

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

**SPECIAL EDUCATION
HANDBOOK**

**PROVIDED BY THE
OFFICE OF ADMINISTRATIVE HEARINGS**



2016

INTRODUCTION	4
The Office of Administrative Hearings, Special Education Division.....	5
OAH Contact Information	5
The Handbook is Available in Other Languages and Formats	6
PART 1: BRIEF SUMMARY OF EDUCATIONAL RIGHTS	7
The Rights of Children with Disabilities	7
Determining Eligibility for Special Education	8
The Individualized Education Program	9
PART 2: DUE PROCESS.....	11
PART 3: HOW DUE PROCESS BEGINS	12
Filing the Complaint	12
Serving the Complaint	12
Proof of Service	12
If Parents Do Not Write and/or Do Not Speak English.....	13
Mediation and Hearing Locations.....	13
Accessibility.....	13
Attorneys and other Authorized Representatives	14
PART 4: THE THREE TYPES OF DUE PROCESS PROCEEDINGS	14
Mediation Only	14
Mediation and Hearing	14
Hearing Only.....	15
Expedited Hearings.....	15
PART 5: THE COMPLAINT	16
How to Prepare a Complaint.....	16
Getting Help with the Forms	17
What to Do after the Complaint is Prepared.....	17
Responding to a Complaint.....	18
PART 6: RESOLUTION SESSIONS.....	18
Timelines for Resolution Session	18
When the Resolution Session May be Cancelled	19
People Who Have To Be at the Resolution Session	19
Agreement at Resolution Session	19
The Difference between a Resolution Session and Mediation	20
PART 7: MEDIATION.....	21
Mediation is Voluntary	21
Mediation is Confidential	21

Scheduling Mediation	21
The Mediator.....	22
The Mediation Meeting	23
The Settlement Agreement	24
If there is No Agreement	24
PART 8: SCHEDULING ORDER	25
Prehearing Conference.....	25
Due Process Hearing.....	25
Continuance	26
Prehearing Motions.....	26
Peremptory Challenges	27
Settlement	27
Representation	27
Service of Documents.....	28
PART 9: MOTIONS	28
How to Prepare a Motion.....	28
How to Respond to a Motion.....	28
Notice of Insufficiency	29
Other Types of Motions	29
How to Present Evidence to Support or Respond to a Motion.....	31
PART 10: STUDENT'S RECORDS	33
PART 11: PREHEARING CONFERENCE.....	34
Prehearing Conferences Are Conducted By Conference Call	34
The Purpose of the Prehearing Conference	34
How to Prepare for the Prehearing Conference	35
The Parties' Prehearing Conference Statements	35
The Judge Will Prepare a Prehearing Conference Order.....	36
PART 12: DUE PROCESS HEARING.....	36
The Hearing Location, Process and Judge.....	37
How to Prepare for the Hearing.....	38
What to Expect During the Hearing	40
Self Help Tips for Parents.....	42
Closing Arguments	46
PART 13: DECISION.....	46
PART 14: RIGHT TO APPEAL DECISION.....	47

PART 15: ADDITIONAL RESOURCES.....	48
Definition of Terms and Frequently Used Acronyms	48
Self Help Guide To Laws That Apply To Special Education Hearings	58
Forms and Common Documents	61
FORM 1: MEDIATION ONLY REQUEST	63
FORM 2: REQUEST FOR MEDIATION AND DUE PROCESS HEARING	67
FORM 3: PROOF OF SERVICE	74
FORM 4: SCHEDULING ORDER AND NOTICE OF DUE PROCESS HEARING AND MEDIATION.....	75
FORM 5: REQUEST FOR CONTINUANCE OF INITIAL SPECIAL EDUCATION DUE PROCESS HEARING DATE.....	82
FORM 6: SAMPLE REQUEST FOR CONTINUANCE BASED ON GOOD CAUSE	84
FORM 7: SCHEDULING ORDER AND NOTICE OF DUAL DUE PROCESS HEARING AND MEDIATION.....	85
FORM 8: NOTICE OF MEDIATION ONLY.....	93
FORM 9: SAMPLE JOINT WAIVER OF RESOLUTION SESSION.....	95
FORM 10: SAMPLE REQUEST TO ADVANCE HEARING DATES.....	96
FORM 11: NOTICE OF SETTLEMENT CONFERENCE	97
FORM 12: SAMPLE PREHEARING CONFERENCE STATEMENT	99
FORM 13: SUBPOENA	101
FORM 14: SAMPLE ORDER FOLLOWING PREHEARING CONFERENCE	103
FORM 15: SAMPLE REQUEST FOR CONTINUANCE OF PREHEARING CONFERENCE BASED ON GOOD CAUSE	107
FORM 16: SAMPLE NOTICE OF INSUFFICIENCY (NOI).....	108
FORM 17: SAMPLE MOTION FOR STAY PUT	109

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. 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 the person understands 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 explains 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. 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 that holds 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 who work for OAH try 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.

OAH Contact Information

The Special Education Division has two regional offices. These offices are located in Sacramento and Van Nuys. Sacramento is the central office. **All hearing and mediation requests and documents must be filed in Sacramento.** OAH prefers that all paperwork be faxed or emailed to the Sacramento office if possible.

Addresses and telephone numbers for regional offices are:

- Sacramento
2349 Gateway Oaks Drive,
Suite 200
Sacramento, California 95833
(916) 263-0880
- Van Nuys
15350 Sherman Way, Suite 300
Van Nuys, California 91406
(818) 904-2383

Fax number for all written communication and filings: (916) 376-6319

Email address for all filings: SEFilings@dgs.ca.gov

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

Mailing address for all written communication, documents and filings:

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

The Handbook is Available in Other Languages and Formats

This Handbook is available in English, Spanish, Vietnamese, Cantonese, Tagalog, and Hmong. It is also available in other languages. 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.

Chinese 本手册有英语、西班牙语、越南语、粤语、菲律宾语、苗族版本，还有其他语言的版本。若有要求，OAH 还可用更大的字母、不同字母书写或电子版本提供本手册的副本。要用不同的语言或格式获取本手册，请将书面请求寄到萨克拉门托的 OAH。请求可用任何语言书写。有关如何用其他格式获取表格和出版物副本的更多信息，请拨打 (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.

Hmong Phau Ntawv Siv Yooj Yim no peb muaj muab hais ua lus Askiv, lus Spanish, lus Nyab Laj, Lus Suav Cantonese, lus Tagalog, thiab lus Hmoob. Thiab peb muaj muab hais ua lwm hom lus tibsi. Thiab OAH yuav muab Phau Ntawv Siv Yooj Yim no luam ntau phau uas yog siv cov tsiaj ntawv loj dua, siv ntau cov tsiaj ntawv nyias txawv nyias, los yog siv computer tsim tseg yog tias koj thov kom ua li ntawd. Yog koj xav tau Phau Ntawv Siv Yooj Yim uas yog muab hais ib hom lus txawv los yog muab tsim ua yam twg ces koj xa ib daim ntawv sau thov tuaj rau OAH nyob hauv Sacramento. Qhov kev thov muab sau ua hom lus twg los tau. Yog koj xav paub ntiv txog txoj kev xav tau cov ntawv khij luam tseg thiab cov ntawv muab luam tawm ua lwm hom ces hu rau (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, or how bad, the disability is. 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 regular classroom with typical children. Special education can also be provided in a separate classroom for all or part of the school day. Sometimes, the student is taught by a teacher who has been trained in special education. At times, the student can be taught at home, in a hospital, or in places 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 clicking on this link. https://scholar.google.com/scholar_case?case=16407799260147120534&q=hendrick+v+rowley&hl=en&as_sdt=2006 The case was decided in 1982 and it is still the law today.

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 things about a student's education. An IEP is provided for the special education student's upcoming year. Some of the things in an IEP are: a list of how well the student is doing in school at the time; what the student's strengths and weaknesses are; what areas the student will work on in the upcoming year (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.

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.

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

The assessment methods must be fair, accurate, appropriate for the student, and free of racial, ethnic, cultural, or sexual bias. If a student’s native language is not English, or if the student does not communicate in English, then 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. 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 go 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. 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.

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. 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, such as an authorized representative, 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.

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 any or all of the things requested or proposed 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 decided that the district may do that.

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 typical peers: The amount of time the student will participate in regular 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 type of educational setting 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 confer some educational benefit” to the student. 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 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.

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 procedure in order to conduct the hearings.

PART 3: HOW DUE PROCESS BEGINS

A due process case begins when a party sends a request for due process to OAH. A request for due process is also called a “complaint.” This Handbook will use the term "complaint" instead of "request for due process." A complaint must be "filed" and "served."

The complaint may be typed or it may be hand-written. OAH has forms for filing a complaint on the website. 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*, and how to prepare a request for due process is explained in Part 5: *How to Prepare a Complaint*.

Filing the Complaint

The complaint has to be “filed” with OAH. "Filing" means that the request must be mailed, faxed, emailed or delivered in person to the OAH offices in Sacramento. The mailing address, fax number and email address are listed above under the heading *OAH Contact Information*.

Serving the Complaint

Anyone that files a complaint must send a copy to all 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, it must a copy to the parents. "Serving" means sending a copy to another party. "Serving" may be done by mail or in person. Serving may also be done by fax or by email, if the other party has agreed.

Proof of Service

All papers that are filed with OAH must have a "proof of service." A proof of service is a declaration statement that says the party served the complaint on the other parties.

The proof of service must be attached to all papers filed with OAH and to all papers sent to other parties. A sample proof of service may be found at the end of this Handbook.

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

Other languages

If parents do not know how to write in English they may write their complaint in their native language. Many OAH forms, including complaints, are available in Spanish, Cantonese, Hmong, Tagalog, and Vietnamese on the website. There are links to the forms in those languages on the website. Parents may also write their complaint in their native language if they are uncomfortable using English. OAH will translate the complaint into English.

Interpreters

If parents are not comfortable speaking or understanding English, they can ask OAH for an interpreter in their native language. OAH will make sure the interpreter is there for all proceedings. It is best if parents ask for an interpreter in their complaint. They need to tell OAH what language they need. For example, if parents need a Mandarin Chinese interpreter rather than a Cantonese Chinese interpreter, they must tell this to OAH in their complaint.

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 for a different location, write a letter to OAH and 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 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 laws on accessibility by disabled people.

If a parent, witness or other person permitted to participate in a mediation, prehearing conference or hearing needs an accommodation because of their disability, they should write to OAH and ask for the accommodation. 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 and other Authorized Representatives

Due process is meant to be used by parents without an attorney. Parents do not need to have an attorney or other type of authorized representative to file a complaint or to participate in mediations and hearings. However, parents have a right to be represented. If parents want to consider contacting an attorney or other authorized representative, OAH has a list of low cost or free attorneys on the OAH website.

PART 4: THE THREE TYPES OF DUE PROCESS PROCEEDINGS

There are three choices when requesting due process rights.

