



Complaint Process

The special education complaint process with federal and state law resource links.

The California Department of Education (CDE) resolves special education complaints.

Who may file a complaint?

Anyone, including parents, students, teachers, and agency representatives, may file complaints. The person filing a complaint is the complainant. The complaint must meet requirements as explained in this document.

Why file a complaint?

A complaint is a formal request to the CDE to investigate allegations of noncompliance with special education laws, federal or state. CDE ensures public agencies meet the educational needs of students with disabilities.

What is a complaint?

A complaint is a written document, including:

1. Statements that the school district or public agency violated special education law within one year prior to the complaint being filed
2. Facts on which such statements are based
3. Signature and contact information for the complainant
4. Child's name, address, and school if alleging violations that are child specific
5. Proposed resolutions

The complainant may use the [model complaint form](#) (DOC) or write a letter to file the complaint.

Where is a complaint filed?

Send complaints by fax or mail to:

California Department of Education
Special Education Division
Procedural Safeguards Referral Service (PSRS)
1430 N Street, Suite 2401
Sacramento, CA 95814-5901
Fax: 916-327-3704

How long is a complaint investigation?

Several timelines apply to the complaint investigation process:

1. Complaints must be filed within one year of the alleged violation
2. Complaint investigations are completed within 60 days of receipt in PSRS
3. The 60-day time limit may be extended under certain circumstances

What is a complaint investigation?

An investigator contacts the complainant and the school district or other public agency in the complaint. The investigator gathers facts about the allegations through:

1. Interviews
2. Reviews service logs and schedules
3. Reviews assessments
4. Reviews individualized education programs (IEPs)
5. Reviews IEP team meeting minutes
6. Reviews prior written notices
7. On-site investigations, as needed

What is in a complaint investigation report?

Based on documentation, the investigator prepares a complaint investigation report. The report contains:

1. Allegation summary
2. General investigation procedures
3. Applicable law and regulation
4. Findings of facts
5. Report conclusions (compliance or noncompliance)
6. Corrective actions and timelines, if applicable

The CDE sends copies of the investigation report to the complainant, the public agency, and the parent is different from the complainant.

What if there is noncompliance?

If the report includes corrective actions, the CDE may require the school district or public agency to:

1. Convene a new IEP meeting
2. Conduct further assessments
3. Submit plans outlining proposals to correct violations and prevent future ones
4. Initiate personnel training in the areas of violations
5. Provide compensatory education or reimbursement
6. Review and revise procedures and practices
7. Participate in monitoring and reporting activities

What if there is a disagreement with the report?

As explained at the end of each report, any party to the complaint may request reconsideration. The appeal process steps are:

1. Submit the reconsideration request no later than 35 calendar days after receiving the investigation report
2. Send a written request to the address found at the end of the investigation report
3. Identify the finding(s), conclusion(s), or corrective action(s) about which there is disagreement
4. Provide appropriate documentation or other information not previously considered
5. Identify the findings of fact that are incorrect and/or the law that is misapplied

Within 35 calendar days of the receipt of that request, the CDE will:

1. Review the investigator's report
2. Review the evidence presented at the investigation
3. If necessary, gather and/or review additional information
4. Review the decision
5. Issue a final written investigation report

What happens if corrective actions are not completed?

The CDE ensures compliance by applying sanctions.

How do school districts or public agencies respond to a complaint?

1. Cooperate with the investigator and provide documentation as requested in a timely manner
2. Submit all documentation regarding the complaint

Failure to respond may result in a finding and remedy in favor of the complainant.






What are the responsibilities of the investigator?

1. Reviews the submitted complaint request
2. Interviews the complainant
 - Confirms allegations
 - Keeps accurate notes
3. Contacts the school district or public agency
 - Requests required materials for investigation
 - Arranges interviews with school staff, if necessary
 - Schedules dates and times for on-site visits, if necessary
4. Reviews pertinent documents
5. Conducts telephone, face-to-face, and/or on-site interviews with school staff, as necessary
6. Prepares an investigation report that addresses each alleged violation

What are the CDE's responsibilities in the complaint process?

