the student's special education services as required by the IEP, in speech and language.

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The Complainant alleges the District failed to comply with IEP requirements set forth in 34 CFR 300.320-300.324 when the District did not provide the student's special education services as required by the IEP, in intensive individual services.

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California Department of Education (CDE)  
Complaints Resolution Unit (CRU)

**REQUEST FOR MEDIATION OF COMPLAINT**

**PERSON REQUESTING MEDIATION**

Parent     Local Educational Agency (LEA)     Student

**Information related to mediation request**  
I request mediation from the CDE to assist in resolving the special education issue(s) submitted in the complaint dated (indicate month, date, year).

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**OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA  
SPECIAL EDUCATION DIVISION**

**SCHEDULING INFORMATION FOR MEDIATION OF STATE COMPLAINT**

In order to schedule your mediation, the Office of Administrative Hearings (OAH) will need the information requested on this form. Once the parties have completed and submitted both the Request for Mediation and the Scheduling Information forms to the California Department of Education (CDE), the CDE will forward this information to the OAH. The OAH will then issue a notice and schedule the mediation on the date requested by the parties. Mediations will be held by videoconference. Information on how to participate in the videoconference mediation will also be provided by the OAH.

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If the complaint settles during mediation

- Withdraw the complaint by sending an email to [speducation@cde.gov](mailto:speducation@cde.gov) (same email you filed with)
- Inform them
  - of the case number you were given (S=XXXX-20/21)
  - that the matter was resolved through mediation
  - that you are withdrawing the complaint

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CDE will then inform all parties that the complaint was withdrawn.



**CALIFORNIA DEPARTMENT OF EDUCATION**  
1430 N STREET, SACRAMENTO, CA 95814-3901 • 916-379-0800 • WWW.CDE.CA.GOV

**TUNY THORNTON**  
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

January 5, 2021

Jodie Howard, Director  
 901 5th Street  
 Clovis, CA 93612

Superintendent  
 Office of Education

Subject: Compliance Investigation Case: S-0309-20/21  
 Student Name: [REDACTED]

Dear Ms. Howard and Superintendent [REDACTED]:

The purpose of this correspondence is to acknowledge receipt of an email from Jodie Howard on December 31, 2020, informing our office of the withdrawal of the above compliance complaint. The case is closed effective January 4, 2021.

This action relates only to the above complaint and does not affect any other investigation, report, or due process hearing at the local, state, or federal level.

Thank you for your assistance and cooperation in this matter. If you have any questions, please contact Robin Lund, by phone at 916-323-4691 or by email at [rlund@cde.ca.gov](mailto:rlund@cde.ca.gov).

Sincerely,

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If the complaint is not withdrawn, CDE will issue an investigation report.

**CALIFORNIA DEPARTMENT OF EDUCATION**  
 Investigation Report  
 Case S-2053-21/22

<b>Public Agency</b> [REDACTED] Superintendent West Park Elementary School District 2695 South Valentine Avenue Fresno, CA 93706-9042	<b>Complainant</b> Jodie Howard 901 5th Street Clovis, CA 93612
<b>Special Education Director</b> [REDACTED] Director, Special Education West Park Elementary School District	<b>Parent</b> [REDACTED]
<b>Special Education Local Plan Area (SELPA)</b> [REDACTED] Director Fresno County SELPA 1111 Van Ness Avenue Fresno, CA 93721-2000	<b>Student</b> [REDACTED]
<b>Complaint Received</b> August 12, 2021	<b>Report Mailed</b> October 11, 2021

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**Compliance Complaint Procedures**

**The Resolution**

If the investigation indicates a failure by the district to comply with the law, the CDE may require "corrective action."

- The CDE investigation report must set forth the timelines the district must follow to correct its violations.
- If CDE finds that a district has not provided appropriate services, the corrective actions must address the needs of the affected student, such as compensatory services or monetary reimbursement.
- Federal regulations also require that the corrective action "address...appropriate future provision of services for all children with disabilities" to avoid similar violations.