Mediation Only

“Mediation Only” is used when the party wants mediation but does not want a hearing. OAH usually schedules mediation about 15 days after a party files a “Mediation Only” complaint. Mediation is voluntary. If the other party does not want to attend, the mediation date will be canceled. Districts usually agree to mediation. The mediation process is discussed in Part 7: *Mediation*.

Attorneys and authorized representatives are not permitted to attend mediation in a “Mediation Only” case.

OAH will close the case after mediation. The party who filed the request for “Mediation Only” may file a request for a hearing if they want.

Use the link to OAH Form 63 "**Mediation Only Request Form**" on the website or the copy of Form 63 at the end of this Handbook. More information is available in Part 5: *How to Prepare a Complaint*.

Mediation and Hearing

"Mediation and Hearing" is the most common type of due process request.

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*.

In a “Mediation and Hearing” case, OAH will give the parties a date for mediation. This date is usually about five days after the time for the “resolution session” is over. OAH will schedule dates for a prehearing conference and a due process hearing. These will take place if the parties do not come to an agreement about the case before hand.

A “prehearing conference” is a meeting that takes place by telephone a week or two before the hearing. At this meeting, the judge will talk to everyone about what is going to happen at the hearing. There is more information about prehearing conferences below in Part 11: *Prehearing Conference*.

Use the link to OAH Form 64 "**Request for Mediation and Due Process Hearing**" on the website or the copy of Form 64 at the end of this Handbook. Check the box for "Hearing and Mediation." 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.

Use the link to OAH Form 64 "**Request for Mediation and Due Process Hearing**" on the website or the copy of Form 64 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 schedules expedited hearings no later than 20 school days after the date the complaint is filed with OAH.

Expedited hearings are usually scheduled when the complaint raises certain issues. This includes issues such as the discipline of a student who is eligible or may be eligible for special education. It also includes issues where a district wants to change the placement of a student with a disability because the district believes the student is likely to hurt themselves or to hurt others.

OAH decides if a case will be expedited. OAH reviews each request for a due process hearing to see if any of the issues must be expedited. 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 schedule two sets of mediations, prehearing conferences, and due process hearings. OAH cannot grant a continuance of an expedited hearing even if all the parties want one.

There is no separate form to use in filing for an expedited hearing. Use the link to OAH Form 64 "Request for Mediation and Due Process Hearing" on the website or the copy of Form 64 at the end of this Handbook.

PART 5: THE COMPLAINT

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 the person who has the 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.

A district, or other educational agency such as a county office of education, may also file a complaint. In that case, the district would name the student whose special education program was at issue as the other party. There are several reasons a district might decide to file a complaint. Some examples are if 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 testing the district has done for the student.

How to Prepare a Complaint

If parents think that a district has not acted as special education law requires, they may file a complaint with OAH. The complaint must be in writing. The complaint may be typed or handwritten.

Anyone can use OAH forms 63 or 64. Links to those forms are on the website. The information on the forms may be filled out online and printed from the website. The 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 give directions on what is needed to complete them.

This is the information needed in a complaint, whether written on an OAH form or on plain paper:

- 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 the student is attending. 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,
- The type of interpreter that may be needed and who it is that needs the interpreter.

Getting Help with 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. The request can be faxed, emailed or mailed to OAH.

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 mail, by fax, email or by taking it in person to the OAH offices in Sacramento. The complaint must also be "served" on all the other parties, by sending them an exact copy of what was filed with OAH.

There is more information about filing and serving the complaint above in Part 3: *How Due Process Begins*.

Remember that 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.

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. The district's response is the district's view of the issues. The district may, but does not have to, send a copy of its response to OAH.

If the district is the one filing the complaint, parents should file 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.

PART 6: RESOLUTION SESSIONS

A resolution session is a meeting between a student's parents and someone from the student's district. A resolution session takes place if a student's parents file for a due process hearing. It does not take place 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 a time to try to come to an agreement with the district. There is no judge at the meeting. If everyone agrees on what to do about the problems stated in the due process request, they sign a paper called a settlement agreement. If that happens, the hearing will be cancelled and 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 fax, email or mail the written request to OAH at the fax number, email address or office address above under the heading *OAH Contact Information*.

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.

OAH may decide to speed up due process of some of the issues. This is called "expediting" the case. In an expedited case, the district has only seven 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.

When the Resolution Session May be Cancelled

The resolution session has to take place unless one of two things happens. Parents and the district may agree not to have the meeting. This agreement must be in writing. Or, parents and the district may decide to go straight to mediation. This agreement also 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.

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, the district will do the writing. 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 either the student's parents or the

district do not follow the agreement, the other side can go to federal or state court to try to get them to follow it.

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 withdraw their case.

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. Mediation is often the next step.

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.

- Mediations are scheduled by OAH. A mediator from OAH will always be at the mediation to try to help the parties come to an agreement. No one from OAH takes part in resolution sessions.
- 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 talk about and 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. The only time a written settlement can be discussed at a hearing is if one of the sides says that the other side has not followed the agreement.

Because mediation is confidential, the mediator does not talk about what happened at the mediation after it is over. The mediator does not talk about it with other judges. If the parties do not settle the case at the mediation, a different judge will handle the hearing. 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.

Scheduling Mediation

OAH sets the date and place for mediation. OAH sets the date when a party files a complaint. If a party files a request for mediation only, OAH sets the mediation about 15 days after the party files the request. If a parent files for hearing and mediation, OAH sets the date for the mediation about 35 days after the parent filed the complaint. This is because the parties must first have a resolution session, or decide to waive the resolution session, before the mediation takes place. If a district files for hearing and mediation, OAH sets the mediation about five days after the district filed the complaint.

OAH will send the date of the mediation to the parties in a scheduling order. Scheduling orders are talked about in Part 8 of this Handbook.

The mediation usually takes place at the district's offices. If there is some reason why the mediation should take place somewhere else, the party asking for the change must contact OAH in writing. The party should say why the change should take place. The party must also suggest a new location for the mediation.

Someone from OAH will call each party a week or two before the date of the mediation. Often it is the mediator who makes this call. Sometimes it is the OAH staff person assigned to the case. This person's title is "case manager." The name of the case manager is usually listed in the scheduling order. The judge or case manager will ask each party if the mediation is going forward on the date in the scheduling order. If one side does not want to go to the mediation or cannot go on the date in the scheduling order, they can tell the judge or the OAH case manager during this call. OAH will then cancel the mediation. A party may also call OAH at telephone number (916) 263-0880 to cancel the mediation. OAH will then send all parties a written notice that the mediation was cancelled.

However, if one of the parties wants to change the date of the mediation, they have to do two things. First, the party has to contact all of the other parties. All parties have to agree to the same new date. OAH will not set a new mediation date unless everyone agrees to it. Second, once they agree on a new date, the parties have to send the request for the new date in writing to OAH. The parties may use the OAH form called "**Request for Continuance of Initial Special Education Due Process Hearing Date and Initial Mediation Date.**" Or, the parties may just send a short written request in their own words to OAH. The written request must say that all parties agree to the new date. The written request must also say what the new date is. Whether the parties use the OAH form or their own writing, all parties must sign the request.

OAH only sets mediations on Tuesday, Wednesday, and Thursday. A request for a new date must be on one of those days. The parties should also check the OAH calendar to make sure that the date they want is not a state holiday or an OAH training date. Links to the calendar and a scheduling guide are on the OAH website.

OAH will send out a written order saying whether it has agreed to assign the new mediation date. If it agrees to a new date, the order will say what the new date is.

There is more information about changing the date for mediation in Part 8: *Continuances* and Part 9: *Motions*.

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. But 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 or authorized representative 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 or other type of authorized representative with them at the mediation.

The parties meet at the mediation 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 talked about, 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.

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. 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 or other authorized representative, that person often will sign approval as to 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.

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.

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;
- The dates, times, and locations of the mediation and of the due process hearing;
- The date and time of the telephonic prehearing conference;
- 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. If a party has a question about procedures in the case, the party may call the case manager for information. However, the case manager cannot give legal advice to anyone.

The scheduling order explains the procedures for the prehearing conference and the due process hearing. The scheduling order explains 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.

Prehearing Conference

The scheduling order describes the prehearing conference. It tells the parties in detail what they need to do to prepare for the prehearing conference. It tells the parties what paperwork they need to file with OAH and serve on the other parties before the prehearing conference takes place. It also tells the parties when these papers need to be filed.

There is more information about prehearing conferences in Part 11.

Due Process Hearing

The scheduling order tells the parties what a due process hearing is. It lets the parties know that they have a right to have a lawyer, or other authorized representative, act for them at the hearing if they want. However, the party must let the other parties know at least 10 days before the start of the hearing if they are going to have a lawyer represent them.

The scheduling order lets the parties know that the only issues at the due process hearing will be the ones listed in the request for due process, unless the other party agrees that more issues can be added.

The scheduling order gives the parties information on how to present evidence at the due process hearing. It tells the parties that they must give a copy of all documents they want the judge to see at the hearing to all the other parties. The copy of the documents must be given to the other

party at least five business days before the hearing. A business day does not include weekends or holidays. The scheduling order explains that the documents for the hearing have to be in binders. Each document has to be behind a numbered tab. The documents have to have page numbers on them. Each binder of documents has to have a table of contents, which is also called an index. The scheduling order also tells the parties that they must provide a copy of their binder to each other. They must also bring two other binders with copies of the documents to the first day of the hearing. One copy will be for the judge. The other copy will be for the witnesses who testify at the hearing.

The scheduling order explains that the parties must give a list of the witnesses they think they will be calling to all the other parties. They must give the other parties this list at least five business days before the hearing.

There is more information about the due process hearing in Part 12.

Continuance

Sometimes, one of the parties needs to change the dates for the mediation, telephonic prehearing conference, or due process hearing. If that needs to be done, the party must make a written request to change the dates. The change of dates is called a “continuance.” The scheduling order explains that the request must be in writing. It must be filed with OAH. It must be sent to all the other parties.

If all the parties agree on what the new dates will be, they can use the OAH form called “**Request for Continuance of Initial Special Education Due Process Hearing Date and Initial Mediation Date.**” OAH sends the parties a copy of this form with the scheduling order. There is more information about changing the date for mediation, telephonic prehearing conference, or due process hearing in Part 9: *Motions - Motions for Continuance*.

Prehearing Motions

The scheduling order tells the parties how to file motions in the case. A motion is a request by a party concerning something that is happening in the case. A judge will make a decision about what is being requested. The judge will send an Order to all the parties saying what the judge has decided. The types of motions that may be filed are things such as requests to continue a date in the case, a request to dismiss issues in the case, a request for stay put, or a request for other things that may affect the rights of the parties to the case.

The party making the motion must file it with OAH and send it to all the other parties. The scheduling order tells the parties how to file a motion. It also lets the parties know that any party who wants to oppose or object to the motion must file it in written form. The objection has to be filed no more than three business days after the party receives a copy of the motion.

There is more information about how to file and how to respond to motions in Part 9: *Motions*.

