

# PROCEDURAL HANDBOOK

## SECTION

### 12

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

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This section contains information you should know about...

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Overview of Alternative Dispute Resolution provided by SBCSELPA.....	12-2
Background and Training for SBCSELPA ADR Cadre.....	12-3
ADR Cadre Process .....	12-4
ADR Services and Meeting Types.....	12-5
Time and Scheduling of ADR Conference or Facilitated IEP Meeting.....	12-7
ADR Data Collection, Evaluation and Reporting.....	12-8
Definitions of Common Terminology in ADR.....	12-10
SELPA Forms.....	12-11

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# **OVERVIEW OF ALTERNATIVE DISPUTE RESOLUTION PROVIDED BY SBCSELPA**

## **Introduction**

SELPA's currently function as objective agencies that provide information and support to parents/guardians, community partners, students, and school district personnel ensuring compliance within special education's multitude of requirements. SELPA's role of being an objective partner provides the supports often needed in navigating conflict in special education. SELPA's mission is to ensure all students in special education receive the supports, services, and programming provided within a free and appropriate public education (FAPE).

Because disagreements are inevitable within educational systems, SELPA's provide a process to identify and discuss the area(s) of conflict through alternative to dispute resolution (ADR). Objectively, through ADR, collaborative communication between parents, students, and school personnel is hopefully restored and the trust broken through the dispute is fostered toward repair.

SBCSELPA and member LEAs promote collaborative relationships with parents/guardians to ensure that students with disabilities receive the services and supports needed in the provision of a free and appropriate public education (FAPE). Often, parent(s)/guardian and school personnel may encounter conflict when providing services and supports within the Individual Education Plan (IEP). In lieu of allowing the conflict to fester, SBCSELPA encourages the ADR process in providing a variety of alternatives to address the conflict and work as a team with the parent(s)/guardian to consensus. The SBCSELPA's overarching goal of ADR is for parents/guardians and school district teams to come to consensus on the conflict and avoid the need to retain costly attorneys, encounter due process, and state complaints, and to promote collaborative communication through the building of positive relationships with families and school district teams.

## **The SBCSELPA ADR Process**

SBCSELPA supports parents/guardians, students, and school personnel through ADR in being a neutral third party. SBCSELPA is not an advocate for a district nor for a parent. SBCSELPA focuses on the conflict and journeys all conversations back to focus on the student's best interests. ADR is a process for resolving conflicts that is voluntary, confidential, and encourages future positive relationships, while creating mutual consensus and solutions.

When a conflict arises for a parent/guardian, student, or school district personnel, a phone call is usually made to the SBCSELPA office. The SBCSELPA Executive Assistant discusses the nature of the call and will often refer the caller to the SBCSELPA Coordinator to investigate further into the concern(s). The SBCSELPA Coordinator's role through the call is to listen, be neutral, and to provide special education learning opportunities and the time for the parent(s)/guardian or school personnel to ask questions. If the nature of the conflict appears to be a communication breakdown, the SBCSELPA Coordinator supports positive communication between the district personnel and parent(s)/guardian through follow up conversation(s) with both groups. SBCSELPA encourages continued communication with district personnel and leadership once a conflict is identified.

SBCSELPA, through the conversations with parent(s)/guardian and district personnel, offers a free of charge, confidential process to help resolve the conflicts within special education in behalf of the student. SBCSELPA completes the following steps upon the suggestion and agreement of ADR from the parent/guardian and school district leadership:

**Step 1: Phone Consultation by calling SBCSELPA (805)683-1424**

SBCSELPA Executive Assistant or Coordinator completes the SBCSELPA Alternative to Dispute Resolution (ADR) Intake form (SELPA86) gathering the nature of the concern/dispute, contact information from the parent(s)/guardian and school contact, and the suggestions for next steps of a conference or facilitated IEP Meeting.

