

# Resolution Session Guidelines



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## Resolution Session Process

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### **Background**

Beginning July 1, 2005, the Individuals with Disabilities Education (IDEA) required a new step in conflict resolution called a Resolution Session. If a parent files a Request for Due Process, a Resolution Session must be made available to the parties as a "first step" in resolving the issues. The Resolution Session will be held within 15 days of Request for Due Process, unless both parties, parents and school district, agree not to have it. If either party wants to try the Resolution Session, it must be convened.

Resolution Session teams will most often consist of members of the school district staff, including an administrator with decision-making authority. For cases in which an "outside" perspective may be desired, the Ventura County SELPA has a team of expert facilitators who can be contracted with to facilitate the process. Contact the SELPA for more information about Resolution Session experts.

If the parties are not able to resolve the issue/issues that are being disputed, then the parties can proceed to Mediation and Due Process Hearing as per usual procedures.

### **Initiation of Due Process**

#### *Parent Initiated:*

- Parent provides Notice of Due Process Complaint to the district and to the Office of Administrative Hearings (OAH).
- If, prior to the parent filing the Notice of Due Process, the district has already given the parent appropriate written notice of issues, the district provides an "Other Party Response" to the complaint to clarify the district's position. This is given to the parent within 10 days.
- If the district has not given the parent a written notice of issues, then the district should develop written notice of issues by using "Notice to Parent of Action" form.
- If the Notice of Due Process Complaint does not give the district sufficient information regarding the issues and the proposed resolution(s), the LEA may file a Notice of Insufficiency with OAH in an attempt to clarify the issues, within 15 days of receiving the complaint.
- After receiving the Notice of Insufficiency from the district, OAH will make a determination of sufficiency, and notify both parties of its decision with 5 days.
- The Resolution Session is convened unless both parties agree otherwise.
- If both parties agree to waive the Resolution session, the parties will be required to wait 30 days, before mediation and/or a Due Process Hearing is scheduled.
- If the parent wishes to waive the Resolution, but district does not, the district will convene the session without them.

#### *District Initiated:*

- District files a Due Process Request and sends a copy to the parents.
- District initiated Due Process Request does not require a Resolution Session.

### **School District Preparation for Resolution Session**

A school district must prepare the appropriate staff and internally direct the level of commitment the district is willing to extend in the Resolution Session. Upon receipt of a Notice of Due Process Complaint from the parent, the district needs to evaluate the case, analyze the risk, and determine a course of action. The following suggestions are provided as guidelines:

1. Decide which staff will participate in the Resolution Session and specify scope of authority to resolve all issues – should include representatives of the district with specific knowledge of the case as well as one with the ability to commit resources. District may not bring an attorney unless the parent will be bringing one.
2. Prepare the file for hearing, review the case with site staff, identify compliance risk, and consider options for resolution.
3. Identify underlying issues and responsibilities of the district.
4. Consider acknowledging errors, omissions, and other shortcomings of the district's position which may validate the parent's concerns and possible options to resolve the issues.
5. Arrange Resolution Session to be held within 15 days of receiving the Notice of Due Process Complaint.
6. Send notice of Resolution Session to parents (attached).

### **Resolution Session**

Resolution Sessions are held within 15 days of receipt of the parent's Notice of Due Process Complaint. The process must be completed within 30 days of receipt.

All participants in the Resolution Session will be required to sign a confidentiality agreement. This means any discussion at the Resolution Session may not be used as evidence in subsequent Mediation or Due Process Hearing.

If parties are able to reach agreement, a Settlement and Release Agreement is developed (see attached sample).

If unable to reach agreement, parties may go to the next steps in Due Process. The timeline for Mediation and Due Process will include 45 days beyond the 30 day Resolution period.

The Resolution Session Agenda should include:

1. Introductions
2. Opening Comments
3. Description of Process

4. Process Agreements (Ground rules)
5. Actual process (see below)
6. Closure

The process should include:

1. Introductions
  - Reason each participant is there
2. Nature of the problem
  - What is the issue?
  - Address FAPE issues first
3. Proposed resolution
  - Identify specific concerns/expectations for resolution
4. Response
  - What is the LEA response?
5. Agreement
  - Seek to resolve issue
6. Repeat sequence for each issue

