

FREQUENTLY ASKED QUESTIONS SPECIAL EDUCATION DUE PROCESS HEARINGS AND MEDIATIONS

What are these Frequently Asked Questions?

These FAQs are designed to provide parents, students, and educational agencies with information on how to access the California Office of Administrative Hearings special education due process hearing and mediation system. These FAQs were developed in consultation with the California Department of Education.

What is OAH?

The Office of Administrative Hearings (OAH) provides a neutral forum for fair and independent resolution of matters while ensuring due process and respecting the dignity of all. OAH is divided into two statewide divisions: General Jurisdiction and Special Education Division. OAH's Special Education Division provides Administrative Law Judges to hear disputes as well as to provide mediation and settlement services throughout the state to school districts and parents of special needs children. The Special Education Division has regional offices in Laguna Hills, Sacramento and Van Nuys.

What happens when there is a disagreement about the special education needs of a student or whether a student needs special education and services?

When a disagreement arises about a child who has (or is suspected of having) special education needs, a request for due process hearing may be filed. The request for due process must be in writing, such as a letter. Alternatively, a parent, student or education agency may use a form that has been developed by OAH and CDE in order to submit a request for due process.

Where can these forms be obtained?

OAH and CDE have developed a form entitled "Request for Due Process Hearing and Mediation" to assist parties in filing a request for hearing. Another form for mediation only has also been developed and is entitled "Request for Prehearing Mediation Only." You can obtain these forms on OAH's website at www.oah.dgs.ca.gov or by writing or telephoning the Office of Administrative Hearings, Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833, (916) 263-0880. Forms may also be obtained by contacting the California Department of Education at (916) 319-0800 or by visiting their website at www.cde.ca.gov.

How do I ask for a due process hearing or a mediation only?

To begin the process, a “Request for Due Process Hearing and Mediation” or a “Request for Prehearing Mediation Only” must be filed with the OAH. Although OAH has regional offices, all due process requests must be filed in Sacramento. The party requesting a due process hearing must at the same time send or deliver a copy of the request to the other party or parties. The request may be sent via facsimile (fax) to 916-376-6319, hand delivered or mailed to the Office of Administrative Hearings, Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833. At this time, OAH is unable to accept any requests for a due process hearing or mediation via email; however, OAH is working towards offering this filing option to parents, students, and educational agencies.

What is the difference between mediation and a due process hearing?

Mediation is a voluntary, confidential, informal meeting at which the parties and an experienced, impartial mediator attempt to resolve the dispute in a cooperative, nonadversarial atmosphere. The mediator does not provide advocacy or legal advice to either side, but facilitates communication between the parties. The participation of the neutral mediator makes it more likely that the parties will reach a mutually satisfactory resolution. Most mediations successfully resolve the dispute.

Most mediations occur as part of the due process hearing procedures. However, as noted, a parent or school district can request a "mediation only," which is a mediation that takes place without also requesting a due process hearing.

A hearing is a more formal, trial-like legal proceeding in which all parties are given a chance to present evidence and arguments before an impartial Administrative Law Judge (ALJ). The ALJ then issues a written decision, which is the final administrative decision resolving the matter.

Who may request a due process hearing or mediation only?

A parent or legal guardian of a student with a disability (or suspected of having a disability) may request a hearing or mediation. A school district or other educational agency may also make such a request. In some cases, the student may make a request. Each side of the disagreement is referred to as a “party.”

How long do I have to request a due process hearing or mediation only?

Education Code section 56505, subdivision (1), provides that a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. This is typically referred to as the “statute of limitations.” However, there are exceptions to the application of this

two-year provision, and OAH recommends that parents, students, and school district obtain advice from legal counsel to determine the viability of a request for due process.

What must be in a request for a due process hearing?

All requests for due process hearing and mediation are confidential. To be legally sufficient, a request for a due process hearing must contain all of the following information:

- 1) the name of the child, the address of the residence of the child, and the name of the school the child is attending;
- 2) if the child is homeless, available contact information for the child and the name of the school the child is attending;
- 3) a description of the nature of the problem, including facts relating to the problem; and (i.e., describing the facts of the disagreement, such as the “who, what, where, how, why and when/dates”);
- 4) a proposed resolution of the problem which is what the party wants the ALJ to order the other party to do.

What will happen to the student’s education during the due process hearing process?