**Step 2: SBCSELPA ADR Cadre**

SBCSELPA has created an ADR Cadre of trained leaders in dispute resolution. All ADR Cadre are skilled in special education law, procedures, and practices within the Santa Barbara County. SBCSELPA's ADR Cadre are neutral leaders who represent SBCSELPA's ADR process and are confident in facilitating collaboration in special meetings between parents/guardians and school personnel for the benefit of students.

The SBCSELPA Executive Director or Coordinator may see a need to assign a SBCSELPA ADR Cadre to the conflict. The SBCSELPA Executive Director or Coordinator will assign a SBCSELPA ADR Cadre based on availability, geographical locations in Santa Barbara County, and the issues within the case. SBCSELPA ADR Cadre do not represent their own districts in ADR affiliated meetings.

**Background and Training Required for SBCSELPA ADR Cadre**

All SBCSELPA Cadre will complete 18 hours of mediation coursework. Optional resources for coursework include the following: <https://www.cadeworks.org>, Sound Solutions, SELPA ADR Conference, Straus Mediating the Litigated Case, and Key2Ed. ADR Cadre will additionally participate quarterly cadre meetings throughout the school year.

As a neutral facilitator, the ADR Cadre recognizes the importance of impartiality with regard to any ideas, options, feelings, or values expressed by participants in meetings. The ADR Cadre is committed to remaining confidential, neutral and unbiased at all times, before, during, and after the student focused meetings.

If the ADR cadre has any known or possible conflicts of interest with any aspect of the concern, conflict or information presented in a meeting, he or she will recuse himself or herself from the facilitator role.

The ADR Cadre does not give advice, make recommendations, or provide opinions about the content of the concerns. The role of the ADR Cadre is to identify areas of consensus in the team meeting and to be aware of areas needing further exploration and information,

promoting fluid positive communication with all team members. The ADR Cadre will only sign as having been a participant in the meeting.

The ADR Cadre will not voluntarily testify or report to any authority about what conversations took place during the meeting unless one of the participants makes a threat of physical harm or reveals information of child abuse or elder abuse, or in the event that proceedings are brought against the Cadre which would require defense of his or her actions. The district remains responsible for the provision of the special education and related services for the student developed through the IEP process. However, the Cadre will have the duty to inform the team if, after reasonable discussion, the team makes or is about to make a decision that the Cadre knows to be in violation of law or district policy. (IEP and Non-IEP Facilitator's Code of Ethics (SELPA89))

### **ADR Cadre Process**

The ADR Cadre assigned to the conflict will conduct the following procedures:

1. Contact via phone call the parent(s)/guardian and district leadership within 2 business days of the receipt of the ADR Meeting Intake form (SELPA86) soliciting additional information and identifying the areas of conflict from the parent(s)/guardians and school personnel.
2. Create, from the phone conversations, an agenda for a future meeting with parent(s)/guardian and school personnel, providing the 'draft' agenda to the team for input and revisions several days before a scheduled meeting. The meeting will be scheduled by school personnel.
3. ADR Cadre attends a scheduled meeting with parent(s)/guardian, school team, and leadership. ADR Cadre to provides to meeting participants the ADR Cadre Code of Ethics (SELPA89) and IEP Agenda.
4. During the meeting, the ADR Cadre may take notes on computer or chart paper to document areas of consensus and areas of impasse. The ADR Cadre supports collaboration during the meeting ensuring each team member can provide input to each agenda item.

Additionally, the Cadre keeps track of time, ensuring each agenda item is reviewed. If the entire agenda is not completed within the given time, the Cadre highlights the agenda items to be covered in a follow-up meeting.

5. Upon completion of the meeting, the Cadre shows appreciation to all team members for the collaboration and teamwork. The Cadre, if appropriate, provides the notes taken by the Cadre at the meeting to the district leadership and parent for review.