Peremptory Challenges

The scheduling order tells the parties how to file a “peremptory challenge” of the judge assigned to the hearing. A peremptory challenge is a way of getting a different judge than the one assigned to hear a case. Each party has the right to ask once for a different judge. The party does not have to give a reason why they want a different judge. The party must file the written request for a different judge with OAH. The request must be filed by the time the prehearing conference is scheduled to start. A copy of the request must be sent to all other parties.

The scheduling order also explains how to find out which judge is assigned to a hearing. The parties may call the case manager assigned to their case. Or, they may go to the special education calendar on the OAH website.

There is more information about how to challenge the judge in Part 9: *Motions - Motion to Challenge the Judge Assigned to the Hearing and How to Present Evidence to Support or Respond to a Motion.*

Settlement

The scheduling order tells the parties what to do if they settle the case before the hearing. The parties need to contact OAH in writing as soon as possible after the case is settled. A copy of the signature page from the settlement agreement must also be sent to OAH. The parties should not include a copy of the entire settlement agreement. The party who filed the case also must ask that the case be dismissed based on the settlement agreement. That is the way a case is closed after the parties have settled it.

If the parties settle the case after 5:00 p.m. or settle on the weekend, they may also contact OAH by calling a special number OAH has for after-hour settlements and cancellations of mediation, prehearing conference, and hearing dates. That telephone number is **(916) 274-6035**. The party who filed the case must still send a written notice to OAH that the case has settled. The party must still send a copy of the signature page of the settlement and a written request to dismiss the case. The party should send these things at the same time he or she calls OAH to leave the message about the settlement.

The dates for the mediation, prehearing conference, and/or due process hearing will stay scheduled until OAH receives written notice of the settlement and a copy of the signature page of the agreement.

Representation

The scheduling order lets the parties know that OAH has a list of attorneys and other authorized representatives that provide free or reduced cost representation or other help with due process hearings. The list is on the OAH website.

Service of Documents

Finally, the scheduling order lets the parties know that they can choose to receive documents by fax instead of through the regular mail. The scheduling order will include a form to be used if a party wishes to do this. The form should be sent to the assigned case manager by fax or by mail.

PART 9: MOTIONS

When a party wants to ask the judge to do or change something about their case, it is called a “motion.” A motion is usually made in writing. A motion can 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 write an "Order." The Order tells the parties whether the judge agrees to do what the party asked for in their motion. 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.

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 mediation, prehearing conference or hearing. Parents may use an OAH form, send a letter to OAH, or use a more formal document. The form, letter or document may be faxed, emailed or mailed to OAH.

Anyone that makes a motion must send a copy of the motion to all the other parties involved in the case, such as the district, lawyers, and other parties. A proof of service must be attached to the motion. A sample proof of service is at the end of this Handbook.

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.

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.

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.

Other Types of Motions

Motions 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 want to postpone dates, the request is called a joint request for a continuance. All parties must agree on the dates in the request. If it is the first time the parties have asked for a continuance, OAH will usually give the parties the dates they request. However, if the parties ask to postpone a hearing for more than 90 days, the parties must explain why they want so much additional time. This is called "showing good cause" for the amount of time the parties want to postpone the hearing. An example of good cause might be 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 a form to file a joint request for a continuance on the website. A copy of the form is at the end of this Handbook.

If a party wants to postpone mediation or hearing dates, they must 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 a request for continuance.

A request for continuance must include:

- A statement that parents have contacted 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 date or dates parents request.

Motion for "Stay Put"

Parents may make a motion to keep their child's 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.

Motion to Amend Due Process Request

The party that filed the due process complaint may make a motion to add more claims 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 must be included.

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.

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.

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. 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 some 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

Reminder: All letters and papers filed with OAH must include a proof of service 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 are 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 it 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 CONFERENCE

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 the website: <http://www.oah.dgs.ca.gov/Special+Education/Special+Ed+Web+Calendar.htm>. 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 or other authorized representative, the judge will call the representative. 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 issues presented in the request for due process;
- The resolution and remedies requested;
- The requirements for exhibit binders;
- The witnesses who will testify at hearing;
- Whether any witness is unavailable or needs to testify by telephone;
- Other matters such as a motion to change the dates of the hearing or to change the location of the hearing;

- 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, parents may request that the hearing be open to the public;
- Any need for interpreters or other accommodations; and,
- Instructions to follow if the parties reach a settlement between the time of the prehearing conference and the date of the hearing.

How to Prepare for the Prehearing Conference

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.

Read the scheduling order. The scheduling order is sent to all parties shortly after the case was filed. If a party needs another copy of the order, they may call (916) 263-0880.

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 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. There is a more detailed discussion of the scheduling order above in Part 8.

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 get someone to appear at 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' case. It also lists witnesses and evidence. 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, 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 they will be talking about and how it is related to the case;
- A list of the evidence parents want to use. These are often documents, such as the student's IEP or copies of assessment 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 Statement, witness lists and exhibit lists with OAH. This must be done at least three business days before the prehearing conference. Parents must also send copies of this information to all other parties. 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 them 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 reflect the things discussed during the prehearing conference and any directions that must be followed.

All parties must comply with the order. There may be sanctions or penalties for failing to follow the prehearing conference order. 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.

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 OAH. OAH will generally schedule the mediation on the date selected by the parties. Mediations are held on Tuesdays, Wednesdays and Thursdays. 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 Hearing Location, Process and Judge

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 times a district office. 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 51 percent, or as if a scale tips slightly in one direction.

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.

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

Due process hearings are intended to be user friendly for parents. Although attorneys may represent parents and other people with specialized knowledge may assist parents, judges are accustomed to working with parents that represent themselves. This section and the next section are offered to help parents that represent themselves and their child. Preparation and organization are important. Preparation begins with the prehearing conference and ends with closing argument at the end of the hearing.

Review the prehearing conference order

Read the prehearing conference order. Be sure all the instructions in the order are followed.

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.

Subpoenas

A subpoena is used to require people to provide documents or testimony.

A parent 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 staff person 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 faxed or sent to parents. Attorneys can sign subpoenas themselves. If the person asking for the subpoena is not an attorney, the subpoena form will be signed by the Presiding Judge for OAH. Once the subpoena forms are signed by the Presiding Judge, parents must fill in the subpoena to include the details. 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.

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.

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. Proper service means that the subpoenas actually got to the person or place that who was supposed to receive it. 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, it is difficult to make the person attend.

The law requires that witnesses who are compelled to attend a due process hearing by subpoena be paid witness fees and mileage. Parents are responsible for paying the witness fees and mileage of any witnesses the parent subpoenas to the hearing, unless the witness waives them.

Subpoenas for documents may be served by fax or mail. If serving by mail add five days to the service time. If serving by fax, get written permission for fax service.

After the hearing has begun, the judge who is conducting the due process hearing can sign the parents' subpoena form.

Although OAH cannot hold people in contempt for not obeying a subpoena, a subpoena is enforceable by seeking a contempt order from the Superior Court in the county where the hearing is held.

Prepare exhibit binders

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.

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. That way all the parties in the hearing can tell which page a witness is looking at.

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 to be prepared to object to the documents or question witnesses about them.

If parents want to use an audio recording of an IEP team meeting, provide a copy of the recording and a written transcript of the relevant portions with parents' exhibit binder.

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.

New attorney or authorized representative

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

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.

The judge will say "on the record" when the judge turns on the recording and "off the record" when the judge turns off the recording. This will happen throughout the day. At the end of the day the judge will "go off the record" and turn off the recording.

Opening statements

The party going first may make an opening statement on the first day of the hearing. An opening statement 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, but may be considered by the judge if the parent has been sworn in. The purpose of an opening statement is to give the judge an idea of what each party expects the evidence to show. After the first opening statement, the other parties may make an opening statement or they may give their opening statement when it is their turn to begin their side of the case.

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 stand, raise their right hand, and swear (or affirm) to tell the truth. The judge may swear in the parties and hear their testimony. Parties may testify from the witness chair or from their table.

All parties, and the judge, may ask questions of witnesses.

Exhibits

Documents and other physical objects such as videos, recordings and equipment, may be used as evidence. Witness testimony, documents and physical objects are all called "evidence." Sometimes the parties will disagree about what evidence is relevant and whether the judge should allow a witness to answer a question or consider the exhibit. When that happens, it is called an objection.

When a witness is shown an exhibit, the judge will put a sticker on the exhibit. Each sticker has an exhibit number. Numbered stickers are used so that when a witness is asked about an exhibit, everyone will know what exhibit is being discussed.

At some point during the hearing, 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. 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.

When someone “moves” an exhibit into evidence, the judge will ask whether there are any objections to having the exhibit admitted into evidence. The judge will let the parties know whether the judge wants to hear the parties' arguments about objections. The judge decides which evidence is admitted into the hearing.

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. It can also mean that a witness does not have personal

knowledge about the subject. A party or the judge can ask more questions to establish the witness knows what the document is, or the basis for their personal knowledge about the subject.

Another common objection is “relevance.” Relevant evidence is something that tends to prove or disprove a fact that is at issue in the case.

Objections do not have to be formal. Parents may object by saying “objection” and briefly telling the judge the reason for the objection. Parents do not need to 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 is properly made before the witness starts to answer the question, but after the question is asked. 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 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.

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 chair. 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 chair. 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 late to hearing

Anyone that is going to be late to the hearing must call the Sacramento OAH office. If parents are late and do not call, 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.

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 technical definition of “hearsay” is an out-of-court statement used to prove the truth of the matter asserted. Generally the judge will consider hearsay to be very weak evidence unless it is supported by other evidence. A judge may not rely on hearsay in the judge's decision unless the hearsay is reliable. Therefore, it is always better to get witnesses who were present at the time of an event.

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

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?

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 psychologists, speech pathologists, occupational therapists and the like. Parents should contact a potential expert as early as possible. Experts usually charge a fee for their time. 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. Then 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: Do you have an opinion about [for example, recommended amounts of services, placing the student in a particular placement, etc.]
- Q: What is your opinion? What is the basis for 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 that the document 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 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 tell 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

An audio recording of an IEP team meeting may be played as evidence in a hearing if the judge agrees. Whether any or how much of the recording may be played is discretionary. Most judges will require parents to give a copy of the recording to the judge and to the other parties. The judge will likely ask the parties to prepare a written transcript of the portions of the recording they want the judge to consider. The judge will ask all parties to exchange their copies of the relevant transcript and tell the parties how to proceed.

What to do at the end of each day

At the end of each day, the judge will ask about the witnesses for the next day. The judge and the parties may review which exhibits have been admitted. 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 evidence, the hearing process and the parties' rights.

After the hearing day ends, parents should call the witnesses they have scheduled for the next day. Let them know what time to appear for hearing the next day. Think about the questions to ask the witnesses for the next day, and the exhibits to present or ask the witness about.

What to do on the last day of the hearing

After all witnesses have testified once, any party may request a witness to be called back for "rebuttal." "Rebuttal" is evidence that explains or disproves facts that the opposing party has put into evidence. Rebuttal evidence is information that has not already been presented that contradicts the other parties' evidence. The judge may permit or deny a request to have a witness come back for rebuttal testimony.