The law requires that the student remain in his or her present educational placement during the mediation and hearing process until the ALJ issues a written decision, unless the school district and the parents agree otherwise. This requirement is often referred to as the “stay put” provision of the law. There are some specific exceptions to the stay put requirement when discipline is involved.

How will I know when my mediation and due process hearing have been scheduled?

You will receive a written document titled “Notice of Due Process Hearing and Mediation and Scheduling Order” approximately one week after filing a request for due process hearing. The notice will contain a date, time, and location of the mediation and due process hearing. It will also contain a date for a telephonic prehearing conference.

When will the due process hearing be scheduled?

The hearing is initially scheduled approximately 55 days after the hearing request is received, to allow time for the 30-day resolution session and for a mediation to take place. The average hearing takes approximately 5 days to complete

What happens in the first 30 days after the form is filed requesting a due process hearing?

Within the first 30 days after the request for hearing is made, the parties must have a meeting called a “resolution session.”

What is a resolution session?

Once a school district receives notice that a due process hearing request has been filed by a parent, the district has 15 days to hold a meeting with the parents called a resolution session. The resolution session must include someone from the district who has the power to make a decision for the district. The district’s lawyer is not allowed to come to the resolution session unless the parent brings a lawyer. This session gives parties an opportunity to resolve the dispute. If the dispute is not resolved within 30 days after the district has received the due process hearing request, then the hearing proceeds as scheduled in the Scheduling Order. There is no requirement in the law for a resolution session in district filed requests for hearing.

Does the resolution session have to include the entire IEP team?

The law requires participation by “relevant” IEP members who have knowledge of the complaint.

What is the process for notification of the resolution session?

The school district, not OAH, is responsible for convening the resolution session and assembling the required participants.

May the resolution session be waived?

The parents and the school district may mutually agree to waive the resolution session. This agreement must be in writing. The parents and the district may also agree to use mediation instead of holding the resolution session. If OAH receives a written waiver of the resolution session signed by both parties, the period allotted for the resolution session ends, and the matter proceeds to mediation and hearing.

What if the parents do not attend the resolution session?

If the parents refuse to go to the resolution session, then they have not met the legal requirements to get a due process hearing, and the case may be dismissed.

What if the case is settled in the resolution session?

If the case is resolved at the resolution session, then both parties sign a settlement agreement. The settlement agreement is a legal document that can be enforced by a state or federal court of competent jurisdiction. The parties have three business days after the settlement agreement is signed to cancel the agreement. If the agreement is cancelled, then the due

process hearing goes forward. If the parties reach an agreement at the resolution session they must notify OAH in writing.

If the resolution session is unsuccessful or cancelled, should the parties advise OAH?

Yes, because OAH will be able to advance the scheduling of a hearing date. If no communication is received, OAH will assume after 30 days that the resolution session was unsuccessful and the matter will proceed to mediation and hearing.

Do the parties have to wait 30 days before notifying OAH that they can't resolve issues in a resolution session and therefore need to proceed to hearing?

If the parties have reached an impasse prior to expiration of the 30-day period and submit to OAH a written statement to that effect, signed and dated by both parties, the matter will proceed to mediation and hearing. OAH will not consider the resolution period terminated based on one party's assertion that the parties are at impasse

What happens after the first 30 days has passed?

The parties will attend the prescheduled mediation.

What is mediation?

Mediation is a way of settling a disagreement through facilitated discussion. At mediation the parties have the help of a trained mediator, who is an unbiased, and independent. The mediator will help the parties try to find a solution that is acceptable to both parties. In mediation, the parties work together to try to find a solution that will satisfy both parties. The parties decide whether or not the dispute is settled. If the parties try mediation but can't reach an agreement, they still have the right to continue to a due process hearing.

What if one of the parties does not want to participate in mediation?

Mediation is a voluntary process. It is encouraged because it is more likely to lead to a settlement of the dispute, but participation in mediation is voluntary. If one of the parties declines the opportunity to mediate, the dispute will proceed to hearing.

What if I need an interpreter at the mediation?

If you need a language interpreter or an interpreter for the hearing or sight impaired, you must notify OAH before the mediation. OAH will provide the interpreter at state expense. When you ask for an interpreter, be sure to say what language or kind of interpreter you need.

Am I allowed to have an attorney represent me?

You may have an attorney represent you at mediation which is scheduled as a part of your due process hearing. You do not have the right to have an attorney appointed for you.

Where can I get assistance in finding an attorney or other representative?

