

# ***GUIDELINES & RESOURCES***



## **Alternative Dispute Resolution (ADR) Parent Guide**



# ALTERNATIVE DISPUTE RESOLUTION AND RESOLUTION SESSION PARENT INFORMATION GUIDE

## INTRODUCTION

A resolution session or other Alternative Dispute Resolution (ADR) process may be requested by a school or parent/guardian to resolve a dispute regarding a student's Individualized Education Plan (IEP). The purpose of this guide is to support parents and/or guardians in understanding the ADR and resolution session processes in order to enhance meaningful participation and positive outcomes for students. The following documents provide general information regarding the ADR and resolution session processes, as well as documents to support participation in a resolution session.

## 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 outside of a more formal arbitration 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 the same process. Also common to all ADR processes is the concept of creating a settlement event or shared experience that increases the likelihood of resolution<sup>1</sup>. 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<sup>5</sup> 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 www.cadeworks.org	Continuum of Dispute Resolution Processes and Practices															
	Continuum of <i>Alternative</i> 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 & Staff Education	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	Third Party Assistance ← → Third Party Intervention															
	Decision Making by Parties ← → Decision Making by Third Party															
	Interest-Based ← → Rights-Based															
	Informal and Flexible ← → Formal and Fixed															

## RESOLUTION SESSION: DEFINITION AND GENERAL PROCESS

As referenced in the previous section, a resolution session is one ADR option afforded to parents/guardians 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/guardian to discuss the facts of their complaint and provide the LEA/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<sup>2</sup>. The resolution session is separate from the IEP process and while some mutually agreeable solutions may impact the IEP, there is also opportunity to present unique and creative solutions to areas of disagreement. A resolution session may also support to rebuild relationship and trust between parties.

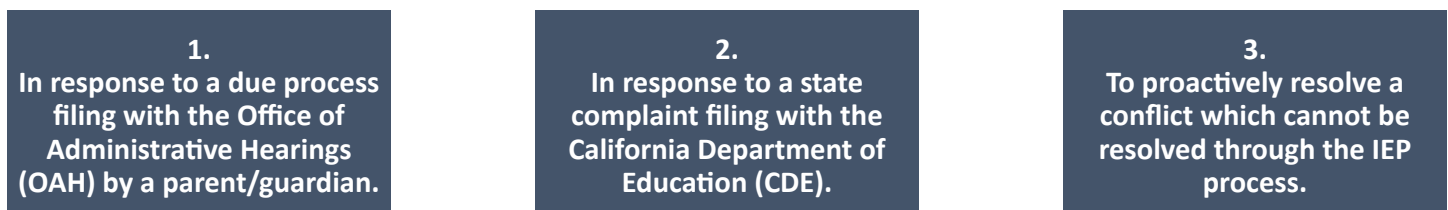
The resolution session participants shall include the parent(s)/guardian(s) and relevant members of the IEP team who have specific knowledge of the facts [34 CFR 300.510]. The resolution session should also include an individual who has the authority to make a decision on behalf of the LEA/district. There is no judge present and it is encouraged that neither party have an attorney present unless the parents/guardians make the request to have an attorney at the meeting<sup>3</sup>. In order for a resolution session to be effective, it is essential that all parties be willing to work toward a mutually agreeable solution.

If a resolution is reached to resolve the complaint, the parties will execute a legally binding agreement prepared by the facilitator during the session. If agreement is not met, parties will continue with due process proceedings, if applicable.

It should be noted that although a settlement agreement is a confidential document, discussions that occur within the resolution session are not confidential. Therefore, both parties will be offered the opportunity to review and sign a voluntary Confidentiality Agreement prior to beginning the resolution session. Providing consent for confidentiality may foster a higher level of trust resulting in mutually beneficial outcomes. The confidentiality agreement is optional and neither party is obligated to sign in order to participate in the resolution session. Both parties must provide consent in order for the confidentiality agreement to be binding, therefore if one party declines to provide consent the resolution session will continue without assurance of confidentiality regarding discussions.

## RESOLUTION SESSION: TYPES

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



### In Response to a Due Process Filing: Timelines

It is required that an LEA/district offer a resolution session in response to a due process filing by a parent/guardian; however it is not required if the LEA/district files for due process. The LEA/district must formally offer the resolution session and arrange for the session to be held within 15 days of receiving the due process complaint.

