

# SPECIAL EDUCATION ADVOCACY MANUAL

Guidance for Students, Families,  
and Community Members



Neighborhood Legal Services  
of Los Angeles County

*50 years of changing lives and transforming communities*

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For caregivers trying to access services for students with special needs, special education law can be complicated and confusing. This guide is designed to provide helpful tools and direction as you navigate the process involved in getting your student special education services.

It is important to remember that all students learn and grow in different ways. If your student receives special education services, that does not mean your student cannot learn or is not as capable as other students. It means that your student needs specialized services to support their development, and the school must provide these.

Your student has the right to special education services and instruction, and you should have as much information about your rights as possible.

## —SPECIAL EDUCATION LAWS AND IMPORTANT TERMS—

The right to special education services in California public schools is guaranteed by both federal and state laws.

The federal laws that protect students with disabilities include:

- The Individuals with Disabilities Education Act ("IDEA");
- The Americans with Disabilities Act ("ADA");
- Section 504 of the Rehabilitation Act ("Section 504" or "504"); and
- The Code of Federal Regulations ("C.F.R.").

California laws include:

- The California Education Code ("Cal. Educ. Code"); and
- The California Welfare and Institutions Code ("WIC").

You may see references to these laws throughout this document or in the documents and notices you get from your student's school. See **Appendix A** for a glossary of other common special education terms.

These laws ensure that students with disabilities receive "special education and related services."<sup>1</sup> The special education program the school provides must be specially designed to meet each eligible student's unique needs so they can make progress in school.

All special education programs must give students with special needs a "free, appropriate, public education" ("FAPE") in the least restrictive environment ("LRE"). What that means for each student is defined by the student's individualized education program ("IEP").

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<sup>1</sup> 20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300 et seq., Cal. Educ. Code § 5600 et seq., 5 Cal. Code Regs. § 3000 et seq.



## **What is a Free Appropriate Public Education?**

IDEA and Section 504 of the Rehabilitation Act guarantee students with disabilities the right to a “free appropriate public education,” or a “FAPE.” It is a school’s job to make sure that all students in special education receive a FAPE. How to advocate when a school does not give your student a FAPE will be discussed below.

The letters in FAPE stand for different types of rights and protections you can demand for your student:

- **FREE**  
“Free” means that students do not have to pay for the special education services they need.
- **APPROPRIATE**  
“Appropriate” means that the student’s education program must allow them to reach goals that are challenging and made especially for them. An appropriate education program is one that helps a student make more than “minimal” progress at school.
- **PUBLIC**  
“Public” refers to the public-school system. Your student has the right to go to a public school, even if they have a serious disability.
- **EDUCATION**  
“Education” means that a school has to give your student all of the services and supports outlined in their education program.

## **What is the “least restrictive environment”?**

Students with special needs must have the chance to receive a FAPE in the least restrictive environment, or “LRE.” This means that they must go to school and classes with nondisabled students for as much of the day as possible.

Students should only be placed in special classes, separate schools, or removed from their regular classes when it is determined that the student’s needs cannot be met in a general education class, even with the use of additional aides or services.<sup>2</sup>

The school’s plan for how a student will receive a FAPE in the least restrictive environment is laid out in the student’s individualized education program, or “IEP.”

## **What is an Individualized Education Program?**

The term “individualized education program” or “IEP” can be confusing because it refers to three different things. It means (1) the team meeting where the student’s educational needs are discussed, (2) the process used to determine what those needs are, and (3) the written plan schools make to meet those needs.

The IEP is essentially a legal document and process that lays out the program of special education instruction, supports, and services that eligible students with disabilities need to succeed in school. Each IEP is specially designed to meet a student’s unique academic, behavioral, and health needs.

More information on how a student becomes eligible for an IEP, who should be on the IEP team, what should be discussed at the meeting, and when meetings should be held can be found below.

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<sup>2</sup> 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114

## —SPECIAL EDUCATION ELIGIBILITY—

*Schools should follow the steps below to determine if your student is eligible for special education services through an IEP.*

### **When is a student “eligible” for special education services?**

To be eligible for special education under IDEA, a student must be 0-22 years old and fall within one or more specific categories of qualifying conditions:<sup>3</sup>

- Autism
- Specific learning disability
- Speech or language impairment
- Emotional disturbance
- Traumatic brain injury
- Visual impairment, including blindness
- Hearing impairment, including deafness
- Intellectual disability
- Multiple disabilities
- Other health impairments
- Orthopedic impairment
- Deaf-blindness

If you want more information on the criteria for each eligibility category, visit [https://kidsalliance.org/wpcontent/uploads/2018/02/SpecialEducationEligibilityChecklist\\_Feb\\_2018.pdf](https://kidsalliance.org/wpcontent/uploads/2018/02/SpecialEducationEligibilityChecklist_Feb_2018.pdf).

### **How does my student become eligible for special education?**

The law requires that schools follow specific steps and timelines when it comes to identifying students who need special education, responding to assessment requests, scheduling IEPs, and assessing students.

There are typically four steps involved in special education eligibility: (1) identifying a struggling student who may need services; (2) referring the student for evaluation; (3) evaluating the student; and (4) holding the initial IEP. Each of these steps is explained in detail below.

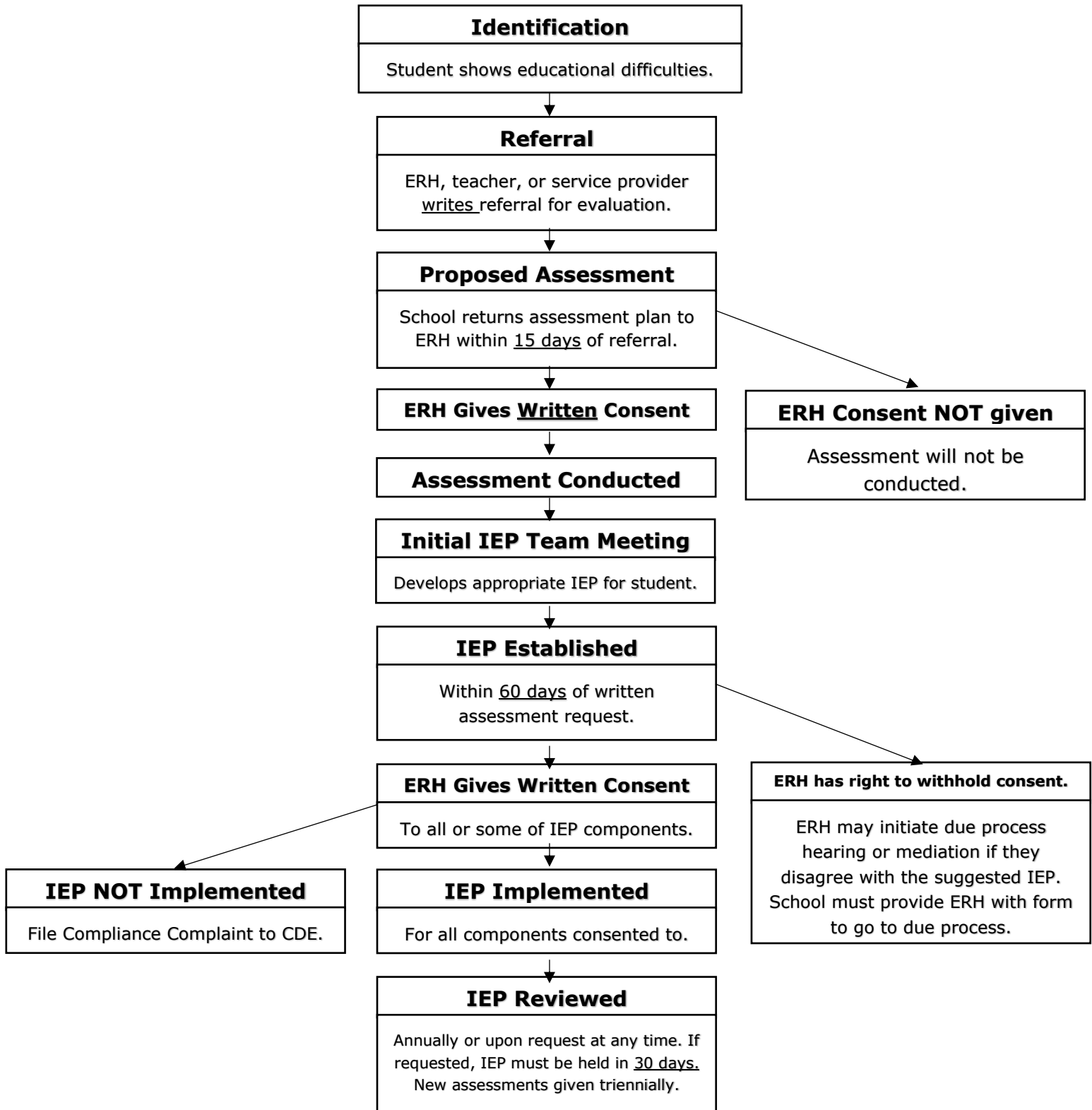
On the next page, you will also find a timeline for how students are found eligible for special education and what deadlines you need to pay attention to in this process.