1. Reviews the complaint and determines if all the required components are addressed, including contacting and interviewing the public agency and complainant
2. Adheres to timelines
3. Sends investigation report copies as appropriate
4. Provides technical assistance to school districts and public agencies for corrective actions
5. Reconsiders investigation reports
6. Retains all documents

Law and regulation governing the complaint investigation process include:

- Required State Complaint Procedures: Title 34, *Code of Federal Regulations* (CFR) Section [300.151](#) 
- Minimum State Complaint Procedures: 34 CFR Section [300.152](#) 
- Filing a Complaint: 34 CFR Section [300.153](#) 
- State Complaint Timelines and Procedures: *California Education Code* sections [56043\(p\)](#),  and [56500.2](#) 
- State Investigation procedures: Title 5, *California Code of Regulations* sections [4660-4670](#)

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

REQUEST FOR COMPLAINT INVESTIGATION

PLEASE NOTE: A complaint may be filed through the use of this form or by a written letter sent by fax or postal mail. E-mails cannot be accepted as formal complaints because they do not meet signature requirements under 34 C.F.R. 300.153(b)(3). If upon analysis of a request, a complaint is opened, a complaint investigation will be completed within 60 days of receipt in the California Department of Education (CDE) Special Education Division Procedural Safeguards Referral Service (PSRS) of all required information.

The written complaint must specify at least one alleged violation of state and/or federal special education laws that occurred not more than one year prior to the date the complaint is received by the CDE. The party filing a complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files a compliance complaint with the CDE. [34 Code of Federal Regulations (CFR) 300.153(d)]

Please return the completed form to: California Department of Education; Special Education Division; Procedural Safeguards Referral Service; 1430 N Street; Suite 2401; Sacramento, CA 95814; Phone: 800-926-0648; FAX: 916-327-3704

Name of School District or other Public Educational Agency that allegedly violated state and/or federal special education laws:

Complainant Contact Information:

Name _____

Address _____

City _____, CA Zip Code _____

Phone Numbers (Please note the best time to call):

(day) _____ (evening) _____

(work) _____ ext. _____ (fax) _____

Parent/Guardian Information (if different from above):

Name(s) _____

Address _____

City _____, CA Zip Code _____

Parent/Guardian Phone Numbers (if phone contact is permitted, please indicate the best time to call):

(day) _____ (evening) _____

(work) _____ ext. _____ (fax) _____

Student Information (If alleging violations with respect to a specific child):

Name _____

Date of Birth _____ Current Grade Level _____

Address Where Student Resides (If different from Parent/Guardian information):

Address _____

City _____, CA Zip Code _____

School of Attendance (required) _____



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 By SFUSD March 2015

1. 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:
 - Annually
 - 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
 - A copy of the Notice of Procedural Safeguards is also available on the SFUSD Website.
(20 USC 1415[d]; 34 CFR 300.504; EC 56301, EC 56321, and 56341.1[g] [1])

2. 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.

3. May I participate in decisions about my child’s education?

- You have the right to refer your child for special education services.
- You must be given opportunities to participate in any decision-making meeting regarding your child’s special education program. You have the right to participate in IEP team meetings about the identification (eligibility), assessment, or educational placement of your child and other matters relating to your child’s FAPE. (20 USC 1414[d] [1]B–[d][1][D]; 34 CFR 300.321; EC 56341[b], 56343[c])
- You or the local educational agency (LEA), has the right to participate in the development of the IEP and to initiate their intent to electronically audiotape the proceedings of the IEP team meetings. At least 24 hours prior to the meeting, the parent or guardian shall notify the members of the IEP team of their intent to record a meeting. If the parent or guardian does not consent to the LEA audiotape recording an IEP meeting, the meeting shall not be recorded on an audiotape recorder.
- You also have the right to be informed of program options and the availability of Free and Appropriate Public Education (FAPE). (20 USC 1401[3], 1412[a][3]; 34 CFR 300.111; EC 56301, 56341.1[g][1], and 56506)
When your child reaches the age of 18, all rights will transfer to your child. The only exception will be if your child is determined to be incompetent under state law. (34 CFR 300.517; EC 56041.5)

4. Where can I get more help?

- When you have a concern about your child’s education, it is important that you contact your child’s teacher or administrator to talk about your child and any problems you see. Staff at your schools site or special education local plan area (SELPA) may answer questions about your child’s education, your rights, and procedural safeguards. Also, when you have a concern, informal conversations often solve the problem and help to maintain open communication. Additional resources include:
 - Office of Family Voice: Ramon Martinez 415-241-6150