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/guardian cannot attend the proposed resolution session dates, the LEA/district should continue to work with the parent(s)/guardian(s) to determine a mutually agreeable date within the required 15-day timeline. If a mutually agreeable date cannot be found within the 15-day timeline, both parties may agree in writing to extend the timeline to allow the resolution session to be held and resolved within 30 days of receiving the due process complaint.

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 LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur [34 CFR §300.510(b)(1)].

### In Response to a Due Process Filing: Expedited Cases

The timeline for resolution session and due process hearing may be expedited in cases involving significant student discipline or if an LEA/district requests to change a student's school placement due to danger to self or others. In an expedited case, the LEA/district is afforded seven days to hold a resolution session and 15 days to resolve issues as opposed to the 30 days as described above.

### In Response to a Due Process Filing: Exceptions

Under 34 CFR §300.510(a)(3), there are two occasions when a resolution meeting need not occur:

1. When the parent/guardian and LEA agree in writing to waive the meeting; and
2. When the parent/guardian and LEA agree in writing to use the mediation process described in 34 CFR §300.506 to resolve the due process complaint.

If a parent/guardian wishes to waive the resolution session, it is legally required that the school be notified in writing of this request. The resolution session may be waived if both parties agree to do so. 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.

### In Response to a Due Process Filing: Failure to Hold the Resolution Session

According to the OAH Special Education Handbook (2018)3, "if parents fail or refuse to go to the resolution session without arranging for a waiver of the resolution session, the district can ask OAH to stop the due process timeline until parents go to the meeting. If parents still refuse to attend a resolution meeting or arrange for a waiver 30 days after the filing of the complaint, the district can ask OAH to dismiss the parents' complaint. If the case is dismissed, the hearing will not happen and OAH will close the case."

If an LEA/district fails to hold a resolution meeting within the required seven days (expedited cases) or 15 days, the parent/guardian may request that OAH immediately start the timeline for the due process hearing and decision rather than waiting 15 days (expedited cases) or 30 days. Parent/guardian must submit this request to OAH in writing.

### 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. There is no timeline nor is there a requirement to offer a resolution session in response to a state complaint; however parties may choose to convene a resolution session in order to resolve outstanding issues included within the complaint, if desired.

The following guidance is provided to parents/guardians and LEAs/districts by CDE in response to the filing of a state complaint:

*"Complainants and LEA 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. If you are interested in a local resolution of this case or any of the allegations in it, please contact your LEA or Special Education Local Plan Area. The complainant must submit a signed letter withdrawing the case or allegation, either to the investigator conducting the investigation, if the case is open and already being investigated or to the CSU unit; if the complainant and the LEA agree to the resolution. While a local complaint resolution may be pending, the investigation itself must continue until the complainant notifies us with a signed letter of withdrawal."*

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, LEAs/districts are 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. The right to void the agreement within three business days does not apply to a resolution session in response to a state complaint, unless requested and agreed to by both parties.

### Proactive Resolution Session

A resolution session may also be offered proactively, without the presence 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.



## **ROLES AND RESPONSIBILITIES OF PARTICIPANTS**

### **Resolution Session: Parent/Guardian Role**

The parent/guardian has the opportunity to attend the resolution session to present their concerns, propose solutions to the IEP-related dispute and work toward resolution. The parent/guardian reserves the right to invite support persons to the resolution session, including a family advocate or attorney if desired. El Dorado County SELPA/Charter SELPA encourages parties to resolve disputes at the local level; however if the parent/guardian chooses to invite legal representation it is the responsibility of the parent/guardian to inform the school site administrator prior to the resolution session. Please see Appendix B: Parent//Guardian Checklist, for additional information and considerations.

### **Resolution Session: Administrator Role**

The administrator of the LEA/district has the opportunity to attend the resolution session as the representative who has the authority to make a decision on behalf of the LEA/district. The administrator is responsible for collecting documentation regarding the IEP-related dispute in order to present concerns, propose solutions and work toward resolution of the IEP-related dispute.

### **Resolution Session: SELPA Facilitator Role**

For schools within the El Dorado County SELPA/Charter SELPA, a SELPA Program Specialist is available to serve as a third-party facilitator to ensure that all perspectives of the outstanding issues are heard and considered, individuals are treated with respect, and that the session proceeds in a productive and efficient manner. A second SELPA facilitator may also attend to support in documenting agreements made by both parties within a settlement agreement document. This document will be provided to both parties for review and signature at the end of the session, if applicable. Resolution session facilitation is a service provided to families and LEAs/districts at no charge and may be more cost effective than legal fees incurred during formal mediation and/or a due process hearing.