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**Compliance Complaint Procedures**

**The Resolution**

If the investigation indicates a failure by the district to comply with the law, the CDE may require "corrective action."

- If the district fails to follow the corrective action, CDE must take further action, including:
  - a court proceeding for an order requiring compliance, or
  - a proceeding to recover or stop state funding to the noncompliant local district.

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**Disagreement with CDE Decision**

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      A[Receive CDE's Decision] -- 35 days --> B[Request Reconsideration]
      B -- 35 days --> C[Modify Decision or Deny Request]
      D[The CDE's decision remains in effect and enforceable pending the Superintendent's reconsideration.]
  
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**Receive CDE's Decision** Either the parents or the district, if they disagree with CDE's decision, may request that the decision be reconsidered.

**Request Reconsideration** Requests must be received by the Superintendent of Public Instruction within 35 days of CDE's decision.

**Modify Decision or Deny Request** The Superintendent may:  
or (1) modify conclusions or corrective action  
(2) deny the request.

The CDE's decision remains in effect and enforceable pending the Superintendent's reconsideration.

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**75**

**Compliance Complaint with Local District**

If your complaint does not meet the grounds for *direct state intervention* by CDE, parents should send the complaint to the district superintendent.

Each district must have its own investigation policy.

**District Receives Complaint** Like the CDE, the district must complete its investigation within 60 calendar days of receiving the complaint.

60 calendar days → **Investigate & Resolve Complaint** You may appeal directly to the CDE for review of the local decision within 15 days after you receive the district's final written decision.

w/ 15 days of receipt of written decision → **Appeal to CDE**

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**State Council on Developmental Disabilities**

559-222-2496 <https://scdd.ca.gov/> Address Systemic Violations

- This could include violations such as:
  - Not considering parents concerns
  - Not fully explaining "Specially Designed Instruction"
  - Not discussing/factoring extra curricular
  - Not fully discussing harmful effects of segregated placement
  - Not beginning the placement discussion with GenEd
  - Not specifying how student will be involved in GenEd Curriculum
  - Failure to provide basics such as change clothes or textbooks
  - Not letting student go on fieldtrip

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**Procedural Safeguards Referral Service**

- To obtain more information about parental rights or dispute resolution, including how to file a complaint, contact:
- California Department of Education  
Special Education Division  
Procedural Safeguards Referral Service  
800-926-0648

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**Compliance Complaint**

- Are not precedential
- Cannot be investigated simultaneously as Due Process
  - Due Process will be decided first (CC will be put on hold)
- Compliance Complaint can be ruled against you and then you file due process with SAME issue
  - District will be able to bring up the Compliance Complaint results in the hearing

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**76**

**Due Process**

Both parties—parents and the district—should always attempt to resolve disagreements in an IEP meeting.

But when an agreement cannot be reached, either party may file for due process.

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**76**

**Due Process**

Reasons a parent can file for due process include:

Parent disagrees with the <ul style="list-style-type: none"> <li>• Assessment results;</li> <li>• Placement; or</li> <li>• Services being proposed.</li> </ul>	District refuses a request for a change the parent feels is necessary to the <ul style="list-style-type: none"> <li>• Assessment;</li> <li>• Placement; or</li> <li>• Services for your child.</li> </ul>	Parent and the district disagree about the availability of an appropriate program for the child
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76 Parents should generally not file for due process until they are prepared. However, remember:

**(1) Filing for due process invokes "stay put."**  
 If the school district is threatening to change your child's program or placement without your consent, and you wish to keep things the way they are, you may want to file for due process to preserve the status quo pending the due process.

**(2) There is a statute of limitations.**  
 Due process complaints must be filed with the Office of Administrative Hearings (OAH) within two years from the date the aggrieved party knew (or had reason to know) of the facts underlying the basis for the complaint.

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The SOL may not apply if you were prevented from filing a complaint because the district:

Due process complaints must be filed with the Office of Administrative Hearings (OAH) within two years from the date the aggrieved party knew (or had reason to know) of the facts underlying the basis for the complaint.

