



California's protection and advocacy system  
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## **#13: Fact Sheet on California's Budget Cuts to Developmental Disability Services & Programs - July 15, 2009**

### **Regional Center Due Process and Hearing Rights Does the Law Change My Due Process and Hearing Rights?**

There are many changes to the Lanterman Act because of the state's budget problems. Most of the changes take effect when the new state budget is passed. The changes do not change your due process rights. The changes make it more important that you properly state your issue if you go to due process hearing.

#### **What Should I Do If the Regional Center Wants to Change My Services?**

If your regional center wants to change your services because of a new law, it must first hold an Individual Program Plan (IPP) meeting.<sup>1</sup> Before your IPP meeting, learn about the new law. You can get Disability Rights California's factsheets on the new law on its website, [www.disabilityrightsca.org](http://www.disabilityrightsca.org). The website has the changes to the law listed by topic.

#### **Many of the New Laws:**

- Have service standards. These standards say when services can be provided or the amount of service that can be provided.

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<sup>1</sup> Welfare & Institutions Code, Section 4646.4(a) – (c).

- Have an exemption (exception) process. An exemption allows the regional center to grant an exception to the new law under specific circumstances.

At the IPP meeting, you should ask the regional center why it wants to change your service. If it is due to a change in the law, you should tell the IPP team exactly how you or your child meets the service standards or exemption requirements. The regional center should explain the new standards to you and tell you about any exemption.

### **Written Notice of Action Required to Be Given By the Regional Center**

If you do not agree with the regional center's final decision at your IPP meeting,<sup>2</sup> the regional center must give you written notice of its decision to change your service and the reason. The notice must be given 30 days before the regional center actually changes your service.<sup>3</sup>

If you want to appeal the decision and continue to receive these services, you must request a fair hearing within 30 days.<sup>4</sup>

- If you request the hearing within 10 days of receiving the notice, your services will be continued while the hearing process is conducted<sup>5</sup>; and
- If you request the hearing after 10 days but still before the 30 day limit, you will receive the fair hearing but your services may be discontinued until the outcome of the hearing is known.<sup>6</sup>

### **Filing for Hearing**

- DDS Forms, such as the Lanterman Fair Hearing Request (#1805), can be found at [http://www.dds.ca.gov/complaints/complt\\_fh.cfm](http://www.dds.ca.gov/complaints/complt_fh.cfm).
- To initiate a regional center fair hearing, complete a fair hearing form and send it to your regional center director or file the form directly with the Office of Administrative Hearings and send a copy to the regional center director.

### **Once You Request a Hearing, the Hearing Steps Are:**

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<sup>2</sup> Welfare & Institutions Code, Section 4646(g)

<sup>3</sup> Welfare & Institutions Code, Section 4710

<sup>4</sup> See Welfare & Institutions Code Section 4710.5(a)

<sup>5</sup> See Welfare & Institutions Code Section 4715

<sup>6</sup> See Welfare & Institutions Code Section 4710.5(a)

- **Regional Center Response** - The regional center must tell you when the hearing request was received. If it has not already done so, the regional center must send you a notice with your due process hearing rights.
- **Voluntary Informal Meeting** - If you request or agree to an informal meeting with the regional center, the regional center and you must agree to a time for the meeting. The regional center must send you a written notice that confirms the agreed upon date, time, and place for a voluntary informal meeting. This notice must also tell you that you can decline an informal meeting.
- **Mediation** - The next step in the appeal process is mediation which you have to request in order for it to be scheduled. We recommend mediation because having an independent, trained mediator makes it more likely to get a fair agreement. However, either you or the regional center can “waive” mediation (decide not to mediate). The regional center has 5 working days to accept or decline mediation after receiving the written request for mediation from you. If you or the regional center decline mediation, you still have a right to a fair hearing without meeting with the regional center informally.
- **Fair Hearing before an Administrative Law Judge** - The hearing must be held within 50 days of when the request for hearing is received by the regional center. The ALJ may allow a delay or continuance, if either you or the regional center asks, and if there is a good reason.
- **Exchanging Evidence** - At least 5 days before the hearing, you and the regional center must give each other copies of any documents and reports that you each intend to use at the hearing. You must also exchange a list of witnesses you intend to call and what you expect them to talk about. At the hearing, the ALJ can decide whether to allow a witness who was not on the list or a document that was not given to the other party before the hearing.

Before the hearing, make copies of the documents you want to present to the ALJ. You should bring the original document, if it is available, and two copies to the hearing.

- **Fair Hearing Decision** - The fair hearing decision must be issued within 10 working days of the last day of the hearing but no later than 80 days from the hearing request.
- **Appeal Of Unfavorable Fair Hearing Decision** - If you disagree with the hearing decision, you have 90 days to file a Writ of

Administrative Mandamus in Superior Court.