## **SUPPORTING DOCUMENTS**

The following documents are intended to support parents/guardians in understanding the resolution session process to enhance meaningful participation. Each document is included as an appendix at the end of this guide.

### **Appendix A: Resolution Sessions Timeline Visual**

The resolution session timeline illustrates the chronological order of steps to take in the process of scheduling and conducting a resolution session.

### **Appendix B: Parent Checklist**

The parent/guardian checklist provides step-by step action items to be taken before, during and after the resolution session. The action items are listed chronologically in the order to be completed. If you have questions regarding specific action items, please contact the SELPA facilitator supporting the resolution session.

## ADDITIONAL RESOURCES

- The Center for Appropriate Dispute Resolution in Special Education (CADRE) website  
<https://www.cadeworks.org/>  
Description: “CADRE’s major emphasis is on encouraging the use of mediation, facilitation, and other collaborative processes as strategies for resolving disagreements between parents and schools about children’s educational programs and support services. CADRE supports parents, educators, administrators, attorneys and advocates to benefit from the full continuum of dispute resolution options that can prevent and resolve conflict and ultimately lead to informed partnerships that focus on results for children and youth.” Resources include a description of the alternative (appropriate) resolution processes, a robust resource library, facilitation resources, fact sheets for parents and other helpful information.
- Office of Administrative Hearings (OAH) Special Education Handbook PDF  
<http://www.dgs.ca.gov/oah/SpecialEducation/Resources.aspx> under “Special Education Resources”  
Description: “A comprehensive guide to understanding Special Education Due Process Hearings at OAH. This User Guide contains answers to frequently asked questions about the hearing process to help parents and other parties better understand California’s special education dispute resolution system.”
- United States Department of Education Office of Special Education and Rehabilitative Services (OSERS) Questions and Answers on IDEA Part B Dispute Resolution Procedures PDF  
<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/accombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf>  
Description: This Q&A document provides responses to frequently asked questions to facilitate and enhance implementation of the Part B dispute resolution procedures, including the resolution session