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<sup>3</sup> 20 U.S.C. § 1401(3)



## SPECIAL EDUCATION ELIGIBILITY TIMELINE<sup>4</sup>



<sup>4</sup> Thank you to Public Counsel for use of their timeline resource.

## **STEP 1 – How does a school identify a struggling student?**

### **Who can ask for special education services?**

Anyone—including you, a teacher, a counselor, or an administrator—can identify a student as possibly needing special education and refer them for evaluation, but schools are required to look for and find students with disabilities who need services.

Your student does not need a doctor's note or formal recommendation from a teacher to be evaluated for an IEP.

### **Does a school have a responsibility to look for students with special needs?**

The IDEA legally requires schools to identify, locate, and evaluate all students who have disabilities or need special education services. This is commonly called "Child Find."<sup>5</sup>

Child Find applies to all children from birth to 21 years old, including children who attend public, private, or charter schools, homeless or migrant children, and children who are wards of the state.<sup>6</sup>

Child Find requires a school to have a plan to identify and assess students who may need special education. The school must notify the public of this plan.

Common signs that a student may have a disability or need special education include:

- Poor grades or attendance;
- Difficulty with classroom activities or assignments;
- Speech and language problems;
- Problems with memory or attention; and/or
- Social or emotional problems.

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<sup>5</sup> 20 U.S.C. § 1412(a)(3), 34 C.F.R. § 300.111; Cal. Educ. Code § 56300

<sup>6</sup> 20 U.S.C. 1412(a)(3)

## STEP 2 – How is a student referred for special education evaluation?

Before a student can start receiving special education services, they must be evaluated to see if they are eligible. Remember, in order for a student to be eligible for special education, they must be 0-22 years old and fall under one of the disability categories listed above.

### **Does the school have to make the referral?**

No. Anyone can refer a student for special education evaluation.

If a school suspects<sup>7</sup> a student of having a disability, the school must refer them for evaluation within a reasonable time.<sup>8</sup> If a student shows any of the signs listed above, the school should probably evaluate them.

If a school fails to identify or evaluate a potentially eligible student for special education, the school may be liable for violating the law. Some courts will even order the school to give your student the service hours it should have been providing or to reimburse you for money you spent getting your student help for their disability.<sup>9</sup> Information on what to do when your school violates the law will be provided later.

If the school has not made a referral, you can ask for an evaluation yourself. **Appendix C** includes sample special education assessment or reassessment request forms that you can use to request that your student be evaluated for services.



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<sup>7</sup> 20 U.S.C. § 1414(a)

<sup>8</sup> W.B. v. Matula, 67 F.3d 484 (3rd Cir. 1995)

<sup>9</sup> See Pamela Wright & Pete Wright, *The Child Find Mandate: What Does It Mean to You?*, WRIGHTSLAW (Jan. 1, 2019), <https://www.wrightslaw.com/info/child.find.mandate.html>

## **How can you request a special education evaluation?**

1. Write a letter or complete the Special Education Assessment Request Form found in **Appendix C** with information about your student's academic and behavior needs. Be sure to sign the form or letter.
2. Submit the form or letter to the school principal or special education coordinator.
3. Get proof that the school received your request in case the school does not respond or there is some other dispute. There are three ways to get proof:
  - If you deliver in person, get a timestamp on the form and keep a copy for yourself;
  - Fax the form and keep a copy of the confirmation sheet showing it was received; or
4. Send it by certified mail and keep the receipt.

### **What if the school refuses to assess your student?**

- Get an explanation from the school
- Pay for your own evaluation from a doctor. Note that the school does not usually have to pay for this.
- File a due process complaint, a request for mediation with the district, or a complaint to the California Department of Education. More information can be found at the end of this manual.

Get the school's response. The school is legally required to send a response to an assessment request within 15 calendar days of receiving it. They can respond by either (1) sending an assessment plan or (2) sending a written refusal to complete the assessment.

The school may try to get you to agree to a parent-teacher conference or a Student Study Team ("SST") meeting instead of or before doing the assessments. You do not have to agree to this.

5. Review, sign, and return the assessment plan within 15 calendar days. Before signing, read the plan to make sure the school is doing all the assessments that they should (i.e. cognition, academics, motor/processing, social/emotional/behavioral/attention).

#### **What is an SST meeting?**

An SST, or Student Study Team, meeting is designed to help support students having some kind of trouble in general education classrooms.

It is not part of the IEP process nor is it designed to support students in special education.

Some schools will try to schedule an SST meeting before assessing a student for an IEP to see if non-special education services or interventions will work.

Request in writing on the assessment plan to receive a copy of the assessment report(s) 5 business days before the IEP meeting.

### **STEP 3 – What happens when the school evaluates a student for special education eligibility?**

Once the school agrees to evaluate your student and you have signed off on the assessment plan, the school has 60 calendar days to complete all of the assessments on the plan and hold an initial IEP meeting.

#### **What kinds of assessments should the school do?**

Below are the assessments that the school should do and that you can request:

- Neuropsychological assessments (assessing intellectual level, language skills, nonverbal or visual skills, memory, attention, organization, judgment, academic skills, and emotional status);
- Speech and language evaluations (assessing your student's understanding and expression of language);

- Psycho-educational evaluations (assessing present levels in reading, math, spelling, writing, and intelligence);
- Educational evaluations (assessing grade level performance);
- Occupational and physical therapy evaluations (assessing sensory motor skills); and
- Personality or projective evaluations (assessing emotional and psychological triggers).



### **Can you get a second opinion if you disagree with the results of the district's assessments?**

Yes. You can request that assessments be completed by an independent educational evaluator if you disagree with or have reason to doubt the results of district-administered assessments. In most cases, the district has to pay for your student to get an independent educational evaluation ("IEE").

When you request an IEE, the district must give you information on where to get an independent evaluation, a list of qualified examiners in the area, and a copy of district policies related to pricing guidelines and other standards.

The district can respond to your request in one of two ways:

- (1) It can make sure you get an IEE at no cost to you, or
- (2) It can file for a due process hearing to prove that the assessments it did were appropriate. More information on due process hearings will be given later.

See **Appendix D** for a form you can use to request an objective evaluation by an independent educational evaluator.

## **STEP 4 – When is the initial IEP and what happens at the meeting?**

The school has 60 days after you consent to the assessment plan to evaluate the student and hold an initial IEP meeting.

At the initial IEP meeting, the team will discuss the assessment results and reach an agreement about whether your student is eligible, and if so, under which eligibility category. More information about eligibility categories are provided below and in **Appendix E**.

### **What happens if the school does not complete the assessments or hold the IEP within 60 days?**

If the school violates this timeline (or any other timeline within IDEA or California law), see the section below on filing compliance complaints or scheduling a due process hearing.

### **Where is the IEP meeting held?**

The IEP meeting is held at the school with a team of people, called the IEP team.

### **Who is on the IEP team?**

The IEP team is made of several people who know the student or are qualified to evaluate or provide services to the student.<sup>10</sup> The IEP team must include:

- The education rights holder (e.g. parent, guardian, or appointed representative);
- General education teacher;
- Special education teacher;
- District representative to authorize money for services; and
- Someone qualified to explain the student's assessments.

The team can also include any other people or experts who know or are qualified to support the student. This can include an attorney, a therapist, or a tutor. The student can also attend if it is appropriate.