### **Agreements**

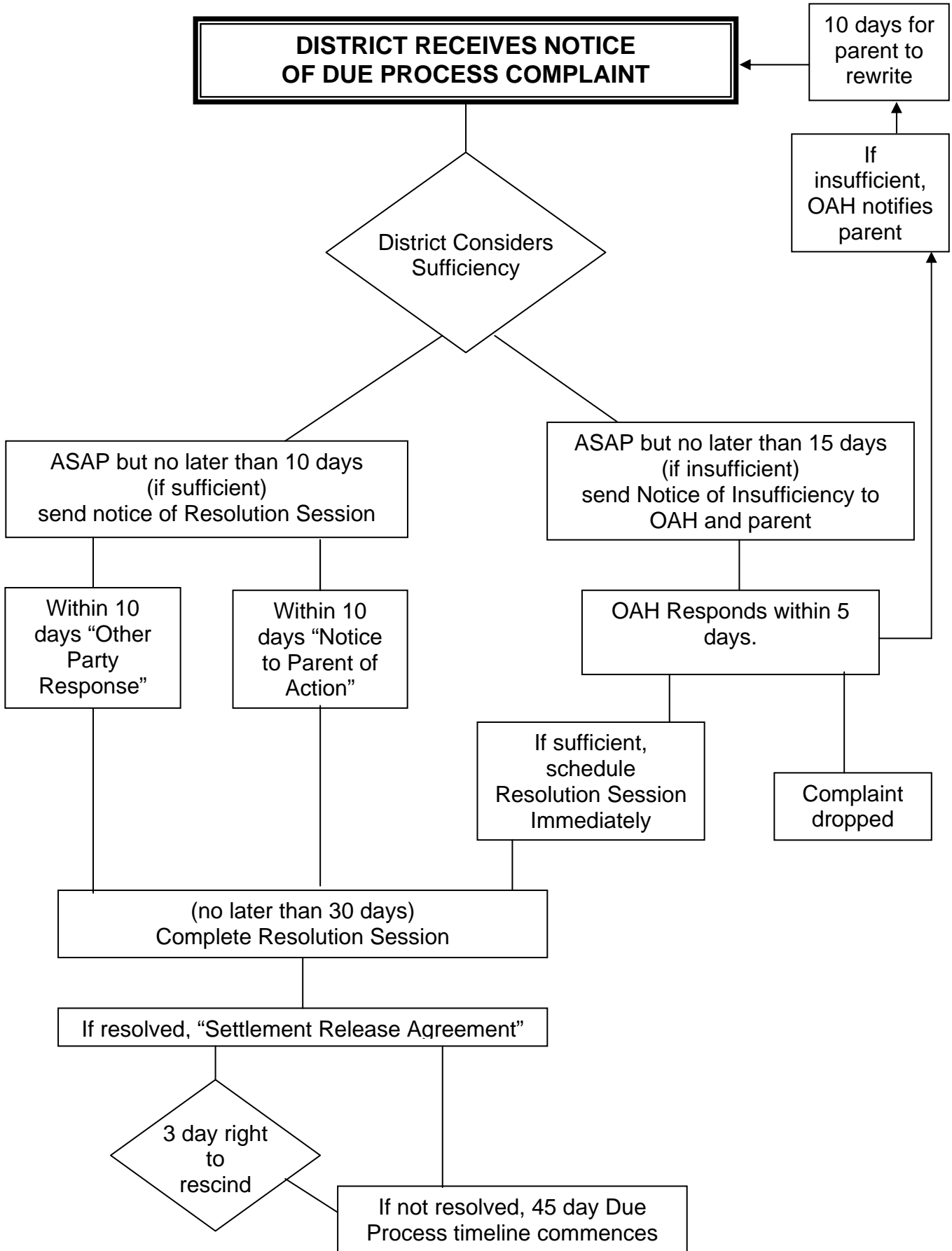
A written settlement agreement signed by both parties becomes a binding contract. After the three-day period for either party to rescind the agreement, it becomes binding to both parties. As such, it is critical that it address all the areas in the manner in which the parties have agreed. The conversation and drafting of the document should provide an opportunity to review and address any issues that may not have been previously discussed in order for the matter to be completely resolved. IEP teams are not able to address non-IEP issues, but all past underlying conflicts may be resolved during this process.

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

The sample Settlement and Release Agreement contained in this booklet is provided to assist in the drafting of a written agreement and allow contemplation of the components. Language that is presented in the example should only be included if the language addresses issues pertinent to the dispute or is technically necessary. For example, language addressing "Assessment" should be deleted if assessment is not at issue during the complaint or resolution process.

It is appropriate for the facilitator, district clerical staff or others to assist in the word processing of the document, once the parties have reviewed the components and

have agreed to the language. Once completed, the facilitator should move toward closure of the meeting.



