

**DEPARTMENT OF GENERAL SERVICES  
OFFICE OF ADMINISTRATIVE HEARINGS**

**SPECIAL EDUCATION  
HANDBOOK**

**PROVIDED BY THE  
OFFICE OF ADMINISTRATIVE HEARINGS**



**2018**

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## INTRODUCTION

All children with disabilities have a right to a free appropriate public education. This Handbook uses the acronym "FAPE" to mean a free appropriate public education. The federal law that gives these rights is the Individuals with Disabilities Education Act. The federal law is also known as the IDEA. The California version of the law is in California's Education Code. This Handbook has two goals. The first goal is to help students and their families understand their rights under the law. The second goal is to help families use what is called "due process" if they believe their child is not receiving a FAPE.

This Handbook describes what due process is and how it works in California. The IDEA intended parents to be able to use due process without an attorney. However, parents have a right to an attorney, at their own expense, and some, but not all, parents choose to have an attorney represent them. Parents also have the right to be accompanied by persons with specialized knowledge, although non-attorneys cannot represent Parents in mediation or in hearings. The Handbook is meant to help parents understand due process whether or not they have an attorney or other help. The Office of Administrative Hearings cannot give legal advice to anyone, but it is easier to be a part of mediation and a due process hearing if you understand the process. The Handbook will refer to the Special Education Division of the Office of Administrative Hearings as "OAH."

The Handbook explains how due process works. The Parts of the Handbook walk through each step of the process and explain how to participate in each step. It is not necessary to read the entire Handbook to get started. However, reading the Handbook from the beginning may give parents a general understanding of how things work.

Due process begins when someone sends a request for due process to OAH. This request is often called a "complaint". OAH has a form to use to request due process and other forms to use during the proceedings. The forms have instructions and the Handbook explains what forms are available and how to use them. Forms are available through the OAH website or by asking for them from the OAH office in Sacramento.

There are many different people and agencies involved in due process proceedings. The Handbook will use the term "parents" to mean parents, legal guardians, or any person or entity who is legally responsible for protecting a student's educational rights. Students that are 18 or older have the same rights as "parents" as that term is used in this Handbook. The Handbook will use the term "district" to refer to all educational agencies involved in making educational decisions for a student. These agencies include:

- School districts;
- Special education local plan areas (commonly called SELPA's);
- Charter schools; and
- Other state agencies that provide services to children with disabilities.

Lastly, the term "party" means a parent, person, district or other educational agency involved in a due process proceeding.

## **The Office of Administrative Hearings Special Education Division**

OAH is a neutral state agency that helps solve disagreements between individuals and government agencies. The Special Education Division handles mediations, prehearing conferences and due process hearings.

OAH provides mediators and administrative law judges who help parents and districts work out their differences in mediation or as the result of a hearing. This Handbook will refer to these special education administrative law judges simply as "judges." Judges are trained not to take sides. Their goal is to ensure students with disabilities receive a FAPE, and to make sure everyone follows the law. The people employed by OAH work very hard to make sure both sides receive a fair hearing process.

The Special Education Division has a website: <http://www.dgs.ca.gov/oah/SpecialEducation>.

The website includes links to this Handbook, the special education case calendar, judge's assignments and profiles, searchable decisions and orders, community outreach, the advisory board, and answers to frequently asked questions, also called FAQ's. There are links to OAH forms that can be filled out on- line and printed. The website also has other useful information about OAH and special education.

The Special Education Division has an online document filing system called the Secure File Transfer system (SFT). Private information contained in documents sent to and from OAH using SFT is more secure than other methods used to send documents such as email or facsimile. Instructions for using SFT are in this Handbook below in Part 3: *Using the Secure File Transfer System*, Part 5: *How to Prepare a Complaint or Other Document Using SFT*, and Part 15: *How to Register and Use SFT*. Parties may register and log in to SFT at: <https://www.dgsapps.dgs.ca.gov/OAH/OAHSFTWeb>

### **OAH Contact Information**

Although the Special Education Division has two regional offices, Sacramento and Van Nuys, it operates as one agency serving the needs of the parties across the state. Sacramento is the central office. The telephone number for the Sacramento office is (916) 263-0880. All hearing and mediation requests and documents must be filed in Sacramento and can be filed using the SFT or by mail.

#### **Mailing address for all written communication, documents, and filings:**

Special Education Division  
Office of Administrative Hearings  
2349 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833

**OAH will no longer accept documents sent by fax. Documents sent by fax or email may contain private information that is not secure. A party needs to have an email address to use SFT. If a parent does not have an email address or is unable to use SFT, please call OAH at (916) 263-0880 for assistance.**

**Link for SFT:** <https://www.dgsapps.dgs.ca.gov/OAH/OAHSFTWeb>

**After-hours "Settlement Hotline" voicemail telephone number: (916) 274-6035.**

### **The Handbook is Available in Other Languages and Formats**

This Handbook is available in English, Spanish, Vietnamese, Korean, Tagalog, Mandarin, and Arabic. It is also available in other languages upon request. OAH can also provide copies of the Handbook in larger lettering, in different lettering, or electronically if requested. To get the Handbook in a different language or format send a written request to OAH in Sacramento. The request can be written in any language. For more information about getting copies of forms and publications in alternative formats call (916) 263-0880.

#### **Español:**

Este Manual está disponible en Inglés, Español, Vietnamita, Cantones, Tagalo, y Hmong. También está disponible en otros idiomas. OAH también le puede proporcionar copias del Manual con letras más grandes, diferentes, o de manera electrónica se así se solicita. Para obtener el Manual en un idioma o formato distinto, envíe una solicitud escrita a OAH en Sacramento. Esta solicitud se puede hacer en cualquier idioma. Para más información acerca de recibir copias de formularios y publicaciones en formatos alternos, llame al (916) 263-0880.

#### **Vietnamese:**

Cuốn Cẩm nang này có bản tiếng Anh, tiếng Tây Ban Nha, tiếng Việt, tiếng Quảng Đông, tiếng Phi-líp-pin, và Hmông. Còn có bản các thứ tiếng khác. OAH có thể cung cấp bản khác của Cẩm nang này với khổ chữ lớn hơn, khổ chữ khác, hoặc bằng điện tử nếu có yêu cầu. Để có được bản Cẩm nang với ngôn ngữ khác hay định dạng khác, gửi thư yêu cầu tới OAH ở Sacramento. Thư yêu cầu có thể viết bằng bất kỳ ngôn ngữ nào. Để có thêm thông tin về việc nhận các mẫu đơn và các xuất bản với định dạng khác, xin gọi (916) 263-0880.

#### **Tagalog:**

Ang Hanbuk na ito ay makukuha sa Ingles, Vietnamese, Cantonese, Tagalog at Hmong. Ito rin ay makukuha sa iba pang mga wika. Ang OAH ay maaari ring magbigay ng mga kopya ng Hanbuk sa mas malaking titik, sa iba't ibang pagkakasulat, o elektronikong pamamaraan kung



hiniling. Para kumuha ng Hanbuk sa ibang wika o ayos magpadala ng isang nakasulat na kahilingan sa OAH sa Sacramento. Ang kahilingan ay maaari nakasulat sa anumang wika. Para sa karagdagang impormasyon tungkol sa pagkuha ng mga kopya sa mga porma at mga pahayagan sa alternatibong ayos tumawag sa (916) 263-0880.

Arabic:

والكورية وال في تنمية والإ سد بانية الإن جلية بال لغات الك تيب هذا ي توفر  
على ب ناء أخرى ب لغات أيضاً ي توفر كما .والعربية والمنداريكية والتجالية  
بالأحرف الك تيب من نسخ ي قدم أن يمكن الإدارية الا سد تماع ج لسات مك تب .الطلب  
أو ب لغات الك تيب على ل لحصول .الطلباء عند إلكترونياً أو الخطوط و ب مذ تلف الك بيرة  
في الإدارية الا سد تماع ج لسات مك تب إلى الطلب إرسال ي رجي مذ تلفة ب .تدسيقات  
على الحصول عن المعلومات من ولمزيد .لغة ب أية الطلب يكتب أن وي يمكن .ساكرامندو  
رقم بالهاتف الات صال ي رجي ب ديلة ب .تدسيقات والمطبوعات ال نماذج  
0880-263 (916).

Korean:

안내서는 영어, 스페인어, 베트남어, 한국어, 타갈로그어, 만다린어, 그리고 아랍어로도 제공되며, 기타 언어도 요청 시 제공이 가능합니다. 행정사무국은 또한 요청이 있을 시, 안내서를 큰활자체나 보기 좋은 다른 활자체 및 전자파일형식으로도 제공해 드립니다. 다른 언어, 활자체, 또는 다른 문서 형태로 안내서를 받아보고 싶으신 경우, 사크라멘토 행정사무국으로 요청해 주십시오. 요청은 어떤 언어로도 가능합니다. 다른 문서 양식이나 활자체 사본에 관한 보다 자세한 정보는 전화 (916) 263-0880번으로 연락 주십시오

Mandarin:

本手册可用英文、西班牙文、越南文、韩文、菲律宾文、中文和阿拉伯文提供，也可按要  
求以其他语言提供。如果要求，行政听证处 (OAH) 还可用更大的文字、不同的文字或电子  
方式提供本手册副本。要想以不同的语言或格式获得本手册，请向萨克拉门托的行政听证  
处发送书面请求。该请求可用任何语言书写。有关以其他格式获取表格和出版物副本的更  
多信息，请致电 (916) 263-0880。

## **PART 1: BRIEF SUMMARY OF EDUCATIONAL RIGHTS**

### **The Rights of Children with Disabilities**

Children with disabilities have a right to a free appropriate public education, no matter what type of disability they have. In California, disabled students between the ages of 3 and 22 may be eligible for special education and related services.

**FAPE** means special education and related services designed for a student's unique needs. The student's education must be designed to help the student to make progress in school. Special education must also be designed to help the student learn skills for independent living.

**Special Education** means teaching that is designed to meet a student's particular needs. Special education is free. The student may be taught in a general education classroom. Special education can also be provided in a separate classroom for all or part of the school day. Often, the student is taught by a teacher who has been trained in special education. Sometimes the student can be taught at home, in a hospital, or in temporary residential placement like Juvenile Hall.

**Related Services** are things such as transportation to and from school, speech therapy, and occupational therapy. Other related services may also be necessary to help a student with disabilities access their education.

**An Appropriate Education** means that the student's education must be reasonably calculated to provide some educational benefit to the student. The United States Supreme Court stated this definition in a case called *Board of Education of the Hendrick Hudson Central District v. Rowley*. A copy of that decision can be found by following the instructions at the back of this Handbook. The actual decision can be found by typing the case citation 458 U.S. 176 (1982) into your website browser. The case was decided in 1982 and it is still the law today.

In 2017, the United States Supreme Court wrote another decision about special education. This recent case is called *Endrew F. v. Douglas County School District*. The Supreme Court said that school districts need to offer a special education student a program that is reasonably calculated to enable the student to make progress according to the student's circumstances. The actual decision can be found by copying and pasting the following citation into your internet browser: *Endrew F. v. Douglas County School District Re-1*, 137 S. Ct. 988.

All special education students must have an individualized education program. This Handbook uses the acronym "IEP" in place of individualized education program. An IEP is a document that contains many different kinds of information about a student's education. Included in an IEP are: a list of how well the student is doing in school at the time the IEP is written; what the student's strengths and weaknesses are; what areas the student will work on (called "goals"); what type of special education the student needs; what sort of classroom the student will be in; what type of related services the student will get; and what accommodations and modifications the student may need to be able to be successful at school. IEP's are discussed in more detail below.

## **Determining Eligibility for Special Education**

School districts determine if a student is eligible for special education using a process called “assessment” or “evaluation.” These terms mean the same thing.

Many different people can ask a district to assess a student for special education. These people include the student’s parents, student’s teachers or other school personnel, and doctors and other service providers.

A district must get written consent from a parent before the district can assess a student. The district must sent parents an assessment plan written in the parent’s native language. The assessment plan must explain what areas are being assessed and how the assessment will be done.

An assessment includes many different parts. It may include written tests given to the student, reviews of the student’s records, including past assessments that may have been done, and interviews with the student’s teachers and parents. The assessment is usually done by district staff members. The people doing the assessment must be knowledgeable about the assessment and the tests they use. They must be trained to give those tests and to interpret the results.

The assessment methods must be fair, accurate, appropriate for the student, and free of racial, ethnic, cultural, or gender bias. If a student’s native language is not English, or if the student does not communicate in English, or if the student has communication disabilities, the portion of the assessment directly involving the student must be in his or her primary language or mode of communication.

The district must assess the student in all areas of suspected disability that might affect the student’s ability to benefit from his or her education and must use a variety of evaluations. No single testing or assessment procedure can be the only means of making a decision about whether a student is eligible for special education.

The people who do the assessment must make a written report of all parts of their assessment. The district must then schedule a meeting with the student’s parents to discuss the assessments. The district must make sure that the student’s parents have a copy of all the assessment reports no later than the time of this meeting. Either the people who did the assessments or other district staff who are knowledgeable about the particular assessment must also come to the meeting to discuss the assessment and the assessment report. The purpose of this meeting is to determine, based on the assessment results, if the student is eligible for special education. School districts must provide an interpreter to attend the meeting if parents need that service.

If a student is found eligible for special education, the student must generally be given a new assessment at least every three years. The same rules that apply to the student’s first assessment apply to reassessments.

If parents disagree with the district’s assessments, parents may ask the district to pay for an independent educational evaluation (IEE). If the district does not want to pay for an independent educational evaluation, the district must explain its reasons for refusing to provide the independent educational evaluation to parents in writing, and file a request for a Due Process Hearing with OAH to prove this. Parents will need to prove that the assessment was done in such a way that it

failed to meet a standard called “legally sufficient” The judge will decide if the district’s assessment was legally appropriate and whether the district must pay for the parents’ IEE. If the district does not file a complaint (due process request) parents may file to ask OAH to order the district to pay for the IEE parents requested.

## **The Individualized Education Program**

If a student is eligible for special education the district must offer an individualized education program for the student. This Handbook uses the acronym "IEP" for a student's individualized education program. Each student’s IEP must be reviewed at least once a year by the student’s IEP team, and must be changed as the student’s needs change.

### ***The IEP Team***

The IEP must be developed by a team. The team must include the student’s parents or guardians, a special education teacher, a general education teacher if the student is or may be placed at least part of the time in a general education classroom, and a school administrator who has authority to make decisions about a student’s IEP, such as the Special Education Director or the Principal. The student may be part of the IEP team if that is appropriate. Sometimes, specialists such as a school psychologist may be part of the IEP team. Someone knowledgeable about the student's assessments must participate when assessments are discussed at the IEP team meeting. People who are required to be part of the IEP team must attend unless parents excuse them in writing. Parents may bring other people to the IEP team meeting to provide information to the team or to advise parents during the meeting. An example of such a person is someone with special knowledge or training about the problems of children with disabilities, a relative, a private service provider for the student, or some other professional who may have assessed the student.

### ***The IEP Team Meeting***

The IEP team should review a student’s assessments, observations of the student, the progress the student has made, and whether a student is eligible, or continues to be eligible, for special education. Parents are full members of the student’s IEP team.

Parent attendance at IEP meetings is important. A district must try to get the parents to attend and participate in the IEP team meetings. The district must send a written notice to the student’s parents in advance telling them the date, time, and place the district is planning to have the IEP team meeting. If the date and time are not convenient for the parents, the parents may request a different date and time. A district must provide an interpreter if parents need that assistance.

Team members will discuss a number of things at the IEP team meeting. For example:

- Formal and informal assessments;
- The impact of the student’s disability on academics and social skills;
- Student's goals and current level of performance;
- Related services needed to assist the student to benefit from the student’s education;
- Accommodations for the student in and out of the classroom;

- Modifications to the curriculum or specialized instruction to assist the student to benefit from the student's education; and
- The types of placement that might be appropriate to meet the student's needs.

District personnel must allow parents to fully participate in the IEP team meetings. Parents may ask questions, provide information and offer opinions about student's needs and programming. Parents may offer suggestions for placement, programming, services, and supports. School districts must consider everything a parent says or asks for. However, the district is not required to adopt proposals made by a student's parents.

The district may not place a student in a special education program or provide related services without a parent's written consent to all or part of the IEP. School districts may only implement a student's IEP without parent's consent if the district has filed a request for due process and a judge from OAH has conducted a hearing and given the district permission to do that. A district must prove that the proposed special education and related services would provide the student a free appropriate public education.

### ***What the IEP Document Must Include***

An IEP must be in writing and must include the student's:

Present levels of performance: The IEP must have a statement of the student's present level of educational performance and special needs. The teachers and service providers working with the student will share information about the student and how far the student has progressed during the past year based on assessment results and/or progress on goals and class work.

Goals: Goals are statements of what the student receiving special education and services can reasonably be expected to accomplish in areas of need during the following year. Annual education goals address the student's needs. The goals are developed by the student's IEP team each year, and can be modified as needed.

Related services: A description of the related services that are necessary for the student to benefit from his or her education will be listed in the student's IEP.

Time with non-disabled peers: The amount of time the student will participate in general education classes or activities and the amount of time the student will spend in specialized instruction settings and/or receiving related services.

Implementation, frequency and duration of placement and services: This section of the IEP states when a program or service will start, for how long it will continue, and for how long it will take place.

Developing skills for independent living: Independent living skills include career, vocational education, and alternatives for meeting requirements for graduation if required. Additionally, during the year the student turns 16, the IEP will contain an individual transition plan that addresses how the student will prepare for life after high school.

Placement: This section discusses the location where the student will receive instruction.

Parents are entitled to a free copy of the student's IEP at no cost to them. The IEP must be translated into parents' native language if they do not read English.

The IEP must be “reasonably calculated to allow a child to make progress appropriate in light of the child’s circumstances.” The student’s IEP must be reviewed by student's IEP team at least once a year.

## **PART 2: DUE PROCESS**

Sometimes, parents and their district do not agree on whether the student is eligible for special education, how the assessments were done or the results of the assessments, or what the student's educational program should be. If that happens, the law gives parents certain rights to resolve their disagreements with the district. Those rights include a system called “due process.”

“Due process” is the name given to the rules that must be followed by governmental agencies when people’s rights are in dispute. It means that the government has to follow established laws, rules and legal principles. Under due process, every person has the right to his or her day in court.

The right to due process applies to special education. “Due process” in special education means the rights and procedures that apply to deciding disagreements between parents and districts. Special education due process procedures occur over a period of time. Each step builds upon the previous steps. It is important for parents to understand how these procedures work so they can participate in them.

A “due process hearing” is the formal procedure used to decide disagreements between parents and a district. A hearing can take place if parents and a district cannot fix the problem without a hearing. Both parents and districts have the right to file a request for due process.

The kinds of disagreements that may be decided by a due process hearing are:

- Whether a student needs special education and related services;
- Whether the assessments of a student were complete and proper;
- Whether a district has to pay for an independent educational evaluation;
- Whether a student's IEP provides a free appropriate public education (FAPE);
- Whether the related services in the student's IEP meet the student’s needs; and
- Whether the placement offered in the student's IEP meets the student’s needs in the least restrictive environment.

There are four basic principles of due process procedures. They are:

- Notice of what is happening;
- A way for the parties to try to solve the problem themselves;
- An equal opportunity to be heard at a due process hearing if needed; and
- A fair decision from an impartial person after a hearing

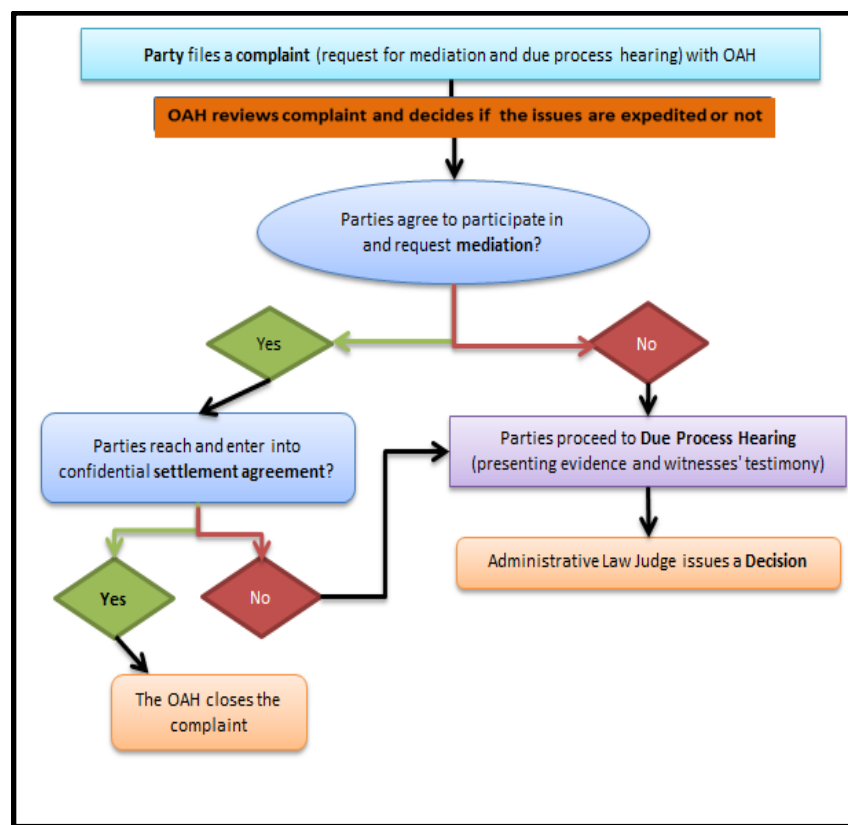
In California, OAH provides due process services. Judges who work for OAH are the impartial people who make the decisions at due process hearings. These judges are trained in special education law and in administrative hearing procedure in order to conduct the hearings.

### **PART 3: THE “PROCESS” OF DUE PROCESS HEARINGS**

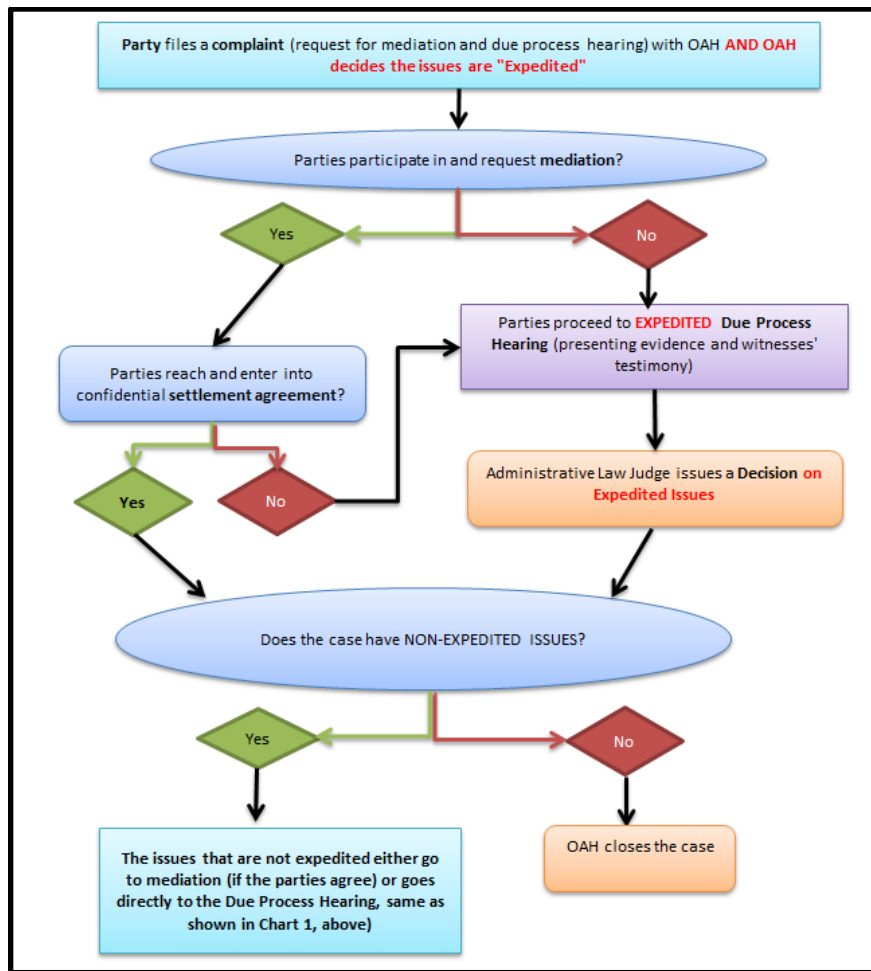
A special education due process case begins when a party sends a request for due process, also called a “complaint”, to OAH. A parent or a district has the choice of requesting three different types of “due process”: Mediation Only, Request for Mediation and Due Process Hearing, and Hearing Only. The differences between these, and how to request the types of due process administrative procedures, are discussed in detail below in Part 4: The Four Types of Due Process Proceedings. The fourth type of due process case is an “expedited” case, and is one that is not chosen by the party filing the complaint. How an expedited case happens is explained Part 4.

This section of the handbook describes the general procedures followed in all of these different procedures. The charts below show the general steps involved in each of the three types of actions. This Handbook will use the term "complaint" instead of "request for due process."