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<sup>10</sup> 20 U.S.C. § 1414(d)(1)(B); Cal. Educ. Code § 56341(b)

## **What Should Be Discussed at the IEP Meeting?**

The idea behind the IEP is that all students have unique needs and their education should be individualized and appropriate to meet those needs. Instead of a one-size-fits-all approach, the law encourages IEP teams to work together to make a plan that will effectively address a student's needs.<sup>11</sup>

Every meeting must discuss:

- The student's current academic levels, often called "present levels of performance" or "PLOPS";<sup>12</sup>
- Annual goals and objectives which must be tracked to show progress and should address all noted areas of weakness;<sup>13</sup>
- Changes to the student's curriculum, supports, or classroom expectations;<sup>14</sup>
- Services available to the student based on their disability;<sup>15</sup>
- When, where, and how often the student will receive services;<sup>16</sup>
- What the student's "least restrictive environment" is and where they should be placed;<sup>17</sup>
- Whether the student will have to take state standardized tests and whether they will get any kind of support during these tests;<sup>18</sup> and
- Whether the student will be given technology to help with classwork.<sup>19</sup>

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<sup>11</sup> 20 U.S.C. § 1414(d)(3)(A); Cal. Educ. Code § 56342(a)

<sup>12</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(I)

<sup>13</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(II), Cal. Educ. Code § 56345(a)(2)

<sup>14</sup> 20 U.S.C. § 1414(c)(1)(B)(iv), Cal. Educ. Code § 56345(a)(2), (4)

<sup>15</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(IV), Cal. Educ. Code § 56345(4)

<sup>16</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(IV), (VII), Cal. Educ. Code § 56345(4), (7)

<sup>17</sup> 20 U.S.C. § 1412(a)(5); 20 U.S.C. § 1414(d)(1)(A)(i)(V), Cal. Educ. Code § 56345(a)(5)

<sup>18</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(V), (VI)(aa)

<sup>19</sup> 20 U.S.C. § 1414(d)(3)(B)(V)



### **Can the IEP team discuss behavioral concerns?**

Yes. In addition to the topics listed above, the team is also able to discuss any behavior issues the student may be having and respond to these issues by creating a Behavior Support Plan ("BSP"), also called a Behavioral Intervention Plan ("BIP"), after a Functional Behavioral Assessment ("FBA") has been completed.<sup>20</sup> See **Appendix F** for a form you can use to request a new FBA.

### **Can the IEP team make a plan to help your older student once they leave school?**

Yes. If your student is at least 16 years old or in need of a plan for transitioning them from school to an independent living environment, college, or employment, the team can also create an individualized transition plan ("ITP"), which may include goals and services during and after this transition.<sup>21</sup>

#### **Tips for Helping Draft an Appropriate IEP**

- Make sure statements describing present levels of performance ("PLOPs") are accurate, as these become the foundations for goals and objectives.
- Make sure goals and objectives are "ambitious." An ambitious goal or objective addresses a specific need and works to move the student toward independence in that skill. Goals must also be "measurable." This means they should be able to be tracked using percentages, steps, or numbers of tries.
- Make sure the IEP specifies which services your student should get, how often they should get these services, where these services should be provided, and who should provide them.
- Make sure that there are no errors in the IEP, like incorrect names, services, or goals.

### **Can you record the IEP meeting?**

You have the right to tape record an IEP meeting.

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<sup>20</sup> 20 U.S.C. § 1414(d)(3)(B)(i)

<sup>21</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(VIII)

### **What are the other types of IEP meetings?**

- Initial IEP – The initial IEP is the first meeting where team members review the results of the assessments the student was given, decide if the student is eligible for special education, and set out which services the student will get.
- Annual IEP – A student's IEP, services, placement, and accommodations must be reviewed by the IEP team at least once a year. This yearly review is called the annual IEP.
- Triennial IEP – The school is required to give your student a new set of assessments every three years to see if the student has made progress or needs additional supports, although the student may be reevaluated more often if the you or the school request it. The assessments are reviewed at the triennial IEP meeting to see if the student still needs special education, if they need more or fewer services, or if their placement needs to be changed.
- **You are also able to request an IEP at any time. The school must schedule an IEP at your request within 30 days. See **Appendix G** for a sample letter requesting an IEP meeting.**

## —ELIGIBILITY UNDER SECTION 504—

*If a student is not eligible for special education, they may still be eligible for services under Section 504 of the Rehabilitation Act.*

For your student to be eligible for special education, they must have a disability that would benefit from special education and related services. If they have a disability but do not need special education services, the student is not eligible for special education under IDEA but still may be eligible for certain services under Section 504.

### **What is Section 504?**

Section 504 is a civil rights law that prohibits discrimination against people with disabilities. It makes sure that any student with special needs has equal access to an education.

### **When is a student eligible for services under Section 504?**

To be eligible for services under Section 504, your student must meet the definition of a qualified “handicapped” person. A qualified “handicapped” person is someone who has or once had a physical or mental impairment that seriously limits a major life activity. Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, self-care, and doing things by hand.

### **What kinds of disabilities qualify a student for 504 services?**

Here are some examples of disabilities that usually (but not always) fall under Section 504 instead of the IDEA:

- Students who use wheelchairs or are missing limbs;
- Students with medical conditions, such as epilepsy, diabetes, AIDS, arthritis, allergies, asthma, ADHD, cancer, spinal bifida, or cerebral palsy;
- Students with diagnoses such as depression or anxiety.

See **Appendix H** for a form you can use to request non-special education support services under Section 504.

## **What kinds of services can a student get with a 504 plan?**

There are many services students with 504 plans can receive. Some of these include:

- Extra time on tests;
- Short breaks from class;
- Speech or language therapy;
- Study skills classes;
- Special classroom seating; and
- Study guides for exams and assignments.

## **What if my student qualifies for services under both the IDEA and Section 504?**

There are many important differences between IDEA and Section 504 in the type of services and protections each offers. If your student qualifies for both special education and Section 504 services, it is better to ask that your student be placed in special education, as the IDEA gives your student more protection and support.

## **What are the differences between IDEA and Section 504?**

There are a few important differences between the IDEA and Section 504 in terms of the protections that each provide students.

### ***1. Disputes and Resolution***

If you have a conflict with your school or district, students in special education have due process protections that students with 504 plans do not have. For example:

- IDEA gives you the option of filing for a “due process” hearing at the State Office of Administrative Hearings (“OAH”) when you disagree with how a school or district is handling your student’s IEP. See below for more information on due process hearings.
- IDEA has a “stay put” provision that requires that a school keep using the most recent IEP during a dispute and until it is resolved.<sup>22</sup>

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<sup>22</sup> 20 U.S.C. § 1415(j); 34 C.F.R. § 300.516(a)

- IDEA requires that a school give you prior written notice of any proposed change in your student's placement.<sup>23</sup>

If your student has a 504 plan, the protections available to you if you have a conflict with your school or district are much fewer:

- Section 504 does not have any procedures for OAH due process hearings. Disputes are resolved at district offices by district officers.
- Section 504 does not have a "stay put" provision, so 504 plans can be changed during a dispute.
- There is no requirement under Section 504 that you get prior notice before your student's placement is changed.

## **2. Assessments and Reassessments**

Assessments for special education eligibility under the IDEA must be completed whenever a student is "suspected" of having a disability. Evaluations must assess all areas that might be affected by the student's disability, including health, vision, hearing, processing, social and emotional status, general intelligence, academic performance, communication, and motor functioning.<sup>24</sup> Reassessments under IDEA must be performed **at least once every three years**, or more often if needed or whenever you, the school, or a teacher requests them.

Section 504 does require students to be assessed and reassessed, but evaluations are not as comprehensive or completed as often. Assessments for 504 eligibility look at standardized tests or benchmarks the student has taken, teacher recommendations, physical needs, and behavior. Students with 504 plans are only reassessed before there is a significant change in placement.

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<sup>23</sup> 20 U.S.C. § 1415(b)(3)

<sup>24</sup> 20 U.S.C. § 1414(b)(3); Cal. Educ. Code § 56320(f); 34 C.F.R. § 300.304(c)(4)

## —ADVOCACY BASICS—

When you are having a conflict with the school or want to make requests or decisions on behalf of your student, it is important to know who holds your student's education rights and how to request your student's educational records.

### Who is the Education Rights Holder?

It is important to know who your student's education rights holder ("ERH") is. A person who holds education rights has the legal authority to make education-related decisions for a student, including:

- Requesting education records;
- Requesting assessments; and
- Agreeing to assessment plans and IEPs.