## REFERENCES

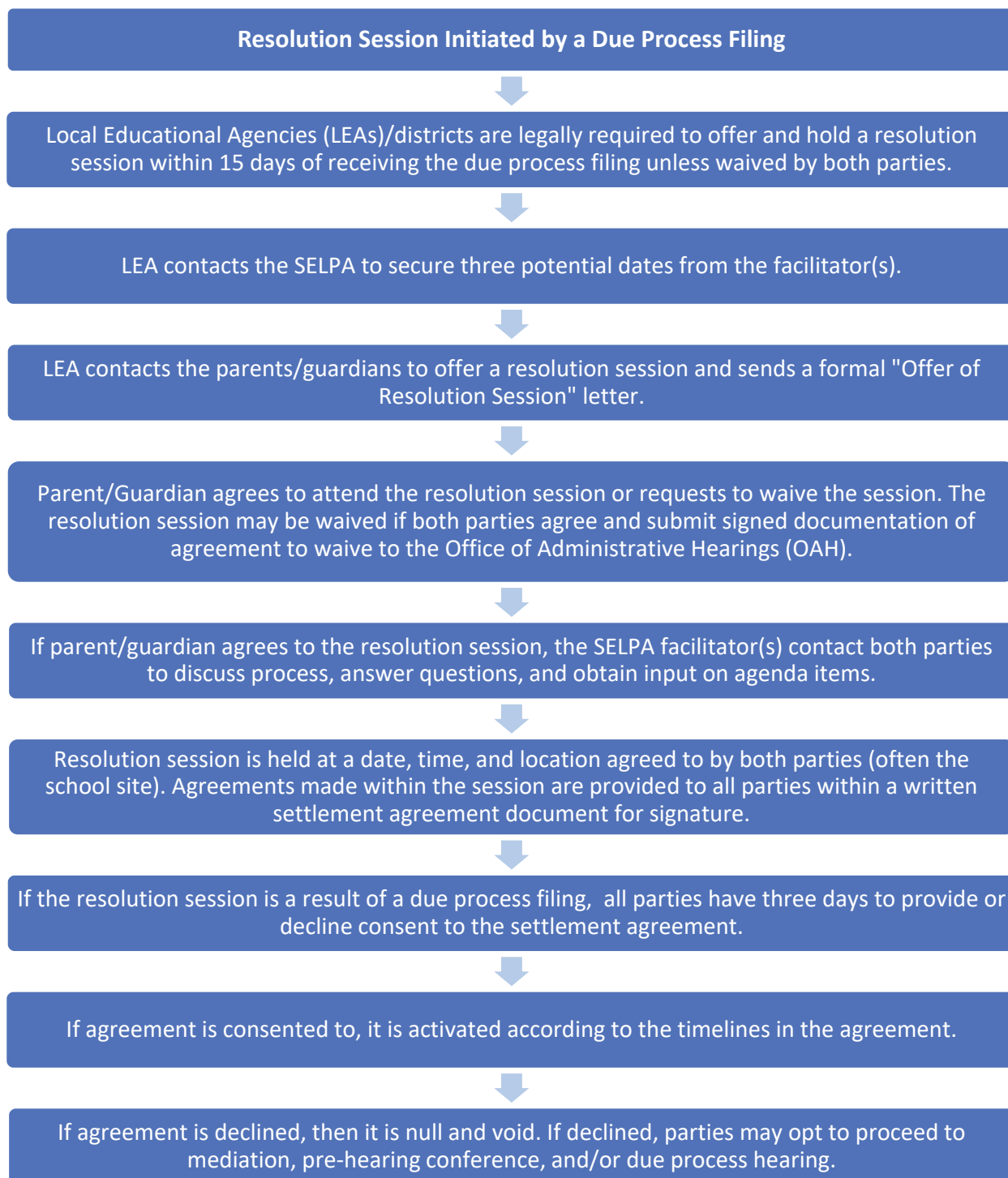
- <sup>1</sup> ADR Options: *An Infinite Spectrum of Processes*. Retrieved from: [https://www.cadeworks.org/sites/default/files/resources/ADR%20Options%20A%20Spectrum%20of%20Processes\\_0.pdf](https://www.cadeworks.org/sites/default/files/resources/ADR%20Options%20A%20Spectrum%20of%20Processes_0.pdf)
- <sup>2</sup> Questions and Answers on IDEA Part B Dispute Resolution Procedures (2013, July 23). Retrieved from: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/accombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf>
- <sup>3</sup> Office of Administrative Hearings Special Education Handbook (2018). Retrieved from: <https://www.documents.dgs.ca.gov/oah/SE/Handbook.4.5.18.pdf>
- <sup>4</sup> Office for Dispute Resolution: Resolution Meeting Procedures and Fact Sheet (2016). Retrieved from: [http://odr-pa.org/wp-content/uploads/pdf/RMF\\_Fact\\_Sheet.pdf](http://odr-pa.org/wp-content/uploads/pdf/RMF_Fact_Sheet.pdf)
- <sup>5</sup> The CADRE Continuum. Retrieved from: <https://www.cadeworks.org/cadre-continuum>