- Ombudsman: Laura Savage 415-241-6185
- Special Education Department: 3045 Santiago St., San Francisco, CA 94116
Phone: 415-759-2222 Fax: 415750-8628

**Notice, Consent, Assessment, Surrogate Parent Appointment, and Access to Records
Prior Written Notice**

5. When is a Prior Written Notice needed?

- Prior to taking action, written notice in parents/guardians native language must be given when SFUSD proposed or refuses to initiate a change in the identification, assessment, or educational placement of your child with special needs or the provision of a free appropriate public education. (20 USC 1415[b][3] and (4), 1415[c][1], 1414[b][1]; 34 CFR 300.503; EC 56329 and 56506[a])
- SFUSD must inform you about proposed evaluations of your child in a written notice or an assessment plan within fifteen (15) days of your written request for evaluation. The notice must be understandable and in your native language or other mode of communication, unless it is clearly not feasible to do so. (34 CFR 300.304; EC 56321)

6. What will the notice tell me?

The Prior Written Notice must include the following:

1. A description of the actions proposed or refused by the school district
2. An explanation of why the action was proposed or refused
3. A description of each assessment procedure, record, or report the agency used as a basis for the action proposed or refused
4. A statement that parents of a child with a disability have protection under the procedural safeguards
5. Sources for parents to contact to obtain assistance in understanding the provisions of this part
6. A description of other options that the IEP team considered and the reasons those options were rejected; and
7. A description of any other factors relevant to the action proposed or refused. (20 USC 1415[b][3] and [4], 1415[c][1], 1414[b][1]; 34 CFR 300.503)

Parental Consent

7. When is my approval required for assessment?

- You have the right to refer your child for special education services. You must give informed, written consent before your child's first special education assessment can proceed.
- You have at least fifteen (15) days from the receipt of the proposed assessment plan to arrive at a decision. The assessment may begin immediately upon receipt of the consent and must be completed and an IEP developed within sixty (60) days of your consent.

8. When is my approval required for services?

- You must give informed, written consent before your school district can provide your child with special education and related services.

9. What are the procedures when a parent does not provide consent?

- If you do not provide consent for an initial assessment or fail to respond to a request to provide the consent, SFUSD may pursue the initial assessment by utilizing due process procedures.
- If you refuse to consent to the initiation of services, the school district must not provide special education and related services and shall not seek to provide services through due process procedures. SFUSD is also not required to provide a free and appropriate public education to the child.
- If you consent in writing to the special education and related services for your child but do not consent to all of the components of the IEP, those components of the program to which you have consented must be implemented without delay.
- If SFUSD determines that the proposed special education program component to which you do not consent is necessary to provide a free appropriate public education to your child, a due process hearing must be initiated. If a due process hearing is held, the hearing decision shall be final and binding.
- In the case of reevaluations, SFUSD must document reasonable measures to obtain your consent. If you fail to respond, the school district may proceed with the reevaluation without your consent. (20 USC 1414[a][1][D] and 1414[c]; 34 CFR 300.300; EC 56506[e], 56321[c] and [d], and 56346)

10. When may I revoke consent?

- If at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency:
 - May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 34 CFR Section 300.503 before ceasing such services
 - May not use the procedures in subpart E of Part 300 34 CFR (including the mediation procedures under 34 CFR Section 300.506 or the due process procedures under 34 CFR Sections 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child
 - Will not be considered to be in violation of the requirement to make a free appropriate public education (FAPE) available to the child because of the failure to provide the child with further special education and related services
 - Is not required to convene an IEP team meeting or develop an IEP under 34 CFR Sections 300.320 and 300.324 for the child for further provision of special education and related services

Please note, in accordance with 34 CFR Section 300.9 (c)(3), that if the parents revoke consent in writing for their child’s receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child’s education records to remove any references to the child’s receipt of special education and related services because of the revocation of consent.

11. What if my child is deaf, hard of hearing, blind, visually impaired, or deaf-blind?

The State Special Schools provide services to students who are deaf, hard of hearing, blind, visually impaired, or deaf-blind at each of its three facilities: the California Schools for the Deaf in Fremont and Riverside and at the California School for the Blind in Fremont. Residential and day school programs are offered to students from infancy to age 21 at both State Schools for the Deaf. Such programs are offered to students aged five through 21 at the California School for the Blind. The State Special Schools also offer assessment services and technical assistance. For more information about the State Special Schools, please visit the California Department of Education (CDE) Web site at <http://www.cde.ca.gov/sp/ss/> or ask for more information from the members of your child’s IEP team.