## **Alternative to Dispute Resolution (ADR) Services and Meeting Types**

### **Parent Conference:**

Parent(s)/guardian and school district personnel may request a collaborative conference to discuss and resolve disagreements before a formal meeting is held such as an IEP. The process is voluntary, confidential, and can increase effective communication between parent(s)/guardian, and school district personnel. IEP services and goals are not amended at this informal meeting. An ADR Cadre may attend the conference to support collaborative conversations.

### **Facilitated IEP Meeting:**

Facilitation is a collaborative process in which a trained and impartial person, the ADR Cadre (facilitator) who is not a member of the IEP team, assists the IEP team to communicate effectively and work towards consensus. The facilitator is not a decision maker or an advisor. Facilitation can be used whenever an IEP team wants to improve the effectiveness of communication. When conflicts have developed, facilitation can help defuse tensions and restore trust and more positive working relationships. A parent(s)/guardian and/or district personnel may request to SBCSELPA an ADR Cadre to facilitate an IEP Meeting.

A facilitated IEP may result in:

- a. More collaborative IEP meetings.
- b. Improved relationships and communication between schools and parents/guardians.
- c. Resolutions to concerns or disputes.
- d. Greater understanding for teams of how to conduct communication at meetings successfully.
- e. Review and adjustment of the IEP to further benefit the student.

### **ADR Meeting with SELPA Director:**

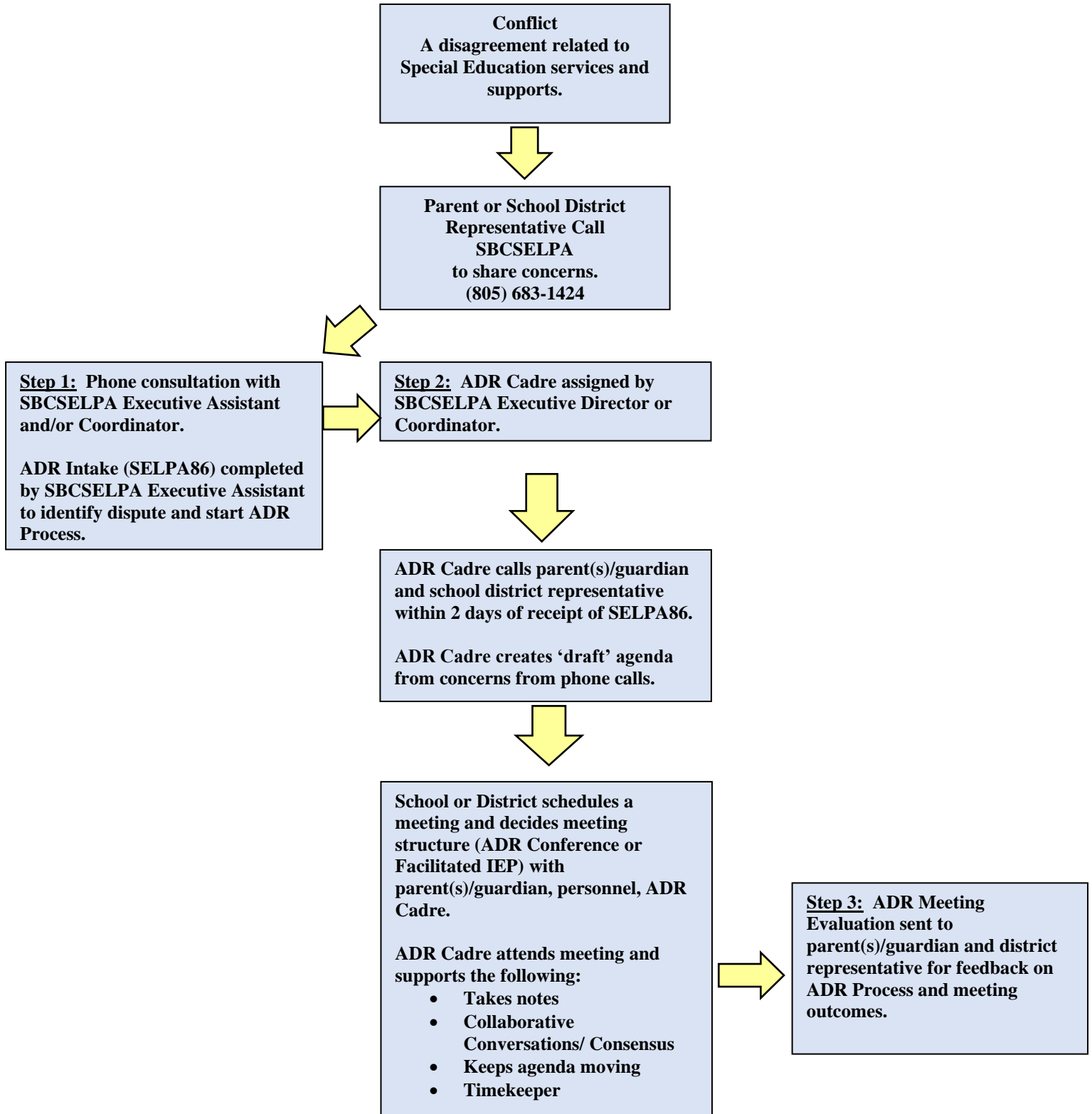
Parents/guardians or district administrator may make a request to the SBCSELPA Executive Director to meet to resolve a dispute. As a complaint agency, there are times when the SBCSELPA Executive Director may be more directive than would be appropriate as an IEP facilitator to help parties determine what is or is not required under state and federal regulations or the SBCSELPA Local Plan. Examples of when a SBCSELPA ADR meeting may be needed are:

