

## **DUE PROCESS AND MEDIATION**

### ***What is Due Process?***

The Shasta County SELPA is committed to supporting LEAs/districts in assessment, identification, and placement of students with special needs in the appropriate and least restrictive environment. LEAs/districts are required by IDEA 2004 to follow procedures to provide access to due process and the protections conferred by procedural safeguards, which are required by federal law. Under IDEA, due process hearings are a principal vehicle for resolving disputes between parents of children with disabilities and LEAs/districts concerning identification, evaluation, placement or provision of Free and Appropriate Public Education (FAPE) [34 CFR 300.511]. Parents, students who have reached the age of majority, and LEAs/districts may request a due process hearing.

### ***When May Due Process be Filed?***

A parent or guardian, adult student and the LEA/district involved may initiate the due process hearing procedures 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 free appropriate public education 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 free appropriate public education to the child;
- The parent or guardian refuses to consent to an assessment of the child;
- 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 CFR 300.148]. If programs and services are not provided according to the IEP, the parent may file a complaint with the California Department of Education (CDE).

### ***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 a due process hearing, a parent, adult student, or LEA/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:

- A. The child's name, address and school of attendance;
- B. A description of the problem with specific related facts; and
- C. A proposed resolution with specific related facts.

The requesting party must also submit a copy of the hearing request to the other party. 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 begin when the party named in the complaint receives the complaint from the filer. If both parties agree to a mediation conference, it is held and completed within 15 days of receipt of hearing request. If parties proceed to a due process hearing, it is held and completed within 30 days of the mediation conference. 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 OAH in writing that the complaint does not meet the requirements. LEAs/districts may file a motion to dismiss those complaints that do not meet requirements per IDEA. Such motions must be filed within 15 days of receipt of the complaint. If the LEA/district chooses not to file a motion to dismiss based on the contents of the complaint, it is assumed that the LEA/district accepts the complaint as is, and an LEA/district may be forced to defend an incomplete complaint at a due process hearing. Therefore, it is important that the LEA/district 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
2. OAH grants permission for the amended complaint. 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 from a parent or adult student, the LEA/district must, within 10 calendar days of receipt, provide a written response to the complaint. It is important that the LEA/district abide by this requirement to respond within the timeline. The response from the LEA/district to the parent shall include all of the following:

- An explanation of why the agency proposed or refused to take the action raised in the due process hearing request
- A description of other options that the individualized education program team considered and the reasons why those options were rejected
- A description of each assessment procedure, assessment, record, or report the agency used as the basis for the proposed or refused action
- A description of other factors relevant to the proposed or refused action of the agency. [34 CFR 300.508(e)(1)]

Once an LEA/district receives a request for due process hearing from the Office of Administrative Hearings (OAH) they should notify the SELPA office immediately. OAH does not inform the SELPA of due process requests, so it is important to date stamp the date of receipt and fax a copy to the SELPA immediately upon receipt. The SELPA can assist an LEA/district with responses to parent(s)/guardian(s) and/or OAH. If a resolution session is required, staff from the Shasta County SELPA may serve as a neutral facilitator.

The LEA/district is required to convene a resolution session, sometimes called an alternative dispute resolution session (ADR), within 15 days of their receipt of a due process complaint. As soon as an LEA/district receives notice of a request for a due process hearing, they should fax a copy to the SELPA so that the SELPA, LEA, and parent can coordinate a resolution session. Attendees at a resolution session may include the parent(s)/ guardian(s), LEA 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 of the LEA/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 LEA/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 is confidential, and the outcome of the resolution session shall be a legally binding settlement agreement if the parent(s) and LEA/district reach agreement regarding the concerns that prompted the request for a due process hearing.

The Shasta County SELPA implements a local process in alternative dispute resolution (ADR) as an alternative to formal mediation and fair hearing. Due process includes the conducting of a resolution session, and the SELPA uses the alternative dispute resolution process to this end. This ADR process is facilitated by SELPA personnel who have received training in the ADR process, seeks to build positive relationships, encourages flexibility and creative problem solving, and promotes a sense of ownership in the outcome. This process does not preclude the option of formal mediation or fair hearing, but is offered as a positive alternative. For more information on the ADR process, contact the SELPA office at (530) 295- 2462. Nothing in the due process procedures described in this chapter is to be construed as prohibiting or preventing the parent and the LEA/district from meeting informally and resolving any issue(s) of concern. It is encouraged that solutions be reached at a local level whenever possible. A facilitated IEP may also be suggested and/or attempted prior to moving forward with more formal avenues to resolve disagreements.

### ***Mediation***

Mediation a voluntary process through which parties seek mutually agreeable solutions to education disputes with the help of an impartial mediator. Parents or LEAs/districts may seek “mediation only” (without request for a due process hearing), or they may participate in mediation as an element of due process. Mediation cannot be used to delay a parents’ right to a due process hearing. A parent or an LEA/district may file a request for mediation.