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.

The judge and the parties will discuss closing arguments. The judge will ask the parties if they want to make oral closing arguments. If oral closing arguments are made, the official record ends at that time and the case is submitted to the judge for decision.

Some people prefer to write their arguments. The judge may allow the parties to prepare written closing arguments. Written closing arguments are sometimes called "closing briefs." If the

parties want to write their closing arguments, the judge will tell the parties the date their written closing arguments must be filed with OAH and served on the other parties. The official record of the hearing ends on the date the written closing arguments are due and the case will be submitted to the judge for decision.

Closing Arguments

A closing argument is a summary of the evidence. It should explain how the evidence relates to the issues. The closing argument should tell the judge why he or she should agree with one side or the other, or between multiple parties. Good closing arguments summarize favorable evidence and explain conflicts in the evidence. 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 that 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.

Written closing arguments must be filed and served by the due date and must include a proof of service.

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 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. The facts that are material to the issues 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*. Basically, 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 analyze what remedy is appropriate. The law gives the judge a lot of freedom to determine remedies, 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 faxed or mailed to the parties. 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 decision, 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.

PART 15: ADDITIONAL RESOURCES

Definition 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.

Acronym	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.
	Annual Goals	A required component of an IEP. Goals are written for the individual student and can be for a maximum of one year.
ABA	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)

Acronym	Term	Definition
ADHD	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)
ASD	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, <i>et seq.</i>)
	Behavior Interventions	The systematic implementation of procedures that results in lasting positive changes in the individual's behavior. (Ed. Code, §§ 56520 through 56525.)
BICM	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.)
BIP	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.)
CARD	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].)
	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.
CALP	Cognitive Academic Language Proficiency	A level of competence required in oral and written language related to literacy and academic achievement.
CAC	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.

Acronym	Term	Definition
	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 § 300.8(c)(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 § 300.8(c)(3).)
	Delay	Generally refers to intellectual or skills development not occurring within expected time ranges.
DIS	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.)
DTT	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.)
EC	California Education Code	The body of statutes that governs education, including special education, in the State of California.
EHA	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).
ED	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. § 300.8(c)(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.)
ESD	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.

Acronym	Term	Definition
ESY	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."
FERPA	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.
FAPE	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.)
FAA	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.
FBA	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.
IEE	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).)
IEP	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.)

Acronym	Term	Definition
	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.
IEP Team	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.
IFSP	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.)
IDELR	Individuals with Disabilities Education Law Reporter	Specialized full text reporting service publishes policy letter and administrative level actions as well as case law.
IWENS	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. § 300.8(c)(6).)
IAES	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.
LD	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.)
LRE	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).)
LEP	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.)

Acronym	Term	Definition
LEA	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)(E). 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. § 1415(e) 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.
MDC	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.
NCLB	No Child Left Behind	A federal school reform law that seeks to improve the quality of public schools around the United States.
NPA	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.)
NPS	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,
OT	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.)
OAH	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

Acronym	Term	Definition
OCR	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.
OSEP	US Office of Special Education Programs	A federal office charged with assuring that the various states comply with IDEA.
OHI	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. § 300.8(c)(9).)
OH	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. § 300.8(c)(8).) This is a category of eligibility for special education services.
PT	Physical Therapy	Means services provided by a qualified physical therapist. (34 C.F.R. § 300.34(c)(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.
PDD	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.
PECS	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

Acronym	Term	Definition
PWN	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.)
RC	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.
	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."
RSP	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".

Acronym	Term	Definition
SDL	Severe Disorder of Language	Students who have a severe impairment in the ability to use or understand language.
SLD	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 § 300.8(c)(10); Ed. Code, §§ 56337 & 56338.) SLD is an eligibility category for special education.
SELPA	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.)
SDC	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.)
SEA	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.)
SLP	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.
SST	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.)

Acronym	Term	Definition
	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).)
TEACCH	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.
	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>)
TBI	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. § 300.8(c)(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.
VI	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 interpreted or applied 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 are 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 persuasive. The same is true for the Ninth Circuit Court of Appeals cases since California is part of that circuit, and federal district courts in California. However, decisions of circuits other than the Ninth Circuit of the United States Court of Appeals and federal district courts in California are highly persuasive; cases from the United States District Court are less persuasive than the above, and even less so when they are not published. Finally, the decisions of OAH, or another state administrative agency, would be less persuasive, particularly if they have been overruled by one of the above courts. 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.

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 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.disabilityrightsca.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.disabilityrightsca.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.

<http://www.leginfo.ca.gov/calaw.html> offers access to California statutes such as the Education Code.

[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.

<http://www.wrightslaw.com/#education> is a Web site geared toward helping parents understand the law and to advocate for their children. It contains useful references and information, including federal statutes and regulations and some case law.

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. 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” or “school.” 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>

This is a list of links for the forms available:

- [Mediation ONLY Request \(OAH 63, rev. 02/14\)](#)
- [Mediation and Due Process Hearing Request Form \(OAH 64, rev. 11/11\)](#)
- [Request for Continuance of Initial Special Education Due Process Hearing Date and Initial Mediation Date \(OAH 80, rev. 08/13\)](#)
- [Case Withdrawal Request \(OAH 69, rev. 03/10\)](#)
- [Notice of Resolution Session \(OAH 68, rev. 06/11\)](#)
- [Transcript Request \(OAH 5A, rev. 9/10\)](#)
- [Special Education Case Scheduling Guide \(OAH 84, rev. 3/15\)](#)
- [Local Education Agency Certification Form \(OAH 101, rev. 09/15\)](#)
- [Request for Reasonable Accommodation by a Person with Disabilities Form \(OAH 104, rev. 09/15\)](#)

The following are examples of documents you may see in your case with OAH:

Form 1: [Mediation only request](#)

Form 2: [Request for mediation and due process hearing](#)

Form 3: [Proof of service](#)

Form 4: [Scheduling order and notice of due process hearing and mediation](#)

Form 5: [Request for continuance of initial special education due process hearing date](#)

Form 6: [Request for continuance based on good cause](#)

Form 7: [Scheduling order and notice of DUAL due process hearing and mediation](#)

Form 8: [Notice of mediation only](#)

Form 9: [Joint waiver of resolution session](#)

Form 10: [Request to advance hearing dates](#)

Form 11: [Notice of settlement conference](#)

Form 12: [Sample prehearing conference statement](#)

Form 13: [Subpoena](#)

Form 14: [Sample order following prehearing conference](#)

Form 15: [Sample request for continuance of prehearing conference](#)

Form 16: [Sample notice of insufficiency \(NOI\)](#)

Form 17: [Sample motion for stay put](#)

FORM 1: MEDIATION ONLY REQUEST

Mediation Only Request Form

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 only 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 child. 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. 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 identified and a copy provided to the Office of Administrative Hearings.

If you need assistance in completing this form or have questions about the due process hearing and mediation process, assistance is available by contacting the Office of Administrative Hearings at the numbers identified below.

Office of Administrative Hearings, Special Education Unit
2349 Gateway Oaks, Suite #200
Sacramento, CA 95833
Phone: (916) 263-0880
Fax: (916) 376-6319

Mediation Only Request Form

Student Information	
First and Last Name (Required)	Date of Birth (Required)
Street Address (Required)	Grade Level
City, Zip Code (Required)	Student's Primary Language (Required)
School of Attendance (Required)	
District of Residence (Required)	
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	Fax
Email Address	

Parties to Be Named

INSTRUCTIONS: please list the parties to be named in the Request for Mediation Only.

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.

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.

(Use additional sheets if necessary)

nd Address
nd 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)

Necessity of Interpreter

Person(s) needing interpreter services:

Language:

Signature of Party Requesting Mediation

Please Print Name in this block	
Email Address	
Please Sign Name in this block	Date

Statement of Service

INSTRUCTIONS: Federal and state law 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, signing and dating below.

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

- First Class Mail**
- Facsimile Transmission**
- Messenger Service (UPS, FedEx, Other courier service) Please attach proof of service**
- Personal Delivery (If other than requestor please name person who made service)**

Signature of person completing this Statement of Service

Date of service

FORM 2: REQUEST FOR MEDIATION AND DUE PROCESS HEARING

MEDIATION AND DUE PROCESS HEARINGS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004(IDEA)

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 Due Process Hearing and Mediation (generally called a Complaint) on the persons or entities you name as parties to the proceeding.

Attached is a form that you may use to request a due process hearing and mediation 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 incorrect, incomplete or not provided, your request for a due process hearing may be delayed until the request meets legal requirements.

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

If you need assistance in completing this form or have questions about the due process hearing and mediation process, assistance is available by contacting the Office of Administrative Hearings at the numbers identified below.

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

Tel. (916)263-0880
Fax (916)376-6319

BEFORE FILLING OUT THIS REQUEST PLEASE TAKE THE TIME TO READ THE FOLLOWING EXCERPTS FROM APPLICABLE FEDERAL STATUTES:

The Request for Due Process Hearing and Mediation (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))

Either party now has the right to challenge the sufficiency of any Complaint. (20 U.S.C. § 1415 (c)(2)(A))

The party filing the Complaint is not entitled to a due process hearing if the Complaint does not comply with 20 U.S.C. § 1415 (b)(7)(A). (20 U.S.C. § 1415 (b)(7)(B))

The determination of whether a Complaint is sufficient and in compliance with the requirements of 20 U.S.C. § 1415 (b)(7)(A), shall be made by an administrative law judge solely on the content of the Complaint. (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))

All timelines, including those for a Resolution Session, start over upon the filing of an amended Complaint. (20 U.S.C. § 1415 (c)(2)(E)(ii))

REQUEST FOR MEDIATION AND DUE PROCESS HEARING

IMPORTANT: This 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 or dismissal of your hearing request. OAH 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.

This is a request for Hearing and Mediation Hearing Only

STUDENT INFORMATION	
First and Last Name (Required)	Date of Birth
Street Address (Required)	Grade Level
City, Zip Code (Required)	Student's Primary Language (Required)
School of Attendance (Required)	
District of Residence (Required)	
PARENT INFORMATION	
First and Last Name	Home Phone
Street Address	Work/Cell Phone
City, Zip Code	Fax
Email Address	

Is the Student a person of Color? Please check the appropriate box. (California Department of Education requirement)		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Declined to State

PARTIES TO BE NAMED

INSTRUCTIONS: Please list the Parties to be named in the Due Process Hearing Request. 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.)

Party and Address
Party and Address
Party and Address

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 denied FAPE for school year 2005-2006” is insufficient. Include facts, dates, references to specific IEP provisions, etc. Lack of specificity in identifying problem(s) may result in the dismissal of this Due Process Hearing Request.

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 Free Appropriate Public Education (FAPE)” is insufficient.

In the space below please identify specific problem(s)/complaint(s) and a proposed resolution for each to the extent known. 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 dispute. If a narrative is included, attach it to your Request.

