

## ALTERNATIVE DISPUTE RESOLUTION (ADR) AND RESOLUTION SESSIONS

### *Alternative Dispute Resolution Defined*

The term Alternative Dispute Resolution (ADR) describes a range of processes with the singular purpose of supporting parties to resolve disputes before or separate from a more formal mediation process.

According to The Center for Appropriate Dispute Resolution in Special Education (CADRE), these processes differ in formality and may range from informal discussion to facilitated negotiation, with the common expectation that all parties understand and agree to a singular process. Also common to all ADR processes is the concept of creating a settlement event or shared experience that increases the likelihood of resolution. Within the educational setting, one strategy for creating a settlement event or shared experience is referred to as the resolution session, also referred to as a resolution meeting.

The graphic below was adapted from the CADRE Continuum and provides a visual representation of the placement of the resolution session within the dispute and alternative dispute resolution processes:

Adapted from the CADRE Continuum <small>www.cadreworks.org</small>	Continuum of Dispute Resolution Processes and Practices															
	Continuum of Alternative Dispute Resolution Processes															
Stages of Conflict	Stage I			Stage II			Stage III			Stage IV			Stage V			
Levels of Intervention	Prevention			Disagreement			Conflict			Procedural Safeguards			Legal Review			
Assistance/ Intervention Options	Family Engagement	Parent and Staff Training	Staff Collaboration	Consultation with SELPA Program Specialist	Parent/Staff Phone Call	Reconvene an IEP Meeting	SELPA Facilitated IEP	Third Party Consultation	Proactive Resolution Session	Resolution Session	Mediation	State Complaint Procedures	Due Process Hearing	Hearing Appeal	Litigation	Legislation
Dimensions that help clarify placement of options along the continuum	<div style="display: flex; justify-content: space-between; align-items: center;"> <span>← Third Party Assistance</span> <span>→ Third Party Intervention</span> </div> <div style="display: flex; justify-content: space-between; align-items: center; margin-top: 5px;"> <span>← Decision Making by Parties</span> <span>→ Decision Making by Third Party</span> </div> <div style="display: flex; justify-content: space-between; align-items: center; margin-top: 5px;"> <span>← Interest-Based</span> <span>→ Rights-Based</span> </div> <div style="display: flex; justify-content: space-between; align-items: center; margin-top: 5px;"> <span>← Informal and Flexible</span> <span>→ Formal and Fixed</span> </div>															

### *Resolution Session Defined*

As referenced in the previous section, a resolution session is one ADR option afforded to parent(s)/guardian(s) and schools in order to resolve IEP-related disputes. According to the US

Department of Education Office of Special Education and Rehabilitative Services (OSERS), the purpose of the resolution session is to allow the parent(s)/guardian(s) to discuss the facts of their complaint and provide the District with an opportunity to resolve the dispute locally (without third-party decision making). This allows parties to achieve a prompt and early resolution and potentially eliminate the need for a more formal mediation or due process hearing. The resolution session is separate from the IEP process and while some mutually agreeable solutions may impact the IEP, there is also an opportunity to present unique and creative solutions to areas of disagreement. A resolution session may also support rebuilding relationships and trust between parties.

### ***Resolution Session: Types***

Resolution sessions are offered in the following three scenarios; each of which are explained in more detail below:

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| 1. In response to a <b>due process filing</b> with the Office of Administrative Hearings (OAH) by a parent/guardian. | 2. In response to a <b>state complaint filing</b> with the California Department of Education (CDE). | 3. To <b>proactively resolve a conflict</b> which cannot be resolved through the IEP process. |
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#### **1. In Response to a Due Process Filing**

The District is required to offer a resolution session in response to a due process filing by parent(s)/guardian(s); however it is not required if the District files for due process. The District must formally offer the resolution session through a written letter and arrange for the session to be held within 15 days of receiving the due process complaint. The District has 30 days after the parent(s)/guardian(s) file their complaint to try to come to a resolution agreement with the student’s parent(s)/guardian(s). After the 30 days have passed, if the parties do not settle the case, a judge must conduct a hearing.

It is recommended that resolution sessions be scheduled in a timely manner and held at a time and location reasonably convenient to both parties. If parent(s)/guardian(s) cannot attend the proposed resolution session dates, the District should continue to work with the parent(s)/guardian(s) to determine a mutually agreeable date within the required 15-day timeline.

It should be noted that a resolution session is a voluntary method of resolving a dispute and may not be used to delay the rights of families to a due process hearing. Therefore, if the District has not resolved the due process complaint to the satisfaction of the parent(s)/guardian(s) within 30 days of the receipt of the due process complaint, the due process hearing may occur.  
(34 C.F.R. § 300.510(b)(1))

A faster timeline is required in some cases involving student discipline issues or where the District wants to change a student’s school because it believes that the student is in danger of hurting themselves or others. These are called “expedited cases.” In an expedited case, the District has

only 7 days to hold a resolution meeting instead of 15. The District will also only have 15 days to try to resolve issues that are expedited instead of 30 days.

Pursuant to 34 C.F.R. section 300.510(a)(3), there are two occasions when a resolution meeting need not occur:

- When the parent(s)/guardian(s) and the District agree in writing to waive the meeting; and
- When the parent(s)/guardian(s) and the District agree in writing to use the mediation process described in 34 C.F.R. § 300.506 to resolve the due process complaint.

If the parent(s)/guardian(s) wish to waive the resolution session, it is required that the school be notified in writing of this request. The resolution session may be waived if both parties are in agreement. If this is the case, OAH requires that written documentation or a “waiver” of the resolution session be signed by both parties and submitted to OAH.

## **2. In Response to a State Complaint**

A state complaint is a formal request to the California Department of Education (CDE) to investigate allegations of noncompliance with special education laws, federal or state. The following guidance is provided to parent(s)/guardian(s) and the District in response to the filing of a state complaint:

*“Complainants and district staff are encouraged to resolve this matter at the local level by using an alternative dispute resolution process, alternative resolution method, or any other local resolution option [which may include, but is not limited to, a resolution session]. A successful resolution at the local level may lead to the withdrawal of the complaint, rendering further state investigation unnecessary.*

There is no timeline nor is there a requirement to offer a resolution session in response to a state complaint. Per the CDE, the timeline for the complaint investigation process is approximately 60 days. Therefore, if desired, the District is encouraged to offer a resolution session as soon as possible upon receipt of the complaint in order to complete the session prior to the end of the investigation period.

## **3. Proactive Resolution Session**

A resolution session may also be offered proactively, without the filing of a due process or state complaint, when attempts to resolve disputes within the IEP process have been unsuccessful. There are no specific timeline requirements for a proactive resolution session, however all other procedural elements are the same as when offered in response to a due process or state complaint.

### ***Additional Information***

For additional information, including specific steps and requirements related to the ADR or resolution session processes please contact the Special Education Local Plan Area (SELPA) Office.