Surrogate Parent Appointment

12. What if a parent cannot be identified or located?

School districts must ensure that an individual is assigned to act as a surrogate parent for the parents of a child with a disability when a parent cannot be identified and the school district cannot discover the whereabouts of a parent. A surrogate parent may also be appointed if the child is an unaccompanied homeless youth, an adjudicated dependent or ward of the court under the state Welfare and Institution Code, and is referred to special education or already has an IEP. (20 USC1415[b][2] ; 34 CFR 300.519; EC 56050; GC 7579.5 and 7579.6)

Nondiscriminatory Assessment

13. How is my child assessed for special education services?

- You have the right to have your child assessed in all areas of suspected disability. Materials and procedures used for assessment and placement must not be racially, culturally, or sexually discriminatory.
- Assessment materials must be provided and the test administered in your child’s native language or mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer.
- No single procedure can be the sole criterion for determining eligibility and developing FAPE for your child. (20 USC 1414[b][1]–[3], 1412[a][6][B]; 34 CFR 300.304; EC 56001[j] and 56320)

14. Review of Assessment

- When the assessment is completed, an individualized education program team meeting will be scheduled to determine whether the student qualifies for special education services. The IEP Team will discuss the assessment, the educational recommendations and the reasons for these recommendations. A copy of the assessment report and the documentation of determination of eligibility will be given to you. (EC 56329[a])

Independent Educational Evaluations

15. *May my child be tested independently at the district's expense?*

- If you disagree with the results of the assessment conducted by the school district, you have the right to ask for and obtain an independent educational assessment for your child from a person qualified to conduct the assessment at public expense.
- The parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.
- The school district must respond to your request for an independent educational assessment and provide you information about where to obtain an independent educational assessment.
- If SFUSD believes that the district's assessment is appropriate and disagrees that an independent assessment is necessary, the school district must request a due process hearing to prove that its assessment was appropriate. If the district prevails, you still have the right to an independent assessment but not at public expense. The IEP team must consider independent assessments.
- SFUSD assessment procedures allow in-class observation of students. If the school district observes your child in his or her classroom during an assessment, or if the school district would have been allowed to observe your child, an individual conducting an independent educational assessment must also be allowed to observe your child in the classroom.

Access to Educational Records

16. *May I examine my child's educational records?*

You have a right to inspect and review all of your child's education records without unnecessary delay, including prior to a meeting about your child's IEP or before a due process hearing. The school district must provide you access to records and copies, if requested, within five (5) **business** days after the request has been made orally or in writing. (EC 49060, 56043[n], 56501[b][3], and 56504)

How Disputes Are Resolved

Due Process Hearing

Parents may utilize informal or less adversarial methods of resolving disputes, such as requesting meetings with the Assistant Superintendent of Special Education; or, Parents may seek resolution through a mediation and due process hearing with the California Office of Administrative Hearings.

17. *When is a due process hearing available?*

- You have the right to request an impartial due process hearing regarding the identification, assessment, and educational placement of your child or the provision of FAPE. The request for a due process hearing must be filed within two years from the date you knew or should have known about the alleged action that forms the basis of the due process complaint. (20 USC 1415[b][6]; 34 CFR 300.507; EC 56501 and 56505[I])

Mediation and Alternative Dispute Resolution

18. *May I request mediation or an alternative way to resolve the dispute?*

- A request for mediation may be made either before or after a request for a due process hearing is made. You may ask the school district to resolve disputes through mediation or alternative dispute resolution (ADR), which is less adversarial than a due process hearing. The ADR and mediation are voluntary methods of resolving a dispute and may not be used to delay your right to a due process hearing.

