

Making it happen



A FAMILY'S GUIDE TO THE APPEAL PROCESS

For Families of Children Age
Birth - 36 Months



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Introduction

Harbor Regional Center is committed to building strong partnerships with families. Each family is unique, and our goal is to be responsive to each family's special needs. Despite our best efforts, there may be a time when you disagree with the regional center on a decision we make about your child's eligibility or about what services he or she should receive. If this happens, you may ask the regional center to review its decision to make sure all information was considered.

The State of California and the federal government require the regional center to have a special process to review these kinds of decisions and make sure that families seeking services for their young children are treated fairly. This is called the appeal process.

Because it is governed by both federal and state laws, the appeal process that Harbor Regional Center uses for infants and children age birth to three can seem quite complicated. This booklet was written to give you a simple explanation of the appeal process, and a step-by-step guide on how to use it.

Section 1

What is

An appeal is a formal request for someone to change a decision. In this booklet, appeal means a request for the regional center to change its decision about a child's eligibility for services or about the services the child receives.

an appeal

An appeal may be made on behalf of a child who is receiving regional center services. This includes both children with a developmental disability and children who are developmentally delayed or thought to be at risk for a disability. An appeal may also be made on behalf of a child who is applying for regional center services. The request may come from the child's parent, legal guardian, or conservator, or from someone representing one of these parties.

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WHEN IS THE APPEAL PROCESS USED? The appeal process is used to settle differences between the regional center and a family. The differences can be about three kinds of decisions:

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1. When the regional center decides that a child is not eligible or is no longer eligible for services, and the family disagrees with that decision
2. When a family asks for a new service or support to be provided and the regional center denies the request
3. When a service or support is reduced, changed, or ended and the family disagrees with this change

If the regional center makes one of these decisions about your child's services, they will send you a written notice explaining the decision and telling you about your right to appeal.

WHAT ARE THE WAYS TO APPEAL A DECISION?

There are informal and formal ways to resolve a disagreement between the regional center and a family. The quickest way is through an informal discussion with the child's Counselor. If such a discussion is not successful in settling the disagree-

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ment, there are two other things that the family may do to appeal. They are called mediation and Due Process Hearing.

1. In mediation, an independent, impartial person (mediator) who is an expert in settling disagreements, meets with you and a representative from the regional center to help you work out your differences. The goal of the mediator is to try to find a solution that both parties agree to. Mediation is less formal than a Due Process Hearing and the recommendations of the mediator are not binding on the parties.
2. Whether or not you ask for mediation, you may request a Due Process Hearing. This is a formal process designed by the State of California and conducted by an impartial expert in the law. This expert is called an “administrative law judge.” He or she listens to evidence from both parties (regional center and family), and makes an independent decision about the disagreement.





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You are not required to try to resolve your differences with mediation, but if you do decide to try mediation, it will occur before the Due Process Hearing. If you go through with mediation and the outcome does not satisfy you, a Due Process Hearing will automatically be scheduled. The regional center may refuse your request for mediation, but they may not refuse your request for a hearing.

You must make a request for mediation or a Due Process Hearing directly to the state Office of Administrative Hearings (OAH) using a special form called a Due Process Mediation and Hearing Request Form. A copy of this form is included at the end of this booklet.

Time

The state has set limits on how quickly it must do things, but there are no time limits set for families. A mediation meeting or a Due Process Hearing must be completed and a final written decision given to the family within 30 days of the date that the OAH receives the family's request for appeal.

If the disagreement is about services that the child is currently receiving, these services will continue while the appeal process is going on. If the disagreement occurs when a child first becomes eligible for regional center services, the child will receive the services about which there is no disagreement.

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Your rights

On the back of the Due Process Mediation and Hearing Request Form you will find a list of the rights clients and families have in mediation and Due Process Hearings. The most important ones are as follows:

1. You have the right to have the meeting conducted by an impartial person who is not employed by an agency serving your child, and who knows about early intervention services and the law governing these services.
2. You have the right to have all information that identifies you or your child handled in a confidential manner.
3. You have the right to have the meeting carried out at a time and place reasonably convenient for you.