**Sample Letter to Parent upon Receipt of Due Process Request  
[ON DISTRICT LETTERHEAD]**

[Date]

[Address]

Re: \_\_\_\_\_

Dear [Mr. and Mrs. \_\_\_\_\_]:

The **[name of your district]** received notice that you filed a request for a due process hearing on **[date]**. Pursuant to the Individuals with Disabilities Education Act ("IDEA") school districts must convene a Resolution Session with parents and relevant members of the IEP team who have knowledge of the facts identified in the request for due process within 15 days of receipt of that request. At the meeting we will discuss your concerns, and the facts that form the basis of your request for due process, and attempt to resolve all or some of the issues.

The goal of the Resolution Session will be to resolve the issues informally, however, if you invite an attorney to assist you at the meeting, the District may also be represented by an attorney. In the event that a resolution is reached, all of the parties must sign a legally binding agreement enforceable in a state or federal court. Such an agreement may be voided within 3 business days of the agreement's execution.

Due process proceedings allow the parties the opportunity to participate in several processes, including the Resolution Session, and/or Mediation, and/or a Due Process Hearing. You may wish to participate in all three processes. The parents and the District may also agree in writing to waive the resolution session and go directly to either Mediation or Hearing. Participation in the Resolution Session will not alter the timeline for completion of Due Process.

Because the Resolution Session must be held within 15 days of receipt of your request for a due process hearing, a meeting has been scheduled on **[date]** at **[time]** at **[place]**. Please return this document as soon as possible with your choice indicated below.

Signature	Title	Date

- 
- I will attend the resolution meeting as scheduled
  - I will attend the resolution meeting as scheduled and will be accompanied by an attorney/advocate.
  - I cannot attend at the date or time scheduled above. Please contact me to reschedule the meeting.
  - I waive my right to participate in a resolution meeting.

Signature	Date

**Ventura County Special Education Local Plan Area  
Prior Written Notice to Parent of Action  
Proposed or Refused by School District  
(300.503 – Code of Federal Regulations)**

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

District: \_\_\_\_\_

Student's Name: \_\_\_\_\_

Parent (s): \_\_\_\_\_

This notice is to inform the parent(s) of the above named student regarding the school district's:

- Proposal to initiate or change the:
  - Identification  Evaluation  Placement  Provision of a free appropriate public education
- Refusal of your request to initiate or change the:
  - Identification  Evaluation  Placement  Provision of a free appropriate public education

1. Description of action proposed or refused by district: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Explanation of reason for proposal or refusal: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Description of any other options district considered and why they were rejected: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Evaluation procedure(s), test(s), record(s) or report(s) used as a basis for the proposed/refused action: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Other relevant factors: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

As a parent(s) of a child with a disability, or suspected of having a disability, you have protections under state and federal laws. Please see attached "Parent Rights." If you need assistance in understanding these rights, you may call Ventura County SELPA at (805) 437-1560.

Additional resources for parents are available on our website: [www.venturacountyselpa.com](http://www.venturacountyselpa.com). If you have questions or need further assistance, please do not hesitate to call.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

**SAMPLE  
CONFIDENTIALITY AGREEMENT**

Case Name: \_\_\_\_\_

Dates of Resolution Sessions: \_\_\_\_\_

The participants in the resolution of this case agree that:

1. No written or oral communication made by any party, attorney, mediator(s), or other participant in any Resolution session in this case may be used for any purpose in any pending or future proceeding unless all parties, including the mediation, so agree.
2. Disclosure of information that otherwise is privileged shall not alter its privileged character.
3. The parties shall not subpoena the mediator(s) or any documents submitted to or prepared by the mediator during or in connection with the Resolution process. The mediator(s) shall not testify voluntarily on behalf of a party.
4. This agreement shall not render inadmissible written settlement agreement reached as a result of this Resolution mediation in an action to enforce that settlement.

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

\_\_\_\_\_  
Mediator

\_\_\_\_\_  
Mediator

\_\_\_\_\_  
Party

\_\_\_\_\_  
Party

## SAMPLE SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is between [PARENTS] ("Parents"), parent of [STUDENT], a minor, and the [SCHOOL DISTRICT] ("District") (collectively referred to as "Parties"). Parents and the District, in consideration of the promises made herein, agree as follows:

### 1. NATURE OF STATUS OF DISPUTE

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

### 2. ACTION TO RESOLVE DISPUTE

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

#### A. Assessment

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

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

#### B. The parties agree to education goals drafted on [INSERT DATE]

#### C. Placement and Services

The child will be placed in [INSERT] class at [INSERT] days, excluding holidays, from [INSERT DATE] to [INSERT DATE].