19. *What is a pre-hearing mediation conference?*

- You may ask the school district to resolve disputes through "mediation only," also occasionally referred to as a "prehearing mediation conference," which is less adversarial than a due process hearing.
- Mediation is a voluntary method of resolving a dispute and may not be used to delay your right to a due process hearing. A request for mediation may be made either before or after a request for a due process hearing is made.
- See "Filing a Due Process Complaint" for the procedure to request mediation only.
- You may seek resolution through mediation prior to filing a request for a due process hearing. The conference is an informal proceeding conducted in a non-adversarial manner to resolve issues relating to the identification, assessment, or educational placement of a child or to a FAPE.
- At the prehearing mediation conference, the parent or the school district may be accompanied and advised by non-attorney representatives and may consult with an attorney prior to or following the conference. However, requesting or participating in a prehearing mediation conference is not a prerequisite to requesting a due process hearing.

- All requests for a prehearing mediation conference shall be filed with the Office of Administrative Hearings. The party initiating a prehearing mediation conference by filing a written request with the Office of Administrative Hearings shall provide the other party to the mediation with a copy of the request at the same time the request is filed.
- The prehearing mediation conference shall be scheduled within fifteen (15) days of receipt by the Office of Administrative Hearings of the request for mediation and shall be completed within thirty (30) days after receipt of the request for mediation unless both parties agree to extend the time. If a resolution is reached, the parties shall execute a legally binding written agreement that sets forth the resolution. All discussions during the mediation process shall be confidential. All prehearing mediation conferences shall be scheduled in a timely manner and held at a time and place reasonably convenient to the parties. If the issues fail to be resolved to the satisfaction of all parties, the party who requested the mediation conference has the option of filing for a due process hearing. (EC 56500.3 and 56503)

Due Process Rights

20. What are my due process rights?

You have a right to:

- Have a fair and impartial administrative hearing at the state level before a person who is knowledgeable of the laws governing special education and administrative hearings (20 USC 1415[f][1][A], 1415[f][3][A]-[D]; 34 CFR 300.511; EC 56501[b][4])
- Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities (EC 56505 [e][1])
- Present evidence, written arguments, and oral arguments (EC 56505[e][2])
- Confront, cross-examine, and require witnesses to be present (EC 56505[e][3])
- Receive a written or, at the option of the parent, an electronic verbatim record of the hearing, including findings of fact and decisions (EC 56505[e][4])
- Have your child present at the hearing (EC 56501[c][1])
- Have the hearing be open or closed to the public (EC 56501[c][2])
- Receive a copy of all documents, including assessments completed by that date and recommendations, and a list of witnesses and their general area of testimony within five (5) business days before a hearing (EC 56505[e][7] and 56043[v])
- Be informed by the other parties of the issues and their proposed resolution of the issues at least ten (10) calendar days prior to the hearing (EC 56505[e][6])
- Have an interpreter provided (CCR 3082[d])
- Request an extension of the hearing timeline (EC 56505[f][3])
- Have a mediation conference at any point during the due process hearing (EC 56501[b][2]), and
- Receive notice from the other party at least ten days prior to the hearing that the other party intends to be represented by an attorney (EC 56507[a]). (20 USC 1415[e]; 34 CFR 300.506, 300.508, 300.512 and 300.515)

Filing a Written Due Process Complaint

21. How do I request a due process hearing?

- You need to file a written request for a due process hearing. You or your representative needs to submit the following information in your request:
 - Name of the child
 - Address of the residence of the child
 - Name of the school the child is attending
 - In the case of a homeless child, available contact information for the child and the name of the school the child is attending, and
 - A description of the nature of the problem, including facts relating to the problem(s) and a proposed resolution of the problem(s)
- Federal and state laws require that either party filing for a due process hearing must provide a copy of the written request to the other party. (20 USC 1415[b][7], 1415[c][2]; 34 CFR 300.508; EC 56502[c][1])
- Prior to filing for a due process hearing, the school district shall be provided the opportunity to resolve the matter by convening a resolution session, which is a meeting between the parents and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process hearing request. (20 USC 1415[f][1][B]; 34 CFR 300.510)

22. What does a resolution session include?

- Resolution sessions shall be convened within fifteen (15) days of receiving notice of the parents' due process hearing request. The sessions shall include a representative of the school district who has decision-making authority and not include an attorney of the school district unless the parent is accompanied by an attorney. The parent of the child may discuss the due process hearing issue and the facts that form the basis of the due process hearing request.
- The resolution session is not required if the parent and the school district agree in writing to waive the meeting. If the school district has not resolved the due process hearing issue within thirty (30) days, the due process hearing may occur.
- If a resolution is reached, the parties shall execute a legally binding agreement. (20 USC 1415[f][1][B]; 34 CFR 300.510)