OAH maintains a list of persons and organizations that can provide representation on a free or reduced cost basis. This list is available upon request and is on OAH's website. Other resources for obtaining legal representation may be available through the local school districts, or the internet.

Why should the parties participate in mediation?

Both federal and state law encourage the use of mediation for all special education disputes. The majority of special education disputes are resolved through mediation. Mediation is a preferred method for resolving disputes for a number of reasons, including the following:

1. The parties are more likely to maintain a cooperative relationship in the future if the settlement of the dispute is by mutual agreement.
2. Through mediation, the parties have a great deal of flexibility in reaching a mutually acceptable settlement. When the dispute goes to hearing, the ALJ makes the final decision, which may not be completely satisfactory to either party.
3. If the parties reach an agreement in mediation, the agreement is written and signed that same day and can be implemented immediately. If the case goes forward to hearing, the ALJ must take time to consider the evidence presented at the hearing and then write a decision informing the parties of his or her determination.
4. Mediation is less costly than a hearing in terms of time, money, and personal stress.

Is mediation confidential?

Except for enforcement purposes, any agreement reached and everything said in a mediation are confidential and are protected by law from being revealed in any other place. This is to encourage the parties to discuss their dispute candidly without fear of the later consequences of what they say.

What happens during mediation?

While all mediators have different ways of approaching mediation, most mediators begin with all of the parties in the same room. The mediator will explain how the mediation will proceed and will usually ask the parties to explain their positions regarding the dispute. The mediator will summarize the issues and invite discussion. Then the mediator may suggest that the parties adjourn to separate rooms. This is called "caucusing." During caucusing, the mediator goes back and forth between the parties trying to develop a basis for common ground and a written agreement. Sometimes the parties are brought back together; sometimes they are not.

How will the parties be notified of the mediation?

When a hearing or mediation is requested, OAH sends a notice to all the parties setting the mediation date. A mediator will be assigned shortly before the mediation. The identity of the mediator can be obtained by either calling the Sacramento OAH office or through the online calendar at www.oah.dgs.ca.gov.

Where will the mediation take place?

The mediation is usually held at the school district or a nearby OAH office.

What happens if the mediation is successful?

The parties enter into a written agreement resolving their dispute. OAH then closes the matter because the dispute has been resolved.

Is the process different when “mediation only” is requested?

The process is basically the same, except that attorneys and advocates cannot attend a mediation only. If parties are unable to resolve the dispute at the mediation only, the matter is closed. However, either party retains the option of filing a due process hearing request if the case is not resolved during mediation.

If mediation is unsuccessful, will the same ALJ be assigned to the due process hearing?

The mediation and hearing functions of OAH are kept separate, so that the parties in mediation will feel free to discuss their dispute candidly. A mediator never discusses the case with anyone else in the office. He or she only reports whether the mediation was successful or not. In addition, all documents that result from mediation are sealed in an envelope marked confidential.

What happens after an unsuccessful mediation and a party has requested a due process hearing?

The case will proceed to due process hearing before an ALJ on the date scheduled in the scheduling order unless postponed (see information on continuances below). A telephonic prehearing conference, also scheduled in the scheduling order, will be conducted prior to the hearing.

Who conducts the prehearing conference and the due process hearing?

An Administrative Law Judge (ALJ) from OAH is in charge of the due process hearing, just like a judge is in charge of a trial. The ALJ does not take the side of either party, and is independent of the school district and the California Department of Education. The ALJ

rules on all procedural matters, runs the hearing, listens to the evidence and arguments of the parties, and writes a final decision. The ALJ will have telephone conferences or meetings before the hearing, give written orders, and generally control the hearing process. All ALJs are licensed California attorneys who have received specialized training in the area of special education law and in the conduct of administrative hearings.

Do I need an attorney to go to a due process hearing?

If you are a party in a due process hearing, you do not have to have an attorney. You may represent yourself and your child. If you choose to represent yourself, you will need to know the law and rules that apply to your case. OAH cannot give you legal advice or help you present your case. You can also be accompanied throughout the hearing process by someone with special knowledge or training relating to the problems of special education students, at your own expense. At a parent's request, OAH will provide a mediator without charge to assist the parent in identifying the issues and proposed resolutions that are stated in the request for due process hearing. However, the OAH-provided-mediator can only assist with preparation of documents and answer questions about the process. The mediator cannot provide legal advice.