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

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

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

D. Reimbursement and Compensatory Education

The District agrees to provide the following compensatory services:

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

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

The District agrees to pay Parents a total of [INSERT] to settle all claims related to [STUDENT'S] educational program through the date of this Agreement. A check in this amount shall be issued to "[INSERT NAME]" within 45 days of execution of this Agreement.

E. [INSERT] – [INSERT] School Year

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

**[ALWAYS INCLUDE THE FOLLOWING PROVISIONS]**

F. Stay Put

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

G. Relocation

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

H. Dismissal of Due Process Complaint

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

**3. WAIVER AND RELEASE OF CLAIMS**

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

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

Parents' initials \_\_\_\_\_

**4. UNKNOWN CLAIMS**

Parents certify that they have read, and hereby waive the application of, the following provision of California Civil Code § 1542 to all claims:

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

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

Parents' initials \_\_\_\_\_

**5. TECHNICAL PROVISIONS**

A. *Conditions of Execution.* Each part acknowledges and warrants that the Parties execution of this Agreement is free and voluntary.

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

**PARENT(S) SIGNATURE**

Dated: \_\_\_\_\_  
[PARENT], Parent

Dated: \_\_\_\_\_  
[PARENT], Parent

**DISTRICT SIGNATURE**

Dated: \_\_\_\_\_  
[AUTHORIZED LEA REP], [TITLE]

**30 EC 56501.5 - RESOLUTION MEETING PRIOR TO DUE PROCESS HEARING**

**56501.5.** (a) Notwithstanding any other provision of law, prior to the opportunity for an impartial due process hearing under this chapter, the local educational agency shall convene a resolution meeting with the parents and the relevant member or members of the individualized education program team who have specific knowledge of the facts identified in the due process hearing request, in accordance with Section 1415(f)(1)(B) of Title 20 of the United States Code and Section 300.510 of Title 34 of the Code of Federal Regulations. The parent and the local educational agency shall determine the relevant members of the individualized education program team to attend the meeting.

(1) The meeting shall be convened within 15 days of receiving notice of the due process hearing request of the parent.

(2) The meeting shall include a representative of the local educational agency who has decision making authority on behalf of the agency.

(3) The meeting shall not include an attorney of the local educational agency, unless the parent is accompanied by an attorney.

(4) The purpose of the meeting is for the parent of the child to discuss the due process hearing issue, and the facts that form the basis of the due process hearing request, so that the local educational agency has the opportunity to resolve the dispute that is the basis for the due process hearing request.

(b) The resolution meeting described in subdivision (a) need not be held if the parents and the local educational agency agree in writing to waive the meeting, or agree to use the mediation process as provided for in this chapter.

(c) If the local educational agency has not resolved the due process hearing issue to the satisfaction of the parents within 30 days of the receipt of the due process hearing request notice, the due process hearing may occur. Except as provided in subdivision (d), the timeline for issuing a final decision under paragraph (3) of subdivision (f) of Section 56505 begins at the expiration of this 30-day period.

(d) The 45-day timeline for the due process hearing cited in paragraph (3) of subdivision (f) of Section 56505 starts the day after one of the following events, provided the local educational agency also affords notice of these events to the agency or contractor providing due process hearings pursuant to Section 56504.5:

(1) Both parties agree in writing to waive the resolution meeting.

(2) After either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible.

(3) If both parties agree in writing to continue a mediation that started before the end of the 30-day resolution period to a date after the 30-day resolution period, but later, the parent or local educational agency withdraws from the mediation process.

(e) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subdivision (c), the failure of the parent filing a due process hearing request to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(1) If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in Section 300.322(d) of Title 34 of the Code of Federal Regulations, such as detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parent and any responses received, and detailed records of visits made to the home or place of employment of the parent, the local educational agency may, at the conclusion of the 30-day period, request that a hearing officer dismiss the due process

hearing request of the parent.

(2) If the local educational agency fails to hold the resolution meeting specified in subdivision (a) within 15 days of receiving notice of a due process hearing request of a parent or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(f) In the case that a resolution is reached to resolve the due process hearing issue at a meeting described in subdivision (a), the parties shall execute a legally binding agreement that is both of the following:

(1) Signed by both the parent and a representative of the local educational agency who has the authority to bind the agency.