If you are the student's biological parent, you hold education rights automatically until your child turns 18, unless a court has limited or transferred those rights to someone else.

If you are the student's adoptive parent or legal guardian, education rights automatically transfer to you through the adoption order or legal guardianship order.

If you are a student who is 18 years or older, you hold your own education rights.

If you are a foster parent, prospective adoptive parent, relative caregiver, Court Appointed Special Advocate

("CASA"), or court-trained volunteer, you can become a student's ERH if you get an order from a judge on a JV-535 form or minute order.

If you are not sure who a student's ERH is, you can ask the student's court-appointed attorney or social worker.



## How do you request your student's education records?

Requesting your student's records can help you better understand their needs and help you monitor their progress over time.<sup>25</sup> Only the student's ERH can request records, but if you are the ERH, you can give someone else, like an attorney, the right to request and view student records for you.

You can access records like:

- Report cards;
- Transcripts;
- Attendance records;
- Special education assessments; and
- Individualized Education Plans ("IEPs").

Schools do not have to provide paper copies of records, unless it would be impossible to review them otherwise (for example, distance).<sup>26</sup> There is no cost to search for or retrieve the student's records.<sup>27</sup> You may be charged for paper copies of the education record, unless paying would keep you from your right to review the record.<sup>28</sup>

## Here are the steps to follow to request your student's records from a school:<sup>29</sup>

1. Complete the form included in **Appendix B**. Be sure to sign and date the form. You should complete one form for each school and district your student has attended.
2. Turn in the completed form along with proof that you hold education rights to all schools and districts that you are requested records from.

Proof of education rights can be a minute order or JV-535 from

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<sup>25</sup> According to the Family Educational Rights and Privacy Act ("FERPA"), only a student's ERH has the legal right to request, inspect, and review a student's educational records.

<sup>26</sup> 34 C.F.R. § 99.10(d)

<sup>27</sup> 34 C.F.R. § 99.11(b)

<sup>28</sup> 34 C.F.R. § 99.11(a)

<sup>29</sup> For additional information, visit [kids-alliance.org/records-requests](http://kids-alliance.org/records-requests).

the court, legal guardianship letters, or an adoption order. If you are the student's biological parent, you DO NOT need to show proof.

3. Get proof that the school or district received the records request in case you later have any difficulties getting the school or district to send the records. There are three ways to get proof:

- a. If you turn in the form in person, get a date stamp on the form and keep a copy as proof.
- b. If you turn in the form by fax: keep a copy of the fax transmission report confirming the fax was received.
- c. If you are sending your form by mail, send it by certified mail and keep the certified mail receipt as proof.



4. Mark your calendar for **5 business days** from the day you sent each request. By law, schools and districts only have 5 business days to respond to each records request they receive.

It is important to note when a deadline measures time in "business days" or "calendar days." A business day means any day from Monday to Friday and does not include weekends or public holidays. A calendar day is any day in a month, including weekends and holidays.

It is a good idea to call the school or district two days after submitting the request to make sure they got it and that they are planning on sending the records within the 5-day timetable.

5. If you have not received records by the 5<sup>th</sup> day, contact the school and ask that they send them to you immediately. If the school does not have the records you are asking for, get this in writing.



If the district is not responding, you may want to reach out to Neighborhood Legal Services of Los Angeles or any attorney specializing in education rights.

#### *6. Organize and review the records.*

Once you receive the records, organize by school year.<sup>30</sup> It can be helpful to use a binder with tabs for each school year. Within each tab, organize the documents by date from newest to oldest.

Read through the documents to make sure you received everything you asked for. You should make sure you received all report cards, attendance records, transcripts, behavior notes/suspension notices, and IEPs (if your student is in special education).

If your student is in special education, pay attention to the IEP dates to make sure the school held an IEP every year and reassessed the student every three years. More information on IEPs is provided below.

If any records are missing, contact the school and request the missing documents.



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<sup>30</sup> Typically, school years go from August of one year to July of the next.

# —WHAT TO DO WHEN A SCHOOL IS NOT FOLLOWING AN IEP—

*When a school does not follow your student's IEP or violates FAPE, you can file a compliance complaint to make the district follow the IEP.*

## What kinds of things are violations of FAPE?

IDEA protects your student from both “procedural” and “substantive” violations of FAPE. The type of violation is important because it determines what a court or the Department of Education will order the district to do or give you when it breaks the law.

- A “procedural” or “process” violation can happen when the school or district does not follow timelines, give you notice, or provide you with the documents that you request.
- A “substantive” violation can happen when the school or district fails to provide your student with an IEP that is going to help them receive educational benefits and meet their goals.

Below are examples of *substantive* violations previous courts found:

- A school district failed to provide proper modifications and accommodations to a student's IEP;<sup>31</sup>
- A student's IEP did not include enough language therapy services or access to a one-on-one aide;<sup>32</sup>
- A school failed to follow a student's behavior management plan and did not provide the math instruction required by the IEP;<sup>33</sup>
- A school district placed a student in a special education class instead of the regular education classroom required by his IEP.<sup>34</sup>

Below are examples of *procedural* violations of FAPE:

- A student's IEP did not include measurable goals or descriptions of services;<sup>35</sup>

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<sup>31</sup> D.S. v. Bayonne Board of Education, 602 F.3d 533 (3d Cir. 2010)

<sup>32</sup> L.R. v. Manheim Township School District, 540 F.Supp. 2d 603 (E.D. Pa. 2008)

<sup>33</sup> Van Duyn ex. Rel. v. Baker School District, 502 F.3d 811 (9th Cir. 2007)

<sup>34</sup> Daniel R.R. v. State Board of Education, 874 F.2d 1036 (5th Cir. 1989)

<sup>35</sup> Rodrigues v. Fort Lee Board of Education, 458 Fed. Appx. 124 (3d Cir. 2011)

- A school district committed three serious procedural violations demonstrating a *pattern* of procedural violations;<sup>36</sup>
- A school district failed to identify a student's disability after repeated behavioral issues and a referral for behavioral support services;<sup>37</sup>
- A school district failed to involve parents in the IEP process, provide parents with notice of changes to the IEP, and adhere to procedural timelines;<sup>38</sup>
- A school held an IEP meeting and drafted the IEP without the student's parent present.<sup>39</sup>

### **What Happens if the District Violates FAPE?**

When a school or district denies your student a FAPE by committing a substantive or procedural violation, a court or the Department of Education may require that the district give you "relief" or "damages." "Relief" or "damages" are terms that describe what the district has to do or give you to make things right.

Below are the types of relief that, depending on the violation, courts usually order:

- Compensatory services – a court will add up the number of service hours your student missed because of the district's violation and will order the district to make them up.
- Injunctive relief – a court will order the district to do something or stop doing something. The order usually means that the district has to follow your student's IEP as it is written.
- Compensatory damages – a court will sometimes require the district to reimburse you for any money or other expenses you spent giving your student the services that the district was supposed to give them.

<sup>36</sup> R.E. v. N.Y.C. Dep't of Educ., 694 F.3d 167 (2d Cir. 2012)

<sup>37</sup> School Board of City of Norfolk v. Brown, 769 F.Supp 2d 928 (E.D. Va. 2010)

<sup>38</sup> Fuhrmann on Behalf of Fuhrmann v. E. Hanover Board of Education, 993 F.2d 1031 (3d Cir. 1993)

<sup>39</sup> L.G. ex. Rel. E.G. v. Fair Lawn Board of Education, 486 Fed.Appx. 967 (3d Cir. 2012)

In the past, courts have been much more willing to force districts to give students compensatory services when there has been a substantive violation of FAPE.

A court will usually only order an “injunction” for a procedural violation. An “injunction” is when a court orders a district to do something or stop doing something. A procedural violation on its own is usually not enough of a reason for the court to order compensatory services, unless there are many procedural violations, or one violation is especially serious.<sup>40</sup>

### **What do you do if the school has violated the law by denying your student a FAPE?**

You can file a compliance complaint with the California State Department of Education (“CDE”) when you believe that the district has violated an education code or special education law.<sup>41</sup> An attorney can also file this for you.

**You must be sure to file your complaint within 1 year of when the violation happened.**<sup>42</sup> If you miss this deadline, CDE will likely reject your complaint.