#### **REQUEST FOR MEDIATION AND DUE PROCESS HEARING (Chart 1):**

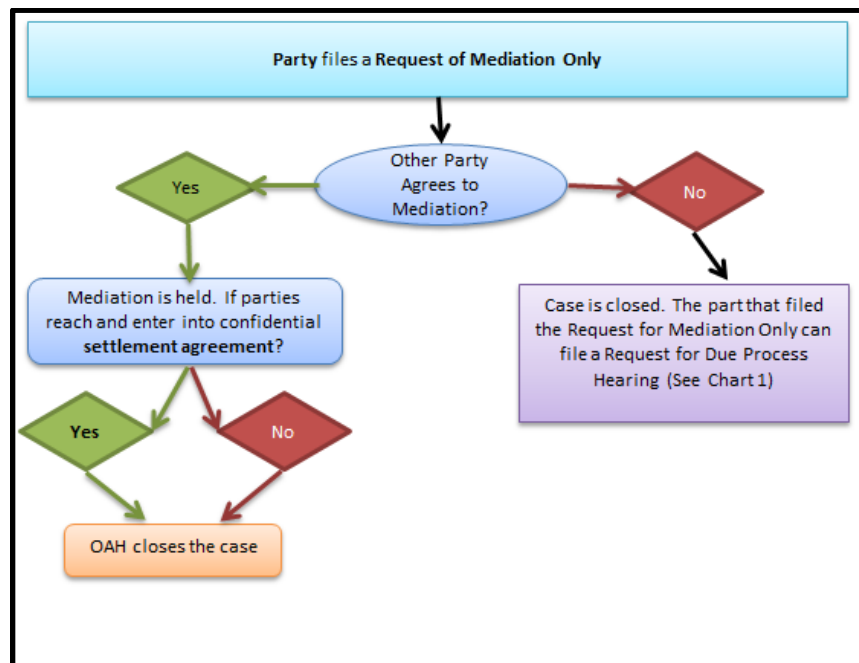


**REQUEST FOR DUE PROCESS HEARING WHERE OAH DECIDES AT LEAST SOME OF ISSUES ARE **EXPEDITED** (Chart 2):**

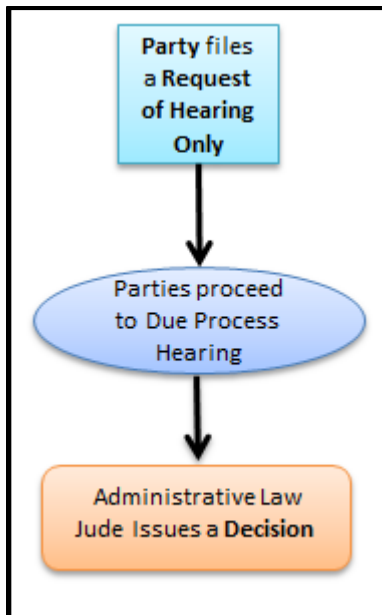




### **REQUEST FOR MEDIATION ONLY (Chart 3):**



### **REQUEST FOR DUE PROCESS HEARING ONLY (Chart 4):**



A complaint, as well as other documents sent to OAH, must be "filed" and "served." All documents used to communicate with OAH about the case must be "served" on the other party or parties to the case. Proof of serving a document on the other parties must then be sent to OAH to show that the other parties have a copy of the document. This is called a Proof of Service and will be discussed below. The Proof of Service lets OAH know that anything one side is saying to the judge has been told to the other parties

## Filing & Serving the Complaint & Other Documents

“Filing” a document is the same as sending a document to OAH where a document is intended to be part of a case and seen by a judge. Anyone who files a document with OAH must send a copy of the entire document, including any attachments, to all of the other parties involved in the case. For example, if a parent files a complaint against a district, the parent must send a copy to the district. If a district files a complaint with OAH, it must send a copy to the parents. “Serving” means sending an exact copy to another party. “Serving” may be done by mail or in person. Serving by fax, email, or SFT may also be done by if the other party has agreed to accept service in one of those ways in advance. It is important to remember that you must provide a copy to the other parties *before* sending the document to OAH because you must send to OAH a proof of service along with the document you are filing with OAH.

### *Proof of Service*

All papers that are filed with OAH must include a “proof of service.” A proof of service is a statement under penalty of perjury that says the party sent or gave (“served”) the complaint or other documents, on the other parties. OAH forms to Request Mediation and to Request Mediation and Due Process Hearing include a statement of service on the last page of the form. **If the OAH form contains a statement of service, it is not necessary to file a separate proof of service.**

If you are not using a form complaint or are filing a document that does not include a proof of service, you must include a separate proof of service or OAH may not be able to accept the document. The proof of service must also be attached to all papers sent to other parties. A sample proof of service may be found at the end of this Handbook.

The complaint may be typed or it may be hand-written. OAH has forms for filing a complaint on the website and in Part 15 of this Handbook. The forms are available in a number of different languages. Either a student’s parent or guardian, or a district may file a complaint. Which form to use is explained in Part 4: *The Three Types of Due Process Proceedings*. See also, Part 5: *How to Prepare a Complaint* section called “How to Prepare a Complaint and Other Documents Using SFT.”

All proofs of service must be signed by the person serving the document on the other party or parties “under penalty of perjury”. This means that the declaration must end with this statement (“Penalty of Perjury Statement and Signature”):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at (write the name of the city here), California, on (write the date here).

\_\_\_\_\_  
(Sign name here)

(Print name here)

If one of OAH's forms is used this Penalty of Perjury Statement and Signature is already on the form. If you make your own proof of service you must include this statement or your proof of service will not be complete.

### ***Filing the Documents***

Once you have served the documents on the other side, you can file them with OAH. All documents have to be "filed" with OAH. As stated above, "filing" means that the document has to be e-filed (sent via the internet) using OAH's Secure e-File Transfer (SFT) system, mailed, hand delivered, or sent by overnight delivery, to the OAH offices in Sacramento. OAH is no longer accepting faxed documents. The address for mailing, hand delivery, or overnight mail is:

Office of Administrative Hearings  
2349 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833.

To send the document by email using the SFT system is explained in detail below.

If a parent is unable to either e-file documents using SFT, to send documents by mail or overnight delivery, or hand deliver the documents, please call OAH at (916) 263-0880 for assistance.

### **Using the Secure e-File Transfer System (SFT)**

Parties may create an online account for special education cases with OAH by using the Secure e-File Transfer system. The program is called SFT. Parents and districts may create an online account by registering with an email address and a password.

This section contains instructions for registering and using SFT for filing documents and viewing files.

### ***How to Register***

Go to <https://www.dgsapps.dgs.ca.gov/OAH/OAHSFTWeb> to register. This link will take you to the SFT home page for both general jurisdiction cases and special education cases. (General Jurisdiction cases handle licensing and other kinds of issues.)

- Click on "Register." Fill in your first and last name, phone number, and email address. Double check the email address you typed to make sure it is correct. OAH will use your email address to confirm that OAH has received your filings and to let you know that a document has been filed in your case. You will also need to create a password. Your password should be easy for you to remember. Your password should contain between 6 and 15 characters, with at least one letter, one number, and one special character. The special character should not be %, @, (, ), or &. Other special characters, such as !, #, \$, or \*, may be used. You will need to confirm the password by typing it again. Then click on the "Register" box located near the bottom of the screen.

- SFT will immediately email you a confirmation that you have registered. After you receive the confirmation, you may log in, file documents, and see documents in your file. You may see and print documents that have been filed within the last 30 days. **After 30 days documents sent to you by OAH will be deleted and you will no longer be able to view the documents on your SFT account so OAH recommends that you either print all documents or save all documents to your own computer. SFT does not allow you to see documents that you have sent to OAH.**
- **When you register you agree to accept electronic service through SFT.** This means you will only receive a copy of an OAH document filed and served on you electronically through your account in the SFT system. You will get an email whenever you have filed a document and when documents are sent to you by OAH. You can print documents from your SFT account and save documents to your own computer. OAH will not send you any paper copies of documents.

### ***How to Log In to SFT***

- Go to <https://www.dgsapps.dgs.ca.gov/OAH/OAHSFTWeb> and click on “Log in” in the blue banner across the top of the screen. You will see a screen with your email address and a box for your password. Enter your password and click on the “Log in” box near the bottom of the screen.
- A screen with three tabs will open. The screen will automatically open in the tab marked “Upload File.” If you want to see your file or change your password, click on the tab for “View My Files” or “Change Password.”

### ***How to File a Complaint or Other Document***

1. **Prepare Your Document:** Before you log in to SFT you will need to prepare your complaint or other document and save the document on your desk top in pdf format.
2. **Log in to SFT:** After your document is saved on your desktop, log in to SFT. Remember, the screen will automatically open in the tab marked “upload file” so the system is ready to receive your new document.
3. **Upload your document and Proof of Service:** The “Upload File” screen allows you to file a document. You may upload and file one of the OAH form documents or any other document using this system by following these directions.
  - Click on the downward arrow in the “Select a Program” box. Click on “Special Education Division.”
  - Click on the downward arrow in the “Select an Office” box. Click on “Special Education – All Offices.”
  - Click on the tab “Send Documents” and then click on the downward arrow in the “Select Type of Document” box. Click on the type of document you want to upload. If you do

not know which type of document to select, you may check “Other” and, in the “Additional Case Information” section please add a brief description of the document you are sending.

- Enter the student’s name and the case number, if you know that information. If you are filing a complaint, you will not know the case number because OAH will give it a number after your complaint has been filed.
- Type the student’s name in the box for “Additional Case Information.”
- Click on the “Select Files” box near the bottom of the screen. When you click on the “Select File” box, you will see files you have saved on your computer. Select the document you want to upload for filing. The document must be in PDF format.
- Instructions for how to prepare a complaint, use an OAH form complaint, or other OAH form documents for uploading on SFT are below in Part 5: *How to Prepare a Complaint, Getting Help with the Forms, and What to do after the Complaint is Prepared.*

4. **Check for Receipt of your confirmation e-mail:** SFT will immediately send you an email that your document has been uploaded. **Save or print this email to verify that you filed the document.**

- NOTE: Whenever you name a document, please be sure to include only letters and numbers in the name of any document that you are sending through SFT. SFT might reject a document if the name includes punctuation or symbols such as a question mark (?), a hashtag or pound sign (#), quotation marks (“ or ”), an apostrophe (‘), or a period (.).

### ***How to View Documents in SFT***

- Go to <https://www.dgsapps.dgs.ca.gov/OAH/OAHSFTWeb> and click on “Log in” in the blue banner across the top of the screen. You will see a screen with your email address and a box for your password. Enter your password and click on the “Log in” box near the bottom of the screen.
- A screen with three tabs will appear. Click on the tab for “View My Files.”
- A screen will appear that lists documents that have been sent to you within the past 30 days. Click on the title of the document. A box with a link to the document will appear near the bottom of the page. Double click on the box to open the document. **If you want to save the document you can right click on the document and select “save as” to save the document to your desktop or file. You can print the document without saving it by right clicking on the document and selecting “Print.” It is recommended that you save all documents sent to you to your own computer. The**

**SFT will only keep documents for 30 days. After 30 days the documents will automatically be deleted.** Documents sent by you will not be available to you through the SFT system. You will need to keep a copy for your own records.

- OAH sends you an email when new files have been added to your case. The email will contain a link to the website so you can login and an email address for you to send a return email that confirms that you received the notification. **Be sure to check your email frequently when involved in an OAH case as new documents could come in at any time. Sometimes, you will have only three business days to respond.**

### ***Troubleshooting***

If you are having trouble, check your browser. Some browsers, such as Internet Explorer, may need a patch to use SFT. Google does not need a patch to use this program.

You may call (916) 263-0880 for technical assistance with the SFT system.

### ***Canceling Your Account***

When your case is closed, or you no longer want to receive service through SFT, you can “opt out” by sending OAH written instructions to cancel your consent to electronic service. This may be done through SFT or by mail.

All registered emails which have had no activity for seven years will be deleted. If your account is deleted after seven years you must re-register with your consent to electronic service for any future activity.

## **If Parents Do Not Write and/or Do Not Speak English**

### ***Translation of Documents into Other Languages***

If parents are not comfortable writing in English they may write their complaint in their native language. Many OAH forms, including complaints, are available in Spanish, Korean, Mandarin, Tagalog, Arabic, and Vietnamese on the website. There are links to the forms in those languages on the website. If parents file a complaint in a language other than English, OAH will translate the complaint into English.

### ***Requesting Interpreters***

If parents are not comfortable speaking or understanding English, they can ask OAH for an interpreter in their native language. This request should be made in writing. OAH will make sure the interpreter is there for all proceedings. It is best if parents ask for an interpreter in their complaint, but the request should be made as soon as parents realize an interpreter is needed and must include information about what language specifically is needed. For example, if parents need a Cantonese interpreter rather than a Mandarin interpreter, OAH should be informed of parents’ need in detail. A request can be mailed, hand delivered, sent by overnight delivery, or sent

through the SFT system and can be made at any time up to the date of the Prehearing Conference. Parents may request an interpreter even if they are able to write the complaint in English. Parents may also request an interpreter for their witnesses.

Parents should tell OAH this in their complaint. Parents may also ask for an interpreter in their Prehearing Conference Statement or during the Prehearing Conference. The Prehearing Conference Statement is explained in Part 7, below. The Prehearing Conference is discussed more in Part 11.

## **Mediation and Hearing Locations**

Mediations and due process hearings often take place at district offices or at schools within the district. Sometimes mediations and due process hearings take place at an OAH office. Parents can request that the hearing be held at a location other than the district's offices. To ask that the hearing be held at a different location, write a letter to OAH explaining your reason for wanting a different location. Be sure to send a copy to all other parties.

## **Accessibility**

OAH makes sure that people with disabilities are able to get into the location of mediations and hearings easily and that they are able to use the facilities such as restrooms. If a mediation or hearing is held at a school district, the district location must follow the Americans with Disabilities Act, the Rehabilitation Act of 1973 and the Unruh Civil Rights Act. These are laws that make sure that buildings, rooms, offices and restroom areas must be easily reached by people with disabilities. OAH requires districts to certify that their buildings, used for mediations or hearings, comply with accessibility laws.

If a parent, witness or other person permitted to participate in mediation, prehearing conference, or hearing needs an accommodation because of their disability, they should write to OAH and describe the accommodation needed. They can also make the request by phone by calling OAH at (916) 263-0880 and asking to speak to the case manager assigned to a case. OAH also has a form available on its website that can be filled out to request an accommodation. The form and more information is available at <http://www.dgs.ca.gov/oah/Home/Accessibility.aspx>

## **Attorneys**

Parents do not need to have an attorney to file a complaint or to participate in mediations and hearings. Parents who do not have an attorney routinely prepare and file legal documents, and participate in mediations, prehearing conferences and due process hearings. Parents have a right to be represented by an attorney if they chose. Attorneys are legally authorized to act on behalf of their clients and to practice law. If parents want to consider contacting an attorney, OAH has a list on the OAH website of attorneys and advocates who have said that they provide services for free or at a reduced fee.

Parents have a right to be accompanied and assisted by someone with special knowledge or training about the problems of children with disabilities. This includes people who are not attorneys. However, in the State of California, non-attorneys are not legally authorized to practice law or to represent parents or students in due process matters or at mediation.

## **PART 4: THE FOUR TYPES OF DUE PROCESS PROCEEDINGS**

There are four choices when requesting due process rights.

### **Mediation Only**

“Mediation Only” is used when a party would like to try mediation to resolve their dispute but does not want to file a request for a hearing right now. OAH usually schedules a mediation about 15 days after a party files a “Mediation Only” complaint. However, parents can also talk to the district representative in advance, choose a mutually convenient mediation date and request that date when they file their “Mediation Only” request. OAH makes every effort to schedule mediation on the parties’ preferred date. More information is available in Part 5: *How to Prepare a Complaint*.

Mediation is voluntary. If the other party does not want to attend, the mediation date will be canceled. However, districts usually agree to mediation because it has a very high success rate. The mediation process is discussed in Part 7: *Mediation*.

Attorneys are not permitted to attend mediation in a “Mediation Only” case. Non-attorney individuals with special knowledge or training about the problems of children with disabilities may not represent parents during the mediation but may accompany and advise parents.

OAH will close the case after mediation in a mediation only case, whether it is resolved or not. Either party may file a request for a hearing if the mediation is not successful and they believe a hearing is necessary.

If the date OAH has scheduled the mediation is not convenient, the parties may ask OAH to set a different date agreeable to both parties. Information about how to get a different date is available in Part 8: *Scheduling Order* under “Continuance”.

### **Mediation and Hearing**

“Mediation and Hearing” is the most common type of due process request (complaint).

When parents file a request for mediation and hearing, the parties must first go to what is called a “resolution session.” If the parties do not want to go to the resolution session they must agree in writing not to have one. The resolution session is discussed in more detail in Part 6: *Resolution Session*. Often the only reason not to have a resolution session is that the parties have agreed to schedule mediation.

When a complaint is filed in a “Mediation and Hearing” case, OAH will send a Scheduling Order showing the dates OAH has scheduled for a prehearing conference and a due process hearing. The



Scheduling Order does not set a date for mediation but does set a deadline for requesting mediation. **Read the Scheduling Order carefully. It contains important information.** The parties must agree to a mediation date. The parties must agree to a mediation date and submit the request for mediation. It is a good idea for the parties to include a second date for the mediation as their second choice. Parents may ask for mediation by using OAH Form No. 48, a copy of which is at the end of this Handbook.

If parents or students are not represented by an attorney, OAH staff will contact them within seven days after the Scheduling Order has been sent to offer assistance in calendaring a mediation date. A mediation date may also be set during the Prehearing Conference if no mediation date has been previously set. It is a good idea to schedule a mediation before the Prehearing Conference because getting ready for the Prehearing Conference and Hearing takes a lot of time and work. If the parties settle at mediation the parties will avoid all the time and work getting ready for the Prehearing Conference and Hearing. See Part 7: *Mediation* below for more information.

To file a Request for Mediation and Due Process Hearing use Form 38, a copy of which is at the end of this Handbook. Check the box for "Mediation and Hearing." More information is available in Part 5: *How to Prepare a Complaint*.

## Hearing Only

"Hearing Only" is the least common type of due process request. A hearing only complaint is used when the party that filed the case does not want to go to mediation. However, if the "hearing only" complaint is filed on behalf of a student, the parties must have a resolution session unless they agree in writing not to have one. (See Part 6 – Resolution Sessions, for more information.) OAH recommends parties attempt to resolve their dispute at either a resolution session or mediation prior to proceeding to hearing. Most cases settle and a mediator may be able to help you find a way of solving your differences without a hearing if parties are willing to try.

Use Form 38 "**Request for Mediation and Due Process Hearing**", a copy of which is at the end of this Handbook. Check the box for "Hearing Only." More information is available in Part 5: *How to Prepare a Complaint*.

## Expedited Hearings

An "expedited hearing" takes place on a faster timeline than most hearings. OAH decides if a case will be expedited based on the law. A hearing will be an expedited hearing if the student is, or might be, eligible for special education AND one of two issues. 1) The hearing will be expedited if the issue or issues involve the discipline of students. 2) The hearing will also be expedited if a district wants to change the student's school because the district is concerned that a student may harm themselves or others. OAH schedules expedited hearings no later than 20 school days after the date the complaint is filed with OAH. OAH will schedule a hearing in an expedited manner even if the person filing the case has not asked for it.

Sometimes, a complaint will contain both expedited and non-expedited issues. If a complaint has some claims that should be expedited and some claims that are not expedited, OAH will split the

case into two parts, scheduling an expedited mediation and an expedited prehearing conference and an expedited hearing. OAH will also schedule a prehearing conference and a hearing for the non-expedited part of the case. However, OAH will not schedule a mediation for the non-expedited portion of the case. The parties may request that the mediation be set on the non-expedited part of the case by making a request for mediation as described above. See Part 7: *Mediation*, below, for how to request a mediation date in a non-expedited case.

The same form is used for filing cases involving expedited and non-expedited issues. Use OAH Form 38 "Request for Mediation and Due Process Hearing", a copy of which is at the end of this Handbook.

## **PART 5: THE COMPLAINT/REQUEST FOR DUE PROCESS HEARING**

### **Who can File a Complaint?**

#### ***Students***

Only certain people can file a complaint on behalf of a student who has, or may have, a disability. Usually, it has to be the student's parents or legal guardian, or another person who has the legal right to make decisions about the student's education.

If the student is 18 years old or over, the student may file a complaint on their own unless a court has made someone else legally responsible for the student. The student may also agree to grant their educational rights to someone else, such as their parent, giving that person the right to file a complaint for the student. This is called "granting educational rights to someone else. An adult student must sign a document to grant their educational rights to someone else.

#### ***School Districts or Other Educational Agencies***

A district, or other educational agency such as a county office of education, may also file a complaint on their own behalf. This is usually done by an attorney representing the district but can be done by anyone given authority by the district, such as the Special Education Director. It is not unusual for a Special Education Director to file a request for Mediation Only, for instance. There are several reasons a district might decide to file a complaint, such as situations where a student's parents disagree with the special education program the district wants to give to the student, or if the student's parents disagree with an assessment of student the district wants to have done.

### **How to Write a Complaint**

If parents think that a district has not acted as special education law requires, they may file a complaint (Request for Mediation and Due Process) with OAH. The complaint must be in writing. OAH provides forms for complaints. There are copies of forms for complaints at the end of this Handbook and on the website. OAH forms are optional but they may help remind you of necessary information that should be included. However, any written document containing the

necessary information is sufficient. The complaint can be created on a computer, typed or hand-written on plain paper. If handwriting a complaint, please print legibly so the Judge is able to read the information.

All complaints must contain this information:

- The first and last name of the student with his or her birthdate and grade level;
- The student's address;
- The parents' address if it is different than the student's address;
- If the parents are homeless, information on how to contact them;
- The name of the school student attends. This is called the "school of attendance;"
- The name of the district where the parents live. This is called the "district of residence;"
- The name of the district or government agency named as a party. This is the district or agency providing the special education program to the student and with whom parents are saying there is a problem. It is usually the student's present or past district, but can be a charter school and, sometimes, another government agency;
- A description of the problem with the student's special education. This is the reason why parents are filing the complaint. For example: "My child's IEP dated September xx, 20xx should have offered two hours a week of speech and language therapy;"
- Facts describing the problem. For example: "My child's IEP only offered one hour a week of speech and language therapy. For the last two years my child has not made any progress in speech. No one is able to understand my child's speech. That is why my child needs at least two hours of speech therapy a week;"
- A "proposed resolution" to the problem. This means what parents want the district to do to solve the problem. For example: "I am asking for the district to increase my child's speech and language sessions to two times a week."
- The main language the student speaks and/or understands; and,
- Whether an interpreter is needed, the language needed, and who it is that needs the interpreter.

## **Getting Help with OAH Forms**

OAH forms may be filled out online and printed from the website or from the back of this handbook. OAH forms can also be printed or copied and typed or filled in by hand. The forms have spaces for all information that OAH needs. The forms have directions about how to fill out the forms.

Support staff who work for OAH can answer basic questions. They cannot give legal advice to anyone. However, OAH can provide a mediator to help parents or students fill out the complaint forms. This help is given to people who do not have an attorney. The mediator cannot give legal advice to parents. The mediator will help the parents to state their issues. If parents would like some help from a mediator, they must ask for it in writing. OAH also provides a list of attorneys on its website who have said they are willing to provide their services either free or at a reduced fee. Once completed, the complaint and proof of service can be mailed to OAH, hand delivered, sent by overnight delivery, or filed online using the Secure File Transfer system (SFT.)

## What to do after the Complaint is Prepared

After the complaint is prepared, the complaint must be filed with OAH. This can be done by mailing or hand-delivering it to the OAH offices in Sacramento; or by uploading the complaint to SFT. The address for mailing or hand delivery is:

Office of Administrative Hearings  
2349 Gateway Oaks Drive, Suite 200,  
Sacramento, California 95833.

To upload the complaint to SFT use: <https://www.dgsapps.dgs.ca.gov/OAH/OAHSFTWeb>. Information about how to set up an SFT account is included Part 3: *Using the Secure File Transfer System*. There is more information about filing and serving the complaint above in Part 3: *How Due Process Begins*.

The complaint must also include a “proof of service” on all other parties. The proof of service may either be on the OAH form, or may be a typed or handwritten list of everyone who is receiving a copy of the complaint.

## How to File a Complaint Using SFT

This section of the Handbook contains instructions for preparing a complaint to be uploaded to SFT. The first two sections contain instructions to upload a complaint using an OAH form complaint. The third section contains instructions to upload a complaint that was not prepared on an OAH form. **A complaint must be uploaded to SFT in a PDF format.**

Whether you prepare the form using a computer or you type or write the form the size of the final form must not exceed 10MB. If the form is bigger than 10MB then the SFT will not accept the form. Once the document is completed you will need to scan it and save it to your computer. It is recommended that the scan be in black and white and not high resolution as this adds to the size of the document and may cause the document to be larger than 10MB. After scanning the document you should check the size of the document to make sure it does not exceed 10 MB.

To find the size of a scanned document, right-click on the document and select “Document Properties”. Toward the bottom of the Description, under “advanced” look for the number beside “File Size”. If the file size is more than 10 MB, tips for reducing the file size may be found at: <https://acrobatusers.com/tutorials/reducing-file-size>

If the file says “kb” (which means kilobytes which are smaller than megabytes) your file is not too large. Anything under 10 MB is fine. **Keep in mind that your complaint should not include copies of all of your evidence.** You will bring that to the hearing. Your complaint is a detailed description of the concerns you have about your child’s educational program and related services that includes the dates issues occurred and the necessary personal information (name, age, school, district, etc) listed above.