- made a "specific misrepresentation" that it had resolved the problem
- withheld information from you that it was legally required to provide.

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**(2) There is a statute of limitations.**  
 Due process complaints must be filed with the Office of Administrative Hearings (OAH) within two years from the date the aggrieved party knew (or had reason to know) of the facts underlying the basis for the complaint.

The SOL may not apply if you were prevented from filing a complaint because the district:

- made a "specific misrepresentation" that it had resolved the problem
- or
- withheld information from you that it was legally required to provide.

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### Filing a Due Process Complaint

Write your complaint, which must contain:	Send your complaint to:	The OAH reviews the request to make sure:	You will receive a notice from the hearing office:
<ul style="list-style-type: none"> <li>A clear description of each problem and</li> <li>A proposed solution for each problem</li> </ul>	<ul style="list-style-type: none"> <li>Office of Administrative Hearings</li> <li>Special Education Division</li> </ul>	<ul style="list-style-type: none"> <li>The dispute is a matter an ALJ is authorized to consider and</li> <li>The request is clear to both the parent and the district.</li> </ul>	<ul style="list-style-type: none"> <li>Within a few days of filing for due process</li> <li>The notice will contain the date set for the hearing &amp; mediation</li> </ul>

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### Filing a Due Process Complaint

- Include all the problems you want to have heard and decided at the hearing in your request for due process.  
Problems that are not described in the request for due process cannot be considered at the hearing unless the other side agrees.
- Problems and proposed resolutions should not be generalized statements like:
  - "My child is not learning anything;"
  - "My child is not making progress;" or
  - "I want him to be in a class where he can learn,"
- Relate each problem to a specific right under IDEA and include enough information to clearly describe the problem, what you want the district to do to solve the problem, and why.

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### Either Parents or the District May Request A Due Process Hearing

- The district may use due process to obtain a decision that orders a parent to give consent.
- The district may file for due process when a parent fails to respond or refuses to consent to:
  - A request for assessment or
  - An IEP (other than the initial IEP)

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**77-78 Notice of Insufficiency**

- A district or parent may file a Notice of Insufficiency (NOI) to have a hearing officer determine that the request for a due process hearing does not clearly describe the problem.
  - If the request is found to be insufficient, the hearing officer will usually allow an amended complaint.
- An NOI must be filed within 15 days of receiving the complaint.
  - A copy of the NOI must also be sent to the opposing party.
- A hearing officer must rule on the NOI within five days.

**Response to a Complaint**

- If no NOI is filed, the district must send parent (or parent must send the district) a written response specifically addressing the issues raised in the request.
- This must be filed within 10 days of receiving the complaint.

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**78 Due Process Timeline**

There is one major difference when a parent files due process as opposed to the district filing

**the resolution period**

A resolution session must occur within:

- 15 days of the district receiving the parent’s request for due process
- 30 days of the district receiving the parent’s request.

After the resolution period is finished, there must be a hearing and a written decision within 45 days.

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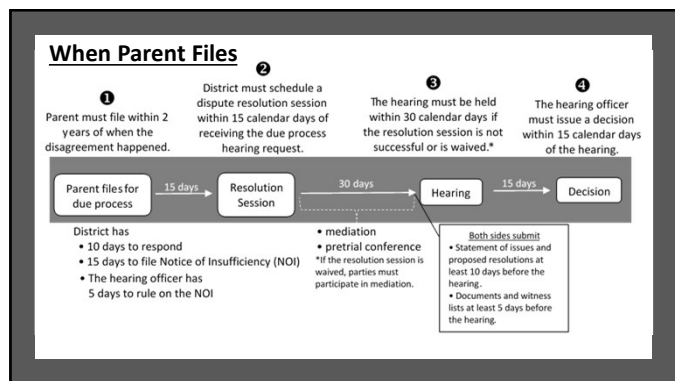
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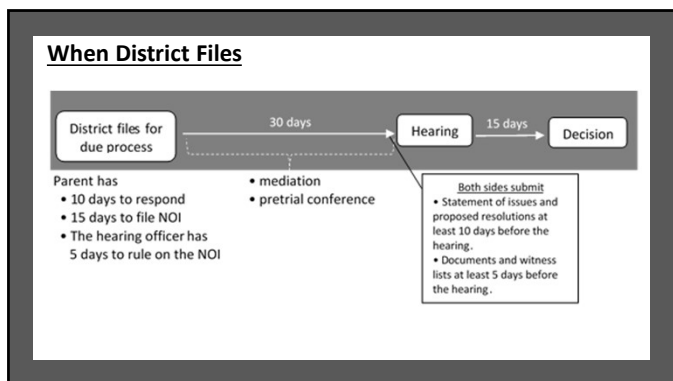
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**79**