## APPENDICES

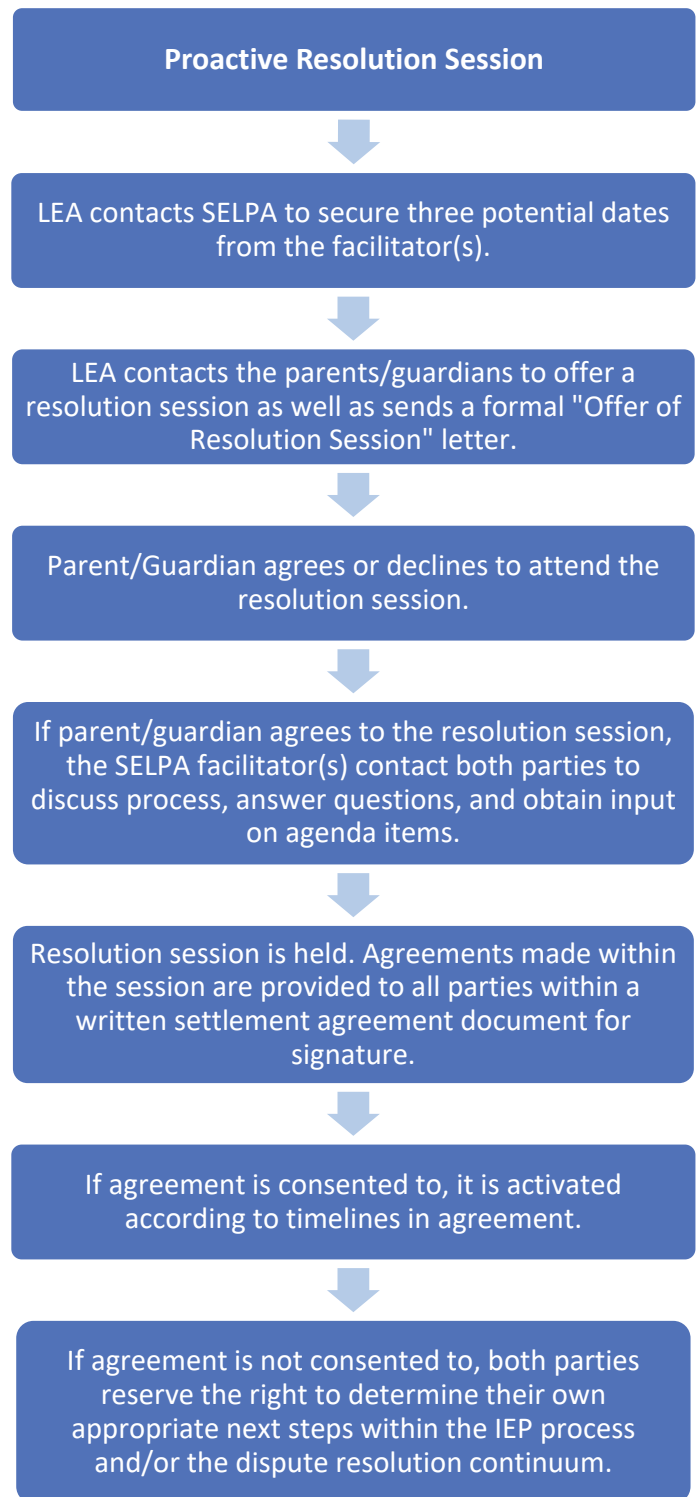
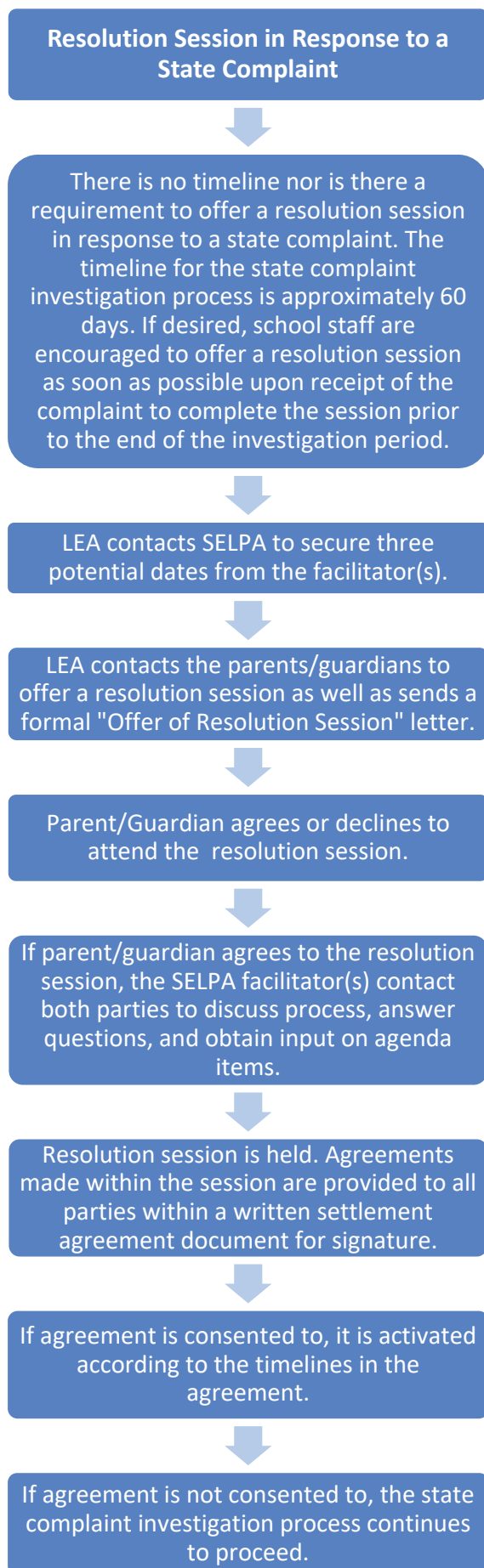
- Appendix A: Resolution Sessions Visual Timeline  
Appendix B: Parent Checklist