## **How to Prepare a Form Complaint for SFT From The Website**

Parents can prepare and file any type of complaint so long as the complaint contains all of the necessary information. If parents choose to, they can use an OAH form complaint either by filling it out on the computer or printing it and then hand-writing or typing in the information. Copies of the forms are also at the back of this Handbook.

To write your own complaint, type or handwrite the required information listed above in “How to Write a Complaint”. Be sure to print legibly if you handwrite the complaint.

Prepare a proof of service. A sample proof of service may be found at the end of this Handbook.

If you are using a form from OAH’s website, these are found under Forms at:

[www.dgs.ca.gov/oah/SpecialEducation/Forms.aspx](http://www.dgs.ca.gov/oah/SpecialEducation/Forms.aspx).

If you only want a mediation use Form 63.

If you want both a mediation and a hearing, or only a hearing, use Form 38.

You may either complete the form and then save it, or save the form on your computer and then fill it out. If you fill it out on the website, be sure to save it to your computer after you complete it. Your entries will not be save unless you do save it to your computer.

The form requires your signature and the signature of the person that completes the Statement of Service at the end of the form. You may sign in both places if you are the person that sends or delivers the form to the other parties. You will be able to sign the form electronically by typing your name in the appropriate space. Save the completed form in PDF format on your computer.

You will need to serve the completed form complaint on all other parties and upload it to SFT. Directions for serving documents are in Part 3: *Serving the Complaint*. Directions for uploading the complaint on SFT are in Part 3: *Using the Secure File Transfer System*.

## ***How to Prepare a Typed or Handwritten Form Complaint for SFT***

Locate the form complaint you want to use on the website or from the back of this Handbook. Print the form from the website or copy it from the Handbook. You may fill it out by hand or with a typewriter. Sign the form and have the person that sends or delivers the form to other parties sign the Statement of Service at the end of the form. Scan the completed form. Save a copy of the scanned form in PDF format.

You will need to serve the completed form complaint on all other parties and upload the scanned PDF form to SFT. Directions for serving documents are in Part 3: *Serving the Complaint*. Directions for uploading the complaint on SFT are in Part 3: *Using the Secure File Transfer System*.

## ***How to Prepare for SFT a Complaint that is Not an OAH Form***

Prepare a written document that contains all of the information listed above in *How to Prepare a Complaint*. Sign the document. Prepare a proof of service. Scan the signed document and the signed proof of service. Save a copy of the scanned document and proof of service in PDF format on your computer.

You will need to serve an exact copy of the document with the proof of service attached on all other parties and upload the PDF copies to SFT. Directions for serving documents are in Part 3: *Serving the Complaint*. A form proof of service may be found at the back of this Handbook. Directions for uploading the complaint on SFT are in Part 3: *Using the Secure File Transfer System*.

## **Responding to a Complaint**

If parents file a complaint, the district they name as the other party must send the parents a written response within 10 days unless parents were previously sent a Prior Written Notice (PWN) regarding the dispute by the district. The district's response or PWN sets out the district's view of the issues.

If the district has filed a complaint, parents should send the district a written response within 10 days after they receive the complaint. This response should tell the district parents' view on the issues in the district's complaint. Parents do not have to send a copy of their response to OAH, but they should keep a copy of it for their records. If parents want to file their response with OAH, they may file it by mail or by uploading it to SFT. Filing it with OAH will allow the judge or mediator to have some basic information about parents' side of the story when they initially look at the case.

## **PART 6: RESOLUTION SESSIONS**

### **What is a Resolution Session?**

A resolution session is a meeting between a student's parents and representatives of the district who include someone from the IEP team who has specific knowledge of the facts involved in the dispute and someone who has the authority to make a decision on behalf of the district. A resolution session is required if a student's parents file for a due process hearing. It is not required if the district files for due process. The district must arrange for a resolution session within 15 days after it receives a student's complaint.

The resolution session gives parents time to try to come to an agreement with the district. There is no judge at the meeting and neither party is allowed to have an attorney present unless the parents choose to have an attorney at the meeting. If everyone agrees on what to do about the problems stated in the due process request, the parties sign a settlement agreement. If that happens, the dispute is resolved and the hearing will be cancelled. OAH will close the case.

### ***If the District Does Not Hold a Resolution Session***

Sometimes, a district does not hold a resolution meeting within 15 days. If that happens, a student's parents may ask OAH to start the 45-day timeline for the due process hearing and decision. Parents must do this in writing. They can mail the written request to OAH or upload the written request to SFT.

### ***If Parents Do Not Go to the Resolution Session***

Parents should try their best to go to the resolution session. If a parent cannot attend, he or she should contact the district as soon as possible. The parent should suggest another date or time for the meeting. If parents do not go to the resolution session, the district can ask OAH to stop the due process timeline until parents go to the meeting. The district can also ask OAH to dismiss the parents' complaint. This means that the hearing will not happen and OAH will close the case.

## **Timelines for Resolution Session**

The district must hold a resolution session no more than 15 days after it receives a copy of the complaint parents filed with OAH. The district has 30 days after parents file their complaint to try to come to a resolution agreement with the student's parents. After the 30 days have passed, if the parties do not settle the case, a judge must conduct a hearing.

### ***Resolution Session Timing in Expedited Cases***

A faster timeline is required in some cases involving student discipline issues or where a district wants to change a student's school because it believes that the student is in danger of hurting themselves or others. These are called "expedited cases." In an expedited case, the district has only 7 days to hold a resolution meeting instead of 15. The district will also only have 15 days to try to resolve issues that are expedited instead of 30 days.

### ***If the District does not Hold a Resolution Session***

Sometimes, a district does not hold a resolution meeting within the required 7 (expedited cases) or 15 days. If that happens, a student's parents may ask OAH to immediately start the timeline for the due process hearing and decision rather than waiting for the full 15 days (expedited cases) or 30 days to pass. Parents must do this in writing. There is no form. A short note informing OAH that no resolution session was held and asking that the time for hearing and decision be delayed is all that is necessary. Parents can mail the written request to OAH, send the request by overnight delivery, or upload the written request to SFT.

### ***If Parents do not go to the Resolution Session***

If parents cannot attend the resolution session, they should contact the district as soon as possible. Parents should suggest another date or time for the meeting. 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.

### **When the Resolution Session May be Cancelled**

The resolution session has to take place unless parents and the district agree not to have the meeting or parents and the district decide to go straight to mediation. Either of these agreements must be in writing.

Usually, the district will be the one to write up an agreement not to have a resolution meeting. Many districts have a form for this. Someone from the district will sign the form or the agreement. They will check off the correct box on the form. They will then ask the parents to sign the form. A written agreement not to have the resolution meeting is sometimes called a "waiver" of the resolution session. After a "waiver" of the resolution session is signed, it must be sent to OAH. Usually the district will send it but parents should confirm who is filing the form.

### **People Who Have To Be at the Resolution Session**

At least one of the student's parents must go to the resolution session. The people from the district who need to be at the meeting are at least some of the people who are on the student's IEP team. These people have to know about the facts talked about in the parents' complaint. Not everyone from the student's IEP team has to be at the meeting.

The district must send someone to the meeting who can make decisions for the district. The district person must have authority to settle the case. This means that this person must be able to sign an agreement promising that the district will do certain things if the district and the parents come to an agreement.

Parents may bring a lawyer to the resolution session if they want. If parents do not bring a lawyer to the meeting, then the district cannot bring one either.

### **Agreement at Resolution Session**

If a student's parents and the district come to an agreement at a resolution session, the agreement has to be written down. Usually, someone from the district will do the writing. Some districts have forms for this purpose. The agreement may be typed or hand-written. The student's parents and a representative from the district sign and date the agreement. The signed agreement is a legal document. If the district does not follow the agreement, parents can either contact the California Department of Education (CDE) for help in enforcing the agreement or go to federal or state court to ask the Court to enforce the agreement. In some instances, failure to perform as agreed in a settlement agreement is a denial of a free, appropriate public education and can form the basis for another OAH complaint by Student. The general Special Education phone number for CDE is (800) 926-0648. CDE's main website address is: <https://www.cde.ca.gov/>.



## ***Agreement***

If the parties come to an agreement at the resolution session, the written agreement should include certain things. Some of these things are:

- What each side is supposed to do to solve the problems;
- Who is responsible for doing the things in the agreement;
- When everything needs to be done; and
- When parents will Notify OAH that their case should be closed.

## ***If there is no Agreement after a Resolution Session***

No one can force a student's parents to sign an agreement if they do not want to sign it. If a student's parents and a district do not come to an agreement at a resolution session, the case continues. The next step is either mediation or a prehearing conference depending on the choices made by the parties.

## **The Difference between a Resolution Session and Mediation**

Mediation is another type of meeting held to try to settle a case. Mediations are discussed in the next part of this Handbook.

There are several differences between a resolution session and mediation.

<b><u>RESOLUTION SESSION</u></b>	<b><u>MEDIATION</u></b>
Scheduled by District but must be convenient to parents. OAH is not involved in scheduling resolution sessions.	Scheduled by OAH after a request by the parties proposing mutually convenient dates. (Expedited case mediations are scheduled by OAH immediately due to time limitations but the parties can ask that the date be changed if not convenient.)
No mediator to assist the parties.	Mediator facilitates the settlement discussions.
Not confidential.	Confidential process.
No lawyers unless parents bring a lawyer.	Lawyers allowed for one or both parties –their choice.
Parties can change their mind about a resolution settlement for up to three days after signing a	Mediation settlements are binding as soon as all

settlement agreement.	parties have signed (though sometimes there is a delay in getting all signatures due to the need for approval of the agreement by a school board).
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- Resolution sessions are scheduled by the District and the parents or students. No one from OAH takes part in resolution sessions.
- Mediations are scheduled by OAH. In the case of an expedited case or portion of a case, the date for mediation will be included in the Scheduling Order. When the party requests mediation only, the mediation will be scheduled by OAH. When the parties file a request for mediation, OAH will separately schedule a mediation on one of the dates requested by the parties.
- A mediator from OAH will always be at the mediation to try to help the parties come to an agreement.
- Mediations with OAH are confidential. That means that the people who participated cannot talk about it to other people. Resolution sessions are not confidential. If the student's parents and the district want a resolution session or agreement to be confidential, they have to sign a paper saying that it is confidential.
- A district can only bring a lawyer to a resolution session if a student's parents bring a lawyer. If the mediation is part of a complaint that also asks for a hearing, the district can have its lawyer at the mediation even if the student's parents do not bring a lawyer with them.
- If the parties sign an agreement at a resolution meeting, either one of them can back out of the agreement. They must back out within **three business days** after everyone signs the agreement. If the parties come to an agreement at mediation, the agreement is final as soon as everyone signs it.

## **PART 7: MEDIATION**

Mediation is a private, informal meeting that takes place between a student's parents and representatives from the district. The purpose of the meeting is to try to solve the issues in a due process complaint without a hearing.

### **Mediation is Voluntary**

All mediations are voluntary. That means that the mediation will only take place if both sides want to attend. No one can force parents or the district to attend the mediation. However, it is very useful to go to the mediation. About 70 percent of all cases reach an agreement at the mediation. About another 25 percent of the cases come to an agreement after a mediation takes place but before the hearing starts.

## **Mediation is Confidential**

The entire mediation process is confidential. No one is supposed to talk about what is said or agreed to during the mediation. Nothing anyone says or agrees to can be brought up at a hearing if the case does not settle. There are a few limited exceptions to that rule which allow the presentation of information at a hearing that would have already been available to the parties outside of the mediation process.

Because mediation is confidential, the mediator does not talk about what happened at the mediation after the mediation is over. If the parties do not settle the case at the mediation, a different judge will handle the hearing. The mediator does not talk about it with hearing judge. The judge at the hearing will know only that mediation took place and that the parties did not come to an agreement.

If the mediator takes any notes at the mediation, the notes are shredded afterward. The notes do not become part of the case file. The mediator does not show the notes to anyone.

## **Requesting and Scheduling Mediations**

### ***Mediation Only and Expedited Matters***

OAH will schedule a mediation date in Mediation Only cases or for the expedited portion of a case. For mediation only cases, OAH will issue a Notice of Mediation showing the mediation date. If a party files a request for mediation only, OAH sets the mediation about 15 days after the party files the request.

For expedited cases a Scheduling Order will be issued showing the mediation date for the expedited issues, a prehearing conference date for the expedited issues, and a hearing date for the expedited issues. If the case has issues which are not expedited, the Scheduling Order will also show a prehearing conference date for the non-expedited issues, a hearing date for the non-expedited issues, and a date by which the parties should submit a request for a mediation date, if the parties want to mediate.

### ***Request for Due Process and Mediation***

For a Request for Due process Hearing and Mediation, OAH will issue a Scheduling Order showing the prehearing conference date, the date for the hearing, and the date by which the parties should submit a request for a date for mediation, if the parties want to mediate.

When parties ask for mediation, the mediation will not be set any earlier than 35 days from the date a student or parents filed a Request for Due Process Hearing. This allows time for the parties to hold a Resolution Session, or decide to waive the resolution session.

To obtain a mediation date, the parties should agree on a date, and an alternate date, for mediation and file their request for mediation asking for mediation on those dates. The parties will need to complete a Request to Set Mediation and Continuance OAH Form 48, copies of which are the back of this handbook.

Mediations may be requested for any day of the week, Monday through Friday, and will be set if OAH's calendar has the date available. Requests may be made up to the day before the requested date but the date will only be approved if OAH's calendar has the date available. Parties are encouraged to submit a request for mediation date at least 10 business days before the mediation to ensure approval for the date the parties have selected. OAH will let the parties know if the date they requested has been approved. OAH will do this within two business days after the parties submit their request. Once the mediation date has been set, parties are expected to go to this mediation.

### ***Parties are Responsible for Cancelling a Mediation Date***

Once a mediation date is set, the parties are expected to attend the mediation. OAH will **not** call the parties to ask if the parties will be going to the mediation. Once mediation is scheduled all parties are responsible for letting OAH know as soon as possible if the mediation needs to be cancelled. Parties may let OAH know of a cancelled mediation either by calling the After Hours line at (916) 274-6035 if after normal business hours, or by calling (916) 263-0880 during business hours and speaking directly with the case manager. Parties may also send by e-File (SFT) a written statement that the mediation will be cancelled to: <https://www.dgsapps.dgs.ca.gov/oah/oahsftweb>.

If sent by SFT please be sure to select the document type of "Continuance Request" when uploading the document. OAH will then notify the parties via telephone that the mediation has been cancelled.

If the parties cancel a mediation and want to request another mediation date, they must have a good reason, such as illness or other unforeseen, unavoidable reason, or "good cause" for cancelling the first mediation. If the parties believe they do have a good reason, and want to change the date for a mediation that has already been scheduled, the parties should follow the same procedure as for requesting the first mediation date, but make sure to include the reason they cancelled the first mediation. The parties will need to reach an agreement on a date, and an alternate date, for mediation and submit a request for mediation for those dates to OAH.

Part 9: Motions, below, provides more information on how to write and prepare a motion. OAH does not provide a form for requesting a change of mediation date or rescheduling a mediation.

### **Requesting a Continuance (Rescheduling) the Hearing and Prehearing Conference**

Requesting a mediation may result in the need to change the date assigned for hearing. This is called "requesting a continuance" of the hearing. Both the prehearing conference (PHC) and the hearing dates originally scheduled by OAH may need to be changed due to the scheduling of a mediation date. OAH Form 48 which may be used for requesting mediation anticipates this and asks the parties to agree on a date for hearing that falls within 60 days of the date of their preferred mediation date. The prehearing conference (PHC) should be scheduled at least eight days prior to the first day of hearing and the parties should choose one of the PHC time slots available: 10 a.m., 1:00 p.m. or 3:00 p.m. on a Monday or Friday. The "motion" or request for mediation and continuance of the PHC and hearing dates must be submitted no later than the date the prehearing conference statements are due. The date the prehearing conference statements are due is shown on the Scheduling Order. However, all requests for mediation should be submitted as early in the

process as possible for maximum benefit to the parties. All continuance requests must be submitted in writing.

OAH will send out a written order saying whether or not it has agreed to assign the new mediation date. If new dates are granted for the prehearing conference and hearing, the order will include the new dates, as well as the new mediation date.

There is more information about changing the date for mediation in the subsection called “*Continuances*”) in Part 8: Scheduling Order, and in Part 9: *Motions*.

## **The Mediation Process**

### ***The Mediator***

A trained mediator from OAH is always present at the mediation to help the parties solve the issues. The mediators are judges. However, the judge who is the mediator in a case will not be the judge at the hearing if the case does not settle.

The mediator is a neutral participant at the mediation. That means that the mediator does not take sides. The mediator is not there to tell the parties what to do. Rather, the mediator is like a guide. The mediator tries to help the parties come to an agreement by asking questions about the case. The mediator may also suggest possible ways to solve the problems in the due process complaint. Neither side has to follow those suggestions. Only the parties decide if they want to agree to settle the case.

### ***The Mediation Meeting***

If the mediation is part of a mediation only case, none of the parties may have an attorney with them during the mediation. If the mediation is part of a hearing and mediation case, the parties choose if they want to have an attorney represent them or be accompanied and advised by someone with special knowledge or training about the problems of children with disabilities.

The parties meet at the mediation location, which is usually the school district office or at a school in the district. If parents are not comfortable having the mediation held at a school district, they may request in writing to OAH for the mediation be held at a different location. OAH will decide if a different location is needed and, if it is needed, then OAH will identify the new location.

Sometimes, the mediator will talk separately to parents and separately to the district representatives before all parties meet together. The mediator may want to discuss what happens at the mediation if parents have never attended mediation before. Or, the mediator may want to discuss some of the issues in the case. Sometimes, one of the parties wants to discuss the issues with the mediator alone as well.

Generally, everyone first will meet together in an office or conference room. The mediator will introduce him or herself and explain their role in mediation. The mediator explains what mediation is. The mediator will explain that the meeting is confidential. Generally, the mediator will ask everyone to follow some simple rules, such as not talking when someone else is talking,

turning off cell phones, and being polite to each other. The mediator will also explain that during the mediation the parties will often separate to discuss the issues alone or just with the mediator without the other party there.

OAH has a sign-in sheet for all parties and their representatives to fill out. The sign in sheet asks for each person's name, address, and email address. OAH uses this information to send out survey forms after the mediation. The survey form asks the parties to let OAH know what went well at the mediation or if something could be done better to help the mediation process be successful. There is another form used to inform OAH whether the case settled during the mediation. The mediator checks a box which states the result of the mediation. All parties sign this form. There is no information about what was said at the mediation on any form. The parties may have a copy of all forms at the end of the mediation if they wish.

The mediator will ask the party who filed the case to talk about the issues that still need to be settled. Sometimes, not all the issues written in the complaint are still in disagreement. The mediator will also ask the party who filed the case what they want the other side to do in order to settle the case. The mediator will ask the other party to also say what their concerns are. It is important to determine exactly what the disagreements are so that all parties can find ways to resolve them.

Once the issues have been discussed, the mediator will often start meeting separately with each party. There will be separate offices or rooms for the parties to meet alone with the mediator. The mediator will often go between the two rooms to discuss issues with each party. Often, the mediator will go back and forth between the parties to discuss offers of settlement made by one party to the other one. During these meetings, the mediator will ask questions about the case. The mediator will sometimes make suggestions about ways to resolve the issues.

Sometimes, a party may want to meet alone with their attorney or other representative without the mediator being there. They may ask the mediator to let them speak alone for a few moments. The mediator will go outside or to another office until requested to return.

Whatever the parties say when they meet alone with the mediator is confidential unless the party tells the mediator that it can be discussed with the other party.

Usually, mediators do not take a lunch break and ask people to run out and bring back sandwiches, or something similar, to maximize the use of the time allowed for the mediation. Feel free to bring food along to eat. There can be long stretches of down-time in mediation while the Mediator talks to the other side. However long mediation takes, it is generally a faster process than holding a hearing which usually takes most of a week and sometimes considerably longer.

### ***The Settlement Agreement***

If the parties agree on some or all of the issues, they must put the agreement in writing. Often, the district's attorney or the district representative will type a proposed agreement, sometimes using a form that they have for this purpose. If no one is able to type the agreement, it can be done in

handwriting. The OAH mediator may have a form for the mediation agreement that can be filled out, as well. The agreement will include the name of the student and the district as well as the OAH case number. The agreement will include the issues that the parties have agreed on. It will then state what the parties have agreed to do in order to settle the case. Finally, the agreement will say when the parties will do all the things they have agreed to do.

The parties making the agreement must sign the agreement. If they have an attorney, the attorney often will sign showing that the attorney approves the form of the agreement. Each party will get a copy of the agreement.

Once all the parties have signed the agreement, it is final. All the parties must do what they agreed to do in the agreement. OAH does not have the power to force the parties to follow the settlement agreement. If one of the parties fails to do something that they are supposed to do by the terms of the agreement, the other side can go to court. They can ask the court to order the party to follow the settlement agreement.

### ***When Approval by the School Board is Necessary***

Sometimes, a settlement agreement is only final after approval by a school board. The mediator will find that out early in the process. If board approval is necessary, it may delay the final approval of the settlement by a few weeks as Board meetings are planned in advance. Settlement approvals are handled by school boards confidentially, meaning that the agreement and any facts pertaining to the student will not be public.

If Board approval is needed, OAH will schedule a “Status Conference.” This is a telephone conference where OAH will contact the parties to ask if the Board has approved the settlement agreement. If the board approves the settlement agreement, the person who filed the complaint must file a dismissal of the case. If a dismissal is filed, the case is closed and the Status Conference will be cancelled. If a dismissal is not filed, the Division Presiding Judge of OAH will ~~convene~~ call the parties for the status conference to ask whether the settlement was approved.

### ***If there is No Agreement***

Mediators are trained to help the parties talk to each other and try to reach an agreement, even if the parties are not getting along. However, sometimes the parties cannot come to an agreement at the mediation. If that happens, the parties may still continue talking to each other about the issues and possible ways to solve their differences. They will have time before the due process hearing to do this. If they still are not able to come to an agreement, the due process hearing will go forward, unless the party who filed the case decides to withdraw it.

### ***OAH Mediation Forms***

At the conclusion of the mediation, the mediator will ask the parties to sign a document stating that the case has settled. If the settlement is final that day, the form will state that the case will be

dismissed. If the settlement must be approved by a school board, the case will be set for a “status conference” by OAH. The parties will receive notice of the date of the status conference

### ***Enforcement of the Settlement Agreement***

When all parties sign the settlement agreement it becomes a binding contract. OAH does not enforce settlement agreements. Parents can seek assistance from the California Department of Education to help them enforce an agreement if it is not honored. Parents can also choose to go to state or federal court to ask a judge to enforce the agreement. Occasionally, a failure to do what was agreed is a denial of FAPE for a student and can form the basis of a new complaint at OAH.

## **PART 8: SCHEDULING ORDER**

OAH sends a document called a scheduling order to all parties a few days after a complaint is filed. **The scheduling order gives the parties important information about the case.** The scheduling order tells the parties:

- The OAH case number;
- Whether the case has issues OAH has decided must be expedited;
- The dates, times, and locations of the mediation, if the case has some issues which OAH has decided should be expedited;
- The dates, times, and locations of the due process hearing;
- The date and time of the telephonic prehearing conference;
- The date the prehearing conference statements are due;
- The deadline for filing a request for mediation, or a request for a continuance of any of the dates in the Scheduling Order;
- The contact information for communicating and filing papers with OAH; and
- The name of the OAH case manager who is responsible for the file in the case and is the person that sends out notices and orders. Any party may call the case manager for information or with questions about procedures in the case. However, **the case manager cannot give legal advice to anyone.**

The scheduling order will be sent with a Mediation and Due Process Hearing Information Packet that provides explanations about the procedures for the prehearing conference and the due process hearing as well as providing information summarizing how to ask for a continuance, challenge the judge assigned, file prehearing motions, get information about representation, and the method they prefer to get copies of documents from OAH. The Scheduling Order also tells the parties what to do if the parties settle the case before the due process hearing. **Read the information packet and Scheduling Order carefully. They contain important information you will be expected to know about what you need to do to prepare for the hearing and prehearing conference.**



**FAILURE TO FOLLOW THE INSTRUCTIONS IN THE SCHEDULING ORDER COULD LIMIT YOUR ABILITY TO INTRODUCE EVIDENCE AT HEARING.** A copy of the Mediation and Due Process Hearing Information Packet may be found at the back of this Handbook.

## **PART 9: MOTIONS**

When a party wants to ask the judge to do or change something about their case, it is called a “motion.” Examples are requesting that a date for mediation be scheduled or that two cases be combined into one hearing (called a “consolidation”). A motion is usually made in writing. A motion may also be made verbally during a prehearing conference or due process hearing. All other parties have the option to respond to a motion. When OAH gets a motion, a judge will decide what to do and either write an "Order" or make a verbal ruling on the record during a prehearing conference or during the hearing. The Order tells the parties whether the judge agrees to do what the party asked for in their motion. If a written order is issued, OAH sends a copy of the Order to each party

### **How to Prepare a Motion**

A motion is a kind of letter, which includes at least three things:

- What the party wants the judge to do;
- An explanation why the judge should do it; and
- Any facts the party thinks are important that support the requested action

For example, if a party wanted to change the date of a mediation that was already scheduled because they found out their mother needed a medical procedure and the party needed to give her a ride they would need to file a motion asking that the mediation date be continued, called a “motion for a continuance”. This motion could be a letter with that heading in which the party explains to the judge why they need the date changed and why the situation is “good cause” (as it could not be anticipated in advance.) The party would need to include facts about the date and time of the mother’s appointment and attach a copy of the appointment reminder. The last sentence should say that the person signing “declares these facts under penalty of perjury.” That statement would need to be signed and dated. This proof of service would need to be served on the other side (with a proof of service) and filed with OAH. If the other side disagreed, they would have the opportunity to file an opposition.