**Preparing for the Hearing**

- At the due process hearing, each party submits evidence in an effort to establish that the child needs the services or placement they feel is appropriate.
- The ALJ will look at the evidence to see which party's argument meets the applicable legal standard.

**Legal Standard**

FAPE only requires that services be appropriate, not the best. Parents may propose a better service for the child and even offer evidence that it is a superior service. However, the district may prevail with an inferior service if they can show it meets the legal standard of appropriate.

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**79**

**Preparing for the Hearing**

- At the due process hearing, each party submits evidence in an effort to establish that the child needs the services or placement they feel is appropriate.
- The ALJ will look at the evidence to see which party's argument meets the applicable legal standard.
- To be prepared for a due process hearing, you should:
  - Be familiar with the legal standards for the services/placement you hope to obtain; and
  - Make sure the necessary proof to meet those legal standards will be available.

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### Evidence

The U.S. Supreme Court has decided that whoever is asking the hearing officer to order something against the other side, has the **burden of proving** that what they want is appropriate and that the other side's proposal is not appropriate. *Schaffer v. Weast, 546 U.S. 49, 62 (2005)*

- **Testimony** of teachers or specialists who know your child or an independent "expert" knowledgeable in the education or training of persons with disabilities.
- **Documents** that are supportive of your position in the case, such as evaluation reports.
  - You cannot have someone submit a letter or other document in lieu of being a witness.
  - But documents that establish and support a witness's testimony can be very helpful and can be used in cross-examination.

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### Pre-hearing Conference

- Generally, the ALJ assigned to the case will hold a conference by telephone with you, the district, and the attorneys before the hearing. The ALJ may wish to discuss:
  - hearing date(s) and location;
  - length of hearing;
  - dispute issues;
  - exchange exhibits and witness lists;
  - witness testimony and scheduling.
- The ALJ will mail you a pre-hearing order which summarizes the conference.

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### Submitting Statements, Exhibits, & Witness List

- At least **10 days before the hearing**, each side must submit to OAH and to each other a statement of:
  - The issues to be decided at the hearing; and
  - Proposed resolution of those issues.
- At least **5 business days before the hearing**, you must make sure the district has:
  - Copies of all documents you intend to submit as exhibits at the hearing,
  - A list of the potential witnesses you may call to testify at the hearing, and
  - A brief statement regarding what each witness will testify about.

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### Opportunities to Resolve Disagreements Before a Hearing

- When a parent files for due process there is a resolution period. Parents may waive the resolution session.
- However, when it is waived, the parties **must** participate in mediation. Otherwise, mediation is optional.

