

# Due Process Webinar

special education



The Law Offices of Thomas Nelson is located in San Diego and exclusively practices Special Education Law. Mr. Nelson frequently speaks on parent's rights under the Federal Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act.

**Presented by...**

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# Disputes Generally

**Try to work out disputes through IEP meetings**

***At minimum, this can help make a good record (tape record meeting- Give 24 hours notice)***

# Compliance Complaint/Due Process Comparison

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## Compliance Complaint-

**District has not followed special education procedures or has not implemented what is already specifically written into a student's IEP.**

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# Compliance Complaint/Due Process Comparison

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## **Due Process- Factual Issue (Appropriateness) Requiring Evidence**

**Common disagreements arise in regard to:**

**Improper - Conducting/Reviewing Assessments, IEP  
meeting creating baselines, goals, service and  
placement**

**Violating the rules surrounding the process- Parent  
participation, consent, notice, timelines, etc.  
The district failing to fulfill what they agreed to.**

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# Compliance Complaint Procedures

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- **File a compliance complaint with the CDE**
- **Fully describe your complaint, including which parts of the law have been violated and the basis for your request.**
- **CDE has 60 calendar days from receipt of the complaint to carry out any necessary investigation and to resolve the complaint.**

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# Due Process Procedures

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**Factual Dispute, often focusing on the term “appropriate!”**

**Your complaint should be specific. Include the following:**

**A description of the problems, disputes or disagreements with enough of the facts to clearly describe the problem with a description of the proposed resolution.**

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- **Familiarize yourself with the *legal standards* for the IEP services or placement you hope to obtain along with the proof you need to support those legal standards.**
- **Proof is usually in the form of documents and witnesses. You must provide those to the District and hearing officer a certain amount of time before the hearing.**
- **Often times you will need an expert!**

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## **Resolution Session-**

**The district must offer you the opportunity to participate in a pre-hearing resolution session. Both sides may waive the resolution session in writing and agree to use mediation instead.**

## **Mediation Conference-**

**OAH will provide a mediator to sit down with you and the district before a due process hearing is held to try to resolve the complaint, The meeting is confidential. The mediator has no power to force either side to do anything, but only tries to help you and the district reach an agreement.**

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## Stay Put-

**Except in rare circumstances, your child must remain in his current educational placement and have his *current* agreed upon IEP fully implemented (including all related services) from the time you request a hearing until the due process hearing proceedings (and court appeals, if any) are completed.**

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# Solutions

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**The most common HO orders for the School District's failure to provide FAPE include:**

**Independent Assessments**

**Compensatory Education**

**Reimbursement for placement/services**

**Change in programming- Goals, Services, Placement**

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# Due Process Procedures

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**If you are successful at the due process hearing and you were represented by an attorney, the attorneys' fees may have to be paid by the district.**

**The due process hearing decision is the final administrative determination, and is binding on both sides. Either side may appeal the hearing decision in state or federal court if it disagrees.**

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