OAH has forms for some kinds of motions. For example, there is a form on the website to request a change in the date for prehearing conference or hearing. Parents may use an OAH form, send a letter to OAH, or use a more formal document. All motions must be served on the other side with a proof of service; and then a complete copy filed via mail, hand-delivery, overnight delivery, or SFT with OAH.

## **How to Respond to a Motion**

Any other party may respond to the motion if they want to. If a party disagrees with the motion, they should respond in writing. They must respond within three days. At least three things should be included in the response:

- Why they disagree;
- What they think the judge should do; and
- The facts they think are important.

Anyone that sends a response to OAH must send a copy to all other parties. A "proof of service" must be attached to the response.

When someone sends a motion to a self-represented parent, the parent has three days to respond if the parent disagrees with the motion. If the parent cannot send a response within three days, the parent may send a letter to OAH asking for more time.

## **Different Types of Motions**

### ***Notice of Insufficiency***

When someone requests a due process hearing, the request must include certain facts:

- The child's name, age, address and school;
- What the problem is and how it might be fixed.

If the request does not include enough information, another party may file a “notice of insufficiency.” “Insufficiency” means “not enough facts or information.” A notice of insufficiency is a kind of motion. No response to a notice of insufficiency is required or expected. The judge decides whether the complaint that was filed is sufficient solely by looking at the complaint itself. A Notice of Insufficiency must be filed within 15 days of the complaint being filed or the complaint is automatically deemed “legally sufficient.” That means the other side cannot require that the complaint be rewritten to include more information. It does not mean that the other side automatically wins.

A judge will decide whether the request contains enough information. The judge will send an Order to all the parties. The Order will explain whether there are enough facts. If the judge decides that there are not enough facts, the judge will cancel the mediation and hearing dates. If this happens, the judge will usually allow 14 days for the party who filed the complaint to write a new request, including more facts. The judge might also say which facts are missing. If the party that filed the complaint does not have a lawyer, the judge may explain how to get help from an OAH mediator in describing the facts about their case.

## ***Motions/Requests for Continuance***

Any party may make a motion to postpone mediation, prehearing conference or hearing dates. Asking OAH to postpone dates is called a "request for continuance."

If all parties in a case want to postpone dates, the request is called a joint request for a continuance. All parties must agree on the dates in a joint request. The parties must provide a good reason for requesting a continuance, which is called "good cause". An example of "good cause" might be illness, or that that an essential witness is not available or out of the country until a certain date. It does *not* include failing to prepare for the hearing. A joint request for a continuance must be signed by all parties. OAH has only one form to file a joint request for a continuance of the hearing and prehearing conference on the website. It is Form 48 Request to Set Mediation and (Continue Initial Hearing Dates). This form must be signed by all the parties to the case. For 39 Request for Continuance of Special Education Due Process Hearing Dates may be signed by all the parties (making a joint request for continuance) but it may also be used by only of the parties. Copies of the forms are at the end of this Handbook.

If a party wants to postpone mediation, then they must follow the instructions set out in Part 7: *Mediation*, in the section called "Requesting and Scheduling Mediations".

Before filing a motion asking for a continuance of any dates, a party should first ask the other parties to agree to postpone the dates and to try to agree upon new dates. If any of the other parties do not agree, the party may file their own motion for continuance.

A motion for continuance should include:

- A statement that parents have tried to contact the other parties and that the other parties do not agree to a continuance, or that the parties cannot agree on dates;
- The reason for the request; and
- The new date or dates parents request.

## ***Motion for "Stay Put"***

After filing a complaint, parents may make a motion to keep their child's educational situation the same until the judge determines something needs to change. This is called a motion for "stay put." A motion for stay put must include a copy of the most recent IEP that parents have agreed to. How to attach the IEP to the motion is explained below in "*How to Present Evidence to Support or Respond to, a Motion.*"

## ***Motion to Dismiss***

Any party may make a motion to skip some or all of the due process hearing. This is called a motion to dismiss. For example, if the student does not live in the district, or parents did not attend a resolution session, the district may file a motion to dismiss the case. Anyone who receives a motion to dismiss has the right to file an opposition to the motion explaining why they believe the case or portion of the case should not be dismissed

### ***Motion to Amend Due Process Request***

The party that filed the due process complaint may make a motion to add more claims or add more facts to the original complaint. This is called a motion to amend the complaint. If a parent wants to do this, the request should be made as early as possible. A judge cannot grant a request less than five days before the hearing unless the other party agrees. A copy of the new complaint the party wants to file must be filed at the same time as the motion asking for permission to amend..

### ***Motion to Add a Party to the Case***

Any party may make a motion to add another party to the case, such as a different district or county office of education. This kind of motion should be sent to the parties that are already part of the case and to the new party. The "proof of service" should include all the parties and the new party. When a new party is added, dates and other details about the mediation and due process hearing might change but they might remain the same. **It is important to read all communications from OAH very carefully.**

### ***Motion to Consolidate Two or More Cases***

Any party may make a motion to consolidate two or more cases into one case. "Consolidate" means to combine the cases so that there is only one hearing. This can happen when there are two or more cases that involve the same parties and facts. For example, if a parent and a district have both filed a complaint about a similar problem, the cases could be combined so there is only one hearing. Combining cases generally saves time and money for all of the parties.

### ***Motion to Challenge the Judge Assigned to the Hearing***

The Special Education website includes a list of all the judges who hear special education matters and the educational background of each. Which judge has been assigned to the hearing is also posted on the OAH website. The parties may also call the OAH staff person on the Scheduling Order to find out which judge has been assigned to the hearing. If a party does not want the judge that is assigned to the case, there are two ways to get a different judge for the hearing. The first way is called a "peremptory challenge." The second way is called a "challenge for cause."

**Peremptory Challenge:** A peremptory challenge allows a party to disqualify a judge from hearing the case without stating a reason. Each party may make one peremptory challenge per case. When any party makes a timely peremptory challenge, a new judge is assigned to the case. Strict time limits apply to peremptory challenges.

A peremptory challenge must be made no later than the beginning of the prehearing conference if the judge conducting the prehearing conference is the judge assigned to the hearing. If the judge assigned to the hearing is not the judge that handles the prehearing conference, the deadline for a peremptory challenge depends upon the location of the hearing. If the location of the hearing is an OAH office, the peremptory challenge must be made no later than two business days before the hearing. If the location of the hearing is not an OAH office, the preemptory challenge must be made by noon on the Friday before the week the hearing is scheduled.

Challenge for Cause: If a party believes the assigned judge cannot be fair in their case, the party may file a "challenge for cause." A challenge for cause is a motion. If a judge is disqualified, a new judge will be assigned.

A challenge for cause must prove that the assigned judge should be disqualified. Actual proof of bias or prejudice is required. To file a challenge for cause follow the instructions above under the heading "*How to File a Motion*" and include evidence of why the party believes the assigned judge cannot be fair. To submit evidence of bias or prejudice, follow the instructions in the next section "*How to Present Evidence to Support or Respond to a Motion.*"

## **How to Present Evidence to Support or Respond to a Motion**

Some motions need to have evidence so that the judge can decide important facts. For example, a motion for stay put must include a copy of the student's most recent IEP that parents have agreed upon.

There are two ways to submit evidence when a party is filing a motion or responding to a motion filed by another party. The first way is by written testimony. This is called a declaration. The second way is by sending OAH copies of relevant documents.

### ***Declarations Stating Facts***

A declaration is a written statement of facts that the person would say if the person was testifying as a witness. A declaration is written testimony. The written testimony is made under penalty of perjury. This means the written testimony is true and the person could be penalized if the written testimony is not true. A declaration may be made by letter or in a more formal document. The declaration must include at least three things:

- The declaration begins by saying who the person is. For example: "My name is Jane Smith. I am student's mother."
- Then the declaration states the important facts. For example, if parents request a continuance, one fact that the parent might say: "I cannot attend the hearing on May 22, 2015, because I will be out of town on vacation and district will not agree to postpone the hearing."
- The declaration must end with this statement ("Penalty of Perjury Statement and Signature"):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at (write the name of the city here), California, on (write the date here).

(Sign name here)

(Print name here)

## ***Declarations Allowing Documents to be Submitted as Evidence***

Documents may be attached to a declaration to support or respond to a motion. Attaching copies to a declaration tells the judge that this is evidence you would offer in a hearing and that the document is real and reliable. To attach a copy of a document, prepare a letter or more formal declaration that includes at least three things:

- Who the person is. For example: "My name is Jane Smith. I am student's mother."
- A description of what the document is and that the copy is a true and correct copy of the document. For example, if parent requests "stay put": "I have attached a true and correct copy of my child's IEP dated June 23, 2015." Do this for each document that is attached.
- The declaration must end with Penalty of Perjury Statement and Signature (see above):

Declarations can include both facts and documents. Try to state one fact per paragraph and number the paragraph. You can even include your motion in the body of your declaration if it is short, such as a continuance or a motion for stay put.

### **For Example:**

#### **Motion for Stay Put and Declaration Attaching IEP**

1. My name is Jane Smith. I am Student's Mother,
2. I am making a motion for stay put.
3. My son currently goes to Main Street school in Anytown, CA. He attends the 4th grade inclusion class there. I am asking that he be granted "stay put" until the hearing is over and the judge decides this case.
4. Attached is a copy of his May 24, 2017 IEP. This is the last IEP I consented to and shows his placement as the 4<sup>th</sup> grade inclusion class.. This is a true and correct copy of this document.

All declarations must end with the Penalty of Perjury Statement and Signature (see above) statement.

Reminder: All letters and papers filed with OAH must include a proof of service that shows that copies have been sent to all other parties.

## **PART 10: STUDENT'S RECORDS**

Parents have a right to inspect and review student's education records. Educational records include digital or hard copies of information the school or district collects, maintains or uses. Educational records include information about the identification, evaluation, and educational placement of a student.

Parents may ask for educational records verbally or in writing. However, it is always best to make the request for educational records in writing. The request should contain the date the request is

made. It is a good idea to keep a copy of the request. The district must respond to the request without unnecessary delay, but no later than five business days after parents request them. Saturdays, Sundays, and state and federal holidays do not count as business days.

Parents have a right to inspect the records for free. The district may charge parents the district's actual cost of making the copies. The district may not charge for searching for and retrieving the records, or for staff time required for making copies. The copy charge may not be so expensive that it would prevent parents from reviewing the records. If parents show that they cannot afford to pay anything for copies, copies must be provided for free.

If the district does not give parents the records requested, or the charge is too high, parents may ask the California Department of Education to help. Parents can download a compliance complaint form from the California Department of Education website:  
<http://www.cde.ca.gov/sp/se/qa/documents/cmplntinvsrqst.doc>.

Parents should complete the form and fax or mail the form to:

Procedural Safeguards Referral Service (PSRS)  
California Department of Education  
1430 N Street, Suite 2401  
Sacramento, CA 95814-3704  
Fax: (916) 327-3704

For additional information about how to file a compliance complaint with the Department of Education, please call PSRS at (800) 926-0648, Monday through Friday, 9:00 a.m. to 4:00 p.m.

A district's failure to provide copies of student's educational records may constitute "good cause" for a continuance of the due process hearing because it prevents parents from preparing for the hearing. Parents should notify OAH in writing if a district does not comply with their request for records. OAH may postpone the hearing to allow parents more time to get the records.

## **PART 11: PREHEARING CONFERENCES**

A prehearing conference typically takes place a week or 10 days before a hearing. Prehearing conferences are held on Mondays and Fridays. The date and time of the prehearing conference is in the scheduling order. OAH will tell the parties if the date and time of the prehearing conference changes.

A calendar and the name of the judge assigned to the case are posted on OAH's website:  
<http://www.dgs.ca.gov/oah/SpecialEducation/Resources/SECalendar/HearingDate.aspx>.

It is a good idea to check the website before the prehearing conference because the assigned judge might change from time to time. Any peremptory challenge to the judge must be made before the prehearing conference begins.

There is more information about peremptory challenges in Part 8: *Scheduling Order* — *Peremptory Challenges*, and in Part 9: *Motions* — *Motion to Challenge the Judge Assigned to the Hearing*.

## **Prehearing Conferences Are Conducted By Conference Call**

A judge will place a conference call with all the parties on the day and time of the prehearing conference. It is a good idea for parties to call OAH 30 minutes before the scheduled prehearing conference and tell OAH the best number to reach them. If parents are represented by an attorney, the judge will call the attorney. If parents are not represented, the judge will call a parent directly. It is very important to participate in the prehearing conference. The judge has experience conducting prehearing conferences with parents and will ensure that everything that needs to be discussed will be covered. The conference call is recorded to make an official record of the prehearing conference. No other recording is allowed without the judge's permission.

## **The Purpose of the Prehearing Conference**

The judge will discuss and plan the due process hearing with the parties. The discussion will include:

- The date, time and location for the hearing;
- The projected length of the hearing;
- The issues presented in the request for due process;
- The requirements for exhibit binders;
- The witnesses who will testify at hearing and whether the district will be able to make district employees available to testify without subpoenas;
- Whether any witness is unavailable or a party is requesting permission to have a witness testify by telephone;
- Any motions that need to be considered such as a motion to change the dates of the hearing, to change the location of the hearing; to privately record the hearing; or to limit evidence;
- Special education hearings are closed to the public unless a student's parents want it to be opened to the public. During the prehearing conference, the judge will ask if the parents want an open or closed hearing. Hearings may be open as long as they are not disrupted. Judges will keep control over the hearing so that everyone is provided with due process of law.
- Any need for interpreters or other accommodations for disabilities; and,
- Instructions the parties should follow if the parties reach a settlement agreement between the time of the prehearing conference and the date of the hearing.

## **How to Prepare for the Prehearing Conference**

Preparation for the Prehearing Conference is the beginning of your preparation for hearing. You should start preparing for the hearing as soon as you file your case. Contact witnesses and gather all the documents needed as early as possible. Parents should allow themselves enough time to meet the requirements for the prehearing conference. The last day for you to identify your



witnesses and the evidence you want to present at the hearing is shortly after the Prehearing Conference. Completing the required preparations for the Prehearing Conference will help you prepare for the final evidence and witness disclosures that are required before the hearing begins.

Read the information sent with the Scheduling Order. The information and the Scheduling Order were sent to all parties shortly after the case was filed. A copy of the information packet may be found at the back of this Handbook.

The information sent with the Scheduling Order contains important information about the prehearing conference. The scheduling order has information about how to:

- Reach someone who can answer questions;
- Prepare for the prehearing conference;
- Prepare witness and exhibit lists;
- Prepare a prehearing conference statement; and,
- How to change the date and time of the hearing, or prehearing conference.

The information sent with the Scheduling Order also explains the deadlines for filing the prehearing conference statement, witness and exhibit lists, and for exchanging copies of exhibits with other parties.

## **Will you Need a Subpoena to Have a Witness Attend the Hearing?**

To make sure a witness will be at the hearing, parents may need to get a subpoena from OAH. A subpoena is a legal way to require someone to appear at the hearing. If someone has to miss work to attend the hearing, they may need a subpoena to show their boss they are required to attend the hearing.

How to get a subpoena is described in Part 12: *Due Process Hearing, How to Prepare for the Hearing*. Parents may want to discuss subpoenas with the judge during the prehearing conference.

## **The Parties' Prehearing Conference Statements**

A "Prehearing Conference Statement" tells the judge and other parties basic information about the parties' cases. The statement will describe each of the issues that will be discussed during the prehearing conference. Parents' Prehearing Conference Statement *must* include all of the following information:

- An estimate of the number of days needed to complete the due process hearing;
- About how many days are needed to complete the due process hearing;
- A simple explanation of the issues that are being heard in the hearing, and a way these issues might be handled. Only issues from the complaint may be included, because new issues may not be raised in prehearing conference statements;
- A list of witnesses parents want to call, and a description of what each witness will be talking about and how their testimony is related to the case;
- A list of the evidence parents want to use. These are often documents, such as the

student's IEP, copies of assessment reports, test results, or doctors' reports. They may also be "demonstrative evidence," such as a video of the student in a classroom setting or a photograph of the school. **This list of evidence should describe both the documents and the demonstrative evidence.** Each piece of evidence is called an "exhibit;" and,

- A request for an interpreter, or other special needs.

All parties must file their Prehearing Conference Statements, witness lists and exhibit lists with OAH. **Do not send copies of your evidence to OAH. You will bring those documents to the hearing.** These required prehearing conference documents must be filed on or before the date identified in the Scheduling Order, a date which is at least **three business days** before the prehearing conference. Parents must also send copies of this information to all other parties with a proof of service. The district and any other parties will also send their statement, exhibits, and list of witnesses to parents. Parents should read these documents, so that they can talk about with the judge during the prehearing conference.

### **The Judge Will Prepare a Prehearing Conference Order**

The judge will prepare a written order after the prehearing conference. The order will be sent to all parties. The order will discuss the things discussed during the prehearing conference and any directions that must be followed. The Order Following Prehearing Conference will repeat the specific directions about how parties must prepare the evidence they wish to submit at the hearing.

All parties must comply with the order. There may be sanctions or penalties for failing to follow the prehearing conference order, including the possibility that evidence will not be allowed to be submitted or witnesses not being allowed to testify. For example, if a party does not provide copies of their exhibits to the other parties at least five business days prior to the due process hearing, the judge might not allow those documents into evidence during the due process hearing.

When the Order Following Prehearing Conference is issued, parties that are registered in the SFT system will get an email from OAH telling them that they have a new document in their file. Click on the link in the email to login, or follow the steps to Log In above in Part 3: *Using the Secure File Transfer System*, to see or print the Order Following Prehearing Conference.

## **PART 12: DUE PROCESS HEARING**

Most parties reach an agreement before the due process hearing. A majority of cases settle with the help of a mediator. Mediation is available at any time during the due process proceedings. Even if the parties have cancelled mediation or want a second mediation, they may agree to a date for it and send a written request to OAH. OAH will generally schedule the mediation on the date selected by the parties. Occasionally, mediation may be scheduled on the first day of the hearing. If that happens, one judge will be the mediator and the regularly scheduled judge will conduct the hearing if the case does not settle.

A due process hearing is the next step if the case is not settled. This section will describe the hearing process beginning with a description of a hearing. This section then explains: what to

expect during the hearing, how to prepare for a hearing, and offers tips for parents that are representing themselves and their child. The section ends by explaining the decision and appeal processes.

## **The Due Process Hearing Location, the Hearing Process and the Judge's Role**

The hearing is a trial-like proceeding. All parties have the opportunity to present their evidence and arguments. All witnesses are placed under oath. Each party may testify, ask witnesses questions, and present their evidence. Usually, the party that filed the complaint goes first.

### ***The Location of the Hearing***

Hearings take place at a location convenient to parents. A convenient location is often a district office or a school. Some hearings take place at OAH hearing rooms in various locations. If a party wants to change the location of the hearing, they may send a written request to OAH and ask for a different location. All hearing locations are accessible to disabled people as discussed above.

### ***Issues and Burden of Proof***

The hearing will focus on the issues in the due process request. The evidence offered by each party must be relevant to those issues. "Relevant evidence" means evidence that has a tendency to prove or disprove a fact that is in dispute in the case. The judge will allow only relevant evidence during the hearing. The judge will not accept evidence that is not relevant.

The party that filed the request has the "burden of proof." The "burden of proof" refers to which party must produce enough evidence to prove their case. For example, if parents have filed the due process request, then parents have the burden of proof. If the district filed the due process request, then the district has the burden of proof.

How much evidence is needed to win the case is called the "standard of proof." The standard of proof is a "preponderance of the evidence." A "preponderance of the evidence" is a measurement that compares the evidence from both sides to see which side is stronger. Some people describe a "preponderance of the evidence" as "the 51 percent Rule", or, as if a scale tips slightly in one direction. If the party with the burden of proof does not meet their burden, they do not win the case. The judge decides if the burden has been met.

### ***The Judge Conducts the Hearing***

The judge that conducts the hearing has extensive training in special education law. He or she also has specialized training in how to conduct hearings.

Keep in mind that the judge hearing the case will not know the details of the case until the evidence is presented. The complaint and response are not evidence so you must prove each piece of your case during the hearing. You are telling the judge your side of the story and showing any documents you have that prove what you are saying is the truth. The other side will do the same. The judge will listen to the evidence and read the documents. Some documents will be "admitted"

into evidence. Those are the documents the judge will consider in making her decision. Some documents may not be admitted, usually on the ground that the judge does not think they are relevant. If that happens, the documents will be returned to the parties at the end of the hearing and will not be considered in making a decision about the case.

Judges do not work for districts and they do not have access to student records.

Judges do not decide the case until they have heard all the evidence. The only facts the judge has about a student or the student's program come from the testimony and evidence the judge has accepted into evidence at the hearing.

## **How to Prepare for the Hearing**

Judges are accustomed to working with parents who represent themselves. This section and the next section are offered to help parents who represent themselves and their child. **Preparation and organization are critical. Do not leave it to the last minute as proper preparation for hearing takes a considerable amount of time.** Preparation begins with the prehearing conference and ends with closing argument at the end of the hearing. It is best to prepare your Exhibit binders prior to the Prehearing Conference as preparing them properly takes several hours.

### ***To Prepare for Hearing, Follow these Steps:***

#### **1. Review the Prehearing Conference Order**

Read the prehearing conference order. Be sure all the instructions in the order are followed. This order tells you exactly how evidence must be prepared in order to submit it for consideration at hearing. Failing to follow these instructions may result in your evidence being excluded. Contact witnesses, including any experts

It is best to do this by writing them an email or a letter. Let all witnesses know what day and time they should be present at the hearing. Let them know where the hearing will take place. Exchange witness lists with the district, and any other parties, at least five business days before the hearing.

#### **2. Request an Interpreter, if Needed**

Due process hearings are conducted in English. If parents or any of witnesses do not speak English well or at all, or are deaf or hard of hearing, an interpreter will be provided at the hearing free of charge. Parents may request an interpreter in the due process request or at the prehearing conference. If the district filed the complaint against parent, parents should call or write to the OAH Special Education Division to request an interpreter as soon as possible after parents receive the district's complaint.

#### **3. Contact Witnesses, Including any Experts**

It is best to contact witnesses as soon as you know you will need them to testify by writing them an email or a letter so they have something in writing with all of the hearing details. Let all

witnesses know what day and time they should be present at the hearing. Let them know where the hearing will take place.

*a) Subpoenas Requiring Witnesses or Evidence at Hearing*

Consider whether you need to have a subpoena issued to require witnesses to appear at the hearing or produce documents. A subpoena is an order requiring people to provide documents or testimony. Attorneys are allowed by law to issue subpoenas to compel people to appear at a hearing or produce documents.

Parents not represented by an attorney, can obtain subpoenas from OAH before the due process hearing by requesting them in writing or by telephone from the OAH case manager assigned to the case. Tell the case manager whether the subpoenas are for a person to testify or for documents, or for both.

The OAH case manager will prepare the subpoena forms to be sent to parents. Parents must then fill in the subpoena details such as the name of the person being required to come to court or a description of the documents being requested before submitting it to OAH to obtain a judge's signature. The Subpoena must be signed by an OAH judge or by an attorney representing Parents prior to being sent to the witness or person who has documents needed

*b) Subpoenas for Documents*

Subpoenas for documents must identify the person or business and organization that have the documents and describe the documents to be produced. The subpoena must also say why the documents are necessary for the case. The person producing the documents should produce them at the hearing, on the first day of the hearing. Subpoenas for documents must comply with strict timelines to obtain the documents and some subpoenas seeking personal documents are required to be sent a longer time in advance of the hearing.

Subpoenas for documents may be served by mail. If serving by mail add five days to the service time. Service by fax or email is only allowed if you get written permission agreeing to fax or email service from the person being served prior to the subpoena being sent.

*c) Subpoenas for Witnesses*

Subpoenas for people to testify must name the person and the time, date and place of the due process hearing. If the hearing is continued and the witness is subpoenaed for the incorrect hearing date, parents must get a new subpoena with the correct hearing date, or reach an agreement with the witness to appear on the new date. If you have such an agreement, be sure it is in writing.

Subpoenas to have a person testify do not need to be served any particular number of days before the day the person is scheduled to testify. However, it is best to give as much notice as possible to the witness you subpoena. Subpoenas must be properly served. **In general, personal service is required for a subpoena that requires someone to testify.** Personal service means handing the subpoena to the person. This is important because unless the person had actual notice of the hearing, and the person issuing the subpoena can prove they had notice, it is difficult to make the

person attend. **The person serving the subpoena should complete a Proof of Service so the party issuing the subpoena has proof it was delivered.** Generally, the subpoena should be served (handed to the person you want to testify) by someone other than the party requiring the witnesses' attendance.