To file a compliance complaint:

1. Write a letter describing your student’s situation. You should give as many details and facts as you can about what services you believe the district has not given your student, which timelines were not met, and which laws were violated. You should also explain what you want the CDE to do about the violations (see types of relief above). See **Appendix I** for a sample letter.

<sup>40</sup> R.E. v. N.Y.C. Dep’t of Educ., 694 F.3d 167 (2d Cir. 2012)

<sup>41</sup> Cal. Educ. Code § 56500.2; 34 C.F.R. § 300.151-152; More information about the CDE’s Uniform Complaint Process is found at <http://www.cde.ca.gov/re/cp/uc>.

<sup>42</sup> 34 C.F.R. § 300.153(c), Cal. Educ. Code §§ 56043(y), 56500.2(b)

2. Send your compliance complaint letter to:

Complaint Management and Mediation Unit  
Special Education Division  
California State Department of Education  
1430 N Street  
Sacramento, CA 95814

3. If you do not hear from CDE within 10 days, you should call 800-926-0648 to follow up. You can also fax CDE at 916-327-3704.

### **What happens after I file my complaint?**

Once you have filed your complaint, an investigator from the CDE will follow up on your complaint and come to a conclusion in writing of whether the district was “out of compliance” with the law or with your student’s IEP.

### **How long will it take to hear about my complaint?**

The law requires CDE to investigate and resolve every complaint within 60 days, unless your complaint involves a simple or urgent compliance issue. If a complaint is simple or urgent, you can request that CDE “fast track” their investigation. Examples of an urgent issues are:

- A student’s IEP requires that a bus bring the student to school, but the bus has not come for two days;
- A student needs an instructional aide and one has not been provided;
- A principal told a student’s parent not to bring them back due to behavior issues.

During CDE’s investigation, the district might ask you to try mediation to resolve your complaint. If you agree, the CDE will oversee this

process,<sup>43</sup> but it will also suspend its investigation of your complaint.<sup>44</sup>

### **What will a decision mean?**

If the CDE finds that the district is out of compliance, it will order the district to start following the law and can require the district to give your student compensatory services. The CDE might also order the district to turn in a “corrective action plan,” which explains the steps the district will take to make sure the issue does not happen again.

If CDE finds no violation, your complaint will be dismissed.

### **Can you appeal if you disagree with CDE’s decision?**

Yes. If you or the district disagree with CDE’s decision about how to handle your complaint, you can file a request for reconsideration within 35 days with the State Superintendent of Public Instruction. The Superintendent has 35 days to respond in writing.

The CDE will give you information on how to appeal its decision when it responds to your complaint.

### **Do you have to file my complaint with the state? Can you file my complaint with the district?**

You can also submit a compliance complaint to your school district’s superintendent of schools or director of special education.<sup>45</sup> All districts have a process known as the Uniform Complaint Procedure (“UCP”) so that they can respond to complaints.

The compliance complaint letter you write to the school district should have the same details and facts that you would put into a letter to the CDE, including as many details and facts as you can about what

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<sup>43</sup> 5 C.C.R. §§ 4660(a)(1)-(2)

<sup>44</sup> 5 C.C.R. § 4660(a)(3); The CDE’s Special Education Dispute Resolution Process is available at <https://www.cde.ca.gov/sp/se/qa/pseng.asp>.

<sup>45</sup> 5 C.C.R. § 4630(b)(2)

services you believe the district has not given your student, which timelines were not met, and which laws were violated. You should also ask for what you want the district to do about the violations.

Once the district gets your complaint, it has 60 calendar days to investigate and give you an answer. This deadline may only be extended with your written permission.<sup>46</sup>

The district is allowed to ask you to participate in mediation or alternative dispute resolution ("ADR"). You do not have to agree to this, and a district cannot make mediation mandatory.<sup>47</sup> Also, any mediation you do does not extend the district's 60-day timeline.

If you disagree with the district's decision, you can appeal to the CDE.



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<sup>46</sup> 5 C.C.R. § 4631(a)

<sup>47</sup> 5 C.C.R. § 4631(f)-(g)

## **—WHAT TO DO WHEN YOU DISAGREE WITH A SCHOOL OVER AN IEP—**

*When you disagree with the school about whether your student is eligible for special education services, what should go in their IEP, or how the IEP should be carried out, you may want to file for a due process hearing.*

### **What if you disagree with the IEP?**

If you disagree with a school's decision on your student's eligibility, placement, needs, or services, you or the school can ask for a due process hearing.<sup>48</sup> At a due process hearing, both you and the district have a chance to present evidence, call witnesses, and submit any reports or evaluations that back up your points.

Due process hearings take place at the Office of Administrative Hearings ("OAH") and are run by a state hearing officer who will hear your arguments and make a final decision on the issue. Both you and the district can bring an attorney to the hearing.

### **What happens to my student during the disagreement/hearing?**

During a due process hearing, your student is protected by "stay put," which means that the last IEP and placement you agreed to cannot be changed and must be followed until a decision is reached.<sup>49</sup>

### **Can you get a written copy of the district's decision on the IEP so that you can use it to file for due process?**

Yes. Before you file for due process, the school district has to give you written notice of what it has decided to do or not do on your student's IEP and why.<sup>50</sup> If they do not, they will have committed a procedural and substantive rights violation.<sup>51</sup>

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<sup>48</sup> 34 C.F.R. § 300.507(a); Cal Educ. Code § 56501(a)

<sup>49</sup> 20 U.S.C. § 1415(j); Cal. Educ. Code § 56505(d)

<sup>50</sup> 34 C.F.R. § 300.503(a)

<sup>51</sup> Union School District v. B. Smith, 15 F.3d 1519 (9th Cir. 1994)



This is called “prior written notice,” and it means that the district has to tell you within a “reasonable time” before it begins or refuses to:

- Change your student’s eligibility category or decide that your student is not eligible for special education anymore;
- Start or change an evaluation;
- Change your student’s placement; or
- Change your student’s IEP.

### **What if English is not my primary language?**

This notice must be translated into your primary language<sup>52</sup> and have:

- A full explanation of all of your student’s rights, including the right to file for due process;
- An explanation of the action the district has decided to take or not take and the other options the district thought about;
- A description of what facts helped make the decision; and
- A statement of your rights as the education rights holder.

### **Are there other options besides a hearing?**

If you are in a dispute with your school or district but would like to try to work it out before or instead of having a due process hearing, you can also request a non-attorney mediation conference. Mediation gives you the chance to work out your conflict with a neutral and experienced mediator from OAH. It can be faster, easier, and less expensive than a due process hearing.

Both you and the district can bring an attorney to mediation, unless you have not requested a due process hearing yet. In that case, neither you nor the district can bring an attorney. Non-attorney mediation is also available even if you have requested a due process hearing if both you and the district agree to it.

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<sup>52</sup> Notice must be translated unless translation is clearly unfeasible.

To request an OAH mediation, submit the form found in **Appendix K** to:

Office of Administrative Hearings  
Special Education Unit  
2349 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833-4231  
Fax: 916-263-0890

Once you make the request, mediation must be scheduled within 15 days and completed within 30 days.

If you do not want a mediation or the mediation is not successful, you can still decide to file for due process.



### **How do you file for a due process hearing?**

While you can file for due process yourself, you can also ask an attorney for help with filing and with representing your student at the hearing. Schools are also able to file for due process, and they are often represented at the hearings by an attorney. California law does not let students file for due process, unless they are emancipated or wards of the court.<sup>53</sup>

Due process usually involves the following steps:

- Request the due process hearing;
- Resolution Meeting;
- Mediation (optional);
- Due process hearing; and
- The right to an appeal.

#### **(1) Requesting the Due Process Hearing**

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<sup>53</sup> Cal. Educ. Code § 56501(a)

The first step is to file your due process complaint with OAH. Mail or fax a written letter alleging the facts supporting your position, the law or education code sections supporting your position, and a proposed remedy to:

Office of Administrative Hearings  
Special Education Division  
2349 Gateway Oaks Drive  
Sacramento, CA 95833  
Fax: 916-376-6319  
Phone: 916-263-0880.<sup>54</sup>

See **Appendix K** for a form you can use to request a hearing. Make sure to include specific information about how the district violated its FAPE obligations to your student as well as contact information for you and the school.