**Your Rights During the Hearing Process In all of the above hearing steps, you have a right to:**

- See your regional center records;
- Be present and give evidence by speaking or writing.
- Have your own family, friends, therapists or doctors be present and speak on your behalf.
- Have a lawyer or advocate present.
- Have an interpreter if your primary language is other than English.

**Prepare for Your Hearing**

- Gather information that shows that you need the services that the regional center wants to change. Make sure the information you use is accurate and explains your needs in detail. Also, find people who are willing to go to your hearing and tell the judge why you need the services. Make sure these people know your needs.
- At the hearing, you can argue that you have the right to have your needs met to fulfill your IPP goals and objectives or explain why you meet an exception or exemption to the law.

For additional information about the IPP process, Due Process and your rights, visit [www.disabilityrightsca.org/pubs/506301index.htm](http://www.disabilityrightsca.org/pubs/506301index.htm) and read Disability Rights California's publication, *The Rights Under the Lanterman Act*.

**WHAT SHOULD YOU DO IF YOUR  
EARLY START SERVICES ARE CUT?**

Due process for Early Start children differs in some respects from due process for children over three who are regional center consumers. Below we discuss your Early Start Rights.

**Written Notice of Action Required to Be Given By the Regional Center**

Parents must be given written notice a reasonable time before a regional center or school district proposes or refuses to initiate or change the identification, assessment data, placement or services of an infant or toddler. The written notice must give enough details to inform the parent about what the agency is proposing or refusing, the reasons for it, and all of

the rights and procedures the parent has to challenge the proposal or refusal.<sup>7</sup>

## **Aid Pending the Due Process Hearing**

Children have the right to continuation of the services the child was receiving as an Early Start child while the hearing process with the school district or regional center is pending.

### **How to Initiate an Early Start Mediation or Hearing**

- DDS Forms, such as Early Start Due Process Hearing Request (#1802), can be found at [http://www.dds.ca.gov/complaints/complt\\_fh.cfm](http://www.dds.ca.gov/complaints/complt_fh.cfm).
- To initiate an Early Start mediation conference or hearing, mail a written request to:

**Office of Administrative Hearings  
Attn: Early Start Intervention Section  
2349 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833  
(916) 263-0654  
FAX (916) 376-6318**

## **Mediation Conference**

Prior to the hearing, the parties may, if they wish, attend a mediation conference with a state mediator to try to resolve the dispute without a hearing. The mediation conference is not mandatory, but Disability Rights California encourages parents to use mediation to resolve some, if not all, of the disputed issues without the expense and effort of a fair hearing.

## **Hearing Procedures**

If a matter is not resolved at mediation, the parents must have an opportunity to present their information and arguments about the action the service agency is proposing or refusing to do in a “fair hearing” or “due process hearing.” The hearing is to resolve disputes about what services should go into your child’s IFSP (Individualized Family Service Plan). At the hearing, an ALJ will hear the testimony from both sides and will

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<sup>7</sup> 17 C.C.R. Sec. 52161.

consider what the evaluation and assessment reports and other records say about your child and/or what your child may need in the way of placement or services. The ALJ will issue a written decision after the hearing.<sup>8</sup>

The entire due process, including both mediation and a fair hearing and receipt of a written decision, is supposed to take no more than 30 days.<sup>9</sup> Again, your child must continue to receive the level of service he or she was previously receiving from the agency while due process procedures are being followed.<sup>10</sup>

### **WHAT SHOULD YOU DO IF YOU RECEIVE REGIONAL CENTER SERVICES THROUGH THE MEDICAID HOME & COMMUNITY BASED WAIVER (HCBS) FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES**

Many consumers of regional center services receive those services through the HCBS Waiver, which is often called the DD waiver. If you receive your services through this waiver, you have additional due process protections. To learn those additional protections, read our fact sheet, *Services and Due Process under the HCBS Waiver*.

For additional information about Early Start and your rights, visit [http://disabilityrightsca.org/pubs/505201.htm#\\_Toc122231456](http://disabilityrightsca.org/pubs/505201.htm#_Toc122231456) and read the Chapter 12 of Disability Rights California's *Special Education: Rights and Responsibilities* manual.

If you have any questions, call:

- Your local Area Board;
- Disability Rights California, Toll Free: 1-800-719-5798; TTY (800) 576-9269; or
- Office of Clients' Rights Advocacy, (north) 1-800-390-7032; (south) 1-866-833-6712

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<sup>8</sup> 17 C.C.R. Sec. 52174.

<sup>9</sup> 17 C.C.R. Sec. 52172(d).

<sup>10</sup> 17 C.C.R. Sec. 52172(f)