The law requires payment of witness fees and mileage to witnesses who are compelled to attend a due process hearing by subpoena. Parents are responsible for paying the witness fees and mileage of any witnesses the parent subpoenas to the hearing, unless the witness waives them. If it becomes necessary to obtain a subpoena after the hearing has begun, the judge who is conducting the due process hearing can sign the parents' subpoena form.

A subpoena can be enforced by seeking a contempt order from the Superior Court in the county where the hearing is held. Because obeying a subpoena is required by state law, they cannot be enforced by OAH in the administrative process.

#### **4. Prepare Your Witness List Well In Advance of the Hearing**

You will have prepared a witness list for the Prehearing Conference. You may use this for the hearing if it is complete. You are entitled to add names to the list up to the time you exchange evidence as required by California Law. **Your Witness list and Evidence binders must be exchanged 5 business days prior to the hearing.** Witness lists must list each witness you are calling, who they are, and a short statement of what topic they will testify about. If you do not include a name on the witness list, you may not be able to call the person to testify so it is best to include a name even if you are not certain you want them to testify. Not every person listed is required to testify. You can change your mind as the hearing proceeds.

#### **5. Prepare Exhibit Binders Well in Advance of the Hearing**

Exhibits are the documents parents intend to use at the due process hearing. Exhibits typically consist of IEP's, assessment reports, school records, and other documents. **At least five business days before the hearing, each party must give all other parties a copy of the documents in their exhibit binder.** Make two extra copies of the exhibit binder and bring both to the hearing -- one will be for the judge and the other will be for the witnesses to use.

#### ***Important Tips for Preparing Your Exhibit Binders***

1. **Read the Prehearing Conference Order carefully and follow the directions on how to put together your exhibit binders.** You will end up with four duplicate binders: One for you, one for the representative for the other side, one for the judge and one for the witnesses to look at when they testify.

2. Make sure that all of the exhibits are complete and in the correct page order. For example, do not include only one page of an IEP, insert the whole document. Write page numbers on each exhibit so that a witness can refer to the exhibit number and page number. That way all the parties in the hearing can tell which page a witness is looking at.

3. Make sure all copies are readable. The judge may not accept an exhibit with a page that is not readable.

4. Be sure to deliver your exhibit binder and witness list to the other side on or before the deadline, which is **five business days** (*weekends and holidays add extra days to the number*) prior to the first day of hearing. For Example: if your hearing begins the Tuesday following a Monday holiday, you would have to deliver the exhibit binder and witness list to the other side more than a week before the first day of hearing. *Postmarks do not count*. The binder and witness lists must be **received by the deadline**.

5. If parents want to use an audio recording of an IEP team meeting, parents will need to provide a copy of the recording and a written transcript **of the relevant portions** with parents' exhibit binder. Pay attention to the prehearing conference order that states you must identify both the exact date and minutes on the tape that are relevant and the person speaking during the hearing in order to be allowed to introduce an IEP recording.

## **6. Read the Evidence from the District and Other Parties**

### ***a. Consider Possible Objections to the Document***

Review the binders from all the other parties to make sure that documents are complete. Read the documents contained in the binders of other parties and think about whether you have an objection to the documents they are offering. An objection based on the fact that the document is not in your favor is not a proper objection. Proper objections include a question about the authenticity of the document or whether it is relevant to the questions being decided in the hearing. Not everything offered by the other side is objectionable. It is not unusual for the other side to offer documents that are helpful to you or which you also believe the judge should consider in deciding the case.

### ***b. Consider Questions You Have for Witnesses About the Documents***

Questions for each witness should be prepared and written down before the hearing starts. The point of asking witnesses questions is to have their answers establish facts that prove your case.

As you read the documents from the other side, consider what kind of information you want the judge to consider about the documents. Does the document show something about an IEP meeting the judge should know? Does it show a statement by someone that supports your case? Those facts are pointed out by asking a witness questions. You are allowed to ask “leading” question of witnesses from the other side. So, it is permissible for you to ask questions like, “Isn’t it true that the IEP notes for the May 24, 2016 IEP meeting state that the Speech Therapist agreed with us that Susie needed speech therapy two times per week? Or, “Isn’t it true that the IEP shows that a special education teacher was not present at the meeting?”

You may think of other questions to ask the other side’s witnesses when they are being questioned by their attorney. Take careful notes while the other attorney is asking questions so you remember the questions you need to ask when it is your turn.

## 7. **Prepare the Questions for your Own Witnesses**

Think carefully about why you are calling each witness and what information you need them to tell the judge. Different witnesses are called because they each have the ability to prove a different piece of your case. Your questions for the witness should be carefully considered and written down in advance. Does the witness need to prove a document is authentic? Does the witness need to testify to something they saw or heard? Does an expert such as a doctor or tutor need to testify to the extent of your child's disability or how it impacts their ability to learn?

Your witness may only testify for a few minutes because they have only one or two key facts to testify to. Or they may testify all day if they are a key witness such as an expert. In either instance, prepare carefully as the witness is being used to tell your story. What do you think you need this witness to tell the judge?

Similarly, if you are planning to testify on your own behalf, **prepare your testimony carefully. Write down what you want to say.** You can have notes on the witness stand to remind yourself what you want to say. **Remember, you must say everything at the hearing itself that you want the judge to consider.** The complaint you filed is not evidence and will not be considered when the judge is making a decision about the case.

### ***New Attorney – If You Are Hiring an Attorney, Try to Do So As Early As Possible***

When parents hire an attorney for the hearing, parents must notify the district at least 10 days before the due process hearing. An attorney must file a "notice of representation" with OAH and must serve all other parties with this notice. If parents hire an attorney less than 10 days before the due process hearing, the attorney may request a continuance of the hearing.

OAH has a list of attorneys who have agreed to provide legal services free or at a reduced cost. The list is on OAH's website.

## **What to Expect During the Hearing**

### ***The Judge Records the Hearing***

The entire hearing is recorded. OAH uses digital equipment connected to the judge's computer. The recording is the official record of the hearing. At the beginning of each day, the judge will start recording and say something like "We are on the record." The judge will state the name and number of the case, identify him or herself, and the date and time. This is called "opening the record."

The judge will ask the parties to state their "appearances" at the beginning of each day. Each person then takes turns stating their full name, spelling their name and stating whom they represent.

Occasionally, an administrative detail that does not have to be on the record will be discussed or there will be a short delay while a witness is located and brought into the hearing. On those occasions, the judge will announce she is going "off the record" and turn off the recorder. The



judge will say "on the record" when the judge turns on the recording back on. This will happen throughout the day. At the end of the day the judge will "go off the record" and turn off the recording. If parties have been granted permission to make their own recordings of the hearing, they are required to go off the record when the judge goes off the record and only turn their own recordings back on when the judge announces she is back "on the record".

## ***Opening Statements***

Parties may make an opening statement at the beginning of the hearing. An opening statement is a short summary of your case and it is optional. Although an opening statement is not required, it does help the judge understand what the evidence and witness testimony will show. The opening statement is not evidence. The purpose of an opening statement is to give the judge an idea of what each party expects the evidence to show.

## ***Witnesses***

Witnesses wait outside the hearing room until it is time to testify. Except for the parties, witnesses are usually not allowed to sit in the hearing room and hear the testimony of other witnesses.

The judge will administer an oath or "swear in" each witness and parties before their testimony. Generally, the witness will go to the witness stand where they will remain standing until the judge swears them in. The judge will ask the witness to raise their right hand, and swear to tell the truth. The person who called the witness to the hearing will start the questioning. Once that person is finished asking questions, one person from the other side may ask questions of the witness. Questioning may go back and forth a few times as questions asked by one side might raise questions in the mind of the other side. So long as the questioning is relevant and adding new information to the case, the judge will usually allow the parties to ask questions until they are finished. The judge may also have questions of the witness occasionally. When a judge asks questions of a witness, the parties may make objections to the questions and ask follow-up questions.

## ***Exhibits***

When a witness is shown an exhibit, the judge will put a sticker on the exhibit. Each sticker has an exhibit number. These exhibit stickers indicate which exhibits were admitted as evidence at the end of the hearing.

When the party is finished questioning a witness about a document, the party who wants to have an exhibit entered into evidence will ask the judge to admit the exhibit into evidence. The legal term for this is to "move the exhibit into evidence." Parents do not need to say the right words; they may simply ask the judge to put the exhibit into evidence. Usually, people say, "your honor, I move that this document be admitted into evidence". The Judge will respond by asking the other side if they have an objection. Often there is no objection, and the attorney or other representative will say, "no objection". The judge will then say, "Exhibit (for example, D-1 or Exhibit S-14) is admitted into evidence. **It is important that the rules for preparing exhibit binders be carefully followed so the judge can properly identify your evidence for the record.**

Parents that are uncertain about how, or when, to put their exhibits into evidence may ask the judge how to do it. Judges cannot give legal advice but they can explain the process to parents. If the party who is not asking to admit the document into evidence has an objection, they must state the legal reason for their objection. Often that is that the document is unreliable for some reason, is incomplete or is not relevant to the hearing. Objections are usually stated by saying, “Objection- relevance”; or “objection, lacks foundation” - (because the person did not show that the document was a complete copy to begin with or came from a reliable source). The judge will let the parties know whether the judge wants to hear more detail about the parties' arguments on the objections. The judge decides which evidence is admitted into the hearing. Once the judge's ruling is made, the case proceeds.

## ***Objections***

A party may object to evidence if there is a question about its relevance, reliability, or admissibility. When parents testify, they have the right to object to the questions asked of them by the other party's attorney and to object to documents shown to them by the other party's attorney.

A common objection is “lack of foundation.” “Lack of foundation” means a document has not been established to be authentic or from a reliable source. It can also mean that a witness does not have personal knowledge about the subject. If the judge “sustains” the objection (agrees with it), the judge will give directions if more information is needed to establish a proper foundation. If directed by the judge, a party can ask more questions to establish whether the witness knows what the document is, the basis for their personal knowledge about the subject or their knowledge about the source of the document. If the judge does not agree with the objection, she will say “Objection overruled.”

Another common objection is “relevance.” Relevant evidence is something that tends to prove or disprove a fact that is at issue in the case. If the judge sustains a relevance objection, it means the judge agrees the evidence is not relevant. That evidence is not discussed any further and everyone moves on to the next question.

The formal rules of evidence do not apply in an administrative hearing. For instance, hearsay (testimony by one person about what they heard another person say) is allowed in an administrative hearing if the judge determines it is reliable information or the kind of information on which people base serious decisions.

Sometimes the judge will admit evidence at the hearing but when considering the case will evaluate it's “weight”, that is, how persuasive it is. For instance, a document may be admitted into evidence, but a judge might determine that the facts disclosed about how it was discovered or created are suspect, ultimately giving it little weight when making the decision in the case. In response to an objection, you might hear the judge say, “Overruled-that goes to the weight of the evidence, not its admissibility.”

Parents who are not represented by an attorney will be allowed to object to documents and to questions of witnesses by saying “objection” and briefly telling the judge the reason for the objection. If Parents do not know a legal basis for an objection, the judge might ask the parties to

explain why the evidence should or should not be allowed. The judge will decide if the evidence is allowed to become part of the record.

Whenever a witness is testifying, it is important to listen carefully to the questions that are asked. A parent may object to the way a question is asked. The objection must be made after the question is asked but before the witness starts to answer the question. Parents may also object to a document when a witness is asked about it.

Judges say "sustained" if the judge agrees with the objection. Judges say "overruled" if the judge does not agree with the objection. The judge will then tell the witness to answer or not to answer the question. The judge will also tell the parties whether or not the evidence will be "admitted." "Admitted" means that evidence will become part of the official record and considered by the judge.

### ***Cell phones***

All cell phones should be turned off and put away during the hearing. Even if a cell phone is just vibrating, it can be disruptive. Cell phones may not be used for recording unless the judge has given someone permission to record the hearing in advance.

### ***No Eating or Drinking During the Hearing***

Food and drinks are not permitted in the hearing room. Water is provided for all hearing participants. Breaks are scheduled throughout the day including a lunch break. Any hearing participant with special medical needs may make a request for a reasonable accommodation. Instructions for doing so are included in the prehearing conference order, on OAH's website or by calling the case manager.

## **Self Help Tips for Parents**

### ***What to Bring to the Hearing***

Bring all exhibit binders. Before the hearing starts, parents should give one exhibit binder to the judge and put another of the exhibit binders by the witness table. Similarly, the district will give one of the district's exhibit binders to the judge and put the district's other exhibit binder by the witness table. Each party should have already sent or given a copy of their evidence binder to all the other parties at least five business days before the start of the hearing.

### ***What to do if You Are Late to The Hearing***

Anyone who is going to be late to the hearing must call the Sacramento OAH office as soon as they know they will be late. If the party who filed the complaint is late and does not call OAH, the case may be dismissed. If the district filed a complaint against parents, and parents are late, the judge can hear the district's side of the case without the parents present. Similarly, if a district filed a complaint against a student and the district's attorney is late, the judge can hear the parents'

side of the case without the district's attorney being present. Therefore, it is important to appear in person and on time at the due process hearing. The Sacramento OAH Office will let the judge assigned to the case know if anyone is running late.

### ***Sample Questions - How to Question Witnesses***

If you want to prove something during your hearing, it is best to have witnesses testify who actually saw or have personal knowledge of the events you want to prove. It is not a good idea to rely on witnesses who "heard" about the events from another person. That kind of evidence is called "hearsay." The definition of "hearsay" is testimony by someone who heard a statement made by someone who is not testifying. The person testifying wants to tell the judge the other person's statement and that the statement is true. Generally, the judge will consider hearsay to be very weak evidence unless it is supported by other evidence. A judge will not rely on hearsay making their decision unless the hearsay is reliable. Reliability must be proven. Therefore, it is always better to get witnesses who actually made the statement to come in and testify.

As Discussed above, questions should be carefully planned in advance. Think about your case and the facts you need to prove to win the case. Who can testify to those facts? What do they need to say? Are there documents that could help prove the facts you need to show? Who could testify that the documents are genuine and reliable and explain to the judge why they are important?

When writing your questions, use these tips:

**Ask simple questions.** After the witness takes the oath and is seated, ask them to identify themselves and ask basic questions to show the basis for their personal knowledge about the subject. For example:

- Q: What is your name?
- Q: Do you know [child's name]?
- Q: How do you know [child's name]?

Then, consider what facts you need this witness to tell the judge about. Are they a doctor who can testify about the child's disability and how it affects their ability to learn? Is the witness a teacher who sees the limits of the child's attention span. Is the witness a tutor who has used some strategies for helping the student with success? List the information you need the witness to talk about and the write questions to have the witness tell that information to the judge.

You might ask questions about a person's participation in an IEP meeting to show the judge what happened at the meeting or who was present at the meeting.

- Q: Have you attended any IEP team meetings for [child's name]?
- Q: Did you attend the IEP team meeting on [date]?

Sometimes it helps to focus on who, what, when, where and why. For example:

- Q: Who was at the IEP team meeting?
- Q: What did these individuals say to you?

- Q: What did the IEP team discuss about [child's name] physical therapy needs?  
Q: Were you able to provide your input to the IEP team?

Keep in mind that you do not need to prove the same fact several times. One good piece of evidence, either testimony or a document or some other kind of evidence, is enough to establish a fact.

### ***How to Question Expert Witnesses***

Expert witnesses are usually professionals. Their job is to explain something or give an opinion about something. In special education, experts are often doctors, psychologists, speech pathologists, occupational therapists and the like. Parents should contact a potential expert as early as possible. Experts usually charge a fee to testify and require that parent's confirm they are needed in advance so they can put the hearing on their calendar. Parents are required to put their experts on their witness list and discuss their testimony at the prehearing conference.

Focus on the expert's training, experience, and knowledge. Always ask for your expert's resume or Curriculum Vitae (CV-another name for professional resume.) You can add this to your exhibits and use it to help establish the expert is qualified to give an opinion. Once you establish their credentials and that they examined or worked with your child, ask the expert to give their opinion. For example:

- Q: What do you do for a living?  
Q: What is your educational background?  
Q: Is this your resume?  
Q: Is everything in this resume accurate?  
Q: Have you received any other training in this area?  
Q: Do you know [child's name]?  
Q: How do you know him or her?  
Q: (Have them describe the work or evaluation they did with the child.)  
Q: Do you have an opinion about [for example, recommended amounts of services (such as speech therapy or occupational therapy or behavioral therapy); or about placing the student in the placement being recommend by the school or the placement parents prefer, etc.]  
Q: What is your opinion? What is the basis for that opinion?  
Q: What is the basis of that opinion?

### ***Parents' Testimony***

Parents do not have to ask themselves questions. Parents may tell the judge the events and facts that they know about and what they need to establish to prove their case. The judge may ask parents questions while they are testifying, and might ask parents some questions at the beginning of their testimony to get them started. Another way for a parent to testify is by giving the judge a list of questions. The judge asks the questions and the parent can answer them.

Other parties may call a parent as a witness. The attorney for the other party will ask the parent questions first, and then the parent will have the opportunity to testify about any matters relating to those questions.

Once the parent finishes asking questions of their witness, the attorney for the district has a chance to ask questions if they want. This is called “cross-examination.” Parents will also have a chance to ask questions of the people the district calls as witnesses. The judge will often ask the witnesses questions as well.

### ***How to Put Exhibits into Evidence***

To have an exhibit from their binder “admitted into evidence,” parents must show that the document is “authentic.” This means that it is what it says it is and that it is an accurate unaltered copy. Parents may prove this through their own testimony or with the testimony of another witness. Before testifying about an exhibit or questioning a witness about an exhibit, ask the judge to mark the exhibit for identification. The judge will then put a sticker on the exhibit and write the exhibit number on the sticker.

A document must be “authenticated” before it may be admitted into evidence. This means that a witness must testify that it is what it appears to be. A document is authenticated by showing the document to a witness. Ask the witness (1) if he or she recognizes it, (2) to identify and describe it, and (3) if the document appears to be a correct copy.

Another way to authenticate some kinds of documents is to show that a government agency or a company kept them in the regular course of business. For example, sometimes a school keeps attendance records. To have a record like that admitted, ask the witness if the information was recorded by a person with knowledge of the routine for keeping the records and in the regular course of business.

After the exhibit has a numbered sticker and has been authenticated by a witness ask the judge to admit the exhibit into evidence. The judge may ask the other side if he or she has any objection to the document coming into evidence. Parents may need to respond to the objections by telling the judge what the document is and why they want it admitted into evidence. Parents do not need to know the law or rules of evidence. Technical rules of evidence do not apply in due process hearings. Parents may simply offer an exhibit and let the judge decide if it should be admitted.

### ***How to Present an Audio Recording at a Hearing***

A portions of an audio recording of an IEP team meeting may be played as evidence in a hearing if the judge agrees. This is usually only allowed if the recording offers important evidence that cannot be provided with testimony by the person who attended the meeting. In order to have a portion of an audio recording admitted, the exact date and minutes of the recording the party wants admitted must be identified; and the person speaking must be identified. Usually, a written transcript of the portion of the recording being offered is required. The person who prepares the transcript will need to submit a declaration (see above) stating their name, who they are, the date the transcript was prepared, and that the transcript offered is an accurate transcript of the recording. Both the transcript and the recording are exhibits and should be included on your

exhibit list. If they are not, the judge may not allow the recording to be submitted. Whether any part, or how much of the recording, may be played is up to the judge.

### ***What to do at the End of Each Day***

At the end of each day, the judge will ask about the witness schedule for the next day. The judge and the parties may review which exhibits have been admitted or may defer that review to the end of the hearing. The judge may also talk with the parties about other scheduling or evidence issues that have come up during the day. The judge cannot give legal advice. The judge may answer questions about, the hearing procedures.

After the hearing day ends, parents should call the witnesses they have scheduled for the next day to let them know what time to appear for hearing the next day. It is a good idea to go the questions you have prepared to ask the witnesses for the next day, and the exhibits you plan to ask the witnesses about.

### ***What Happens on the Last Day of the Hearing***

#### ***Evidence Reconciliation:***

At the end of each day, the judge will ask about the witness schedule for the next day. The judge and the parties may review which exhibits have been admitted or may defer that review to the end of the hearing. The judge may also talk with the parties about other scheduling or evidence issues that have come up during the day. The judge cannot give legal advice. The judge may answer questions about, the hearing procedures.

Once all testimony is finished, the judge and the parties will review the evidence that has been admitted. Everyone will confirm the Exhibits from each sides that were admitted. This is done by the judge going through each binder and stating which exhibits her records show were admitted. If one party or the other has a different record, notes and the hearing recording can be consulted to make a determination of what was entered as evidence. In some cases, an exhibit that was not admitted can be admitted at the end of the hearing on request of the party. However, it is best to ask to have the exhibit put in evidence when it is discussed in case there is an objection that needs to be cleared up.

Some exhibits may not have been admitted. The judge will return all evidence that was not offered as an exhibit. It is not uncommon to include documents in the exhibit binder that a party decides not to use as evidence during the hearing either because it turned out it was not needed or was a duplicate of a piece of evidence introduced by the other side. After completing the evidence review, the judge will ask the parties to remove the evidence from both copies of their binders that was not admitted into evidence but to leave the tabs in the binders so the judge knows which documents were removed.

The judge will keep any evidence that was not admitted due to an objection in the Exhibit binder. The document will be marked as “not admitted” so it is not relied on as evidence when the judge makes her decision

The judge and the parties will review the evidence that has been admitted. Some exhibits may have a sticker but were not admitted because there was an objection. The judge will return, to the parties, all evidence that does not have a sticker or was not admitted.

## **Closing Arguments**

The last thing the parties and judge discuss are closing arguments. The judge will ask the parties if they want to make written or oral closing arguments. Oral closing arguments are made at the end of the hearing. If oral closing arguments are made, the official record ends on the last day of the hearing and the case is submitted to the judge for decision.

Most people prefer to submit written closing arguments. Written closing arguments are sometimes called "closing briefs." A written closing argument allows you to think about the evidence presented by both sides and take your time to tell the judge why your evidence proved your case and why the other side's evidence did not prove their case. The judge usually gives the parties a couple of weeks to write and submit their closing argument. Sometimes, a longer period is allowed if there is a good reason to ask for a longer time. The judge will tell the parties the date their written closing arguments must be filed with OAH and served on the other parties. The case is continued until the deadline for the written arguments. The official record is closed on the date the written closing arguments are due and the case is considered submitted to the judge for decision.

A written closing argument does not have to be submitted in any particular format. Parents who are not represented by attorneys may write a letter. Usually the judge will give the parties a page limit for the closing briefs.

A closing argument is a summary of the evidence. Good closing arguments highlight a party's most favorable evidence, and states why the evidence shows the judge should decide in favor of the party writing the brief. Closing arguments explain why a witness is credible or why one witness should be believed instead of another. Closing arguments should discuss only the evidence that was presented at the hearing. It should not attempt to offer new evidence. The closing argument should end by telling the judge what the judge should do about the each issue.

Closing arguments may discuss what law applies. However, parents who do not have an attorney are not expected to know all the law that applies to their case. The judge is an expert in the law that applies. Therefore, parents are able to make very good closing arguments even if they are not familiar with legal vocabulary or special education law as the most important information to discuss is the evidence that was presented and why it proved your case.

Written closing arguments must be filed and served by the due date and must include a proof of service. If your written closing argument is late, it may not be considered by the judge.



## PART 13: DECISION

Generally, the law requires that a decision must be sent out within 45 days of the complaint. When the 45 days begin to run depends upon whether the case was filed by a parent or by a district. This is because the law requires a resolution session when parents file a complaint. When parents file the complaint, the 45 days begin to run after the end of the 30-day resolution period. There is no resolution session when a district files the case. When a district files the case the 45 days begins to run when the complaint was filed and served. The 45-day period is extended whenever the due process hearing is continued for any reason. The parties may agree to extend the 45-day period by sending a letter to OAH.

The judge will write a decision. The decision will state the issues. The decision will include a section called “Factual Findings” and another section called “Legal Conclusions.” There will be a section about remedies if a party has won on an issue and a remedy is appropriate. At the end of the decision, the judge will state an order that resolves the case.

The factual findings do not summarize the evidence presented during the hearing. Factual findings state the facts the judge believes to be true based upon all the evidence. Only the facts that are material to the issues being decided are included in the factual findings.

The legal conclusions begin by stating the law that applies to special education and to each issue in the case. The judge will analyze how the law applies to the facts. Sometimes this analysis will also include why the judge believes one witness instead of another or what evidence was most persuasive. The judge will determine whether a party has met their burden of proof on each issue. The burden of proof is explained in Part 12: *Due Process Hearing — Issues and Burden of Proof*. It is a determination of whose evidence was more persuasive.

If the judge has determined that any party is entitled to a remedy, the decision will state the law that applies to remedies and discuss the remedy the judge decides is appropriate. The law gives the judge a lot of freedom to determine the remedies to awarded, if any. Even if a party wins, the decision may not necessarily award the remedy the party asked for.

The decision will include a final order that resolves all of the issues in the case. The judge’s decision is immediately binding on all parties. Lastly, the decision will state which party prevailed on some or all of the issues and that the parties have a right to appeal.

The decision will be emailed by OAH’s Secure e-File Transfer System and mailed to the parties by U.S. mail. Parties that are registered in the SFT system will get an email from OAH telling them that they have a new document in their file. Click on the link in the email to log in, or follow the steps to Log In above in Part 3: *Using the Secure File Transfer System*, to see or print the Decision. OAH will also post the decision on its website. OAH does not identify the student by name on the website or in the decision.