Problem/Complaint #1:

Proposed Resolution #1:

Proposed 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:

NECESSITY OF INTERPRETER

Person(s) needing interpreter services:	Language:

SIGNATURE OF PARTY REQUESTING DUE PROCESS HEARING

Please Print Name in this Block	
Email Address	
Please Sign Name in this Block	Date

STATEMENT OF SERVICE

INSTRUCTIONS: Federal and state law 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 Due Process Hearing and Mediation to all the named parties and to the Office of Administrative Hearings by:

- First Class Mail**
- Facsimile Transmission**
- Messenger Service (UPS, FedEx, Other courier service). Please attach proof of Service**
- Personal Delivery (If other than requestor please name person who made service.)**

Signature of person completing this Statement of Service

Date of service

FORM 3: PROOF OF SERVICE

PROOF OF SERVICE

On _____ (*put the date documents served*) I served a copy of the following documents[s] to each person[s] named below at the addresses listed:

_____ [TITLE OF DOCUMENT: *i.e.*, REQUEST FOR MEDIATION AND DUE PROCESS HEARING]

_____ [Name of the person to whom the document was sent]

_____ [Name of the district served]

_____ [Address to where served]

Fax No: _____ [Fax number if served by fax]

[*If the school district is represented by an attorney, list that attorney's name and address (and fax numbers if sent by fax) and send a copy of the document and the proof of service to that attorney also.*]

[*If any other parties are involved, list those parties' names and addresses (and fax numbers, if sent by fax) and send a copy of the document and the proof of service to those parties as well.*]

I served this document by the following method:

_____ Hand

_____ U.S. Mail

_____ Fax transmission [*keep a copy of the transmission report to show that the fax was received.*]

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 _____ (*put the city in which this document was signed*) California, on _____ (*put the date on which this document was signed*).

Printed Name and Signature

FORM 4: SCHEDULING ORDER AND NOTICE OF DUE PROCESS HEARING AND MEDIATION

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF CALIFORNIA In the Matter of: _____(Parent Name) AND _____(Parent Name) PARENT(S) ON BEHALF OF _____(Student's Name), STUDENT, v. _____(Name of School District) DISTRICT.	OAH Case No. _____ <i>(Case Number will be assigned)</i> SCHEDULING ORDER AND NOTICE OF DUE PROCESS HEARING AND MEDIATION
--	---

Please read this document carefully. It describes various steps in the process that will be followed in this matter, and includes your rights and responsibilities at each stage. For questions related to this case you may contact(name of case manager) at (916) 263-0880.

I. RESERVED DATES

MEDIATION

DATE: *(Date will be assigned and stated here.)*
TIME: **9:30am to 4:30PM** *(Except in Los Angeles School District, which will be either 9:00AM to 12:30PM or 1:30PM to 5:00PM)*
PLACE: *(Address will be provided by Office of Administrative Hearings.)*
MEDIATOR: **To be assigned**

TELEPHONIC PREHEARING CONFERENCE

DATE: *(Date will be assigned and stated here.)*
TIME: *(Time will be assigned and stated here.)*

DUE PROCESS HEARING

DATE: *(Date will be assigned and stated here.)*
The hearing shall continue day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.
TIME: **9:30am**
PLACE: *(Address will be provided by Office of Administrative Hearings.)*

II. ACCESSIBILITY OF HEARING AND MEDIATION FACILITIES

The named local educational agency shall provide facilities for the scheduled mediation and hearing that fully comply 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.A. § 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. The named local educational agency shall certify that the facilities used for this case comply with the law. If the signed Local Education Agency Certification Form or a comparable certification is not received by OAH within five days of the date of this order, OAH may schedule the case at another legally compliant location and report this failure to the Department of Education. If the assigned ALJ determines a location provided by the local education agency does not fully comply 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.A. § 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, the ALJ may order the proceedings moved or continued, and report the failure to the Department of Education.

III. REQUEST FOR REASONABLE ACCOMMODATION

OAH complies with the Americans with Disabilities Act, (42 U.S.C.A. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C.A. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.) and all laws governing accessibility of government services to persons with disabilities. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the mediation or hearing may contact the assigned calendar staff identified above, or the OAH Reasonable Accommodation Coordinator, Nicole Buckowski, Staff Attorney, (916) 263- 0880.

IV. MEDIATION

Mediation is a voluntary, confidential process conducted by a neutral mediator in a non-adversarial, informal atmosphere. Mediation in special education cases has produced mutually satisfactory resolutions in the vast majority of cases. If mediation is unsuccessful, the matter will proceed to the Prehearing Conference and Due Process Hearing.

Should this mediation be scheduled at a time that you are not available, you must contact the opposing party(s) to get an agreeable date and complete the REQUEST FOR CONTINUANCE OF INITIAL SPECIAL EDUCATION DUE PROCESS HEARING DATE AND INITIAL MEDIATION DATE portion of the form included with this Notice.

Mediation has proven successful in a vast majority of cases; however, should you choose not to participate in the scheduled mediation, please check the box “Please cancel the mediation without resetting” on the bottom portion of the REQUEST FOR CONTINUANCE OF INITIAL SPECIAL EDUCATION DUE PROCESS HEARING DATE AND INITIAL MEDIATION DATE form included with this Notice.

V. PREHEARING CONFERENCE

A prehearing conference is a telephonic conference held between the Administrative Law Judge and the parties to discuss and clarify the due process hearing issues, witnesses, and other prehearing matters. The telephonic prehearing conference will be initiated by an ALJ at OAH.

Each party is required to submit a PREHEARING CONFERENCE STATEMENT which shall be filed at least **three business days prior to the PREHEARING CONFERENCE** with the Office of Administrative Hearings, Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833. The Prehearing Conference Statement may be filed and served by facsimile transmission at (916) 376-6319. The parties need not mail a hard copy of any document sent by facsimile transmission. The parties shall not send by mail or facsimile transmission copies of documentary evidence intended for the due process hearing to OAH. The Prehearing Conference Statement shall include the following:

- a. Each party's estimate of the time necessary to complete the Due Process Hearing;
- b. A concise statement of the issues that remain to be decided at the Due Process Hearing and the proposed resolution of such issues, based upon those issues raised in the due process hearing request;
- c. The name of each witness the party may call at the Due Process Hearing, a brief summary of the subject of the expected testimony of the witness, and a description of the issue to which the testimony of the witness relates;
- d. The name and address of each expert witness the party intends to call at the Due Process Hearing, a brief summary of the opinion that the expert is expected to give, and a description of the issue to which the testimony of the expert relates;
- e. A list of documentary evidence that the party intends to present, and a description of any physical or demonstrative evidence; and
- f. The need for an interpreter or special accommodation at the due process hearing

VI. DUE PROCESS HEARING

An impartial Administrative Law Judge of the Office of Administrative Hearings will conduct the hearing. You have the right to represent yourself or be represented by an attorney or other appropriate person.

- a. Issues: The hearing shall be limited to the issues raised in the due process complaint notice. You will not be permitted to raise other issues unless the other party (or parties) agrees.
- b. Attorney Representation: You must also inform the other party (or parties) **at least ten (10) calendar days in advance**, if you plan to be represented by an attorney at the hearing.

- c. Evidence: At least **five (5) business days** before the hearing, you must give to the other parties a copy of all documents and a list of witnesses that you plan to present at the hearing. Failure to do so may result in the exclusion of your documents and witnesses at the hearing. Exhibits shall be pre-marked prior to the hearing, and shall be placed in binders and tabbed. Each tabbed exhibit binder shall contain a detailed index of its contents, including page numbers. Any documentary exhibit more than four pages in length shall be Bates-stamped or internally paginated. In the event of duplicate exhibits, the most legible version will be used. Each side shall prepare and have available at the hearing an additional exhibit binder for use by witnesses, and another additional exhibit binder for use by the ALJ.

VII. CONTINUANCE

If you wish to continue the due process hearing or prehearing conference, you must file your request with the Office of Administrative Hearings, Special Education Division at the Sacramento location, via U.S. mail or facsimile transmission at (916) 376-6319 and serve the request upon the opposing party. The parties are encouraged to meet and confer as to available dates for the Due Process Hearing. **If the parties can mutually agree on dates for the Due Process Hearing and Prehearing Conference, the parties should complete the REQUEST FOR CONTINUANCE OF INITIAL SPECIAL EDUCATION DUE PROCESS HEARING DATE AND INITIAL MEDIATION DATE form included with this Notice.**

VIII. PREHEARING MOTIONS

All prehearing motions shall be served upon the opposing party and filed with the Office of Administrative Hearings, Special Education Division at the Sacramento location, via facsimile transmission at (916) 376-6319. Prehearing motions include motions for continuance, dismissal, stay put, or any other request for a ruling by an ALJ, which affects the rights of the parties. **If a party wishes to oppose a motion, such opposition must be received by OAH at the Sacramento location no later than 3 business days after service of the motion.**

IX. PEREMPTORY CHALLENGES

California Code of Regulations, title 1, Section 1034, subdivisions (a) and (b) provide in pertinent part that, pursuant to Government Code section 11425.40, subdivision (d), a party is entitled to one preemptory challenge (disqualification without cause) of an ALJ assigned to an OAH hearing. However, in no event will a preemptory challenge be allowed if it is made after the hearing has commenced.

A preemptory challenge must be directed to the Presiding Judge, served on all parties if made in writing, and filed in compliance with the time requirements in section 1034. It is important to note that, if at the time of a scheduled prehearing conference, an ALJ has been assigned to the Hearing, any challenge of the assigned ALJ shall be made no later than commencement of that prehearing conference.

Parties may determine the identity of the Administrative Law Judge who will hear their matter by contacting **Colette Clark (OAH, Special Education Division) at (916) 263-0880, or by viewing the on-line calendar at <http://www.dgs.ca.gov/oah/SpecialEducation.aspx> (follow the Special Education link to the calendar option).**

X. SETTLEMENT

If the parties reach settlement in the matter, OAH shall be notified as soon as possible. Notification shall be in writing, but need not include the entire contents of the settlement agreement. It shall be sufficient to provide a page that identifies the nature of the document and participants and the signature page with each participant's signature. A request for dismissal based on settlement of all issues that is submitted by the party who requested the hearing shall also suffice. The matter shall remain on calendar and shall not be dismissed until OAH receives the proper notification.

If the parties reach settlement and finalize an agreement after hours (Monday through Friday between 5:00 p.m. and 8:00 a.m. or on Saturday or Sunday) they may contact OAH at (916) 274-6035 and leave a message that settlement has been reached and that an ALJ will not need to attend the hearing. Proof of settlement via a copy of the signed signature page, stipulation of the parties, or notice of withdrawal from the Petitioner should be simultaneously faxed to OAH at (916) 376-6319.