***APPENDIX A***  
***RESOLUTION SESSIONS VISUAL***  
***TIMELINE***







***APPENDIX B***  
***PARENT CHECKLIST***



# PARENT CHECKLIST

## BEFORE THE RESOLUTION SESSION

1. ☐ The school will contact you in writing to let you know that they would like to schedule a resolution session.
2. ☐ Choose one of the dates/times offered in the correspondence to hold the resolution session or, if you would like to participate and need a different date, propose alternate dates to the school contact listed.
3. ☐ Determine if you will be bringing a friend or family member to attend the resolution session with you as support. If this resolution session is in response to a due process complaint, determine if you will be bringing legal representation. If you plan to bring legal representation to the resolution session, inform the designated school contact prior to the session.
4. ☐ The El Dorado County/ El Dorado Charter SELPA designated facilitator will contact you to review the resolution session process, ask questions in order to understand your concerns and proposed resolutions, as well as answer any questions you may have about the process.
5. ☐ At the beginning of the resolution session, the facilitator will invite you to briefly share (3-5 minutes) your desired outcomes for the session and/or key areas of concern. It can be helpful to write down these items prior to the session. This will ensure that the school is aware of and understands all areas to be addressed within the resolution session.

## DAY OF THE RESOLUTION SESSION

1. ☐ Ensure your availability for the day by minimizing time constraints as much as possible.
2. ☐ Be fully present in the resolution session by refraining from use of cell phones or computers during the active session for any activities unrelated to the resolution session.
3. ☐ The facilitator will welcome both parties and review housekeeping items and meeting norms for the session.
4. ☐ Both parties will be invited to briefly share (3-5 minutes) desired outcomes for the session and/or key areas of concern.
5. ☐ Feel free to ask questions for clarification regarding the process at any time.
6. ☐ Remember that the facilitator will not be able to provide advice to participants during the resolution session.
7. ☐ The SELPA facilitator or co-facilitator will write the drafted settlement agreement to reflect agreements made between parties during the session.
8. ☐ If applicable, you will be given a copy of the settlement agreement to review at the conclusion of the resolution session. You will be given as much time as needed to review the document to determine whether you agree to the terms of the settlement agreement. Any changes must be agreed upon by both parties prior to updating the document.
9. ☐ If you to consent to the agreement, you will be asked sign and date before leaving the session.
10. ☐ If all parties have signed the settlement agreement, the facilitator will provide you with a signed copy of the settlement agreement. Upon signing, the agreement is binding. Either party may void the agreement within three business days of the agreement's original execution/date of signature. (This option is embedded for resolution sessions in response to a due process filing only, unless specifically requested and agreed upon within a proactive resolution session or in response to a state complaint).

### ***AFTER THE RESOLUTION SESSION***

1. ☐ Either party may void within three business days of the agreement's original execution/date of signature (for resolution sessions in response to a due process filing only, unless requested and agreed upon within a proactive resolution session or in response to a state complaint). During this three day period, parties may request minor changes to the settlement agreement via the SELPA facilitator. The facilitator will be accessible during this time to communicate requested changes to both parties, as well as provide an updated settlement agreement to reflect changes is needed.
2. ☐ If both parties have signed the settlement agreement and the three-day period to void has passed, the parties will execute the agreement made within the resolution session. All items consented to in the settlement agreement must be fulfilled by the person responsible on the dates determined. Failure to do so could result in the voiding the agreement in its entirety.
3. ☐ If parties do not consent, they may proceed in the due process or state complaint investigation procedures (if applicable). If the resolution session was proactive and not initiated by a due process filing, both parties reserve the right to determine their own next appropriate steps within the IEP process and/or the dispute resolution continuum. Please contact the SELPA facilitator if there are any questions regarding this process.
4. ☐ If not provided at the end of the resolution session, the facilitator will provide a feedback form for all member of the resolution session to complete (includes a self-addressed, stamped return envelope) three to five days after the resolution session is held. This form supports improvement in the El Dorado County/ El Dorado Charter SELPA resolution session facilitation process, therefore your timely response to the feedback form is appreciated.