(2) Enforceable in a state court of competent jurisdiction or in a federal district court of the United States.

(g) If the parties execute an agreement pursuant to subdivision (d), a party may void the agreement within three business days of the execution of the agreement.

118 STAT. 2732 PUBLIC LAW 108-446—DEC. 3, 2004

**IDEA 2004**

[Provided below are excerpt from the law related to provision of a Resolution Session.  
\*\*\*\* indicate that material was removed from that section of the law that is unrelated to the Resolution Session process.]

**“SEC. 615. PROCEDURAL SAFEGUARDS.**

“(a) ESTABLISHMENT OF PROCEDURES.—Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

“(b) TYPES OF PROCEDURES.—The procedures required by this section shall include the following: 20 USC 1415.

\*\*\*\*

“(3) Written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency—

“(A) proposes to initiate or change; or

“(B) refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

“(4) Procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so.

“(5) An opportunity for mediation, in accordance with subsection (e).

“(6) An opportunity for any party to present a complaint—

“(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

“(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this part, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

“(7)(A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice Applicability. 118 STAT. 2717 PUBLIC LAW 108-446—DEC. 3, 2004 in accordance with subsection (c)(2) (which shall remain confidential)—

“(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and

“(ii) that shall include—

“(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

“(II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney- Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;

“(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

“(IV) a proposed resolution of the problem to the extent known and available to the party at the time.

“(B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).

“(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

“(c) NOTIFICATION REQUIREMENTS.—

“(1) CONTENT OF PRIOR WRITTEN NOTICE.—The notice required by subsection (b)(3) shall include—

“(A) a description of the action proposed or refused by the agency;

“(B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

“(C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

“(D) sources for parents to contact to obtain assistance in understanding the provisions of this part;

“(E) a description of other options considered by the IEP Team and the reason why those options were rejected; and

“(F) a description of the factors that are relevant to the agency’s proposal or refusal.

“(2) DUE PROCESS COMPLAINT NOTICE.—

“(A) COMPLAINT.—The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A). “(B) RESPONSE TO COMPLAINT.—

“(i) LOCAL EDUCATIONAL AGENCY RESPONSE.—

“(l) IN GENERAL.—If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent’s due process complaint notice, such

local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include—

“(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;

“(bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;

“(cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

“(dd) a description of the factors that are relevant to the agency’s proposal or refusal.

“(II) SUFFICIENCY.—A response filed by a local educational agency pursuant to subclause (l) shall not be construed to preclude such local educational agency from asserting that the parent’s due process complaint notice was insufficient where appropriate.

“(ii) OTHER PARTY RESPONSE.—Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complainant a response that specifically addresses the issues raised in the complaint.

“(C) TIMING.—The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.

“(D) DETERMINATION.—Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify the parties in writing of such determination.

“(E) AMENDED COMPLAINT NOTICE.—

“(i) IN GENERAL.—A party may amend its due process complaint notice only if—

“(I) the other party consents in writing to such amendment and is given the opportunity to resolve

the complaint through a meeting held pursuant to subsection (f)(1)(B); or

“(II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

“(ii) APPLICABLE TIMELINE.—The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).

\*\*\*\*

“(e) MEDIATION.—

“(1) IN GENERAL.—Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

“(2) REQUIREMENTS.—Such procedures shall meet the following requirements:

“(A) The procedures shall ensure that the mediation process—

“(i) is voluntary on the part of the parties;

“(ii) is not used to deny or delay a parent’s right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and

“(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

“(B) OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY.—A local educational agency or a State agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

“(i) a parent training and information center or community parent resource center in the State established under section 671 or 672; or

“(ii) an appropriate alternative dispute resolution entity, to encourage the use, and explain the benefits, of the mediation process to the parents.

“(C) LIST OF QUALIFIED MEDIATORS.—The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

“(D) COSTS.—The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

“(E) SCHEDULING AND LOCATION.—Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

“(F) WRITTEN AGREEMENT.—In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that—

“(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

“(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

“(iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

“(G) MEDIATION DISCUSSIONS.—Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

“(f) IMPARTIAL DUE PROCESS HEARING.—

“(1) IN GENERAL.—

“(A) HEARING.—Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

“(B) RESOLUTION SESSION.—

“(i) PRELIMINARY MEETING.—Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint—

“(I) within 15 days of receiving notice of the parents’ complaint;

“(II) which shall include a representative of the agency who has decision making authority on behalf of such agency;

“(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

“(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint, unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).

“(ii) HEARING.—If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.