## PART 14: RIGHT TO APPEAL DECISION

If a party disagrees with the final decision in the case, the party has the right to appeal. The party may file an appeal in either the state superior court or the federal district court. An appeal must be filed within 90 days of the date the party receives the decision.

The state superior court or the federal district court will require a written transcript of the hearing. A party may request a transcript of the hearing by sending a written request to OAH. OAH form number 5A may be used to ask for a transcript. There is a link to the form on the website. Parents are entitled to one free copy of the transcript in either written or electronic form. Parents are also entitled to one free copy of the administrative record. The administrative record is the OAH file. The administrative record includes copies of the exhibits that were accepted into evidence during the hearing.

## PART 15: ADDITIONAL RESOURCES

### Definitions of Terms and Frequently Used Acronyms

#### *The Individuals with Disabilities Education Act (IDEA)*

The *Individuals with Disabilities Education Act* (20 U.S.C. § 1400 et seq.) is a federal law which requires (1) that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs, and to prepare them for further education, employment, and independent living; (2) that the rights of children with disabilities and parents of such children are protected.

#### *List of Acronyms*

ACRONYMS	TERM	DEFINITION
	Adapted Curriculum	An alternative in the general education curriculum that includes the same content and to some extent the same sequence as regular education.
	Adaptation	Any modification to the classroom, instruction or materials that strengthens the student performance or allows participation.
	Adaptive Behavior	Usually measured by scales that identify how well a person manages within his or her own environment, such as self-care tasks like dressing oneself or feeding oneself.
ADL	Activities of Daily Living	Activities that make a student independent in his or her environment such as dressing, eating, and toileting.
APE	Adapted Physical Education	A service provided by school districts consisting of physical education to students whose disabilities interfere with their participation in mainstream physical education.
	Administrator/Designee	A representative designated by administration, other than a pupil's teacher.
	Affective	A term that refers to emotions and attitudes.
ADR	Alternative Dispute Resolution	An interest-based approach to resolving disagreements between parties. ADR includes mediation.

ACRONYMS	TERM	DEFINITION
	Annual Goals	A required component of an IEP. Goals are written for the individual student and can be for a maximum of one year.
<b>ABA</b>	Applied Behavioral Analysis	Behavior-analytic approach frequently used to teach student with autism. Discrete Trial Training (DTT methods rely on ABA approach.)
	Asperger's	Asperger's Disorder is a category on the PDD spectrum. Typically, a student with Asperger's may be relatively high-functioning in some areas, but have difficulties with socialization and communication. A student with Asperger's Disorder may be eligible for special education.
	Assistive Technology Device	Refers to any item, piece of equipment, or product system—whether acquired commercially off the shelf, modified, or customized that is used to increase, maintain, or improve the functional capabilities of a student with a disability. (See Ed. Code, § 56020.5)
<b>ADHD</b>	Attention Deficit Hyperactive Disorder	A condition identified as a medical diagnosis by the American Psychiatric Association's Diagnostic and Statistical Manual IV-Revised (DSM IV-R). Related to condition of Attention Deficit Disorder (ADD). Although it is not an eligibility category under the IDEA, children with this condition may be eligible for special education under other categories or under Section 504. (See Ed. Code, § 56339)
<b>ASD</b>	Autism Spectrum Disorder	A group of disorders that includes autism and non-autistic pervasive development disorders (PDD) not otherwise specified (NOS), Fragile X Syndrome, Rett's Syndrome and Childhood Disintegrative Disorder.
	Assessment	Observation and testing of children to identify the strengths and weakness of the child and to determine progress in order to develop an appropriate education plan. Sometimes called an evaluation. (See Ed. Code, § 56320, et seq.)
	Behavior Interventions	The systematic implementation of procedures that results in lasting positive changes in the individual's behavior. (Ed. Code, §§ 56520 through 56525.)
<b>BICM</b>	Behavioral Intervention Case Manager	A designated certificated school district SELPA staff member or other qualified personnel contracted by the school district that has been trained in behavioral analysis and positive behavioral interventions. (See Ed. Code, § 56025.)
<b>BIP</b>	Behavioral Intervention Plan	A written document, which is developed when an individual exhibits a serious behavior problem that significantly interferes with the implementation of the goals of the individual's IEP. The behavioral intervention plan becomes part of the IEP. LEAs are required to develop a BIP in some circumstances for students with behavioral problems. (See Ed. Code, § 56523.)
<b>CARD</b>	Center for Autism & Related Disorders	One of many NPAs providing Lovaas type programs.
	Categorical Placement	Special Education programs in which students are grouped on the basis of their IDEA eligibility category. Alternative models include "non-categorical" placement and "cross-categorical" placement.
	Chapter 26.5	The section of the California Government Code that governs interagency responsibilities for the delivery of mental health services to eligible students under the IDEA and related California laws. The services are frequently referred to by the Assembly bills that created the laws, AB 3632 and AB 2726. (See Gov. Code, §§ 7570; 7572, subds. (a) & (c), 7576, subd. (a) [community mental health services provide the mental health services required in order to provide a FAPE].)

ACRONYMS	TERM	DEFINITION
	Child Find	Also known as “search and serve.” School districts are required to actively seek out and identify students within their boundaries who may be eligible for special education, and have a system in place to do so. (20 U.S.C § 1412(a)(3); Cal. Ed. Code, §§ 56300 through 56302.)
	Cognitive	A term that refers to reasoning or intellectual capacity.
<b>CALP</b>	Cognitive Academic Language	A level of competence required in oral and written language related to literacy and academic achievement.
<b>CAC</b>	Community Advisory Committee	A group of parents, community members, and district staff appointed by, and responsible to, the SELPA. It advises the SELPA in the development and implementation of the local plan for special education. It also assists in parent education and public involvement in the development of the local plan and supporting activities on behalf of students with disabilities.
	Community Based	When skills are taught at varied locations in the community rather than in the classroom. This is done in order to facilitate generalization and application.
	Comp Ed.	Compensatory education and/or related services provided to remedy a denial of FAPE.
	Continuum of Services	The range of services that must be available to the students of a school district so that they may be served in the least restrictive environment (LRE).
	Core Academics	The required subjects in middle and high school, usually English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. (20 U.S.C. § 1401(4), incorporating by reference 20 U.S.C. § 7801(11); 34 CFR § 300.10.)
	Cued Speech	Method of communication used by some persons with hearing impairments. It is used to reduce the ambiguities involved in lip reading. This method is caught in the controversy between teaching deaf children to rely on oral methods of communication or to use sign language.
	Deaf/Blind	Student with both hearing and vision disability. (20 U.S.C. § 1401(3) & (30); 34 CFR § 300.81(2).)
	Deaf/Hard of Hearing	Student who has a measurable hearing loss, conductive or sensor neural, in either one or both ears. This limits the normal acquisition of speech and language through the ear. (20 U.S.C. § 1401(3)& (30); 34 CFR § 300.81(3).)
	Delay	Generally refers to intellectual or skills development not occurring within expected time ranges.
<b>DIS</b>	Designated Instruction and Services	Transportation and such development corrective and other supportive services as may be required to assist a student with a disability to benefit from special education. Also known in IDEA as related services. School districts are required to provide whatever DIS (other than medical care which is not for diagnostic purposes) a child needs in order to benefit from his or her special education program. (20 U.S.C. § 1402(26); 34 C.F.R. § 300.24; and Ed. Code, § 56363.)
<b>DTT</b>	Discrete Trial Training	Type of instruction for children with autism. Based upon ABA principles.
	Due Process	All procedural safeguards of public law and related laws and regulations. (20 U.S.C. 1415; 34 C.F.R. §104.36.)

<b>ACRONYMS</b>	<b>TERM</b>	<b>DEFINITION</b>
<b>EC</b>	California Education Code	The body of statutes that governs education, including special education, in the State of California.
<b>EHA</b>	Education for all Handicap Children Act	A federal law more commonly identified as P.L. 94-142. It became effective in 1975 and has been significantly modified by the Individuals with Disabilities Education Act (1977).
<b>ED</b>	Emotionally Disturbed	An emotional problem that has existed for a period of time, to a marked degree, that adversely affects a child's educational performance. This is a category of eligibility for special education. (20 U.S.C. § 1401(3)& (30); 34 C.F.R. § 300.81(4)(i); Cal. Code Regs., tit. 5, § 3030, subd. (i).)
	Expedited Hearing	A provision of the IDEA that streamlines a due process hearing when the student has violated a code of student conduct. (20 U.S.C. § 1415(k), 34 C.F.R. § 300.532.)
<b>ESD</b>	Extended School Day	A provision for a special education student to receive instruction for a period longer than the standard school day. This sometimes includes "double" kindergarten, later afternoons, or earlier starting times.
<b>ESY</b>	Extended School Year	The special education program provided between school sessions when the IEP team determines they are needed to prevent regression of skills. ESY services are required to be included in the IEP and provided to the pupil if the pupil's IEP team determines, on an individual basis, that the services are necessary for the provision of a FAPE to the pupil. (Ed. Code, § 56345(b)(3), citing 34 CFR § 300.309.)
	Fair Hearing	A formal hearing that is requested by parents or school district personnel. Issues that may be considered under the fair hearing procedures are limited to eligibility, assessment, the individualized education program, and placement of individuals with exceptional needs. Also known as "due process hearing."
<b>FERPA</b>	Family Education Rights and Privacy Act	A federal law that regulates the management of student records and disclosure of information from those records. FERPA mandates confidentiality of special education matters, including confidentiality of names of special education students. FERPA has its own administrative enforcement mechanism (not covered by due process hearings).
	Fine Motor	Functions which require tiny muscle movements. For example, writing or typing would require fine motor movement. Services typically associated with deficits in this area include occupational therapy.
<b>FAPE</b>	Free Appropriate Public Education	Every school age child with a disability is entitled to an education that meets his/her individual needs, which is at no cost to parents. Specifically, FAPE refers to special education and related services that (1) are provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the state educational agency, including the requirements of the federal regulations for the education of children with disabilities; (3) include an appropriate preschool, elementary, or secondary school education in the state involved; and (4) are provided in conformity with a qualifying individualized education program. (20 U.S.C. § 1401(9); 34 CFR § 300.17; Ed Code § 56040.)
<b>FAA</b>	Functional Analysis Assessment	Under California law, school districts must conduct an FAA when a student demonstrates a "serious behavior problem," which is defined in title 5, Cal. Code of Regs., § 3001 and 3052. An FAA is also referred to as a "Hughes Bill" assessment.

ACRONYMS	TERM	DEFINITION
<b>FBA</b>	Functional Behavioral Assessment	Under federal law, school districts must conduct an FBA when the student's behavior impedes his or her own learning or that of others. (34 C.F.R. § 300.346.) FBAs may also be required in relation to some disciplinary actions.
	Functional Curriculum	A curriculum focused on practical life skills and usually taught in community-based settings with concrete materials that are a regular part of everyday life. The purpose of this type of instruction is to maximize the student's generalization to real life use of his/her skills.
<b>IEE</b>	Independent Educational Evaluation	A private evaluation typically obtained by parents when they do not agree with the results of an evaluation performed by the LEA. If parents disagree with an LEA's evaluation, the parents may seek an IEE at public expense. (Cal. Ed. Code, § 56329(b).)
<b>IEP</b>	Individualized Education Program	A written statement, mandated by law, that defines a child's disability, states current levels or educational needs, and specifies annual goals, and evaluation and progress reporting schedule. (20 U.S.C. § 1414(d); 34 C.F.R. § 300.22; referring to 20 U.S.C. §§ 1400 to 1482, and Ed. Code, §§ 56032, 56345 & 56345.1.)
	IEP Meeting	A gathering required at least annually under IDEA in which an IEP is developed for a student receiving special education. The IEP meeting usually includes the student's parents and classroom and resource teachers.
<b>IEP Team</b>	Individualized Education Program Team	The team is composed of an administrator or his/her designee, the student's special education and general education teacher, and the parent. Other members may include the student, those who have assessed the student, and others as appropriate. The IEP Team is responsible for developing, reviewing, or revising an IEP for a child with a disability. (20 USC § 1414(d)(1)(B); 34 CFR §300.23; and Ed. Code, § 56341.)
	Inclusion	A placement for a student with a disability that in a classroom with typically developing peers (nondisabled students). The term is related to mainstreaming and LRE.
<b>IFSP</b>	Individualized Family Service Plan	Similar to an IEP, but an IFSP is for eligible children from birth to age three. IFSP is a document that outlines the services to be delivered to families of infants and toddlers receiving early intervention services pursuant to Part C of the IDEA. (20 U.S.C. § 1436; 34 C.F.R. § 300.24, incorporating by reference 20 U.S.C. § 1436.)
<b>IDELR</b>	Individuals with Disabilities Education Law	Specialized full text reporting service publishes policy letter and administrative level actions as well as case law.
<b>IWENS</b>	Individuals With Exceptional Needs	Individuals from infancy through 21 identified by an individualized education program team as having a disability or condition that requires specialized instruction and/or services. (Ed. Code, § 56026.)
	Intellectual Disability	Student with significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. (20 U.S.C. § 1401(3) & (30); 34 C.F.R. § 300.81(6).)

ACRONYMS	TERM	DEFINITION
<b>IAES</b>	Interim Alternative Education Setting	(IDEA 20 U.S.C. § 1415(k).) If a special education student violates a code of student conduct, school personnel may consider changing the educational placement of the student to an IAES. Most typically, a school will place a student in an IAES for up to 45 days in special circumstances” discipline cases (weapons, drugs, serious bodily injury) pursuant to 20 U.S.C. § 1415(k)(1)(F).
	In-home Interventions	Special education services delivered in a child’s own home.
<b>LD</b>	Learning Disability	An eligibility category under IDEA and California Education Code. Technically known as “specific learning disability,” as listed below. Includes dyslexia. (45 C.F.R. § 1308.14.)
<b>LRE</b>	Least Restrictive Environment	A learning environment for a student with exceptional needs that meets his/her learning needs while providing maximum interaction with the general school population in a manner appropriate to the needs of the student and his/her peers. IDEA requires that, to the maximum extent appropriate, children with disabilities shall be educated with children who are not disabled. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114 (2006); Ed Code, §§ 56031, 56342, subd. (b), & 56364, subd. (a).)
<b>LEP</b>	Limited English Proficiency	Also known as English language learner (ELL). Students whose primary language is other than English, who lack competence in the English language, and for whom linguistically appropriate goals, are developed. (20 U.S.C. § 1401(18); 34 C.F.R. § 300.27.)
<b>LEA</b>	Local Education Agency	A public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a state, or for such combination of school districts or counties as are recognized in a state as an administrative agency for its public elementary or secondary schools. (E.g., a school district.) (20 U.S.C. § 1401(19)(A), (19)(B), (19)(C); 34 C.F.R. § 300.28(a), (b), (c); Cal. Ed. Code § 56026.3.)
	Lovaas	Type of program for students with autism. Program typically involved in providing intensive, one-to-one DTT services to autistic preschoolers for forty hours per week. Based upon research conducted by Dr. Ivar Lovaas at UCLA.
	Mainstreaming	This term refers to IDEA’s preference for the education of every child in the least restrictive environment (LRE) for each student. This term has been most widely used to refer to placement of disabled children in a regular classroom for a portion of each school day.
	Manifestation Determination	IDEA 20 U.S.C. § 1415(k)(1)I. Within 10 school days of a decision by a school district to change the placement of a child with a disability based upon a violation of a code of conduct, the district must convene an Individualized Educational Program (IEP) meeting with the purpose of determining whether the conduct was a manifestation of the student’s disability. (34 C.F.R. § 300.530, 300.532(2006).)
	Mediation	A voluntary dispute resolution process that is offered by OAH to all parties involved in special education disputes before OAH. (20 U.S.C. § 1415I and Ed. Code, §§ 56500.3 & 56503.)
	Mediation Only	A type of special education case in which the petitioner has requested mediation but not a due process hearing.

ACRONYMS	TERM	DEFINITION
<b>MDC</b>	Multidisciplinary Conference	A requested gathering under IDEA and is the only body that can make certain determinations – specifically about a child’s eligibility for special education.
	Multidisciplinary Team	Using a combination of the skills of several persons with specialized areas of training for a common purpose, i.e. assessment of student to determine eligibility for services.
<b>NCLB</b>	No Child Left Behind	A federal school reform law that seeks to improve the quality of public schools around the United States.
<b>NPA</b>	Nonpublic Agency	Private agency providing related services. Means a private, nonsectarian establishment or individual that provides related services necessary for an individual with exceptional needs to benefit educationally from the pupil’s educational program pursuant to an IEP. NPAs are certified by CDE. (Ed. Code, § 56035.)
<b>NPS</b>	Nonpublic Schools	A private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an IEP. NPS’s are certified by CDE. (Ed. Code, § 56034)
<b>OT</b>	Occupational Therapy	A special education related service which addresses areas including fine motor skills, gross motor skills, self help skills, and activities of daily living, sensory integration and sensory processing. (34 C.F.R. § 300.34.)
<b>OAH</b>	Office of Administrative Hearings	OAH is an independent state agency designated by CDE to provide mediation and hearing services in special education cases. OAH conducts hearings and provides a neutral forum for fair and independent resolution of matters.
<b>OCR</b>	US Office of Civil Rights	An agency of the federal government’s executive branch within the Department of Education. It is charged with enforcing a number of civil rights statutes including Section 504.
<b>OSEP</b>	US Office of Special Education Programs	A federal office charged with assuring that the various states comply with IDEA.
<b>OHI</b>	Other Health Impaired	This is a category of eligibility for special education services. It means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that : (1) is due to chronic or acute health problems such as asthma, ADD or ADHD, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and (2) adversely affects a child’s educational performance. (20 U.S.C. § 1401(3) & (30); 34 C.F.R. § 300.8I(9).)
<b>OH</b>	Orthopedically Handicapped	A severe orthopedic impairment that adversely affects a child’s educational performance, including impairments caused by congenital anomaly (for example, clubfoot, absence of some member, and the like), disease (for example, poliomyelitis, bone tuberculosis, and the like), and other causes (for example, cerebral palsy, amputations, and fractures or burns that cause contractures). (20 U.S.C. § 1401(3) & (30); 34 C.F.R. § 300.8I(8).) This is a category of eligibility for special education services
<b>PT</b>	Physical Therapy	Means services provided by a qualified physical therapist. (34 C.F.R. § 300.34I(9).) PT consists of treatment of physical disabilities given by a trained physical therapist that includes the use of massage, exercise, etc., to help the person improve the use of bones, muscles, joints and nerves Physical therapy may be a related service, or DIS, under Ed. Code, § 56363.



ACRONYMS	TERM	DEFINITION
<b>PDD</b>	Pervasive Developmental Disorders	Also known as autistic spectrum disorders. Autism is one type of Pervasive Developmental Disorder. If a child displays some characteristics of autism but does not meet all the criteria, another possible diagnosis is PDD-NOS (not otherwise specified). A child with PDD may be eligible for special education.
<b>PECS</b>	Picture Exchange Communication System	Program wherein children with limited communication ability use pictures of items to communicate their wants and needs. Teachers may also set up a picture schedule so the child will understand what his/her daily schedule is.
	Placement	California Code of Regulations, title 5, section 3042, defines “educational placement” as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (See also 34 C.F.R. § 104.35.)
	Policy	Refers to a procedure, philosophy or standard that has been formally adopted and is intended to assist in the governance and provision of programs in the school district.
	Present levels of Educational Performance	A required IEP component
<b>PWN</b>	Prior written notice	When a school district proposes to initiate or change, or <i>refuses</i> to initiate or change, the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education (FAPE) to the child, the school district must first provide notice to the student’s parents in writing, commonly referred to as “prior written notice.” (20 U.S.C. § 1415(b)(3)(A); 34 C.F.R. § 300.503(a)(1)(2006); Ed. Code, § 56500.4, subd. (a).)
	Referral	The request to identify and assess a child’s possible special education needs: a referral may be made by a parent, teacher, medical personnel, or anyone with specific knowledge of the child. Notice to a school district that a child may be in need of special education. A referral triggers the running of certain timelines for assessment and holding an IEP meeting. (Ed. Code, § 56029.)
<b>RC</b>	Regional Centers	Community agencies throughout California which are mandated to provide services to individuals with qualifying disabilities. Regional Centers provide early intervention services to infants and toddlers with disabilities pursuant to part C of the IDEA, but do not provide special education services under Part B of the IDEA, the part of the IDEA which our due process hearings cover. Regional Centers cannot be parties in special education hearings; a separate hearing process exists.
	Regression/Recoupment	The amount of loss of skills a child experiences over an instructional break (primarily summer vacation) and the amount of time it takes him/her to recover the lost skills. Standards for when regression and recoupment concerns require summer school are developed in case law and in state and federal policy letters.

ACRONYMS	TERM	DEFINITION
	Resolution Session	Referring to IDEA 20 U.S.C. § 1415 (f)(1)(B). This is a required meeting of parents and “relevant” IEP team members. After a request for mediation and due process hearing is filed, school districts must arrange this session and attempt to cure any problems within 30 days. If the school district does not cure the issue within 30 days, a hearing is scheduled and the 45 day hearing timeline begins.
	Resource Placement	(See RSP below). A special education placement for less than half a child’s school day. Such a classroom is usually called a “resource room.”
<b>RSP</b>	Resource Specialist Program	Provides students with special education instruction for less than 50 percent of their day. A placement/service wherein a child receives individual or small-group instruction from a “resource specialist,” who is credentialed special education teacher.
	Respite Care	A service provided to the families of children who require extraordinary forms of care so that the family can take vacations, handle business affairs, and have some relief from the duties of caring for the child. (It is often provided by the Regional Centers. However, it is not an educational service, so it should not arise under IDEA.)
	Section 504	Section 504 of the Rehabilitation Act of 1973 is a federal law that prohibits recipients of federal funds from discrimination against persons with disabilities. (Section 504 complaints must be filed with OCR. Due process hearings under the IDEA do not involve Section 504 claims, and OAH does not have jurisdiction to hear Section 504 claims.)
	Severe Discrepancy	Part of the criteria used to determine whether a child is eligible for special education due to a specific learning disability (SLD). California Code of Regulations, title 5, section 3030(j) uses the phrase “severe discrepancy between intellectual ability and achievement in one or more of the academic areas specified in Section 56337(a) of the Education Code.”
<b>SDL</b>	Severe Disorder of Language	Students who have a severe impairment in the ability to use or understand language.
<b>SLD</b>	Specific Learning Disabilities	A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. (20 U.S.C. § 1401(30); 34 CFR § 300.81(10); Ed. Code, §§ 56337 & 56338.) SLD is an eligibility category for special education.
<b>SELPA</b>	Special Education Local Plan Area	A service entity identified by the CDE and funded to provide special education services for the school districts that belong to the SELPA. (Ed. Code, § 56440.) SELPAs operate as described in the comprehension plan for special education, which is submitted by the agency to the California Department of Education. A SELPA is a government entity that provides special education services for the school districts that belong to the SELPA. (Ed. Code, § 56440.)
<b>SDC</b>	Special Day Class	Special classes that serve pupils with similar and more intensive educational needs. SDCs may enroll pupils only when the nature or severity of the disability of the pupil is such that education in the regular classes with the use of supplemental aids and services cannot be achieved. (Ed. Code, § 56364.2.)

ACRONYMS	TERM	DEFINITION
<b>SEA</b>	State Education Agency	i.e., California Department of Education. Means the state board of education or other agency or officer primarily responsible for the state supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the governor or by state law. (20 U.S.C. § 1401(32); 34 C.F.R. § 300.41.)
<b>SLP</b>	Speech and Language Pathologist	A person credentialed by the state to provide speech and language therapy services, which may be a related service, or DIS, under Ed. Code, § 56363.
<b>SST</b>	Student Success Team or Student Study Team	A team of educators, convened at the request of a classroom teacher, parent, or counselor which designs in-class interventions techniques to meet the needs of a particular student, prior to developing an IEP.
	Standardized Tests	Tests that have norms reflecting a larger population. Usually these are age or grade based norms reflecting the performance of children throughout the country on the same tests.
	Stay Put	Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising.
	Supplementary Aids & Services	Accommodations which could permit a student to profit from instruction in the least restrictive environment. They are required under IDEA. Specifically defined as aids, services, and other supports that are provided in regular education classes or other education related settings to enable individuals with exceptional needs to be educated with nondisabled children to the maximum extent appropriate in accordance with paragraph (5) of subsection (a) of Section 1412 of Title 20 of the United States Code. (20 U.S.C. § 1401(33); Ed. Code, § 56033.5.)
	Surrogate Parent	An individual appointed to exercise special education rights on behalf of children with disabilities who do not have a parent able to represent them, generally because the child is a ward of the court. (Cal. Gov. Code § 7579.5; 20 U.S.C. § 1415(b)(2).)
<b>TEACCH</b>	Treatment and Education of Autistic and Related Communication Handicapped Children	A method of instruction used for children with autism.
	Therapeutic Day Program	An instructional placement for students with emotional with emotional disturbance (ED) in which aspects of treatment for the emotional difficulty are incorporated into the school program. Depending on the theoretical orientation of the school, these services may include psychotherapy, behavior management, positive peer culture, or other types of intervention.
	Total Communication	An instructional strategy in which teachers instruct children with severe hearing loss both by speaking to them and by using sign language.