XI. REPRESENTATION

California Education Code Section 56502, subdivision (h), provides as follows: "The Superintendent or his or her designee shall provide both parties with a list of persons and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing. This list shall include a brief description of the requirement to qualify for the services. **This list is available on the OAH website (<http://www.dgs.ca.gov/oah/SpecialEducation.aspx>) or by request by contacting OAH Sacramento Special Education Division at (916) 263-0880.**

XII. SERVICE OF ALL DOCUMENTS INVOLVED IN YOUR CASE

Rather than being served with copies of all documents relevant to your case by United States mail, you have the option of having these documents served by way of facsimile to a number you have chosen.

In order to select service of documents by way of facsimile, please complete the attached form and submit it to:

(Case Manager's name)
Office of Administrative Hearings
2349 Gateway Oaks Drive, Suite 200
Sacramento, California 95833
Facsimile: (916) 376-6319

Dated: _____
(Date document issued)

BOB N. VARMA
Division Presiding Administrative Law Judge
Office of Administrative Hearings

REQUEST FOR SERVICE OF DOCUMENTS

_____ **BY WAY OF FACSIMILE TRANSMISSION**

Name of Case:

Case Number:

Party Requesting Receipt of Documents:

Facsimile Number for Service of Documents:

By signing this form, I am agreeing to accept service of documents in this matter by way of facsimile to the facsimile number noted above that I maintain.

Signature

FORM 5: REQUEST FOR CONTINUANCE OF INITIAL SPECIAL EDUCATION DUE PROCESS HEARING DATE

REQUEST FOR CONTINUANCE OF INITIAL SPECIAL EDUCATION DUE PROCESS HEARING DATE AND INITIAL MEDIATION DATE

INTRODUCTION: After receiving a request for due process hearing or mediation, the Office of Administrative Hearings (OAH) issues a scheduling order with a mediation date, and, if a hearing is requested, a prehearing conference date and a hearing date. These dates are set to insure compliance with federally mandated timelines, and cannot be changed except for good cause. **This form may be used only when the parties mutually agree to continue the initial dates that were identified in the scheduling order.** If you agree to continue the case, the federally mandated timelines to issue a decision will be extended. If you are making a second request for continuance, you may use this form, but you must also explain your reason for requesting the continuance. The form must be signed by all parties

MEDIATION: You must select a date for mediation that is within 30 days of the initial mediation date in the scheduling order. If the date for mediation is beyond 30 days, you must explain why an earlier date is not available. Mediation is a voluntary process and both parties must agree to participate. If either party does not wish to mediate, you may cancel the mediation below. Mediations are held on Tuesday through Thursday. 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. A mediation cannot be held on the same day as the prehearing conference or hearing.

HEARING: You must select dates for hearing that are within 90 days of the initial hearing date in the scheduling order. If the dates for hearing are beyond 90 days, you must explain why an earlier date is not available. Please select the total number of days both parties believe it will take to complete the hearing. Hearings are held on Monday through Thursday. Hearings beginning on either Monday or the Tuesday after a holiday start at 1:30 p.m. The first day of all other hearings start at 9:30 a.m. You may not request a trial setting conference instead of choosing dates. If you cannot agree on dates, each side should provide dates within the next 90 days for hearing and OAH will pick the dates for you. You may also request that OAH set dates for you within 90 days of the initial hearing date.

PREHEARING CONFERENCE: You must also select a date for a prehearing conference on a Monday or Friday within 5 to 10 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.

REQUEST FOR CONTINUANCE OF INITIAL SPECIAL EDUCATION MEDIATION DATE

Case Number: _____

Student's Name: _____

Initial Mediation Date: _____

Requested Mediation Date and Time: _____

Please cancel the mediation without rescheduling.

REQUEST FOR CONTINUANCE OF INITIAL SPECIAL EDUCATION DUE PROCESS HEARING DATE

Initial Continuance Request

Second Continuance Request

Case Number: _____

Student's Name: _____

Initial Hearing Date: _____

Requested Hearing Dates: _____

Prehearing Conference Date and Time: _____

The parties cannot agree on hearing dates and ask that OAH set hearing dates within 90 days of the initial hearing date.

Explanation for second continuance or why dates are not within 90 days:

The parties 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. 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

For OAH Use Only

The request of the parties has been reviewed for good cause and the request is:

_____ **Granted**. The matter is continued to the dates requested by the parties.

_____ **Granted**. The matter is continued to the following dates:

_____ **Denied**

ALJ assigned to prehearing conference and hearing: _____

Date:

Presiding Administrative Law Judge

FORM 6: SAMPLE REQUEST FOR CONTINUANCE BASED ON GOOD CAUSE

_____ (Put date of request)]

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

Re: _____, (Name of parents) Parents on behalf of _____, (Name of student) Student v. _____ (Name of district) Unified School District, OAH Case Number _____ (Case number)

Dear Presiding Judge:

The due process hearing in this matter is scheduled for _____, (put the first date of the hearing), through _____ (put the last date of the hearing). We are asking that the hearing be continued for the following reasons:

[state reasons here]

[state whether you have contacted the district or attorney for the district and tried to work out new dates for the prehearing conference and hearing, and state the dates agreed upon]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed in [_____, (put the name of the city in which this document is signed) California on [put the date on which this document is signed].

Printed Name and Signature

cc: School district

[Any other parties]

[complete and attach proof of service (Form 3), and attach it to your request for continuance]

FORM 7: SCHEDULING ORDER AND NOTICE OF DUAL DUE PROCESS HEARING AND MEDIATION

SAMPLE SCHEDULING ORDER OF DUAL DUE PROCESS HEARING AND MEDIATION

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

_____ (Name of Parent), PARENT(S) ON
BEHALF OF _____, (Name of Student)
STUDENT,

v.

_____ (Name of District)
DISTRICT.

OAH Case No. _____
(Case number will be assigned)

SCHEDULING ORDER SETTING
DUAL HEARING DATES INCLUDING
EXPEDITED HEARING,
PREHEARING AND MEDIATION

Please read this document carefully. It describes various steps in the process that will be followed in this matter, and includes your rights and responsibilities at each stage.

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 complaint.

An expedited hearing must be completed within twenty (20) school days from the date of the request and a decision issued within ten (10) school days of completion of the hearing. Therefore, the parties **MAY NOT** mutually agree to different hearing dates and continuances will not be granted except in exceptional circumstances. Questions regarding this case should be directed to Colette Clark at (916) 263-0880.

I. RESERVED DATES

EXPEDITED MEDIATION

DATE: (Date will be assigned and printed here)
TIME: (Times will be assigned and printed here)
PLACE: (Location will be printed here)

NON-EXPEDITED MEDIATION

DATE: *(Date will be assigned and printed here)*
TIME: *(Times will be assigned and printed here)*
PLACE: *(Location will be printed here)*

EXPEDITED PREHEARING CONFERENCE

DATE: *(Date will be assigned and printed here)*
TIME: *(Times will be assigned and printed here)*
PLACE: **Telephonic – OAH will initiate the call**

NON-EXPEDITED PREHEARING CONFERENCE

DATE: *(Date will be assigned and printed here)*
TIME: *(Times will be assigned and printed here)*
PLACE: **Telephonic – OAH will initiate the call**

EXPEDITED DUE PROCESS HEARING

DATE: *(Date will be assigned and printed here)*
TIME: *(Times will be assigned and printed here)*
PLACE: *(Location will be printed here)*

NON-EXPEDITED DUE PROCESS HEARING

DATE: *(Date will be assigned and printed here)*
**The hearing shall continue day to day, Monday through Thursday,
unless ordered otherwise.**
TIME: *(Times will be assigned and printed here)*
PLACE: *(Location will be printed here)*

II. ACCESSIBILITY OF HEARING AND MEDIATION FACILITIES

The named local educational agency shall provide facilities for the scheduled mediation and hearing that fully comply 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.A. § 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. The named local educational agency shall certify that the facilities used for this case comply with the law. If the signed Local Education Agency Certification Form or a comparable certification is not received by OAH within five days of the date of this order, OAH may schedule the case at another legally compliant location and report this failure to the Department of Education. If the assigned ALJ determines a location provided by the local education agency does not fully comply 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.A. § 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, the ALJ may order the proceedings moved or continued, and report the failure to the Department of Education.

III. REQUEST FOR REASONABLE ACCOMMODATION

OAH complies with the Americans with Disabilities Act, (42 U.S.C.A. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C.A. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.) and all laws governing accessibility of government services to persons with disabilities. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the mediation or hearing may contact the assigned calendar staff identified above, or the OAH Reasonable Accommodation Coordinator, Nicole Buckowski, Staff Attorney, (916) 263- 0880.

IV. MEDIATION

Mediation is a voluntary, confidential process conducted by a neutral mediator in a non-adversarial, informal atmosphere. Mediation in special education cases has produced mutually satisfactory resolutions in the vast majority of cases. If mediation is unsuccessful, the matter will proceed to the Prehearing Conference and Due Process Hearing.

Should this mediation be scheduled at a time that you are not available, you must contact the opposing party(s) to get an agreeable date and complete the **REQUEST FOR CONTINUANCE OF INITIAL SPECIAL EDUCATION DUE PROCESS HEARING DATE AND INITIAL MEDIATION DATE** portion of the form included with this Notice.

Mediation has proven successful in a vast majority of cases; however, should you choose not to participate in the scheduled mediation, please check the box "Please cancel the mediation without resetting" on the bottom portion of the **REQUEST FOR CONTINUANCE OF INITIAL SPECIAL EDUCATION DUE PROCESS HEARING DATE AND INITIAL MEDIATION DATE** form included with this Notice.

V. PREHEARING CONFERENCE

A prehearing conference is a telephonic conference held between the Administrative Law Judge and the parties to discuss and clarify the due process hearing issues, witnesses, and other prehearing matters. The telephonic prehearing conference will be initiated by an ALJ at OAH.

Each party is required to submit a PREHEARING CONFERENCE STATEMENT which shall be filed at least three business days prior to the PREHEARING CONFERENCE with the Office of Administrative Hearings, Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833. The Prehearing Conference Statement may be filed and

served by facsimile transmission at (916) 376-6319. The parties need not mail a hard copy of any document sent by facsimile transmission. The parties shall not send by mail or facsimile transmission copies of documentary evidence intended for the due process hearing to OAH. The Prehearing Conference Statement shall include the following:

- a. Each party's estimate of the time necessary to complete the Due Process Hearing;
- b. A concise statement of the issues that remain to be decided at the Due Process Hearing and the proposed resolution of such issues, based upon those issues raised in the due process hearing request;
- c. The name of each witness the party may call at the Due Process Hearing, a brief summary of the subject of the expected testimony of the witness, and a description of the issue to which the testimony of the witness relates;
- d. The name and address of each expert witness the party intends to call at the Due Process Hearing, a brief summary of the opinion that the expert is expected to give, and a description of the issue to which the testimony of the expert relates;
- e. A list of documentary evidence that the party intends to present, and a description of any physical or demonstrative evidence; and
- f. The need for an interpreter or special accommodation at the due process hearing

VI. DUE PROCESS HEARING

An impartial Administrative Law Judge of the Office of Administrative Hearings will conduct the hearing. You have the right to represent yourself or be represented by an attorney or other appropriate person.