1. a request from the California Department of Education or CDE Complaint Process.
2. a Resolution Session required as part of a due process filing.

### **Co-Facilitation:**

Co-facilitation is when two people jointly facilitate a meeting. Co-Facilitation could be conducted by two ADR Cadre with each taking a specific role in the meeting.

## SBCSELPA Alternative to Dispute Resolution (ADR) Process



## **Models of Practice:**

There are various models of practice that can be employed during ADR facilitation.

### Evaluative

This model is directive and provides advice and authority. The goal is settlement.

### Facilitative

This model is supportive as it guides a team through probes and queries with purpose. The facilitator helps the team to generate options and the goal is a productive dialogue.

### Transformative

This model is reflective and follows the discussion while asking questions without providing direction. The facilitator does not generate options for the team, rather the team discovers the options themselves. The goal of this model is empowerment and recognition.

## **Confidentiality:**

All meetings are confidential. The ADR Cadre will maintain the confidentiality of all participants in the process. This means that what is discussed in the meeting will not be repeated unless known from other sources or specifically authorized by the parties involved. There are exceptions to confidentiality when one of the team members makes a genuine threat of physical harm and/or child or elder abuse. The ADR Cadre will not voluntarily testify or report on anything said during the facilitated meeting unless one of the participants makes a threat of physical harm or reveals information of child abuse or elder abuse.

## **Potential Conflicts of Interest:**

The ADR Cadre may possibly have a conflict of interest in a case. If a conflict of interest is established and all parties are aware and agree, then the Cadre may continue to facilitate the meeting. If the conflict is such that the team agrees the Cadre cannot continue and take the case, then a different Cadre will be provided by SBCSELPA.

## **Time and Scheduling of ADR Conference or ADR Facilitated IEP**

### **SBCSELPA Notice of ADR Conference or ADR Facilitated IEP**

SBCSELPA recommends requests for ADR Conferences or ADR Facilitated IEPs be received at least 10 days prior to a scheduled meeting. Exceptions to this rule can be made in extenuating circumstances.

## **Time Allotment for Meetings**

Each meeting will be allotted 3 hours of facilitation time and a total of 5 hours per case. The SBCSELPA Cadre will be responsible for logging hours spent on each case and will inform district and SBCSELPA of the total hours and results of each case.