Am I allowed to have an attorney represent me?

You may have an attorney represent you at due process hearing. You do not have the right to have an attorney appointed for you.

Must I give notice to the other parties if I plan to use an attorney?

The law requires that a party notify all other parties ten days before a hearing if that party intends to be represented by an attorney at the hearing.

What about attorneys' fees?

Parents may be entitled to have attorneys' fees reimbursed if they prevail as a result of filing for a due process hearing. School districts may also have attorneys' fees reimbursed, but only if parents act in bad faith in using the hearing process. Attorneys' fees are not awarded by the ALJ hearing the case. Recovery of attorney's fees requires that a separate case be filed with the federal or state court.

Where can I get assistance in finding an attorney or other representative to represent me at the due process hearing?

OAH maintains a list of persons and organizations that can provide representation on a free or reduced cost basis. This list is available upon request and is on OAH's website. Other resources for obtaining legal representation may be available through the local school districts, or the internet.

What if I need an interpreter at the due process hearing?

If you need a language interpreter or an interpreter for the hearing or sight impaired, you must notify OAH before the mediation, hearing, or event where the interpreter will be needed. OAH will provide the interpreter at state expense. When you ask for an interpreter, be sure to say what language or kind of interpreter you need.

What if I can't attend the hearing on the day it is scheduled?

You may request a postponement, which is called a continuance, as long as you have "good cause" to do so. A request that the hearing be continued is simply a request by one or more of the parties that the hearing be rescheduled to a later date. Continuing the case also means that the time for issuance of a decision is extended.

What is "good cause" for a continuance?

In determining whether good cause exists for a continuance, the ALJ will consider the facts supporting the request for continuance, prior rulings by OAH on continuance requests, and the legal mandate for speedy resolution of special education disputes.

How do I request or respond to a request for a continuance?

Whenever possible, a party seeking a continuance should first contact the other party to inquire if the other party will agree to continue the hearing. If all the parties agree to the continuance, they should promptly communicate their agreement in writing to OAH. The parties must identify specific facts showing good cause for the continuance.

If the parties are unable to agree on a continuance of the hearing, the party requesting a continuance should submit a request in writing to OAH and at the same time send a copy of the request to the other parties. The written request should state the specific facts supporting the request for a continuance, indicate the time at which the parties learned of the facts that created the need for a continuance, and show that a copy of the request has been sent at the same time to the other parties.

If you wish to oppose a request for continuance, you must submit your reasons for opposing the request, in writing, to OAH within three (3) business days of the request for continuance.

What is OAH's procedure for ruling on a request for continuance?

All continuance requests are ruled on by a presiding administrative law judge (PALJ) or his or her designee. Until a ruling has been made on the continuance request, the parties should be prepared to proceed on the date and time previously scheduled.

What happens once a ruling is made on a continuance request?

If a continuance request is granted, the hearing will be rescheduled and the 45-day time limit will be extended accordingly. OAH will either provide the parties with a notice of the new hearing date or schedule a telephonic trial setting conference in order to set mutually agreeable dates for the prehearing conference and the hearing.

Are parties permitted to stipulate (agree) to continuances?

While parties may jointly request a continuance, by law, the parties must still establish good cause, which must be decided by PALJ. A stipulation by the parties is not a substitute for the requirement of finding good cause. However, the fact that the parties jointly request a continuance will be considered in the assessment of good cause.

Are parties permitted to stipulate to specific hearing dates as part of a continuance?

The law requires these matters to be heard within a specified time period. The parties are encouraged to cooperatively arrive at agreement hearing dates for the matter. OAH will consider the parties' preferences in resetting the matter once a finding of good cause for the continuance is determined.

Before the due process hearing begins, what other events will occur?

Before the hearing is held, various prehearing events may occur. Primarily these are motions, trial setting conferences, status conferences, and prehearing conferences.

What is a motion?

A motion is simply a written request that an ALJ rule on a particular issue prior to the due process hearing.

When should I make a prehearing motion?

The following are examples of issues that are appropriate for resolution through the filing of a prehearing motion:

1. Whether good cause exists for a continuance;
2. Determining the student's stay put placement pending resolution of the dispute;
3. Dismissal of a party or parties; and
4. Consolidation of two cases into one for hearing.

How do I make a prehearing motion?