### ***Mediation Only***

A parent or LEA/district may request a Mediation Only conference. Requests for Mediation Only are filed with the Office of Administrative Hearings (OAH), and copy of the request must be provided to the LEA/district at the same time the request is filed with OAH. Both the parent and the LEA/district must voluntarily agree to participate. Attendees at a Mediation Only session should include the parent(s), LEA representative(s) who has the authority to make decisions, and

a mediator. An interpreter may be required if a parent requests one. A parent or an LEA/district may be accompanied and advised by non- attorney representatives. Attorneys or other independent contractors used to provide legal advocacy services may not participate in the Mediation Only conference.

A Mediation Only conference is scheduled by an OAH Administrative Law Judge (ALJ) within fifteen (15) days of receipt of the request, 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***

Each party in a request for due process hearing shall be notified by the California Department of Education (CDE) and offered a formal 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. A mediation session must be held within 15 days of filing a request for due process hearing.

Attorneys and advocates are permitted to participate in mediation conferences scheduled upon the filing of a request for due process hearing. A qualified, impartial mediator is appointed when mediation is agreed upon. This person must be trained in effective mediation techniques. During the mediation session, the neutral mediator facilitates communication between the parent(s) and the LEA/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. The mediator confirms that the agreement is consistent with all applicable laws and regulations.

A copy of the mediation agreement is sent to each party involved. The compliance status of the LEA/district will revert to noncompliance if they do not perform the provisions of the mediation agreement within the time specified.

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***

- I. Initiation of Due Process Hearing
  - A. If a parent desires a due process hearing to dispute any educational decision by an LEA/district covered under due process guidelines, parent shall submit a written hearing request to Office of Administrative Hearings (OAH) and the LEA/district. If a hearing request is submitted by a parent or adult student directly to an LEA/district, the request must immediately be forwarded to the Office of Administrative Hearings.

OAH letter confirms receipt of request, and informs parent and LEA/district of dates of mediation conference, and due process hearing.

LEA/district determines if they believe request for due process hearing meets requirements of IDEA 2004, which include:

- a. Child's name, address and school of attendance;
- b. A description of the problem with specific related facts; and
- c. A proposed resolution with specific related facts

If a request for due process hearing is determined by the LEA/district to be valid, the LEA/district must, within 10 calendar days, provide a written response to the complaint to the parent which specifically addresses:

- a. Why the action subject to dispute was proposed or rejected;
- b. Includes a description of the other options considered and the reason for rejection;
- c. The basis of the action; and
- d. All relevant factors related to the decision

LEA/district may file a motion to dismiss the request for due process hearing if the LEA/district deems the complaint to be insufficient.

An administrator or designee may meet informally with parents as soon as possible after receipt of request for due process hearing to address concerns raised in the request. An IEP team meeting may be scheduled as necessary to discuss concerns and any potential changes to FAPE based on the needs of the student and the concerns which resulted in the request for due process hearing.

- B. If concern(s) remain(s) unresolved, the administrator or designee may inform parent:
  - a. The LEA/district would like to participate in a resolution session;
  - b. The LEA/district would like to move forward to mediation;
  - c. The LEA/district waives the mediation conference and is proceeding directly to the due process hearing before a State Hearing Officer.

## II. Resolution Session

- A. The LEA/district is required to offer a resolution session (Alternative Dispute Resolution (ADR)) to be held within 15 days of their receipt of the request for due process hearing. When the LEA/district files for Mediation Only or a due process hearing, a resolution session is not required to be offered, but may still be scheduled.
- B. If agreement is reached at the resolution session within the timeline, OAH must be notified to remove the matter from hearing. Sample forms may be found at:  
<http://www.documents.dgs.ca.gov/oah/SE/Forms/OAH%2069,%20rev.%2003-10.pdf>  
<http://www.documents.dgs.ca.gov/oah/SE/Forms/OAH%2068,%20rev.%2007-08.pdf>
- C. An IEP 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:
  - a. The LEA/district will participate in a mediation conference; or
  - b. The LEA/district waives the mediation conference and is proceeding directly to the due process hearing before a state hearing officer.

### III. Mediation Conference

- A. A mediation conference will be held if the parent and/or LEA/district do not waive the conference. The parents and LEA/district have the right to request a mediation conference at any point during the hearing process.
- B. If the parties attending mediation come to agreement, the decisions are documented in a mediation agreement. Attorneys and advocates are permitted to participate in mediation conferences.
- C. An IEP team meeting is scheduled as soon as possible to incorporate pertinent agreement elements into the IEP.
- D. If concern(s) unresolved through mediation, OAH lists unresolved issue(s) as the basis for due process hearing and sets hearing date and place convenient for both parties.

### IV. Due Process Hearing

- A. A due process hearing must be completed within 30 days of the mediation conference or within 45 days of receipt of request for due process hearing if the mediation conference is waived.
- B. OAH assigns a state hearing officer who is knowledgeable of administrative hearing procedures.
- C. All evidence (written documentation and list of witnesses) shall be exchanged by parent and LEA/district 5 days prior to due process hearing. The party requesting the due process hearing 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 LEA/district and the parent 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 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. An LEA/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 an LEA/district must continue to offer FAPE by convening IEP meetings during due process proceedings, even though the parents may not consent.
- G. If an LEA/district does not intend to appeal the decision made in due process hearing,

it should implement the decision as soon as possible, and in any event, within a reasonable amount of time.