## **Denial of ADR Conference or ADR Facilitated Meeting Request**

A request can be denied for facilitation. These types of situations include, but are not limited to:

- a topic beyond the scope of facilitation
- the case is in due process
- family and or district have retained an attorney
- one of the team does not agree to facilitation
- the request is received with not enough time to arrange for a Cadre or there are no Cadre available.

## **ADR Data Collection, Evaluation, and Reporting**

### **Step 3: Evaluation of Each Meeting**

After the ADR Cadre notifies SBCSELPA of the results from the meeting, the ADR Conference or ADR Facilitated Meeting Evaluation Form (SELPA88) will be disseminated by the SBCSELPA Executive Assistant and sent to the parent(s)/guardian and district representative to gather feedback on the ADR process and outcome(s) from the meeting. SBCSELPA Executive Assistant will collect survey and meeting outcome data for records retention.

The SBCSELPA ADR Cadre will review the data at minimum of two times annually to determine the efficacy of the ADR process and collaborate as an ADR Cadre on future best practices in ADR.

### **Ongoing Evaluation ADR Cadre**

The SBCSELPA Executive Director will informally evaluate the effectiveness of the ADR Cadre annually prior to June each school year, meeting with both the district special education administrators and the SBCSELPA JPA Board. Evaluation will be based on 1) Availability of each Cadre 2) Meeting outcomes and 3) Survey data.

### **Annual Methods of Overall Program Evaluation**

Record keeping / data collected

- number of cases
- number of meetings
- hours per meeting
- hours per case
- outcome of meeting



- satisfaction level of participants
- ADR Cadre's performance
- perceptions of ADR Cadre
- follow up after facilitation
- relationship to other dispute resolution
- ADR Cadre debrief
- Parent(s) debrief

### **Dissemination of Information**

SBCSELPA provides information regarding ADR services to Santa Barbara County on the SBCSELPA website at <https://www/sbcselpa.org> under the Community and Family Resources button. Additional training and information are provided to Santa Barbara County through ADR related professional development, presentation(s) to the SBCSELPA Community Advisory Committee (CAC), and through email blasts to districts.

## **Definitions of Common Terminology in Alternative to Dispute Resolution (ADR)**

**ADR Cadre:** SBCSELPA has created an ADR Cadre of trained leaders in dispute resolution. All ADR Cadre are skilled in special education law, procedures, and practices within the Santa Barbara County. SBCSELPA's ADR Cadre are neutral leaders who represent SBCSELPA's ADR process and are confident in facilitating collaboration in special meetings between parents/guardians and school personnel for the benefit of students.

**Facilitator:** A facilitator helps keep members of a team focused on the development of the IEP while addressing conflicts and disagreements that may have occurred before or emerged during the meeting. A facilitator is not a member of the IEP team but encourages cooperation amongst team members and helps the collaboration of all team members in the meeting.

**Norms:** Guidelines for communicating and behavior to support an effective conversation.

**Team:** The Individualized Education Program (IEP) team consists of educational professionals, school personnel, parents/guardians, students, and others who have special knowledge of the student.

**Consensus/Agreement:** A negotiated arrangement between a team that allows for future action.

## WHAT FORMS SHOULD BE USED

The following forms should be used in conjunction with requesting and implementing Alternative Dispute Resolution (ADR):

- SELPA86: ADR Conference and Facilitated Meeting Intake and Documentation Form
- SELPA87: Alternative Dispute Resolution (ADR) Meeting Participation Guidelines and Code of Ethics
- SELPA88: ADR Conference and Facilitated Meeting Evaluation Form
- SELPA89: ADR Cadre Code of Ethics

SELPA Forms referenced in this handbook are located in our county's online SIRAS Systems [www.sirassystems.org](http://www.sirassystems.org) website.