“(iii) WRITTEN SETTLEMENT AGREEMENT.—In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is—

“(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and

“(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

“(iv) REVIEW PERIOD.—If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement’s execution.

“(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS. —

“(A) IN GENERAL.—Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party’s evaluations, that the party intends to use at the hearing.

“(B) FAILURE TO DISCLOSE.—A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

“(3) LIMITATIONS ON HEARING.—

“(A) PERSON CONDUCTING HEARING.—A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum—not be—

“(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

“(II) a person having a personal or professional interest that conflicts with the person’s objectivity in the hearing;

“(ii) possess knowledge of, and the ability to understand, the provisions of this title, Federal and State regulations pertaining to this title, and legal interpretations of this title by Federal and State courts;

“(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

“(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

“(B) SUBJECT MATTER OF HEARING.—The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

“(C) TIMELINE FOR REQUESTING HEARING.—A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.

“(D) EXCEPTIONS TO THE TIMELINE.—The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to—

“(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

“(ii) the local educational agency’s withholding of information from the parent that was required under this part to be provided to the parent.

“(E) DECISION OF HEARING OFFICER.—

“(i) IN GENERAL.—Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

“(ii) PROCEDURAL ISSUES.—In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—

“(I) impeded the child’s right to a free appropriate public education;

“(II) significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents’ child; or

“(III) caused a deprivation of educational benefits.

“(iii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

“(F) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.

“(g) APPEAL.—

“(1) IN GENERAL.—If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency.

“(2) IMPARTIAL REVIEW AND INDEPENDENT DECISION.—The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). The officer conducting such review shall make an independent decision upon completion of such review.

“(h) SAFEGUARDS.—Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

“(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

“(2) the right to present evidence and confront, cross examine, and compel the attendance of witnesses;

“(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

“(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions—

“(A) shall be made available to the public consistent with the requirements of section 617(b) (relating to the confidentiality of data, information, and records); and

“(B) shall be transmitted to the advisory panel established pursuant to section 612(a)(21).

“(i) ADMINISTRATIVE PROCEDURES.—

“(1) IN GENERAL.—

“(A) DECISION MADE IN HEARING.—A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).

“(B) DECISION MADE AT APPEAL.—A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).

“(2) RIGHT TO BRING CIVIL ACTION.—

“(A) IN GENERAL.—Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

“(B) LIMITATION.—The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.

“(C) ADDITIONAL REQUIREMENTS.—In any action brought under this paragraph, the court—

“(i) shall receive the records of the administrative proceedings;

“(ii) shall hear additional evidence at the request of a party; and

“(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

“(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS’ FEES.—

“(A) IN GENERAL.—The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

“(B) AWARD OF ATTORNEYS’ FEES.—

“(i) IN GENERAL.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys’ fees as part of the costs—

“(l) to a prevailing party who is the parent of a child with a disability;

“(II) to a prevailing party who is a State educational agency or local educational agency 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; or

“(III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent’s complaint or subsequent cause of action was presented

for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

“(ii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

“(C) DETERMINATION OF AMOUNT OF ATTORNEYS’ FEES.—Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

“(D) PROHIBITION OF ATTORNEYS’ FEES AND RELATED COSTS FOR CERTAIN SERVICES.—

“(i) IN GENERAL.—Attorneys’ fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

“(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before

the proceeding begins;

“(II) the offer is not accepted within 10 days; and

“(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

“(ii) IEP TEAM MEETINGS.—Attorneys’ fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e).

“(iii) OPPORTUNITY TO RESOLVE COMPLAINTS.—A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered—

“(I) a meeting convened as a result of an administrative hearing or judicial action; or

“(II) an administrative hearing or judicial action for purposes of this paragraph.

“(E) EXCEPTION TO PROHIBITION ON ATTORNEYS’ FEES AND RELATED COSTS.—Notwithstanding subparagraph (D), an award of attorneys’ fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

“(F) REDUCTION IN AMOUNT OF ATTORNEYS’ FEES.— Except as provided in subparagraph (G), whenever the court finds that—

“(i) the parent, or the parent’s attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

“(ii) the amount of the attorneys’ fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

“(iii) the time spent and legal services furnished were excessive considering the nature of the action

or proceeding; or

“(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A), the court shall reduce, accordingly, the amount of the attorneys’ fees awarded under this section.

“(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS’ FEES.—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

“(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT.— Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

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“(n) ELECTRONIC MAIL.—A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.

“(o) SEPARATE COMPLAINT.—Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.