**It is very important that you file for due process within 2 years from the date you knew or should have known about the issue.**

This deadline does not apply to situations in which the district told you that it resolved an issue but did not, or where the district did not give you information that it legally had to.<sup>54</sup>

## (2) Resolution Meeting

After you file your complaint, the school has 15 days to schedule a resolution meeting with you and relevant members of the IEP team. At this meeting, you and the school will try to solve the issues you brought up in your complaint. You or the school can choose to waive this meeting if you both agree.

The school must send someone to the meeting with the power to make decisions in your case. The school can only bring an attorney to the meeting if you also bring one.

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<sup>54</sup> 20 U.S.C. §§ 1415(b)(6); (f)(3)D); 34 C.F.R. §§ 300.507(a)(2), 300.511(f); Cal. Educ. Code § 56505(1)

### (3) Mediation (optional)

Unlike non-attorney led mediation, mediation after a due process request is filed is binding if an agreement is reached and can involve attorneys. Mediation is optional, but it will be automatically offered to you once you file for due process.



If you agree to mediation, it must be scheduled within 15 days and completed within 30 days of the request.

### (4) Due Process Hearing

The due process hearing is a formal procedure where both you and the school district present a case to the OAH hearing officer. It runs like a mini-trial.

Both you and the school district can call and question witnesses, present evidence, have an attorney, have your student present, and record the hearing.

It is important to pay attention to who has the “**burden of proof**” at the hearing. If you file for due process, then you have the burden of proof. This means that you have the responsibility of proving that the services the district offered were inadequate. If the school files, they have to prove the services they provided your student were adequate.

### (5) Right to an Appeal

Both you and the district have the right to appeal a decision from OAH in either federal or state court. You must file this appeal within 90 days of the OAH hearing decision.

# —WHAT TO DO WHEN A SCHOOL DISCRIMINATES AGAINST YOUR STUDENT BECAUSE OF A DISABILITY—

*When a district or school does not give a student with a disability an educational benefit that it gives to nondisabled students, you can file a discrimination complaint with CDE's Office for Civil Rights ("OCR").*

## When can you file a complaint for discrimination?

Schools that get money from the government cannot discriminate against students with disabilities by keeping them from participating in a school program or activity. If you think a school is discriminating against your student because of their disability, you can file a complaint with the Office for Civil Rights ("OCR") under Section 504.<sup>55</sup>

Common special education issues that are raised in OCR complaints include:

- Problems in how the school is built, such as a lack of wheelchair-accessible ramps or elevators for students in wheelchairs;
- Lack of access to programs required by an IEP or 504 plan;
- Failure to implement an accommodation that was included in an IEP or 504 plan.

Your student does not have to qualify for special education or Section 504 services to file an OCR complaint. For example, you can also file a complaint with OCR if your student has behavioral problems and is excessively suspended from school (i.e. for a total of 10 days or more) without the school first meeting to see if the behavior is caused by a disability.

## How you do file an OCR discrimination complaint?

To file an OCR complaint:

1. Fill out the form attached in **Appendix J** or use the link found on the attached form to fill it out on your computer. **You must file your complaint within 180 days of when the discrimination**

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<sup>55</sup> 34 C.F.R. § 104.4(a)

**happened**, unless this deadline is extended by an OCR official.

2. Once you file your complaint, OCR will let you know that it has received it. As soon as you get this notice from OCR, you have 20 days to give them written permission to investigate your complaint or OCR will close your complaint.
3. If OCR investigates and finds that the school is out of compliance with the law, they will send out a "Letter of Finding," explaining how the school failed to meet legal standards and what it needs to do. The school can either fix the problem or risk being monitored by OCR, having funding withheld, or being referred to the Department of Justice for legal action.

### **Can I file a discrimination complaint with the CDE instead?**

Yes. If you think the school or district is discriminating against your student because of their disability, you can also file a CDE complaint using the "local complaint investigation process."<sup>56</sup>

**You must file this type of complaint within 6 months of either (1) when the discrimination actually happened to your student or (2) when you learned that the discrimination happened.**

The district superintendent can extend this deadline by 90 days if you submit a written request with a good reason for the extension.

The process for this type of complaint is the same Uniform Complaint Procedure described above. Write a letter to the school district that includes as many details and facts as you can about how the school is discriminating against your student, when the discrimination took place, and who was involved. Once the district gets your complaint, it has 60 calendar days to investigate and give you an answer. This deadline may only be extended with your written permission.<sup>57</sup>

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<sup>56</sup> 5 C.C.R. §§ 4600(c), 4630(b)

<sup>57</sup> 5 C.C.R. § 4631(a)

# APPENDIX

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## —APPENDIX A—

### ***SPECIAL EDUCATION GLOSSARY OF COMMON ACRONYMS***

*Special education law uses a lot of acronyms. Below is a glossary to help you understand education-related documents or meetings.*

#			
504	Section 504 of the Rehabilitation Act		
A			
ADA	Americans with Disabilities Act	APE	Adaptive Physical Education
ADD/ADHD	Attention Deficit/Attention Deficit Hyperactivity Disorder	AS	Asperger's Syndrome
ADR	Alternative Dispute Resolution	ASD	Autism Spectrum Disorder
B			
BD	Behavioral Disorder	BIP	Behavioral Intervention Plan
C			
CDE	California Department of Education	CF	Cystic Fibrosis
CAHSEE	California High School Exit Exam	CP	Cerebral Palsy
D			
DSS	Department of Social Services	DS	Down Syndrome
E			
EC	Education Code	ERMHS	Educationally Related Mental Health Services
EI	Early Intervention	ESSA	Every Student Succeeds Act
EIP	Early Intervention Program		



F			
FAA	Functional Analysis Assessment	FERPA	Family Education Rights and Privacy Act
FAPE	Free Appropriate Public Education	FHR	Fair Hearing Request
FBA	Functional Behavior Assessment		
G			
GE	General Education		
H			
HFA	High Functioning Autism	HH	Hard of Hearing
I			
IA	Instructional Assistant	IEP	Individualized Education Plan (or Program)
I/DD	Intellectual and Developmental Disabilities	ITP	Individualized Transition Plan
IDEA	Individuals with Disabilities Education Act		
L			
LEA	Local Educational Agency	LRE	Least Restrictive Environment
LEP	Limited English Proficiency		
M			
MDR	Manifestation Determination Review		
N			
NCLB	No Child Left Behind Act	NPA	Non-Public Agency
NOA	Notice of Action	NPS	Non-Public School
NOR	Notice of Resolution		

O			
OAH	Office of Administrative Hearings	OSEP	U.S. Office of Special Education Programs
OCR	U.S. Office for Civil Rights	OT/PT	Occupational Therapy/Physical Therapy
OEO	CDE Office of Equal Opportunity		
P			
PBIS	Positive Behavior Intervention and Supports	PS	Program Specialist
PBS	Positive Behavior Supports	PSE	Post-secondary education
PDS/NOS	Pervasive Developmental Disorder/Not Otherwise Specified	PWS	Prader-Willi Syndrome
POS	Purchase of Service		
R			
RSP	Resource Specialist Program	RTI	Response to Intervention
S			
SC	Service Coordinator	SLD	Specific Learning Disability
SDC	Special Day Class	SLP	Speech and Language Pathologist
SELPA	Special Education Local Plan Area	SPED	Special Education
SES	Supplementary Education Services	SST	Student Study Team
SIR	Special Incident Report		
T			
TA	Teacher's Aide/Assistant	TBI	Traumatic Brain Injury

**—APPENDIX B—**

**REQUEST FOR STUDENT EDUCATION RECORDS**

ERH Name:	
Address:	
City, State, Zip:	
Phone/Email:	

Student's Name:			
Student's D.O.B.:		Grade Level:	
School:			
District:			

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

Dear Records Clerk,

I am the education rights holder for the above-mentioned child. I hereby request all general education and special education records. The requested records include, but are not limited to:

- All special education records, including all Individualized Education Programs, assessment referrals, evaluations, assessments, testing protocols, and service records;
- All general education records, including cumulative records, attendance records, progress reports, report cards, transcripts, and test scores;
- All discipline records, including referral slips, suspension records and notices, recommendations for expulsion, and hearing transcripts;
- All correspondence, including communication logs, phone calls, emails, and inter-office memos;
- All health records, including health reports, medication records, and evaluations; and
- Any and all other documents related to my student's education.