ACRONYMS	TERM	DEFINITION
	Transition Planning	At a minimum, this is planning for adolescents' post-school lives and must begin by age 16. This involves preparation of a document called an Individual Transition Program (ITP). Good practice may involve planning for earlier transitions as well as incorporating such plans into the child's IEP. (Ed. Code, § 56045, <i>et seq.</i> )
<b>TBI</b>	Traumatic Brain Injury	TBI is an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. (20 U.S.C. § 1401(3)& (30); 34 C.F.R. § 300.81(12))
	Typically Developing Peers	Preferred terminology used to identify age-level peers who do not have disabilities. Also sometimes referred to as general education peers or non-disabled peers.
	Unilateral Placement	Placement by parents acting unilaterally, without approval of the school. A unilateral placement does not constitute the student's stay put placement. Parents generally cannot receive reimbursement for unilateral placements unless they provided the LEA with ten days advance notice of the placement.
<b>VI</b>	Visually Impaired	An impairment in vision that, even with correction. Adversely affects a student's educational performance. (20 U.S.C. § 1401(3) & (30); 34 C.F.R. § 300.8(c)(13).)

## Self Help Guide To Laws That Apply To Special Education Hearings

In general, there are two sources of law that apply to special education cases: 1) statutes and regulations; and 2) decisions by courts or administrative agencies (like OAH) that either interpret statutes and regulations, or apply them to a particular set of facts. This section will give an overview of where to find both sources of law that apply to special education disputes. Links to the federal law and regulations can be found on the OAH and CDE Web sites.

### What are sources of special education law?

#### Statutes and Regulations:

Special education law comes from the *Individuals with Disabilities Education Act* (IDEA), a federal law that provides states with special education funding if certain conditions are met. The IDEA begins at title 20 United States Code section 1400. The IDEA sets forth the categories of disability that qualify an individual for special education, the responsibility of school districts and others to provide a free appropriate public education, the rights and responsibilities of parents or guardians; the types of placements and services that may need to be provided for students, and the procedures that apply when there is a dispute about special education eligibility or services. The United States Department of Education, which oversees giving federal money to the states for special education, has also developed regulations that apply to the implementation of the IDEA. The regulations begin at title 34 Code of Federal Regulations, part 300.1.

The state of California has its own set of statutes and regulations about special education. The state laws and regulations are generally consistent with the federal laws. They are found in the California Education Code, beginning at section 56000, and in title 5 of the California Code of

Regulations, beginning at section 3000. The special education sections of the California Code of Regulations were developed by CDE to apply to the implementation of the *IDEA*. Links to the California statutes and regulations can be found on the OAH and CDE Web sites.

#### Interpretations of statutes and regulations:

Statutes and regulations define the rights and responsibilities of students, their parents or guardians, school districts and other agencies responsible for providing special education services. However, sometimes it is helpful to know how a particular statute or regulation has been explained or applied by a judge in the past. Like statutes and regulations, there are both federal and state sources of court decisions interpreting special education law and regulations. In addition, another source of interpretation may be comments to the Code of Federal Regulations.

At the state level, the most often used sources are prior decisions of OAH. Additional interpretations are available through the state and federal courts. State courts include the California Court of Appeal or California Supreme Court. Federal court is divided into the United States District Court (the equivalent of a California Superior Court), the United States Court of Appeals (the equivalent of the California Court of Appeal), and the Supreme Court of the United States. District Court and Court of Appeals decisions are not always published, but even if not officially published, are still available for the public to look at. All decisions of the Supreme Court are published.

Another possible source of information about the interpretation of the federal regulations is the “comments” to the regulations. If the meaning of a regulation is not clear, the comments are sometimes looked at for guidance about what the United States Department of Education intended.

Finally, it is important to understand what cases are most persuasive, convincing and supportive of *your* case. As a general rule, the decisions of the Supreme Court of the United States must be followed by everyone, making them the most important and generally the most persuasive law. Next are cases from the Ninth Circuit of the Federal Court of Appeals as California is part of that circuit, followed by cases from the federal district courts in California (the California federal courts below the 9<sup>th</sup> Circuit.) Decisions of federal appellate courts in circuits other than the Ninth Circuit of the United States Court of Appeals can also be important, although, the appellate justices in the Ninth Circuit are not required to follow the lead of courts from a different circuit or the lower federal courts of other states. Finally, the decisions of OAH which are not “precedential” meaning they are not required to be followed by other judges, would be less persuasive. If the facts matched very closely to the facts of your case, a judge might consider the opinion in another OAH case. Cases that have been overruled by a higher court should not be used. Don’t be surprised if you cannot find a case exactly like yours. In general, there is less published law on special education topics than other areas of law and special education cases tend to be somewhat unique as every child is different

#### **How can I find statutes, regulations and decisions?**

Your local regional center may have a parent resource center that can help (and may also be able to help with advocacy if your child is a regional center client). You may find your local regional center on the internet at <http://www.dds.ca.gov/RC/RCList.cfm> or by contacting the California

Department of Developmental Services at 1600 Ninth Street, P. O. Box 944202, Sacramento, CA 94244-2020, Info: (916) 654-1690, TTY: (916) 654-2054.

### **Internet resources:**

<http://www.dgs.ca.gov/oah/SpecialEducation.aspx> contains information about OAH procedures, links to special education law and access to prior special education decisions and orders. When researching prior OAH decisions you will be asked to enter search terms.

[http://policy.microscribepub.com/cgi-bin/om\\_isapi.dll?clientID=2469931611&depth=2&infobase=casernl&softpage=PL\\_frame](http://policy.microscribepub.com/cgi-bin/om_isapi.dll?clientID=2469931611&depth=2&infobase=casernl&softpage=PL_frame) California Special Education Reference (CASER) is a word-searchable database of special education-related state and federal statutes and regulations, federal guidance documents, and editions of the Federal Register.

<http://www.disabilityrightscalifornia.org/> is the Web site of Disability Rights California or DRC (formerly Protection and Advocacy, Inc. (PAI)), a nonprofit organization whose mission includes assisting people with disabilities in advocating for their rights.

<http://www.disabilityrightscalifornia.org/pubs/PublicationsSERREnglish.htm> provides access to DRC's book "Special Education Rights and Responsibilities."

<http://www.cde.ca.gov/sp/se/lr/> contains links to a searchable database of the California Education Code and California Code of Regulations and links to sources of federal special education law.

<http://www.ecfr.gov/cgi-bin/text-idx?tpl=%2Findex.tpl> is the Electronic Code of Federal Regulations.

<http://findlaw.com> is a Web site that offers free access to federal and state cases and statutes.

[https://govt.westlaw.com/calregs/index?lrTS=20160304195115127&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/index?lrTS=20160304195115127&transitionType=Default&contextData=(sc.Default)) offers access to the California Code of Regulations.

<http://idea.ed.gov/> provides information from the Federal Department of Education about the IDEA.

<http://www.supremecourt.gov/opinions/opinions.aspx> offers access to cases decided by the Supreme Court of the United States.

### **How do I do legal research?**

When doing legal research, don't "reinvent the wheel." There are many sources of information available that have already been organized by someone else, which makes it easier on you. In general, it is always best to start with a source like a book or Web site on special education law. The author will generally have organized the information by topic and will have included the

relevant law. Use these sources to help guide you to the statutes that will apply to your case so that you do not have to try to sift through all of the statutes on your own.

Identify the key words that describe the dispute. Whether you are using a book or Web resource, you will need to use key words to find information. For example, the first thing you should do when looking at a book about special education law or a book containing statutes is to consult the index or table of contents to find references to the key words about your case. Similarly, to access decisions like those on the OAH Web site, you will need to plug in key words about your dispute.

To develop key words (also known as “search terms”), think about what the issue is in your dispute with the school district. For example, does your dispute involve how your child was assessed by the school district? If so then a key word would be “assessments.” If your dispute involved where your child is going to school, then you might want to use a key word like “placement.” If your dispute involved events that happened at an IEP, then you might want to use a keyword like “IEP” or “IEP meeting.” Another useful keyword is your child’s particular disability such as “autism” or “emotional disturbance.”

Once you have your keywords, use them to look through the index of books about special education law or books containing special education statutes. Usually this will point you to the law that applies to your problem. For online research, like finding prior decisions by OAH, use your keywords in the Web site search box. When looking for cases like prior OAH decisions, it is better to use more than one of your keywords. For example, putting in “IEP” in the search box will likely point you to all of the OAH special decisions. However, putting in “IEP,” with the additional terms “autism” and “applied behavioral analysis” would return a much smaller list of cases that are likely to be more relevant to your particular dispute.

## **Forms and Common Documents**

All of OAH’s request forms are available online here:

<http://www.dgs.ca.gov/oah/SpecialEducation/Forms.aspx>

Examples of the documents listed below.

Form 1: Request for Mediation Only (Form)

Form 2: Request for Mediation and Due Process Hearing (Form)

Form 3: Proof of Service (Form)

Form 4: Scheduling Order Setting Telephonic Prehearing Conference and Due Process Hearing—  
Sample only – Document prepared by OAH.

Form 5: Request to Set Mediation (Form)

Form 6: Request for Continuance of Special Education Due Process Hearing (Form)

Form 7: Scheduling Order Setting Dual Hearing Dates Including Expedited Hearing, Prehearing and Mediation – Sample only – Document prepared by OAH

Form 8: Notice of Mediation Only - Sample only – Document prepared by OAH

Form 9: Joint Waiver of Resolution Session

Form 10: Request to Advance Hearing Dates - Sample only – Document prepared by OAH

Form 11: Sample Prehearing Conference Statement - Sample only – Document prepared by OAH

Form 12: Subpoena



## FORM 1: MEDIATION ONLY REQUEST



### OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF CALIFORNIA

SPECIAL EDUCATION DIVISION

#### Information Sheet for Request for Mediation Only

##### **Important information to know before requesting a Mediation Only case:**

Participation in mediation is voluntary. If one of the parties declines the opportunity to participate, the mediation cannot occur. However, if the mediation does not occur, either party may still file a request for due process hearing.

For a mediation only case, the law provides that attorneys and other independent contractors who provide legal advocacy services shall not attend or otherwise participate in a "prehearing request mediation conference." However, they may otherwise participate during all stages of the hearing process if a party later files for due process hearing. This means that by requesting a mediation only case you may not have an attorney or advocate present at mediation.

The Office of Administrative Hearings (OAH) will assign your request to a mediator who is knowledgeable about non-adversarial dispute resolution. All mediators are also experienced in the area of special education law and mediation.

Attached is a form that you may use to request Mediation Only on behalf of a particular student. If the information requested is incorrect, incomplete or not provided, your request for mediation only may be delayed until that information is provided to OAH or returned to you. All required information must be provided for the request to be processed. As soon as the completed request has been processed you will be notified by mail.

*Your request must be sent to all of the parties you have named in the complaint and a copy provided to the Office of Administrative Hearings.*

---

If you need assistance in completing this form or have questions about mediation, assistance is available by contacting OAH at the numbers below.

Office of Administrative Hearings, Special Education Division  
2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833  
Website: [www.dgs.ca.gov/oah/SpecialEducation.aspx](http://www.dgs.ca.gov/oah/SpecialEducation.aspx)  
Email (SFT): <https://www.dgs.ca.gov/OAH/OAHSFTWeb>

Tel. (916)263-0880

Save

Clear



OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA  
SPECIAL EDUCATION DIVISION

Submit completed  
request:

Via U.S. mail or e-File

Questions about OAH's  
Special Education  
Division?

Call: (916) 263-0880

## Request for Mediation Only

(Document Description: Initial Mediation Request)

This request is being initiated by the:

☐ Parent

☐ School District

(or other Local Education Agency)

Student Information (all fields required)		
First and Last Name		Date of Birth
Street Address		Grade Level
City	Zip Code	Student's Primary Language
School of Attendance		
District of Residence		
Parent Information (all fields required if Student is under 18 years of age)		
First and Last Name		Home Phone
Street Address		Work/Cell Phone
City	Zip Code	
Email Address		
Necessity of Interpreter		Language
Identify person(s) needing interpreter services		
<b>Parties to Be Named:</b> please list the parties to be named in the Request for Mediation Only. <ul style="list-style-type: none"> <li>• If this request is being filed by a parent, this includes any school district, county office of education or other public agencies involved in any decision regarding the student that you feel should be a party in the mediation.</li> <li>• If this request is being filed by the district or any public agency involved in any decision regarding a student, this would be the parent or student as appropriate.</li> </ul> (Use additional sheets if necessary)		
Party and Address		
Party and Address		
Party and Address		

**Brief Summary of Reason For Request**Describe the nature of the problem including all relating facts. *(required)***Proposed Resolution of Problem Stated Above *(required)*****Signature of Party Requesting Mediation**

Name (print name)

Email Address

Signature

Date

**Statement of Service**

Federal and state laws require you to send or deliver a copy of this Request to each of the named parties. Additionally, you must send or deliver a copy to the Office of Administrative Hearings. Retain a copy for yourself. Please indicate your compliance with this requirement by checking the appropriate box below.

I have provided a copy of this Request for Mediation to all the named parties and to the Office of Administrative Hearings by:

☐ E-File

Provide the name and address of each person or educational agency served:

☐ First Class Mail

Provide the name and address of each person or educational agency served:

☐ Facsimile Transmission

Provide the name and address of each person or educational agency served:

☐ Messenger Service (UPS, FedEx, other courier service) Please attach proof of service.

Provide the name and address of each person or educational agency served:

☐ Personal Delivery (If other than requestor please name person who made service)

Name of person who made personal delivery: \_\_\_\_\_

Provide the name and address of each person or educational agency served:

Print name of person completing this Statement

Signature

Date of Service

## FORM 2: REQUEST FOR MEDIATION AND DUE PROCESS HEARING



### OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF CALIFORNIA

SPECIAL EDUCATION DIVISION

#### Information Sheet for Request for Mediation and Due Process Hearing

(Ed. Code § 56502, subd. (b))

**IMPORTANT:** The Request for Mediation and Due Process Hearing (complaint) form is designed to assist parties in requesting mediation services and a due process hearing. Provide all information requested. Failure to provide all information may result in delay in opening the complaint or the return of your complaint. The Office of Administrative Hearings will send you a notice that identifies your mediation and hearing dates. OAH will also send you a list of attorneys and advocates who provide free and reduced cost services.

#### Mediation and Due Process Hearings under the Individuals with Disabilities Education Improvement Act Of 2004

IDEA provides for mediation and due process hearings to resolve disputes relating to the education of children with disabilities to ensure that each child receives a Free and Appropriate Public Education (FAPE) tailored to his/her unique needs. The process is initiated by serving a completed Request for Mediation and Due Process Hearing on the persons or entities you name as parties to the proceeding.

Attached is a form that you may use to request a mediation and due process hearing on behalf of a particular child. You should be aware that the IDEA has very specific requirements regarding the information to be included on the request. If the information requested is incomplete or not provided, your request for a due process hearing may be delayed until the request meets legal requirements or returned to you.

*Your request must be sent to all of the parties you have named in the complaint and a copy provided to the Office of Administrative Hearings.*

**Before filling out the Request for Mediation and Due Process Hearing form please take the time to read the following excerpts from applicable federal statutes:**

The Request for Mediation and Due Process Hearing (Complaint) shall include:

"the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending..." (20 U.S.C. § 1415 (b)(7)(A)(ii)(I));

"a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem...." (20 U.S.C. § 1415 (b)(7)(A)(ii)(III)) and

"a proposed resolution of the problem to the extent known and available to the party at the time." (20 U.S.C. § 1415 (b)(7)(A)(ii)(IV))



"...a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii)." (20 U.S.C. § 1415 (b)(7)(B))

"[The complaint] shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A)." (20 U.S.C. § 1415 (c)(2)(A))

"...the hearing officer shall make a determination on the face of the notice whether the notification meets the requirements...and shall immediately notify the parties in writing of such determination." (20 U.S.C. § 1415 (c)(2)(D))

A party may amend its Complaint only if: (I) the other party consents in writing and a Resolution Session is held; or (II) if permitted by the Administrative Law Judge. (20 U.S.C. § 1415 (c)(2)(E)(i))

"The applicable timeline for a due process hearing under this subchapter shall recommence at the time the party files an amended notice..." (20 U.S.C. § 1415 (c)(2)(E)(ii))

---

#### **Clarification for sections of complaint form**

##### **\*Parties to Be Named**

Please list the parties to be named in the Due Process Hearing. This includes any school district, county office of education or other public agencies responsible for providing services you feel should be a party in the hearing. (Use additional sheets if necessary)

##### **\*Problem/Complaint**

Statement of Reason(s) for Request: Federal and state law require you describe with specificity the nature of the problem(s)/complaint(s). Simply describing a problem as: "Student was denied FAPE for school year 2005-2006" is insufficient. Include facts, dates, references to specific individual education program provisions, etc. Lack of specificity in identifying problem(s)/complaint(s) may result in the dismissal of this Due Process Hearing Request.

##### **\*Proposed Resolution**

Proposed Resolution for Each Problem/Complaint: Federal law requires that you provide a proposed resolution to each identified problem/complaint to the extent known. Again, please be as specific as possible. A proposed resolution that the District "provide a FAPE" is insufficient.

---

If you need assistance in completing this form or have questions about the mediation and hearing process, assistance is available by contacting OAH at the numbers below.

Office of Administrative Hearings, Special Education Division  
2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833  
Website: [www.dgs.ca.gov/oah/SpecialEducation.aspx](http://www.dgs.ca.gov/oah/SpecialEducation.aspx)  
E-File (SFT): <https://www.dgs.ca.gov/OAH/OAHSFTWeb>

Tel. (916)263-0880

Save

Clear



## OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF CALIFORNIA

SPECIAL EDUCATION DIVISION

## Request for Mediation and Due Process Hearing

(Document Type: Initial Hearing Request)

Submit completed request:

Via U.S. mail or e-File (SFT)

Questions about OAH's Special Education Division?

Call: (916) 263-0880

This is a request for:

☐ Mediation and Hearing☐ Hearing Only

This request is being initiated by the:

☐ Parent☐ School District

(or other Local Education Agency)

**Student Information** (all fields required)

First and Last Name		Date of Birth
Street Address		Grade Level
City	Zip Code	Student's Primary Language
School of Attendance		
District of Residence		

**Parent Information** (all fields required if Student is under 18 years of age)

First and Last Name		Home Phone
Street Address		Work/Cell Phone
City	Zip Code	
Email Address*		

\*By providing an e-mail address, you acknowledge and agree, until further notification by you, to receive documents from OAH electronically and waive receipt of documents via any other method. In the event your contact information should change, it is your responsibility to notify OAH.

Is the Student a person of color? Please check the appropriate box.

(California Department of Education requirement)

☐ Yes
 ☐ No
 ☐ Decline to State
**Necessity of Interpreter**

Identify person(s) needing interpreter services	Language

**Parties to Be Named** \*for further information on this section please refer to the Information Sheet for Request for Mediation and Due Process Hearing

Party and Address
Party and Address
Party and Address

**Identify Specific Problem(s)/Complaint(s) and Proposed Resolution(s)**

All that is required and recommended is a simple, clear, concise statement of the problem/complaint. If you run out of space, use additional sheets with the same format. Lengthy narratives often create more confusion than clarity and are not a substitute for a clear statement of the dispute. If a narrative is included, attach it to your Request.

\*For further information on this section please refer to the Information Sheet for Request for Mediation and Due Process Hearing.

**Problem/Complaint #1****Proposed Resolution #1****Problem/Complaint #2****Proposed Resolution #2**



**Problem/Complaint #3**

**Proposed Resolution #3**

**Problem/Complaint #4**

**Proposed Resolution #4**

**Problem/Complaint #5**

**Proposed Resolution #5****Problem/Complaint #6****Proposed Resolution #6****Signature of Party Requesting Mediation and Due Process Hearing**

Name (print name)

Email Address

Signature

Date

**Statement of Service**

Federal and state laws require you to send or deliver a copy of this Request to each of the named parties. Additionally, you must send or deliver a copy to the Office of Administrative Hearings. Retain a copy for yourself. Please indicate your compliance with this requirement by checking the appropriate box below.

I have provided a copy of this Request for Mediation and Due Process Hearing to all the named parties and to the Office of Administrative Hearings by:

☐ Email to:

☐ First Class Mail

Provide the name and address of each person or educational agency served:

☐ Facsimile Transmission

Provide the name and address of each person or educational agency served:

☐ Messenger Service (UPS, FedEx, other courier service) Please attach proof of service.

Provide the name and address of each person or educational agency served:

☐ Personal Delivery (If other than requestor please name person who made service)

Name of person who made personal delivery:

Provide the name and address of each person or educational agency served:

Print name of person completing this Statement

Signature

Date of Service

## FORM 3: PROOF OF SERVICE

<b>Statement of Service</b> <small>Federal and state laws require you to send or deliver a copy of this document to each of the named parties. Additionally, you must send or deliver a copy to the Office of Administrative Hearings. Retain a copy for yourself. Please indicate your compliance with this requirement by checking the appropriate box below.</small>		
I have provided a copy of the _____ document to all the named parties and to the Office of Administrative Hearings by:		
<input type="checkbox"/> Email to: _____		
<input type="checkbox"/> First Class Mail		
Provide the name and address of each person or educational agency served: <div style="background-color: #d3d3d3; height: 30px; width: 100%; margin-top: 5px;"></div>		
<input type="checkbox"/> Facsimile Transmission		
Provide the name and address of each person or educational agency served: <div style="background-color: #d3d3d3; height: 30px; width: 100%; margin-top: 5px;"></div>		
<input type="checkbox"/> Messenger Service (UPS, FedEx, other courier service) Please attach proof of service.		
Provide the name and address of each person or educational agency served: <div style="background-color: #d3d3d3; height: 30px; width: 100%; margin-top: 5px;"></div>		
<input type="checkbox"/> Personal Delivery (If other than requestor please name person who made service)		
Name of person who made personal delivery: _____		
Provide the name and address of each person or educational agency served: <div style="background-color: #d3d3d3; height: 30px; width: 100%; margin-top: 5px;"></div>		
Print name of person completing this Statement	Signature	Date of Service

# **FORM 4: SCHEDULING ORDER SETTING TELEPHONIC PREHEARING AND DUE PROCESS HEARING**

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

\_\_\_\_\_, PARENT(S) ON BEHALF  
OF \_\_\_\_\_, STUDENT,

v.

\_\_\_\_\_ SCHOOL DISTRICT.

OAH Case No. XXXXXXXXX

SCHEDULING ORDER SETTING  
TELEPHONIC PREHEARING  
CONFERENCE AND DUE PROCESS  
HEARING

The Office of Administrative Hearings (OAH) is in receipt of a Request for Due Process Hearing for the above student. Below are the dates in your case. **OAH STRONGLY ENCOURAGES MEDIATION AND THE PROCESS IS DESCRIBED IN THE ATTACHED INFORMATION PACKET.** Please thoroughly read the attached packet, which describes your rights and responsibilities in each step of your case. For questions related to your case you may contact CASE MANAGER'S NAME at CASE MANAGER'S DIRECT PHONE NUMBER.

MEDIATION REQUESTS, PREHEARING CONFERENCE MOTION(S) & PREHEARING  
CONFERENCE STATEMENTS

**LAST DAY**      DATE

**TO FILE**

This deadline does not include motions with specific statutory timelines. Any motions filed after this due date must show good cause as to why it was not filed timely.

TELEPHONIC PREHEARING CONFERENCE

**DATE:**              DATE

**TIME:**             TIME

DUE PROCESS HEARING

**DATE:**              DATE

**TIME:**             TIME

**LOCATION:**      NAME OF SCHOOL DISTRICT  
SCHOOL DISTRICT'S  
ADDRESS

IT IS SO ORDERED.

Dated: \_\_\_\_\_

MARGARET GIBSON

\_\_\_\_\_  
Division Presiding Administrative Law Judge  
Office of Administrative Hearings

## FORM 5: REQUEST TO SET MEDIATION



### OFFICE OF ADMINISTRATIVE HEARINGS STATE OF CALIFORNIA SPECIAL EDUCATION DIVISION

Submit completed request:

Via U.S. mail or Secure e-File: <https://www.dgsapps.dgs.ca.gov/OAH/OAHSFTWeb>

Questions about OAH's Special Education Division?

Call: (916) 263-0880

### Request to Set Mediation (and for Continuance of Initial Due Process Hearing, if Required)

**The Office of Administrative Hearings (OAH) strongly encourages parties to participate in mediation and will provide a trained mediator at no cost to the parties.** Mediation is a voluntary, confidential process conducted by a neutral mediator in a cooperative and informal atmosphere. Mediation in special education cases has produced mutually satisfactory resolutions in the vast majority of cases. The parties are encouraged to work together to choose a mediation date and may use the form attached to make the request. The parties requesting the continuance may submit a letter or motion instead of this form. **A party who is not represented by an attorney may, if needed, contact the case manager listed on the Scheduling Order for assistance in setting up a mediation.**

The joint request for mediation must be made in writing to OAH via U.S. mail or Secure e-File at <https://www.dgsapps.dgs.ca.gov/OAHSFTWeb>. OAH will notify parties within two business days as to the status of their requested mediation date.

In order to assure the best chance of getting the requested mediation date, the request should be filed at least 10 business days before the date the parties are requesting for mediation. Requests made less than 10 business days before a requested date will be approved on a space-available basis. The final date to file the request for a mediation date, and continuance if requested, is the date the prehearing conference statements are due in your case. Requests filed after the due date of the prehearing conference statement will require a showing of why the request could not have been filed earlier.