23. Does my child's placement change during the proceedings?

- The child involved in any administrative or judicial proceeding must remain in the current educational placement unless you and the school district agree on another arrangement.
- If you are applying for initial admission of your child to a public school, your child will be placed in a public school program with your consent until all proceedings are completed. (20 USC 1415[j]; 34 CFR 300.518; EC 56505[d])

24. May the decision be appealed?

- The hearing decision is final and binding on both parties. Either party may appeal the hearing decision by filing a civil action in state or federal court within 90 days of the final decision. (20 USC 1415[i][2] and [3][A], 1415[i]; 34 CFR 300.516; EC 56505[h] and [k], EC 56043[w])

25. Who pays for my attorneys' fees?

- In any action or proceeding regarding the due process hearing, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you as parent of a child with a disability if you are the prevailing party in the hearing. Reasonable attorneys' fees may also be made following the conclusion of the administrative hearing, with the agreement of the parties. (20 USC 1415[i][3][B]-[G]; 34 CFR 300.517; EC 56507[b])
- Fees may be reduced if any of the following conditions prevail:
 - The court finds that you unreasonably delayed the final resolution of the controversy
 - The attorneys' hourly fees exceed the prevailing rate in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience
 - The time spent and legal services provided were excessive, or
 - Your attorney did not provide to the school district the appropriate information in the due process request notice.
- Attorneys' fees will not be reduced, however, if the court finds that the State or the school district unreasonably delayed the final resolution of the action or proceeding or that there was a violation of this section of law. (20 USC 1415[i][3][B]-[G]; 34 CFR 300.517)
- Attorneys' fees relating to any meeting of the IEP team may not be awarded unless an IEP team meeting is convened as a result of a due process hearing proceeding or judicial action. Attorneys' fees may also be denied if you reject a reasonable settlement offer made by the district/public agency ten (10) days before the hearing begins and the hearing decision is not more favorable than the offer of settlement. (20 USC 1415[i][3][B]-[G]; 34 CFR 300.517)
- If the district prevails, a school district may be awarded attorneys fees in limited circumstances. Fees may be awarded against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation, if the district prevails. A school district may also be awarded attorneys fees against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for an improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. (20 USC 1415[i][3][B]-[G]; 34 CFR 300.517)

To obtain more information or to file for mediation or a due process hearing, contact: Office of Administrative Hearings
Attention: Special Education Division
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833-4231
916-263-0880
FAX 916-263-0890

School Discipline and Placement Procedures for Students with Disabilities
School Discipline and Alternative Interim Educational Settings

26. *May my child be suspended or expelled?*

- School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct from his or her setting to:
 - An appropriate interim alternative education setting, another setting, or suspension for not more than ten (10) consecutive school days, and
 - Additional removals of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct

27. *What occurs after a removal of more than ten (10) days?*

- After a child with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal the public agency must provide services to enable the child to continue to participate in the general education curriculum and progress toward meeting the goals set out in the child's IEP. Also, a child will receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not recur.
- If a child exceeds ten (10) days in such a placement, an IEP team meeting must be held to determine whether the child's misconduct is caused by the disability. This IEP team meeting must take place immediately, if possible, or within ten (10) days of the school district's decision to take this type of disciplinary action.
- As a parent you will be invited to participate in the "manifestation determination" team meeting. If the conduct is determined not to be a manifestation of the disability, the school district may be required to develop an assessment plan to address the misconduct or, if your child has a behavior intervention plan, review and modify the plan as necessary. (34 CFR 300.530(f))

28. *What happens if the IEP team determines that the misconduct is not caused by the disability?*

- If the IEP team concludes that the misconduct was not a manifestation of the child's disability, the school district may take disciplinary action, such as expulsion, in the same manner as it would for a child without a disability. (20 USC 1415[k][1] and [7]; 34 CFR 300.530)
- If you disagree with the IEP team's decision, you may request an expedited due process hearing, which must occur within twenty (20) school days of the date on which you requested the hearing. (20 USC 1415[k][2]; 34 CFR 300.531[c])
- Regardless of the setting the school district must continue to provide FAPE for your child. Alternative educational settings must allow the child to continue to participate in the general curriculum and ensure continuation of services and modifications detailed in the IEP. (34 CFR 300.530; EC 48915.5[b])