- a. Issues: The hearing shall be limited to the issues raised in the due process complaint notice. You will not be permitted to raise other issues unless the other party (or parties) agrees.
- b. Attorney Representation: You must also inform the other party (or parties) at least **ten (10) calendar days in advance**, if you plan to be represented by an attorney at the hearing.
- c. Evidence: At least **five (5) business days** before the hearing, you must give to the other parties a copy of all documents and a list of witnesses that you plan to present at the hearing. Failure to do so may result in the exclusion of your documents and witnesses at the hearing. Exhibits shall be pre-marked prior to the hearing, and shall be placed in binders and tabbed. Each tabbed exhibit binder shall contain a detailed index of its contents, including page numbers. Any documentary exhibit more than four pages in length shall be Bates-stamped or internally paginated. In the event of duplicate exhibits, the most legible version will be used. Each side

shall prepare and have available at the hearing an additional exhibit binder for use by witnesses, and another additional exhibit binder for use by the ALJ.

VII. CONTINUANCE

If you wish to continue the due process hearing or prehearing conference, you must file your request with the Office of Administrative Hearings, Special Education Division at the Sacramento location, via U.S. mail or facsimile transmission at (916) 376-6319 and serve the request upon the opposing party. The parties are encouraged to meet and confer as to available dates for the Due Process Hearing. **If the parties can mutually agree on dates for the Due Process Hearing and Prehearing Conference, the parties should complete the REQUEST FOR CONTINUANCE OF INITIAL SPECIAL EDUCATION DUE PROCESS HEARING DATE AND INITIAL MEDIATION DATE form included with this Notice.**

VIII. PREHEARING MOTIONS

All prehearing motions shall be served upon the opposing party and filed with the Office of Administrative Hearings, Special Education Division at the Sacramento location, via facsimile transmission at (916) 376-6319. Prehearing motions include motions for continuance, dismissal, stay put, or any other request for a ruling by an ALJ, which affects the rights of the parties. **If a party wishes to oppose a motion, such opposition must be received by OAH at the Sacramento location no later than 3 business days after service of the motion.**

IX. PEREMPTORY CHALLENGES

California Code of Regulations, title 1, Section 1034, subdivisions (a) and (b) provide in pertinent part that, pursuant to Government Code section 11425.40, subdivision (d), a party is entitled to one peremptory challenge (disqualification without cause) of an ALJ assigned to an OAH hearing. However, in no event will a peremptory challenge be allowed if it is made after the hearing has commenced.

A peremptory challenge must be directed to the Presiding Judge, served on all parties if made in writing, and filed in compliance with the time requirements in section 1034. It is important to note that, if at the time of a scheduled prehearing conference, an ALJ has been assigned to the Hearing, any challenge of the assigned ALJ shall be made no later than commencement of that prehearing conference.

Parties may determine the identity of the Administrative Law Judge who will hear their matter by contacting Colette Clark (OAH, Special Education Division) at (916) 263-0880, or by viewing the on-line calendar at <http://www.dgs.ca.gov/oah/SpecialEducation.aspx> (follow the Special Education link to the calendar option).

X. SETTLEMENT

If the parties reach settlement in the matter, OAH shall be notified as soon as possible. Notification shall be in writing, but need not include the entire contents of the settlement agreement. It shall be sufficient to provide a page that identifies the nature of the document and participants and the signature page with each participant's signature. A request for dismissal based on settlement of all issues that is submitted by the party who requested the hearing shall also suffice. The matter shall remain on calendar and shall not be dismissed until OAH receives the proper notification.

If the parties reach settlement and finalize an agreement after hours (Monday through Friday between 5:00 p.m. and 8:00 a.m. or on Saturday or Sunday) they may contact OAH at (916) 274-6035 and leave a message that settlement has been reached and that an ALJ will not need to attend the hearing. Proof of settlement via a copy of the signed signature page, stipulation of the parties, or notice of withdrawal from the Petitioner should be simultaneously faxed to OAH at (916) 376-6319.

XI. REPRESENTATION

California Education Code Section 56502, subdivision (h), provides as follows: "The Superintendent or his or her designee shall provide both parties with a list of persons and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing. This list shall include a brief description of the requirement to qualify for the services. **This list is available on the OAH website (<http://www.dgs.ca.gov/oah/SpecialEducation.aspx>) or by request by contacting OAH Sacramento Special Education Division at (916) 263-0880.**

XII. SERVICE OF ALL DOCUMENTS INVOLVED IN YOUR CASE

Rather than being served with copies of all documents relevant to your case by United States mail, you have the option of having these documents served by way of facsimile to a number you have chosen.

In order to select service of documents by way of facsimile, please complete the attached form and submit it to:

Case Manager
Office of Administrative Hearings
2349 Gateway Oaks Drive, Suite 200
Sacramento, California 95833
Facsimile: (916) 376-6319

Dated: *(Date of issuance will be printed here)*

BOB N. VARMA
Division Presiding Administrative Law Judge
Office of Administrative Hearings

REQUEST FOR SERVICE OF DOCUMENTS

_____ **BY WAY OF FACSIMILE TRANSMISSION**

Name of Case:

Case Number:

Party Requesting Receipt of Documents:

Facsimile Number for Service of Documents:

By signing this form, I am agreeing to accept service of documents in this matter by way of facsimile to the facsimile number noted above that I maintain.

Signature

FORM 8: NOTICE OF MEDIATION ONLY

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

NOTICE OF MEDIATION

STUDENT:	<i>(OAH will put the Student's name here)</i>
SCHOOL DISTRICT:	<i>(OAH will put the name of the School District here)</i>
CASE NUMBER:	<i>(OAH will put the case number assigned to this matter here)</i>

REQUESTING PARTY: *(OAH will put the name of the person or school district here)*

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: *(OAH will fill this in)*
TIME: *(OAH will fill this in)*
PLACE *(OAH will fill this in)*
MEDIATOR: *(OAH will fill this in)*

If you cannot attend the mediation on the date and time scheduled, you must call the Office of Administrative Hearings, Special Education Division, at (818) 904-2383, 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 will be put here) (OAH, Special Education Division) at (916) 263-0880 or via written request faxed to (916) 376-6319 to calendar the new mediation date.

Representation. California Education Code Section 56502, subdivision (h), provides as follows: “The Superintendent or his or her designee shall provide both parties with a list of persons and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing. This list shall include a brief description of the requirement to qualify for the services. The Superintendent or his or her designee shall have complete discretion in determining which individuals or groups shall be included on the list.” Under the foregoing provision, “Superintendent” refers to the State Superintendent of Public Instruction, and “designee” currently refers to the Office of Administrative Hearings (OAH) which, under Interagency Agreement No. CN088015, administers the mandated special education dispute resolution program. **This list is available on request.**

Dated: *(OAH will fill this in)*

OFFICE OF ADMINISTRATIVE HEARINGS
2349 GATEWAY OAKS DRIVE, SUITE 200
SACRAMENTO, CA 95833-4231
TEL (916) 263-0880
FAX (916) 376-6319

FORM 9: SAMPLE JOINT WAIVER OF RESOLUTION SESSION

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

**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);¹ 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.]

¹ All statutory citations are to Title 20 United States Code unless otherwise indicated.

FORM 11: NOTICE OF SETTLEMENT CONFERENCE

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

_____, (Name of Parents) ON
BEHALF OF _____, (Name of Student),

v.

_____, (Name of School District).

OAH CASE NO. _____
(Case Number)

ORDER SETTING VOLUNTARY
SETTLEMENT CONFERENCE

Based on discussions with the parties, the following order is issued:

1. **VOLUNTARY SETTLEMENT CONFERENCE.** A Voluntary Settlement Conference will be held before an Administrative Law Judge of the Office of Administrative Hearings. Settlement conference briefs are not required, but may be filed in accordance with California Code of Regulations, title 1, section 1028, subdivision (f).

DATE: _____ (This date will be filled in by OAH)

TIME: _____ (The time will be filled in by OAH)

LOCATION: _____ (The location will be filled in by OAH)

2. All persons necessary to a resolution of this case shall appear in person at all settlement conferences, unless excused by an Administrative Law Judge of the Office of Administrative Hearings.

3. The parties must continue to confer and cooperate with each other (1) to facilitate exchange of evidence, (2) to reach stipulations of facts, law and the admissibility of evidence in order to promote the efficient conduct of the hearing, and (3) to promote productive settlement discussions.

4. This office will not take any scheduled dates off calendar based on settlement of the case, unless the parties file a copy of a fully executed settlement agreement resolving all issues in the case before the scheduled date. In the alternative, the petitioner may file and serve a letter asking this office to issue a dismissal order based on a final settlement of all issues in the case.

FORM 12: SAMPLE PREHEARING CONFERENCE STATEMENT

PREHEARING CONFERENCE STATEMENT OAH CASE _____ (*Insert Case Number*)
_____, (*Name of Parents*) Parents on behalf of _____, (*Name of Student*),
Student
v.
_____, (*Name of School District*) School District

- A. At this time I estimate two days to complete the Due Process Hearing. I estimate one day for me to complete my portion of the hearing, and one day for District to complete its portion of the hearing.
- B. Issues that remain to be decided at the Due Process Hearing are listed below:
- Student's Issue 1:** Is Student is entitled to independent educational assessments (IEE) in the areas of speech and language and occupational therapy because Student's parent disagreed with District's assessments in these areas, requested IEEs, and District's assessments in these areas were not appropriate.
Proposed Resolution: OAH order that District fund IEEs in the areas of speech and language and occupational therapy.
 - Student's Issue 2:** Does Student require individual speech therapy session and individual occupational therapy sessions in order to receive a free appropriate public education?
Proposed Resolution: Individual speech and language therapy to be provided thirty minutes weekly, and individual OT to be provided thirty minutes weekly. Also, compensatory education in the areas of speech and language therapy and OT.
 - District's Issue 1:** Are Districts assessments of Student in the areas of speech and language and occupational therapy appropriate under California law?
Proposed Resolution: OAH order that District's assessments in the areas of speech and language and occupational therapy are not appropriate under California law. OAH order that District fund an IEE in the area of speech and language and in the area of occupational therapy.
 - District's Issue 2:** Do group speech and language and occupational therapy sessions, as offered by District, meet Student's needs in these areas and constitute a free appropriate public education for Student.
Proposed Resolution: OAH order that group speech and language and occupational therapy sessions offered by District to not meet Student's needs in these areas, and do not constitute a FAPE for Student. OAH order for individual services in each of those areas, and compensatory education in each of those areas.

C. I intend to call the following witnesses to testify at the Due Process Hearing: *(Below is a suggested list of possible witness.)*

1. _____, *(Name of teacher)* teacher of SDC 3,4,5 grades at _____ Elementary School. I expect her to testify that the District's assessments of Student were not appropriate, that Student requires individual speech and language therapy and individual occupational therapy, and that group therapy does not meet Student's needs or provide Student with a free appropriate public education.
2. _____, *(Name of occupation therapist)* the occupational therapist employed by District who completed Student's occupational therapy assessment. I expect her to testify regarding her assessment of Student.
3. _____, *(Name of speech therapist)* the speech therapist employed by District who completed Student's speech and language assessment. I expect her to testify regarding her assessment of Student.
4. Both parents will also testify regarding all issues in this case.