Please waive all fees associated with the duplication of these records, as such fees would act to deny me access to these records. Please provide a physical copy of all records to the address included above. I understand that by law, these records should be provided to me within 5 business days. Cal. Educ. Code §§ 49069, 56504; 17 CCR § 52164(b).

Thank you for your attention and cooperation regarding this matter. If you have any questions, do not hesitate to contact me at the number listed above.

ERH Signature: \_\_\_\_\_

ERH Name: \_\_\_\_\_

**—APPENDIX C—**

**REQUEST FOR SPECIAL EDUCATION EVALUATION**

ERH Name:			
Address:			
City, State, Zip:			
Phone/Email:			

Student's Name:			
Student's D.O.B.:		Grade Level:	
School:			
District:			

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

Dear Principal/Special Education Coordinator,

I am the education rights holder for the above-mentioned student. I am requesting that my student receive comprehensive psycho-educational assessments to determine academic and behavioral strengths and weaknesses and to appropriately address my student's educational and special education service needs.

Assessments are needed at this time because my student has the following academic and/or behavioral needs:

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In compliance with this request, please forward a proposed assessment plan to the address included above within fifteen (15) calendar days. Cal. Educ. Code §§ 56043(a) and 56321(a). I would also like to receive copies of any assessment reports and protocols when available or at least five (5) days prior to any Individualized Education Program meeting that is scheduled.

Thank you for your attention and cooperation regarding this matter. If you have any questions, do not hesitate to contact me at the number listed above.

ERH Signature: \_\_\_\_\_

ERH Name: \_\_\_\_\_

## REQUEST FOR SPECIAL EDUCATION REASSESSMENT/REEVALUATION

ERH Name:			
Address:			
City, State, Zip:			
Phone/Email:			

Student's Name:			
Student's D.O.B.:		Grade Level:	
School:			
District:			

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

Dear Principal/Special Education Coordinator,

I am the education rights holder for the above-mentioned child. I am requesting that my student be reassessed for special education eligibility and/or services. My student continues to have difficulty learning, and I believe reassessment is necessary to find the best way to address these needs.

Specifically, I am concerned that my student continues to have the following academic and/or behavioral issues:

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In compliance with this request, please forward a proposed assessment plan to the address included above within fifteen (15) calendar days. Cal. Educ. Code §§ 56043(a) and 56321(a). I would also like to receive copies of any assessment reports and protocols when available or at least five (5) days prior to any Individualized Education Program meeting that is scheduled.

Thank you for your attention and cooperation regarding this matter. If you have any questions, do not hesitate to contact me at the number listed above.

ERH Signature: \_\_\_\_\_

ERH Name: \_\_\_\_\_

**—APPENDIX D—**

**REQUEST FOR AN INDEPENDENT EDUCATIONAL EVALUATION**

ERH Name:			
Address:			
City, State, Zip:			
Phone/Email:			

Student's Name:			
Student's D.O.B.:		Grade Level:	
School:			
District:			

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

Dear Principal/Special Education Coordinator,

I am the education rights holder for the above-mentioned student. My student was evaluated for special education services in \_\_\_\_ / \_\_\_\_ (month/year). I am writing to request an Independent Educational Evaluation at public expense, as I disagree with the assessments administered by the district for the following reasons:

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I would like this Independent Educational Evaluation to be done as soon as possible so that we can fully address my student's academic and/or behavioral needs. Cal. Educ. Code § 56329(b), 34 C.F.R. Section 300.502. As you know, the law requires you to respond requests for Independent Educational Evaluations without "unnecessary delay."

Thank you for your attention and cooperation regarding this matter. If you have any questions, do not hesitate to contact me at the number listed above.

ERH Signature: \_\_\_\_\_

ERH Name: \_\_\_\_\_

## —APPENDIX E—

### SPECIAL EDUCATION ELIGIBILITY CATEGORIES

#### DEFINITIONS OF 13 DISABILITY CATEGORIES UNDER IDEA

(c) **Definitions of disability terms.** The terms used in this definition are defined as follows:

(1) **Autism**

(i) **Autism** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (b)(4) of this section.

(ii) A child who manifests the characteristics of "autism" after age 3 could be diagnosed as having "autism" if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) **Deaf-blindness** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) **Deafness** means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

(4) **Emotional disturbance** is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(5) **Hearing impairment** means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(6) **Mental retardation** means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

(7) **Multiple disabilities** means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

(8) **Orthopedic impairment** means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) **Other health impairment** means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that-

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and

(ii) Adversely affects a child's educational performance.

(10) **Specific learning disability** is defined as follows:

(i) **General.** The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.



(ii) **Disorders not included.** The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) **Speech or language impairment** means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(12) **Traumatic brain injury** means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(13) **Visual impairment including blindness** means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

(Authority: 20 U.S.C. 1401(3)(A) and (B); 1401(26))

**—APPENDIX F—**

**REQUEST FOR FUNCTIONAL BEHAVIORAL ASSESSMENT (FBA)**

ERH Name:			
Address:			
City, State, Zip:			
Phone/Email:			

Student's Name:			
Student's D.O.B.:		Grade Level:	
School:			
District:			

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

Dear Principal/Special Education Coordinator,

I am the education rights holder for the above-mentioned student, who currently has an IEP and has been experiencing the following ongoing challenges in the area of behavior:

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I request that the above-mentioned school and/or district provide my student with a Functional Behavioral Assessment (FBA) to be performed by a qualified behaviorist to determine current needs are and develop or update a positive behavioral intervention plan (BIP) and other related services to address the concerns I have raised.

I look forward to receiving an Assessment Plan within the next 15 days for my review and to our IEP team meeting within 60 days of my consent to the Assessment Plan.

Please contact me with your proposed dates for the IEP so that I can prepare. Also, please provide me with all of my student's most recent assessment reports and protocols at least 5 days prior to the meeting.

Thank you for your attention and cooperation regarding this matter. If you have any questions, do not hesitate to contact me at the number listed above.

ERH Signature: \_\_\_\_\_

ERH Name: \_\_\_\_\_

**—APPENDIX G—**  
**REQUEST FOR IEP TEAM MEETING**

ERH Name:	
Address:	
City, State, Zip:	
Phone/Email:	

Student's Name:			
Student's D.O.B.:		Grade Level:	
School:			
District:			

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

Dear Principal/Special Education Coordinator,

I am the education rights holder for the above-mentioned special education student. I am requesting that an IEP meeting be held for my student as soon as possible and in no more than 30 days, as is required by law. Cal. Educ. Code § 56343.5.

This meeting is necessary due to the following academic and/or behavioral concerns I have regarding my student's current IEP and services:

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I request that the following people attend the IEP and that the meeting be scheduled at a mutually agreeable time and place for all participants:

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Please contact me with your proposed dates for the IEP so that I can prepare. Also, please provide me with all of my student's most recent assessment reports and protocols at least 5 days prior to the meeting.

Thank you for your attention and cooperation regarding this matter. If you have any questions, do not hesitate to contact me at the number listed above.

ERH Signature: \_\_\_\_\_

ERH Name: \_\_\_\_\_

**—APPENDIX H—**

**REQUEST FOR SUPPORT SERVICES UNDER SECTION 504**

ERH Name:			
Address:			
City, State, Zip:			
Phone/Email:			

Student's Name:			
Student's D.O.B.:		Grade Level:	
School:			
District:			

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

Dear Principal/Special Education Coordinator,

I am the education rights holder for the above-mentioned student. Although my student has not been found eligible for special education services, they have a documented disability and need supportive services to succeed in school. It is my understanding that the accommodations my student needs are covered under Section 504 of the Rehabilitation Act. I would like to have my student assessed for services under Section 504.

I am concerned because my student has the following disability and has been having the following academic and/or behavioral issues:

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Please contact me within 10 days to meet and discuss the accommodations and modifications a Section 504 plan could provide and what assessments must be completed to establish eligibility for services.

Thank you for your attention and cooperation regarding this matter. If you have any questions, do not hesitate to contact me at the number listed above.