Due Process Hearing. The additional rights you have when you request a Due Process Hearing include:

4. You have the right to attend the hearing with a lawyer or some other person who knows about the needs of infants and toddlers with disabilities.
5. You have the right to present evidence if that evidence has been shared with the regional center at least five days before the hearing.

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6. You have the right to ask that the regional center not be allowed to use any evidence that was not shown to you at least five days before the hearing.
7. You have the right to compel any witnesses to attend the meeting, and to question any witnesses.
8. You have the right to a written or electronic verbatim (word-for-word) transcript of the proceedings.
9. You have the right to receive written “findings of fact” and the decision.
10. You have the right to have an interpreter at any meeting or hearing.
The regional center will pay for the interpreter.

To prepare for mediation or a Due Process Hearing, or at any other time, you also have the right to see regional center records about your child. The regional center must respond to your request to see records within five days of the request. If you request copies of records, the regional center has the right to charge a reasonable fee to duplicate them.

Step-by-

If you receive notice of a decision about your child's eligibility or services that you do not agree with:

STEP 1. Tell your Counselor or other regional center staff member that you disagree with the decision and want to appeal it. He or she will give you a copy of the Due Process Mediation and Hearing Request Form.

STEP 2. Complete the Due Process Mediation and Hearing Request Form. If you need help filling out the form, ask your Counselor or some other regional center staff member for help.

STEP 3. Decide whether or not you want to try to settle the disagreement through mediation. If you do, check the appropriate box on the form. (Remember, you and the regional center both have the right not to use mediation.)

STEP 4. Mail the completed Due Process Mediation and Hearing Request Form to the OAH at the address on the form.

- When the OAH gets your request for an appeal, they will notify you about the time and place of the meeting.

(If you and the regional center agree to mediation, go to STEP 5; otherwise, skip to STEP 6.)

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through the appeal process

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STEP 5. You and a representative (if you wish to have one) attend the mediation session where the mediator will try to help you and the regional center agree on a solution to the problem.

- If mediation results in a decision that you agree with, the OAH will not schedule a Due Process Hearing.
- If the meeting does not result in a decision you agree with, you may go on to a Due Process Hearing. To do this, you do not need to fill out any more forms. The OAH will contact you about a time and place for the hearing. No information from the mediation hearing will be used at the Due Process Hearing.

STEP 6. At least five days before the Due Process Hearing, you and the regional center must exchange a list of witnesses and copies of all documents that will be used at the hearing. You must also tell each other what your witnesses will talk about.

STEP 7. You, your representative, and any witnesses you ask to attend the Due Process Hearing will present your case. The regional center will also present its case. At the end of the meeting, you and the regional center representative may make closing arguments. After considering all the evidence, the judge will send you his or her decision in writing.

- If the decision is unfavorable to you and your child has been receiving the services that were the subject of the appeal, the decision will not take effect until 10 days after you receive written notice of the decision.

The decision from the Due Process Hearing is final, and it marks the end of the appeal process. You may still, however, bring legal action in a court of law.

ABOUT HOW LONG DOES THE WHOLE PROCESS

TAKE? The mediation or Due Process Hearing must be completed within 30 days. That is, from the time the Office of Administrative Hearings receives your request to the time you complete mediation or receive the final decision of the hearing officer should be no longer than 30 days. It may take longer if, for example, you request to reschedule the mediation or hearing, if you or the person helping you in the appeal gets ill, or if you have some kind of personal emergency that prevents you from attending a meeting.

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final note

At Harbor Regional Center we try to make decisions that are in the best interest of clients and families. At the same time, we need to make sure that what we do is consistent with the laws and regulations related to the Early Start program. Sometimes these decisions are difficult to make and a family may disagree with what we decide. The appeal process is a very important check on the fairness of our decisions. Families can use the process to make sure that we considered all of the important facts and properly interpreted all guidelines before making our decision about eligibility and services.

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You should keep in mind that it is your right as a parent to use the appeal process. To ask for an appeal would never have any negative effect on your or your child's relationship with the regional center.

Whatever the outcome of an appeal, the regional center will continue to work in partnership with you to provide the best possible services to your child.





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