Mediations are generally held on Tuesdays, Wednesdays and Thursdays. Requests for mediations on Mondays or Fridays will be approved on a space-available basis. Mediations with Los Angeles Unified School District begin at either 9:00 a.m. or 1:30 p.m. All other mediations begin at 9:30 a.m.

Canceling a mediation without good cause may result in a denial of a request to reschedule the mediation. The parties should notify OAH of any mediation cancellation by noon on Friday the week prior the scheduled date or as soon as the need for cancellation arises. If asking to reschedule a mediation, the parties should explain why they canceled the mediation they previously requested.

When the parties' requested date for mediation is after the calendared hearing date the parties should provide OAH with proposed prehearing conference and hearing



OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA  
SPECIAL EDUCATION DIVISION

Submit completed  
request:

Via U.S. mail or Secure  
e-File: <https://www.dgsapps.dgs.ca.gov/OAH/OAHSFTWeb>

Questions about OAH's  
Special Education  
Division?

Call: (916) 263-0880

## Request to Set Mediation (and for Continuance of Initial Due Process Hearing, if Required)

dates as part of their request for continuance. Parties may use the form below to request to set Mediation and for Continuance of Initial Due Process Hearing. Parties should include the location of the local education agency or school district where the mediation and hearing will be held. Please note that the request **should** be filed with OAH by the due date indicated on the scheduling order.

If you agree to continue the case, to allow the parties to participate in mediation, the federally mandated timelines to issue a decision will be extended. The parties should choose three days for hearing beginning on a Tuesday. The number of hearing days may be decreased or increased at the prehearing conference at the discretion of the Administrative Law Judge. Hearings begin at 9:30 a.m. in the first day and 9:00 a.m. on each additional day, unless ordered otherwise. Hearing dates must be chosen that are no later than 60 days from the mediation date requested.

**Prehearing Conference:** You must also select a date and time for a prehearing conference on a Monday or a Friday within 5 to 10 business days before the first day of hearing you selected. Prehearing conferences are held at 10:00 a.m., 1:00 p.m., or 3:00 p.m., except that prehearing conferences on the first Monday of each month are only held at 1:00 p.m. and 3:00 p.m.



## OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF CALIFORNIA  
SPECIAL EDUCATION DIVISION

Submit completed  
request:

Via U.S. mail or Secure  
e-File: <https://www.dgsapps.dgs.ca.gov/OAH/OAHSFTWeb>

Questions about OAH's  
Special Education  
Division?

Call: (916) 263-0880

### Request to Set Mediation (and for Continuance of Initial Due Process Hearing, if Required)

Student Name (Required):

Case Number (Required):

#### REQUEST TO SET MEDIATION DATE

Requested Mediation Date:

Alternate Mediation Date:

Location:

#### REQUEST FOR CONTINUANCE OF DUE PROCESS HEARING DATE

This section may **ONLY** be used to request continuance of the hearing date if the requested mutually agreed on mediation date is after the currently scheduled hearing. The parties requested hearing dates must be within 60 days of the newly requested mediation date. All other continuance requests must be submitted separately and show good cause.

Requested Hearing Dates:

Prehearing Conference Date and Time:

**[Please refer to the instruction page when selecting dates]**

All parties must agree to the selected dates for mediation and hearing. All hearings shall continue day to day, Monday through Thursday, as needed, at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. the first day and at 9:00 a.m. on all other days unless otherwise ordered. All parties understand and agree that by changing the due process hearing dates they are agreeing to extend the timeline to issue a decision.

Signature of Parent/Representative

Date

Signature of District/Agency Representative


Date

Signature of Other Party Representative

Date



## FORM 6: REQUEST FOR CONTINUANCE OF SPECIAL EDUCATION DUE PROCESS HEARING

	<p>OFFICE OF ADMINISTRATIVE HEARINGS STATE OF CALIFORNIA SPECIAL EDUCATION DIVISION</p>	<p><b>Submit completed request:</b></p> <p>Via U.S. mail or Secure e-File: <a href="https://www.dgsapps.dgs.ca.gov/OAH/OAHSFTWeb">https://www.dgsapps.dgs.ca.gov/OAH/OAHSFTWeb</a></p> <p>Questions about OAH's Special Education Division?</p> <p>Call: (916) 263-0880</p>
<h3>Request for Continuance of Due Process Hearing Date</h3>		
<p>This form may be used when one party wishes to request to change the prehearing conference date and/or the hearing date that were identified in the scheduling order. It is intended for use when one party wishes to continue the dates in the case, but the other parties do not agree. This form is not required. The party requesting the continuance may submit a letter or motion instead of this form. If you are not represented by an attorney, you may contact the case manager listed on the Scheduling Order for assistance with this form.</p>		
<p>Hearings are only continued on showing of good cause (the reason(s) you are asking for a continuance). Please indicate your reasons in the section provided below, or on additional sheets of paper as needed. A signature under penalty of perjury is required on every request. If a continuance is granted, the federally mandated timelines to issue a decision will be extended. All parties to the case must be served with a copy of any request to continue.</p>		
<p>The hearings shall begin at 9:30 a.m. the first day and at 9:00 a.m. on all other days unless otherwise ordered. A request for new hearing dates shall identify three consecutive days for hearing beginning on a Tuesday. All hearings shall continue day to day, Monday through Thursday, as needed at the discretion of the ALJ. A request to change the due process hearing dates is an agreement to extend the timeline to issue a decision.</p>		
<p>You must also select a date and time for a prehearing conference on a Monday or Friday within 5 to 10 business days before the first day of hearing you selected. Prehearing conferences are held at 10:00 a.m., 1:00 p.m., or 3:00 p.m., except that prehearing conferences on the first Monday of each month are only held at 1:00 p.m. and 3:00 p.m.</p>		
<p>The Request for Continuance of Due Process Hearing must be made in writing to OAH via U.S. mail or E-file at <a href="https://www.dgsapps.dgs.ca.gov/OAHSFTWeb">https://www.dgsapps.dgs.ca.gov/OAHSFTWeb</a>.</p>		
<p>DGS-OAH 39 (Cal.Rules of Court, rule 3.1332(d)) (Rev. 1/18)</p>	<p>1</p>	<p>(For Optional Use)</p>

Save

Clear



OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA  
SPECIAL EDUCATION DIVISION

Submit completed request:

Via U.S. mail or Secure e-File: <https://www.dgsapps.dgs.ca.gov/OAH/OAHSFTWeb>

Questions about OAH's Special Education Division?

Call: (916) 263-0880

## Request for Continuance of Due Process Hearing Date

Student Name (Required):

Case Number (Required):

Current Hearing Date(s):

Requested Consecutive Hearing Dates:

Requested Prehearing Conference Date and Time:

Explanation for why a continuance is requested (use additional sheets if necessary):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature

Printed Name

Date

Title (Parent, School District etc.)

# **FORM 7: SCHEDULING ORDER SETTING DUAL HEARING DATES INCLUDING EXPEDITED HEARING, PREHEARING AND MEDIATION**

<p>BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS STATE OF CALIFORNIA</p>					
<p>In the Matter of</p> <p>PARENT ON BEHALF OF STUDENT,</p> <p>v.</p> <p>_____ SCHOOL DISTRICT.</p>	<p>OAH Case No. XXXXXXXXX</p> <p>SCHEDULING ORDER SETTING DUAL HEARING DATES INCLUDING EXPEDITED HEARING, PREHEARING AND MEDIATION</p>				
<p>The Office of Administrative Hearings (OAH) is in receipt of a Request for Due Process Hearing for the above student. Because of the issues raised in the request, the matter has been set for TWO HEARING DATES. The first hearing date will only address the issues which are the subject matter for an "expedited" hearing and the second hearing date will address all other issues raised in the request. Below are the dates in your case.</p> <p>An expedited hearing must be completed within twenty (20) school days from the date of the request. A decision will be issued within ten (10) school days of completion of the hearing. Therefore, the parties <b><u>MAY NOT</u></b> mutually agree to different hearing dates and continuances will not be granted except in exceptional circumstances.</p> <p><b>OAH STRONGLY ENCOURAGES MEDIATION AND THE PROCESS IS DESCRIBED IN THE ATTACHED INFORMATION PACKET.</b> Please thoroughly read the attached packet, which describes your rights and responsibilities in each step of your case. For questions related to your case you may contact CASE MANAGER at (916) 263-0880.</p> <p align="center"><u>EXPEDITED PREHEARING CONFERENCE MOTION(S) &amp; EXPEDITED PREHEARING CONFERENCE STATEMENTS</u></p> <table style="width: 100%;"> <tr> <td style="width: 30%;"><b>LAST DAY TO FILE</b></td> <td> <p><b>DATE</b></p> <p>This deadline does not include motions with specific statutory timelines. Any motions filed after this due date must show good cause as to why it was not filed timely.</p> </td> </tr> </table> <p align="center"><b><u>EXPEDITED MEDIATION</u></b></p> <table style="width: 100%;"> <tr> <td style="width: 30%;"> <p><b>DATE:</b></p> <p><b>TIME:</b></p> <p><b>PLACE:</b></p> </td> <td> <p><b>DATE</b></p> <p><b>TIME</b></p> <p><b>NAME AND ADDRESS OF SCHOOL DISTRICT</b></p> </td> </tr> </table> <p>_____</p>		<b>LAST DAY TO FILE</b>	<p><b>DATE</b></p> <p>This deadline does not include motions with specific statutory timelines. Any motions filed after this due date must show good cause as to why it was not filed timely.</p>	<p><b>DATE:</b></p> <p><b>TIME:</b></p> <p><b>PLACE:</b></p>	<p><b>DATE</b></p> <p><b>TIME</b></p> <p><b>NAME AND ADDRESS OF SCHOOL DISTRICT</b></p>
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<p><b>DATE:</b></p> <p><b>TIME:</b></p> <p><b>PLACE:</b></p>	<p><b>DATE</b></p> <p><b>TIME</b></p> <p><b>NAME AND ADDRESS OF SCHOOL DISTRICT</b></p>				

**EXPEDITED DUE PROCESS HEARING**

DATE: THREE DATES  
TIME: TIME  
PLACE: NAME AND ADDRESS OF SCHOOL DISTRICT

**EXPEDITED TELEPHONIC PREHEARING CONFERENCE**

DATE: DATE  
TIME: TIME  
Telephonic – OAH will initiate the call

**MEDIATION REQUESTS, PREHEARING CONFERENCE MOTION(S) & PREHEARING  
CONFERENCE STATEMENTS**

**LAST DAY TO FILE**      **DATE**  
This deadline does not include motions with specific statutory timelines.  
Any motions filed after this due date must show good cause as to why it  
was not filed timely.

**NON-EXPEDITED DUE PROCESS HEARING**

DATE: DATE: The hearing shall continue day to day, Monday through  
Thursday, unless ordered otherwise.  
TIME: 9:30AM  
PLACE: NAME AND ADDRESS OF SCHOOL DISTRICT

**NON-EXPEDITED TELEPHONIC PREHEARING CONFERENCE**

DATE: DATE  
TIME: TIME  
Telephonic – OAH will initiate the call

IT IS SO ORDERED.

Dated: DATE

MARGARET GIBSON  
\_\_\_\_\_

## FORM 8: NOTICE OF MEDIATION ONLY

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

### NOTICE OF MEDIATION

STUDENT:	NAME OF STUDENT
SCHOOL DISTRICT:	NAME OF SCHOOL DISTRICT
CASE NUMBER:	XXXXXXXXXXXX

REQUESTING PARTY: EITHER THE STUDENT OR THE SCHOOL DISTRICT

A mediation request from the above-named party was received by the Office of Administrative Hearings, Special Education Division. California Education Code section 56500.3 requires that we set a mediation date within fifteen (15) days from receipt of the request. The mediation must be completed within 30 days from the date received, unless the parties agree to extend the time for the mediation.

Participation in mediation is voluntary, although we strongly encourage participation, as the process results in a resolution of the underlying dispute in a majority of these matters. Mediation takes place in a non-adversarial atmosphere by a neutral mediator. To foster this environment, attorneys and other independent contractor legal advisors are not permitted to attend or otherwise participate. You may consult with an attorney or legal advisor before or after the mediation. You may also be accompanied in the mediation by someone who is assisting you who is not an attorney or independent contractor legal advisor or advocate.

DATE:	DATE
TIME:	9:30AM to 4:30PM
PLACE	NAME AND ADDRESS OF SCHOOL DISTRICT

**MEDIATOR: TO BE DETERMINED**

If you cannot attend the mediation on the date and time scheduled, you must call the Office of Administrative Hearings, Special Education Division, at (916) 263-0880, as soon as possible. We will reschedule the mediation to a date and time which is acceptable to all parties.

**If the mediation is scheduled at a time that you are not available, you must contact the opposing party(s) to get an agreeable date and telephone NAME OF CASE MANAGER (OAH, Special Education Division) at (916) 263-0880 or via written**

**request emailed to <https://www.dgsapps.dgs.ca.gov/oah/oahsftweb> to calendar the new mediation date.**

Dated: DATE

OFFICE OF ADMINISTRATIVE HEARINGS  
2349 GATEWAY OAKS DRIVE, SUITE 200  
SACRAMENTO, CA 95833-4231  
TEL (916) 263-0880  
EMAIL: <https://www.dgsapps.dgs.ca.gov/oah/oahsftweb>

**FORM 9: JOINT WAIVER OF RESOLUTION SESSION**  
**- SAMPLE -**

**JOINT WAIVER OF RESOLUTION SESSION**

Office of Administrative Hearings  
Special Education Division  
2349 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833

Re: \_\_\_\_\_ (*Name of Student*) v. \_\_\_\_\_ (*Name of District*)  
\_\_\_\_\_ (*Case Number*)

Dear Presiding Judge:

\_\_\_\_\_ (*Name of parent, student's representative, or student if over 18*) on behalf of  
\_\_\_\_\_ (*Name of Student*), \_\_\_\_\_ (*Name of District*) hereby jointly waive  
the resolution session in this matter.

Dated: \_\_\_\_\_ (*Date of signature*)

Dated: \_\_\_\_\_ (*Date of signature*)

\_\_\_\_\_  
(*Print name of Representative and sign above*)

\_\_\_\_\_  
(*Print name of Representative and sign above*)

cc: School district

[Any other parties]

[complete and attach proof of service (Form 3), and attach it to your joint waiver of resolution session.]

**FORM 10: SAMPLE REQUEST TO ADVANCE HEARING DATES**  
**- SAMPLE -**

**REQUEST TO ADVANCE HEARING DATES WHEN  
RESOLUTION SESSION NOT HELD**

To: Office of Administrative Hearings  
2349 Gateway Oaks, Suite 200  
Sacramento, CA 95822

Re: \_\_\_\_\_ (Name of Student) v. \_\_\_\_\_ (Name of District)  
\_\_\_\_\_ (Case Number)

Dear Presiding Judge:

I filed a request for due process hearing (complaint) on behalf of my child on \_\_\_\_\_ (put the date on which the Request for Due Process Hearing was filed with OAH). I served a copy of that complaint on the District on \_\_\_\_\_, \_\_\_\_\_. (Put the date on which you served the Request for Due Process Hearing.). The District has failed to schedule a resolution session within 15 days of receiving my complaint.

A local educational agency (LEA) is required to convene a resolution meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within 15 days of receiving notice of the Student's complaint.  
(20 U.S.C. § 1415(f)(1)(B)(i)(I);<sup>1</sup> 34 C.F.R. § 300.510(a)(1) (2006).)

The 45-day timeline for the due process hearing starts the day after a resolution meeting, unless the parties agree in writing to waive the resolution meeting. (34 C.F.R. § 300.513(b) & (c) (2006).) If the LEA fails to hold the resolution meeting within 15 days of receiving notice of the due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. (34 C.F.R. § 300.510(b)(5) (2006).)

Therefore, I request that the hearing dates in this matter be advanced, and that the due process hearing be held as soon as possible [or specify preferred dates.]

Dated: \_\_\_\_\_ (Date of signature)

\_\_\_\_\_  
(Print name of Representative and sign above)

cc: School district

[Any other parties]

[complete and attach proof of service (Form 3), and attach it to your motion to advance hearing dates.]

<sup>1</sup> All statutory citations are to Title 20 United States Code unless otherwise indicated.



## FROM 11: SAMPLE PREHEARING CONFERENCE STATEMENT

BEFORE THE  
OFFICE OF ADMINISTRATIVE  
HEARINGS STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SCHOOL DISTRICT.

OAH Case No. XXXXXXXXXX

ORDER FOLLOWING  
PREHEARING CONFERENCE

On DATE, a telephonic prehearing conference was held before Administrative Law Judge NAME OF HEARING JUDGE, Office of Administrative Hearings. NAME OF ATTORNEY, Attorney at Law, appeared on behalf of Student NAME OF ATTORNEY, Attorney at Law, appeared on behalf of NAME OF SCHOOL DISTRICT. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing shall take place on DATES OF HEARING, continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the (SCHOOL DISTRICT) School District's offices located at ADDRESS OF SCHOOL DISTRICT. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

As ordered in the scheduling order, SCHOOL DISTRICT shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. SCHOOL DISTRICT certified that the facilities used for this case comply with the law. SCHOOL DISTRICT shall inform OAH within two days of the date of this order if it is unable to comply with this order.

Prior to the beginning of the hearing, SCHOOL DISTRICT shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum (1) a table for Student and his representatives; (2) a table for SCHOOL DISTRICT's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. SCHOOL DISTRICT shall provide drinking water and tissue to all parties, witnesses and the ALJ. The same hearing room shall be used for each day of hearing and shall be available at least one hour prior to the commencement of the hearing each day. The hearing room shall be locked following the hearing each night. SCHOOL

DISTRICT shall ensure that the hearing room and access to it are in compliance with the Americans with Disabilities Act.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issues and Proposed Resolutions. The issues to be determined at the due process hearing, and the proposed resolutions, are listed below:

*Issues*

1. Did SCHOOL DISTRICT deny Student a free appropriate public education from date 1 to date 2 by:

- a. failing to identify Student as a child with special education needs beyond speech and language;
- b. failing to assess Student in areas beyond speech and language including psychoeducational, mental health and special circumstances instructional assistance;
- c. failing to provide appropriate services;
- d. failing to provide a goal in attention and failing to provide appropriate measurable goals in academics through date;
- e. failing to provide educational records within 5 days after two separate requests in months A and B;
- f. failing to hold an IEP within 30 days after receiving a request from parent in month C.

*Proposed Resolution:*

1. District should provide Student educational support for reading and writing.
2. District should provide reading specialist support to meet Student's individualized need for such services.
3. District should provide Student a 1:1 aide in the classroom.
4. District should provide Student behavior services in the classroom.
5. District should provide compensatory education for educational services,

behavioral and mental health services that were not provided from *(from month D to Month E)*. Compensatory services can take place during the school year and the summer. These services should not be limited to those dates within the District's ESY period;

6. District should provide goals for attention and academic goals that are appropriate for a child in 2nd grade.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits, but shall place the letter "S" or "D" in front of the exhibit to designate if it is a Student or District exhibit (for example, "S-5, S-6, or D-1, D-2"). Each exhibit shall be Bates-stamped consecutively throughout the binder. Each exhibit binder shall contain a detailed table of contents. The parties shall serve their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

Parties are encouraged to present resumes or curriculum vitae for each professional witness.

The District shall include a color copy of the school calendar for each school year in question and shall have witnesses available to testify as to any legend notations that might be unique to SCHOOL DISTRICT.

4. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Neither party shall be permitted to call any witnesses not timely disclosed except for good cause shown, and at the discretion of the ALJ.

The parties are encouraged to review and shorten their witness lists prior to the hearing, bearing in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear. To that end, **the parties are ordered to meet and confer no later than 3:00 p.m. on (date)**, to discuss whether routine information can be subject of stipulations to shorten the hearing by avoiding the necessity of testimony, particularly as to routine matters, and/or exhibits. The parties shall also discuss the order of witnesses and the length of witness testimony and be prepared to present the ALJ with a written joint witness list with time estimates and dates of expected testimony on the

first day of hearing.

Should an agreement on a list not be reached, each party shall prepare separate lists and Student shall have witnesses available so the hearing can proceed promptly. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. Additionally, the parties shall be prepared at the end of each day of hearing to discuss the witnesses to be presented the next day and the time the testimony of each such witness is expected to take.

5. Scope of Witness Examination. Each witness shall be called to testify only once, except for rebuttal purposes, and all parties shall examine the witness on all issues when the witness is first called. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once.

6. Telephonic Testimony. Whether a witness may appear by telephone is a matter within the discretion of the ALJ. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Any party seeking to present a witness by telephone shall move in advance for leave to do so. The proponent of the witness shall provide the proposed witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing; and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings. No witness will be heard by telephone unless all these requirements have been fulfilled.

**Student requested telephonic testimony of (witness's name) due to his work schedule.** He works in (name of city), California. District objected to the request stating that the witness works approximately fifteen miles away from the hearing. Student has not shown a good reason why the witness cannot appear in person. Thus, the request is hereby denied without prejudice.

7. Electronic Recording of Hearing.

a. Audio Recording. **Student requested to audio record the hearing.** Student's motion to make an audio recording of the hearing is granted, subject to the following conditions: 1) that OAH's recording is the only official recording; 2) that the recording will be turned on and off at the same time as the ALJ's recording, in order to avoid recording conversations while off the record; 3) the recording device will be removed by the party recording during any recess where the party leaves the room; 4) that operation of the party's recording mechanism will not be allowed to delay the hearing; and 5) the recording will not be used to prepare other witnesses.



b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

8. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 (126 S.Ct. 528, 163 L.Ed.2d 387)). Here, Student requested the hearing and shall present his case-in-chief first, followed by (*SCHOOL DISTRICT*).

9. Motions. No pretrial motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made three business days prior to the prehearing conference.

10. Compensatory Education/Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

11. Stipulations and Exhibits. Stipulations to pertinent facts, contentions or resolutions are encouraged to promote hearing efficiency. Stipulations to routine foundational facts and avoiding duplicative exhibits are particularly favored. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

12. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

13. Special Needs and Accommodations. **Student requested a Spanish interpreter for Mother.** Student's request for a Spanish interpreter is granted and OAH has been notified of the request. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk identified in the scheduling order, at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is known. Additional information concerning requests for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accessibility.aspx>.

14. Hearing is Closed To the Public. At the request of Student, the hearing will be closed to the public.

15. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

16. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: DATE OF JUDGE'S SIGNATURE

\_\_\_\_\_  
JUDGE'S SIGNATURE  
NAME OF JUDGE  
Administrative Law Judge  
Office of Administrative Hearings

# FORM 12: SUBPOENA

## BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS



In the Matter of:

[Redacted]

Agency / Agency Case No. [Redacted]

OAH No. [Redacted]

☐ **SUBPOENA:** *Requesting Testimony* ☐ **SUBPOENA DUCES TECUM:** *Requesting the Production of Records or Things*

THE PEOPLE OF THE STATE OF CALIFORNIA SEND GREETINGS TO: [Redacted]	(name and address of person being subpoenaed) [Redacted]
1. At the request of <input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent (party name) [Redacted]	(name, address and telephone number of contact person) [Redacted]

2. You are hereby commanded, business and excuses being set aside, to appear as a witness on:

(date) [Redacted], at (time) [Redacted], and then and there to testify at: (location)

☐ OAH, 2349 Gateway Oaks Drive, Suite 200, Sacramento CA 95833 ☐ OAH, 320 West Fourth Street, Room 630, Los Angeles CA 90013

☐ OAH, 1515 Clay Street, Suite 206, Oakland CA 94612 ☐ OAH, 1350 Front Street, Room 3005, San Diego CA 92101

☐ Other: [Redacted], California.

☐ 3. You are not required to appear in person if you produce the records described in the accompanying affidavit and a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose your original declaration with the records. Seal them. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number, your name and date, time, and place from item 2 (the box above). (3) Place this first envelope in an outer envelope, seal it, and mail it to the Office of Administrative Hearings at the address checked in item 2. (4) Mail a copy of your declaration to the attorney or party shown in item 1.

☐ 4. You are not required to appear in person if you produce the records described in the accompanying affidavit and a completed declaration of custodian of records in compliance with Evidence Code section 1561.  
By [Redacted] (date), send the records to:  
[Redacted]

**NOTE:** This manner of production may not satisfy the requirements of Evidence Code section 1561 for admission at hearing.

☐ 5. You are ordered to appear in person and to produce the records described in the accompanying affidavit. The personal appearance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562 of the Evidence Code will not be deemed sufficient compliance by this subpoena.

6. Disobedience to this subpoena will be punished as contempt of court in the manner prescribed by law.
7. Witness Fees: Upon service of this subpoena, you are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you so request. You may request them before your scheduled appearance from the person named in item 1. See Government Code sections 11450.05, 11450.50, 68092.5-68093, and 68096.1-68097.10.
8. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE YOU ARE TO APPEAR, OR TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED ON THE DATE AND TIME SPECIFIED ABOVE, CONTACT THE PERSON REQUESTING THIS SUBPOENA, LISTED IN ITEM 1 ABOVE, BEFORE THE DATE LISTED IN ITEM 2 ABOVE.

(Date Issued) [Redacted] (Signature of Authorizing Official) [Redacted]

(Printed Name) [Redacted] (Title) [Redacted]