ERH Signature: \_\_\_\_\_

ERH Name: \_\_\_\_\_

## —APPENDIX I—

### SPECIAL EDUCATION COMPLIANCE COMPLAINT

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

Complaint Management and Mediation Unit  
Special Education Division  
California State Department of Education  
1430 N. Street, Suite 2401  
Sacramento, CA 95814

RE:

ERH Name:	
Address:	
City, State, Zip:	
Phone/Email:	

Student's Name:			
Student's D.O.B.:		Grade Level:	
School:			
District:			

Dear Sir or Madam:

I am the education rights holder for the above-mentioned student. This is a special education compliance complaint. I feel that the \_\_\_\_\_ (school district's name) is out of compliance with federal and state special education laws.

I. Statement of Facts  
(Check all that apply)

\_\_\_\_\_ I requested an assessment on \_\_\_\_/\_\_\_\_/\_\_\_\_ (date) to determine whether my student had a learning disability and the school failed to provide me with an assessment plan within 15 days.

\_\_\_\_\_ My student was assessed for a learning disability but no Individualized Education Program (IEP) meeting was held within 60 days to determine eligibility and/or services.

\_\_\_\_\_ I requested education records on \_\_\_\_/\_\_\_\_/\_\_\_\_ (date) for my student and records were not provided within the 5-day timeline.

Additional comments:

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II. Specific Issues of Non-Compliance  
(Check all that apply)

- \_\_\_\_\_ School district has failed to identify and assess a student that may have a disability. Referrals for special education assessment were ignored. [Non-compliance with the child-find requirement, California Education Code § 56300, 56301, 56302].
- \_\_\_\_\_ School district has failed to assess the student in all areas of suspected disability. [Failure to assess, California Education Code § 56321(f)].
- \_\_\_\_\_ School district has failed to provide an assessment plan within the 15-day timeline. [California Education Code § 56321(a)].
- \_\_\_\_\_ School district has failed to hold an IEP as a result of an assessment within the 60-day timeline. [California Education Code § 56344(a)].
- \_\_\_\_\_ The student already received special education services and the education rights holder requested an IEP meeting, but the school district has failed to hold an IEP within 30 days of the request. [California Education Code § 56343.5].
- \_\_\_\_\_ School district has failed to send records as a result of a records request within the 5-day timeline. [California Education Code § 56504].

Additional comments:

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III. Resolution  
(Check all that apply)

In order to resolve this complaint, I am asking for the following remedies:

- \_\_\_\_\_ Order the school to assess the student for suspected disabilities.
- \_\_\_\_\_ Order the school to send an assessment plan to the family.
- \_\_\_\_\_ Order the school to hold the IEP.

\_\_\_\_\_ Order compensatory services for the time lost without services.

\_\_\_\_\_ Order the school to send the records requested.

\_\_\_\_\_ Add any further resolutions:

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Because my complaint involves a matter which calls for direct intervention by the State Department of Education pursuant to Title 5 of the California Code of Regulations Section 4650(a)(vii)(C), I have not filed a complaint with the local education agency. Rather, I request direct state intervention with this matter.

I ask for immediate investigation and resolution, as my student cannot afford the continued failure of the district to provide the needed academic support.

Thank you for your attention and cooperation regarding this matter. If you have any questions, do not hesitate to contact me at the number listed above.

ERH Signature: \_\_\_\_\_

ERH Name: \_\_\_\_\_

## —APPENDIX J—

### OCR COMPLAINT

## United States Department of Education Office for Civil Rights

### DISCRIMINATION COMPLAINT FORM

**You do not have to use this form to file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR). You may send OCR a letter or e-mail instead of this form, but the letter or e-mail must include the information in items one through nine and item twelve of this form. If you decide to use this form, please type or print all information, using additional pages if more space is needed. An on-line version of this form, which can be submitted electronically, can be found at:**

**<http://www.ed.gov/about/offices/list/ocr/complaintintro.html>.**

Before completing this form, please read all information contained in the enclosed packet including: Information About OCR's Complaint Resolution Procedures, Notice of Uses of Personal Information, and the Consent Form.

1. Name of person filing this complaint:

**Last Name:** \_\_\_\_\_ **First Name:** \_\_\_\_\_ **Middle Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Home Telephone:** \_\_\_\_\_ **Work Telephone:** \_\_\_\_\_

**E-mail Address:** \_\_\_\_\_

2. Name of person discriminated against (if **other** than person filing). If the person discriminated against is age 18 or older, we will need that person's signature on this complaint form and the consent/release form before we can proceed with this complaint. If the person is a minor, and you do not have the legal authority to file a complaint on the student's behalf, the signature of the child's parent or legal guardian is required.

**Last Name:** \_\_\_\_\_ **First Name:** \_\_\_\_\_ **Middle Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Home Telephone:** \_\_\_\_\_ **Work Telephone:** \_\_\_\_\_

**E-mail Address:** \_\_\_\_\_

3. OCR investigates discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education and against public educational entities and libraries that are subject to the provisions of Title II of the Americans with Disabilities Act. Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

**Name of Institution:** \_\_\_\_\_



**Address:** \_\_\_\_\_  
**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_  
**Telephone:** \_\_\_\_\_ **E-mail Address:** \_\_\_\_\_  
**Department/School:** \_\_\_\_\_

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, age or retaliation. Please indicate the basis of your complaint:

☐ Discrimination **based on race (specify)**

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☐ Discrimination **based on color (specify)**

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☐ Discrimination **based on national origin (specify)**

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☐ Discrimination **based on sex (specify)**

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☐ Discrimination **based on disability (specify)**

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☐ Discrimination **based on age (specify)**

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☐ **Retaliation because you filed a complaint or asserted your rights (specify)**

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☐ **Violation of the Boy Scouts of America Equal Access Act (specify)**

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5. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved and, why you believe the discrimination was because of race, disability, age, sex, etc. Also please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

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6. What is the most **recent date** you were discriminated against? **Date:**\_\_\_\_\_

7. If this date is **more than 180 days ago**, you may request a waiver of the filing requirement.

☐ I am requesting a waiver of the 180-day time frame for filing this complaint. Please explain why you waited until now to file your complaint.

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8. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing? ☐ **YES** ☐ **NO**

If you answered **yes**, please describe the allegations in your grievance or hearing, identify the date you filed it, and tell us the status. If possible, please provide us with a copy of your grievance or appeal or due process request and, if completed, the decision in the matter.

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9. If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the other agency or court.

**Agency or Court:** \_\_\_\_\_

**Date Filed:** \_\_\_\_\_ **Case Number or Reference:** \_\_\_\_\_

**Results of Investigation/Findings by Agency or Court:**

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10. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information **is not required**, but it will be helpful to us.

**Last Name:** \_\_\_\_\_ **First Name:** \_\_\_\_\_ **Middle Name:** \_\_\_\_\_

**Home Telephone:** \_\_\_\_\_ **Work Telephone:** \_\_\_\_\_

11. What would you like the institution to do as a result of your complaint — what remedy are you seeking?

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12. We cannot accept your complaint if it has not been signed. Please sign and date your complaint below.

(Date) (Signature)

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(Date) (Signature of person in Item 2)

Please mail the completed and signed Discrimination Complaint Form, your signed consent form and copies of any written material or other documents you believe will help OCR understand your complaint to the OCR Enforcement Office responsible for the state where the institution or entity about which you are complaining is located. You can locate the mailing information for the correct enforcement office on OCR's website at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>.

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**—APPENDIX K—**

**OAH MEDIATION OR HEARING REQUEST**

ERH Name:	
Address:	
City, State, Zip:	
Phone/Email:	

Student's Name:	
Student's D.O.B.:	
Grade Level:	
School:	
District of Attendance:	
District of Residence:	

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

Office of Administrative Hearings  
Special Education Division  
2349 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833-4231  
Fax: 916-263-0890

Dear Sir or Madam:

This letter is to request a:  
(Circle one)

A. Pre-hearing mediation conference

B. Due process hearing

C. Due process hearing and mediation

1. Other than the district named above, is there any other school district or public agency that is responsible for providing services for the student and should be party to the hearing?

(Circle one)                YES    or    NO

If YES, provide the name of the party:

\_\_\_\_\_

\_\_\_\_\_

2. Explain why the hearing is being requested:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

3. Explain a resolution you believe would solve the problem:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

Thank you for your attention and cooperation regarding this matter. If you have any questions, do not hesitate to contact me at the number listed above.

ERH Signature: \_\_\_\_\_

ERH Name: \_\_\_\_\_