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	Resolution Session	Mediation
Who Attends:	<ul style="list-style-type: none"> <li>• Parent</li> <li>• A district representative who has authority to resolve the problem (Attorneys for the district may not attend unless parents are represented by an attorney)</li> </ul>	<ul style="list-style-type: none"> <li>• A mediator</li> <li>• Parent</li> <li>• A district representative who has authority to resolve the problem</li> <li>• Attorneys may attend</li> </ul>
What happens:	Will likely resemble an IEP meeting with school staff. <ul style="list-style-type: none"> <li>• Parent must be able to discuss the basis for their complaint and</li> <li>• District is given an opportunity to resolve it.</li> </ul>	The mediator has no power to force either side to do anything. Rather, they act as a neutral person to help parents and the district reach an agreement.
Confidentiality	Discussions which take place during the resolution session are <u>not confidential</u> and can be disclosed in a subsequent hearing or court case, unless both sides agree otherwise.	If the mediation fails to resolve all the issues in dispute, <u>nothing said or written</u> as part of the mediation <u>may be submitted at the hearing</u> to prove either side's case.
Revocable	Either you or the district has three days after signing the agreement to "void" or revoke your signature.	There is no automatic three-day "grace period" in which either side can void the agreement
Effect on 45-day timeframe	The days before the resolution session is finished do not count toward the total number of days the state has to complete the hearing process and issue a decision.	Mediation does not change the 45-day timeline. Parents can be asked to extend the 45-day timeline to aid in the mediation process.

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### Mediation Only

- After identification of a disputed issue and before filing for due process, you may ask for mediation only.
- This mediation (also called prehearing request mediation conference) is not mandatory and
- Parents may proceed to filing for a due process hearing if mediation only is not successful.

This is conducted exactly like a due process mediation except:

- no attorneys or legal advocacy contractors may attend the session &
- the mediation must be conducted and resolved in a shorter period of time.

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**Mediation Only**

- After identification of a disputed issue and **before filing** for due process, you may ask for mediation only.
- This mediation (also called prehearing request mediation conference) is **not mandatory** and
- Parents **may proceed** to filing for a **due process** hearing if mediation only is **not successful**.
- You must make your “mediation only” **request in writing**.
  - You may use the state’s form for this purpose.
  - Visit the OAH website at <https://www.dgs.ca.gov/OAH>, click on Forms and then on Special Education and then use the “Mediation ONLY Request Form.”

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**Representation**

- Represent yourself
- Hire a non-attorney advocate
  - Ensure they have special knowledge or training with respect to the problems of children with disabilities
- Be accompanied and advised by an attorney.
  - If you do choose to be represented by an attorney, you must notify the other parties of this at least 10 days prior to the hearing.

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**Paying for an Attorney**

- If you are successful or partially successful in a due process or court hearing, a federal court may award you reasonable attorneys’ fees.
  - This means that the district may have to pay for your attorney.
- Attorneys’ fees are not available for their attendance at an IEP meeting
  - Unless the meeting was convened at the order of a hearing officer or judge.
- The costs of expert witnesses are not recoverable.

*Arlington Cent. District Board v. Murphy, 548 U.S. 291 (2006)*

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Right to Appeal

- Both sides have the right to go to court to appeal the due process hearing officer's decision.
- Any appeal must be filed within 90 calendar days of receipt of the administrative hearing decision.

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Helpful Websites 

- [https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help#@ViewBag\\_JumpTo](https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help#@ViewBag_JumpTo)
- <https://www.cde.ca.gov/sp/se/qa/cmplntproc.asp>

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Complaints of Alleged Discrimination

- If your complaint involves an issue of educational discrimination under Section 504, you can file a disability-based discrimination complaint with the U.S. Department of Education, Office of Civil Rights (OCR).
- Complaints concerning *discrimination* must be filed within six months from:
  - The date the discrimination occurred or
  - The date you first knew about the discrimination.
- This six-month period may be extended by the district superintendent, if you ask for an extension in writing.

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<b>State Office of Equal Opportunity (CA)</b>
<ul style="list-style-type: none"> <li>• Office of Equal Opportunity</li> <li>• 916-445-9175</li> <li>• <a href="https://www.cde.ca.gov/re/di/or/oeo.asp">https://www.cde.ca.gov/re/di/or/oeo.asp</a></li> </ul>
<b>Office of Civil Rights (Federal)</b>
<ul style="list-style-type: none"> <li>• Office of Civil Rights</li> <li>• 800-421-3481</li> <li>• <a href="https://www2.ed.gov/about/offices/list/ocr/index.html">https://www2.ed.gov/about/offices/list/ocr/index.html</a></li> </ul>

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