D. I will call the following expert witnesses:

1. _____, *(Name of occupational therapist)* who is an occupational therapist. I expect her to give her expert opinion that Student needs individual occupational therapy session in order to benefit from his/her education, and that the occupational therapy report conducted by District was inappropriate.
2. _____, *(Name of speech therapist)* who is a speech and language therapist. I expect her to give his expert opinion that Student needs individual speech and language therapy sessions in order to benefit from his/her education, and that the speech and language report conducted by District was inappropriate.

E. Documentary, physical or demonstrative evidence this party intends to present listed below:

1. Transcript from tape recorded IEP meeting of _____ *(date of IEP meeting)*.
2. Triennial IEP dated _____ *(date of IEP)*, including Psycho-Educational Evaluation, Individualized Education Plan, Speech and Language Report, and Occupational Therapy Report.
3. Individualized Education Plan dated _____ *(Date of IEP)*.

F. No interpreter or special accommodations are needed.

cc: School district

[Any other parties]

[complete and attach proof of service (Form 3), and attach it to your prehearing conference statement.]

FORM 13: SUBPOENA

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS



In the Matter of: _____

Agency / Agency Case No. _____

OAH No. _____

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

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

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

(date) _____, at (time) _____, 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: _____, 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 _____ (date), send the records to:

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) _____ (Signature of Authorizing Official) _____

(Printed Name) _____ (Title) _____

DECLARATION FOR SUBPOENA DUCES TECUM

(Any party issuing a subpoena for production of books and/or records must complete this section.)

The undersigned states that the books, papers, documents and/or other things named below and requested by this subpoena are material to the proper presentation of this case, and good cause exists for their production by reason of the following facts:

[Empty box for stating facts]

(Use additional pages, if necessary, and attach them to this subpoena.)

Executed _____, 20_____, at _____, California.

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

(Signature of Declarant)

METHOD OF DELIVERY of this subpoena:

- Personal Service - In accordance with Code of Civil Procedure sections 1987 and 1988, delivery was effected by showing the original and delivering a true copy thereof personally to:
Messenger Service - In accordance with Government Code section 11450.20, an acknowledgement of the receipt of this subpoena was obtained by the sender after it was delivered by messenger to:
Certified Mail, Return Receipt Requested - I sent a true copy of this subpoena via certified mail, return receipt requested to: (name and address of person)

at the hour of _____ m., on _____, 20_____.

City of _____, State of _____.

(Signature of Declarant)

FORM 14: SAMPLE ORDER FOLLOWING PREHEARING CONFERENCE

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

_____ (Name of Parents), on Behalf
of _____ (Name of Student),
Petitioner,

v.

_____ (Name of School
District and other Respondents),
Respondent.

OAH CASE NO. _____
(Case No. will be added by
OAH)

ORDER FOLLOWING PREHEARING
CONFERENCE

On _____ (OAH will fill this date in) a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) _____ (OAH will fill this in), Office of Administrative Hearings, Special Education Division (OAH). _____ (OAH will fill this in) Attorney at Law, appeared on behalf of _____ (OAH will fill in the name of either the Student or District). _____ (OAH will fill this in), Attorney at Law, appeared on behalf of _____ (OAH will fill in the name of either the Student or District). The PHC [was/was not] recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing [is continued on motion of _____ (OAH will fill in the name of either the Student or District or state joint motion of the parties) shall take place on _____ (OAH will fill in the date). The hearing shall begin each day at [_____ a.m./p.m.] and end at [_____ a.m./p.m.] [with the exception of the first day of hearing, on which day the hearing shall begin at _____ a.m./p.m.], unless otherwise ordered, at the offices of _____ (OAH will fill this in, if applicable) located at _____ (OAH will fill this in, if applicable).²

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

² A conference room with a single conference table is not suitable. At a minimum, the room should have (1) one table for Student's attorney and parent(s); (2) one table for the District's attorney and the District representative; (3) one table for the ALJ; and (4) one witness table. [The room shall also have a speakerphone.] A boardroom can usually accommodate a due process hearing.

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 at the due process hearing are those alleged in the due process complaint, as clarified by the parties and the ALJ at the PHC:

- a) (OAH will fill this in)
- b) (OAH will fill this in)
- c) (OAH will fill this in)

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. [Student/District] shall use numbers and [District/Student] shall use letters to identify exhibits. Each exhibit shall be internally paginated, by exhibit, or all of a party’s exhibits shall be Bates stamped. Each exhibit binder shall contain a detailed table of contents. Each party shall serve an exhibit binder containing its respective exhibits on the other party by 5:00 p.m. on _____(OAH will fill this in). At the hearing, the parties are to supply an exhibit binder containing their respective 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 included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible.

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 disclosed in the party’s prehearing conference statement except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

[The parties are ordered to meet and confer by _____(OAH will fill this in), as to the schedule of witnesses/The parties have agreed to coordinate the availability and order of testimony of witnesses/to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled.]

[The following witnesses will be called to testify by _____(OAH will fill this in):

[The following witnesses will be called to testify by _____(OAH will fill this in):

[The witness schedule will be finalized at the commencement of the due process hearing.]

[_____ (OAH will fill this in) has identified ____ (OAH will fill this in) witnesses to be called at the hearing, and _____ (OAH will fill this in) has identified ____ (OAH will fill this in) witnesses. Some of the witnesses are listed by both parties. In light of the fact that ____ (OAH will fill this in) days have been scheduled for the hearing in this matter, it would be difficult to complete the hearing as scheduled. Therefore, by _____ p.m. on _____ (OAH will fill in this date), each party shall serve on the other party and on OAH a tentative witness list, including a time estimate of the length of each witness's direct examination testimony, and notations as to the witnesses the party intends to call, as opposed to witnesses the party may call, depending on the flow of the hearing and the evidence. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.]

5. Telephonic Testimony. [A party seeking to call a witness to testify by telephone shall move in advance for leave to do so.] [_____ (OAH will fill this in)'s motion to allow _____ (OAH will fill this in) to testify telephonically is granted/denied.] [_____ (OAH will fill this in) shall provide _____ (OAH will fill this in) with a complete exhibit binder from each party, 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.]

6. Timely Disclosure of Witnesses/Exhibits. [The request of _____ (OAH will fill this in) to delay disclosure of witnesses/exhibits until ____ (OAH will fill this in) days prior to the hearing is denied/granted, and witnesses/exhibits shall be exchanged by _____ (OAH will fill this date in) at _____ a.m./p.m.] [Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing.] [The OAH order of _____ (OAH will fill this date in), specifically ordered the production of lists of all witnesses/documents by an earlier date, to wit: at least three business days prior to this PHC.]

7. Order of Presentation of Evidence. [This matter is consolidated, and involves ____ (OAH will fill this in) parties. The order of presentation of evidence shall be as follows: _____ (OAH will fill this in)] [If a witness is to be called by more than one party, _____ (OAH will fill this in).]

8. Motions. [Rulings on motions made at PHC.] [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 prior to or during the prehearing conference of _____ (OAH will fill this date in).]

9. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

10. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witness 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.

11. 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.

12. Special Needs and Accommodations. A [_____(*OAH will fill this in*)] language interpreter [or other accommodation] is required.

13. Hearing Open/Closed To the Public. [At the request of the parent, the hearing will be open to the public.]

14. Settlement. The parties are encouraged to continue their attempts 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. If a settlement is reached five days or fewer than five days before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. IF A FULL AND FINAL SETTLEMENT 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, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF [EACH PARTY/COUNSEL FOR EACH PARTY.] The ALJ will check for messages the evening prior to the hearing and the morning of the hearing.

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

IT IS SO ORDERED.

Dated: _____(*OAH will fill this in*).

(*Name of Judge*)
Administrative Law Judge
Office of Administrative Hearings

FORM 15: SAMPLE REQUEST FOR CONTINUANCE OF PREHEARING CONFERENCE BASED ON GOOD CAUSE

[DATE]

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

Re: John and Joanne Doe, Parents on behalf of Jane Doe, Student v. _____ (*Name of School District*) Unified School District, OAH Case Number _____ (*Case No.*)

Dear Presiding Judge:

The prehearing conference in this matter is scheduled for Monday, [date], through Friday [date]. We are asking that the prehearing conference be continued for the following reasons:

[STATE REASONS]

[STATE WHETHER YOU HAVE CONTACTED THE DISTRICT OR ATTORNEY FOR THE DISTRICT AND TRIED TO WORK OUT NEW DATES FOR THE PREHEARING CONFERENCE AND HEARING, AND STATE THOSE DATES.]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed in [City, California] on [date].

Printed Name and Signature

cc: School district

[Any other parties]

[complete and attach proof of service (Form 3), and attach it to your request for continuance.]

FORM 16: SAMPLE NOTICE OF INSUFFICIENCY (NOI)

To: Presiding Judge
Office of Administrative Hearings

Re: Case No. _____
Student Name v. District
NOTICE OF INSUFFICIENCY

The school district filed a request for due process hearing naming my child. I do not believe this complaint is sufficient, and I request that OAH deem it to be insufficient.

A party against whom a due process complaint has been filed has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c); Ed. Code § 56502, subd. (d)(1).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A) and Education Code section 56502, subdivision (c)(1). Section 1415(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time. (§ 1415(b)(7)(A)(ii)(III) & (IV).) The purpose of these requirements is to promote fairness by providing respondents with a specific understanding of the allegations and to provide a school district with sufficient information to make a specific response to the complaint as required by section 1415(c)(2)(B), and to participate in a resolution session and mediation under section 1415, subsections (e) and (f). The party against whom the complaint has been filed is entitled to know the nature of the specific allegations being made against him or her, such that he or she may be able to prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

I cannot determine what the school district is claiming. [More specific details, if you wish.] Therefore, I request that OAH deem the complaint to be insufficient.

Sincerely,

_____ (Signature)

cc: School district

[Any other parties]

[complete and attach proof of service (Form 3), and attach it to this motion.]

FORM 17: SAMPLE MOTION FOR STAY PUT

To: Presiding Judge
Office of Administrative Hearings

Re: Case No. _____
Student Name v. District
MOTION FOR STAY PUT

I request that my child's placement, defined by his/her most recently implemented IEP, be deemed his/her stay put placement for the duration of the due process proceedings.

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. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) 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. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

Attached is my child's most recently implemented IEP which shows his/her placement and services to include:

[List them]

The District is refusing to provide _____ (*Name of Student*) placement or _____ (*state specific services*) services to my child.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed in [City, California] on [date].

Therefore, I request that OAH issue an order of stay put.

Sincerely,

_____ (*signature*)

cc: School district

[Any other parties]

[complete and attach proof of service (Form 3), and attach it to this motion. Also attach copy of most recently implemented IEP.]