29. *Do Any Special Circumstances Permit Removal of a Student for Misconduct Related to a Student's Disability?*

- A school district may place a child in an appropriate interim alternative educational setting for up to forty-five school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child:
 - Carries or possesses a weapon at school, on school premises, or to or at a school function;
 - Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function;
 - Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function

Children Attending Private School

30. *May students who are parentally placed in private schools participate in publicly funded special education programs?*

- Children who are enrolled by their parents in private schools may participate in publicly funded special education programs. The school district must consult with private schools and with parents to determine the services that will be offered to private school students. Although school districts have a clear responsibility to offer FAPE to students with disabilities, those children, when placed by their parent in private schools, do not have the right to receive some or all of the special education and related services necessary to provide FAPE. (20 USC 1415[a][10][A]; 34 CFR 300.137 and 300.138; EC 56173)
- If a parent of an individual with exceptional needs who previously received special education and related services under the authority of the school district enrolls the child in a private elementary school or secondary school without the consent of or referral by the local educational agency, the school district is not required to provide special education if the district has made FAPE available. A court or a due process hearing officer may require the school district to reimburse the parent or guardian for the cost of special education and the private school only if the court or due process hearing officer finds that the school district had not made FAPE available to the child in a timely manner prior to that enrollment in the private elementary school or secondary school and that the private placement is appropriate. (20 USC 1412[a][10][C]; 34 CFR 300.148; EC 56175)

31. Observation of your child at a nonpublic school

If you unilaterally place your child in a nonpublic school and you propose the placement in the nonpublic school to be publicly financed, the school district must be given the opportunity to first observe the proposed placement and your child in the proposed placement. The school district may not observe or assess any other child at the nonpublic school without permission from the other child's parent or guardian. (EC 56329(d))

32. When may reimbursement be reduced or denied?

- The court or hearing officer may reduce or deny reimbursement if you did not make your child available for an assessment upon notice from the school district before removing your child from public school. You may also be denied reimbursement if you did not inform the school district that you were rejecting the special education placement proposed by the school district, including stating your concerns and intent to enroll your child in a private school at public expense.
- Your notice to the school district must be given either:
 - At the most recent IEP team meeting you attended before removing your child from the public school, or
 - In writing to the school district at least ten (10) business days (including holidays) before removing your child from the public school. (20 USC 1412[a][10][C]; 34 CFR 300.148; EC 56176)

33. When may reimbursement not be reduced or denied?

- A court or hearing officer must not reduce or deny reimbursement to you if you failed to provide written notice to the school district for any of the following reasons:
 - The school prevented you from providing notice
 - You had not received a copy of this Notice of Procedural Safeguards or otherwise been informed of the requirement to notify the district
 - Providing notice would likely have resulted in physical harm to your child
 - Illiteracy and inability to write in English prevented you from providing notice, or
 - Providing notice would likely have resulted in serious emotional harm to your child (20 USC 1412[a] [10] [C]; 34 CFR 300.148; EC 56177)

State Complaint Procedures

34. When may I file a state compliance complaint?

- You may file a state compliance complaint when you believe that a school district has violated federal or state special education laws or regulations. Your written complaint must specify at least one alleged violation of federal and state special education laws.
- The violation must have occurred not more than one year prior to the date the complaint is received by the California Department of Education (CDE). When filing a complaint, you must forward a copy of the complaint to the school district at the same time you file a state compliance complaint with the CDE. (34 CFR 300.151–153; 5 CCR 4600)
- Complaints alleging violations of federal and state special education laws or regulations may be mailed to:
 - California Department of Education
 - Special Education Division
 - Procedural Safeguards Referral Service
 - 1430 N Street, Suite 2401
 - Sacramento, CA 95814
- For complaints involving issues not covered by federal or state special education laws or regulations, consult your district's uniform complaint procedures.
- To obtain more information about dispute resolution, including how to file a complaint, contact the CDE, Special Education Division, Procedural Safeguards Referral Service, by telephone at 800-926-0648; by fax at 916-327-3704; or by visiting the CDE, [Special Education Webpage](#).

Glossary of Abbreviations Used in This Notification

ADR: Alternative Dispute Resolution
CFR: Code of Federal Regulations
EC: California Education Code