A party may obtain a ruling on a prehearing issue by submitting a written request for a ruling. This is called a motion. While OAH has regional offices, all motions must be filed at the Sacramento location. The written motion should state the specific facts and legal

authority supporting the motion, and indicate that a copy of the motion has at the same time been sent to the other party or parties. When facts important to the motion are in dispute, declarations (affidavits) about the facts, made under penalty of perjury, should be included in the motions.

Before OAH rules on a motion, will OAH ensure that all parties get a copy of the motion?

The party making the motion must serve it on the other party at the same time it files the motion with OAH. OAH does not forward a copy of the motion to the other parties.

How and when do I oppose a motion? When will OAH rule on the motion?

The party wishing to file an opposition to a motion has three business days from the mailing of the motion to send a copy of the response to OAH and all other parties. After three business days OAH may rule on the motion, but its timing will depend on the nature of the motion, its urgency, and the nearness of the hearing date.

Are prehearing motions assigned to the ALJ handling the case?

Most motions filed before assignment of an ALJ to a matter will be handled by the Presiding Administrative Law Judge of the Sacramento office or his or her designee. Motions filed after the assignment of an ALJ to the matter will be handled by the ALJ assigned to hear the matter.

What is a trial setting conference?

It is a brief, unrecorded telephonic conference initiated by the ALJ from an OAH office during which the dates and times for further proceedings are set, such as the prehearing conference and the due process hearing. It gives the parties and the ALJ an opportunity to consult their calendars and agree on dates that are acceptable to all.

What happens if I do not participate in a trial setting conference?

The conference will proceed without you, and the other party and the ALJ will set dates for further proceedings that are convenient to them.

What is a prehearing conference?

A prehearing conference is a meeting, usually by telephone, of the ALJ and the parties that is held to organize the upcoming hearing. The parties may discuss with the ALJ almost any issue concerning how the hearing will proceed, such as the need for clarification of issues, the length of the hearing, additional dates for motions and the hearing, and the need for an interpreter or special accommodation at the hearing. The ALJ may cover the disclosure of witnesses, evidence, and exhibits. A prehearing conference may also decide which party will

put on its case first and what documentary evidence and witnesses will be presented by the parties. The parties are required to address these issues in written prehearing statements that must be filed three business days before the prehearing conference.

Will the same Administrative Law Judge who conducted the prehearing conference also conduct the hearing?

OAH makes every effort to assign the ALJ who conducted the prehearing conference to the hearing. However, scheduling problems may require that another ALJ be assigned to conduct the hearing.

What if I don't want to use the particular ALJ assigned to hear my case?

A peremptory challenge is the disqualification of the ALJ scheduled to preside over the hearing. A party can challenge an assigned ALJ one time for any reason. The challenge will be reviewed and if this challenge is granted, a different ALJ will be assigned. If a party wants to exercise a peremptory challenge, the challenge should be made as soon as an ALJ is assigned. This can be determined by contacting the Sacramento OAH office or from the calendar located on the OAH web site at www.oah.dgs.ca.gov . In no event can the challenge be made once the prehearing conference or hearing has started.

What should I do to prepare for the hearing?

In preparing for a hearing, a party must not only determine what issues need to be addressed by the ALJ, but must also prepare to present evidence during the hearing to support the party's position on those issues. Additionally, the law requires that, prior to the hearing, each party must make certain disclosures to the other parties, including notice of the following: (1) proposed issues; (2) proposed resolutions; (3) evidence to be presented at the hearing; (4) witnesses that may be called to testify; and (5) representation by an attorney.

Can I get my child's school records?

Parents have the right to examine all pupil records maintained by the school district that are related to their child and to receive copies within five business days after requesting them. Parents should call or write their school district to request access to pupil records.

Do I have to give notice of the evidence I plan to present during the hearing?

By law each party must provide to the other parties copies of all documents that the party plans to use during the hearing. Each party must also provide to the other parties a list of all witnesses who will provide testimony, and a brief description of their expected testimony.

When must the evidence be provided to the other party and to OAH?

The evidence must be received by the other parties at least five business days before the hearing. Copies of the evidence should not be sent to OAH, but a copy for the ALJ should be brought to the hearing instead. Another copy should be brought to the hearing for use by witnesses.

What happens if I fail to provide the evidence to the other party five business days prior to the hearing?

The ALJ has discretion to exclude the evidence.

How can I make sure witnesses appear at the hearing?

Most witnesses appear voluntarily when asked. Typically the school district will be calling many of the same witnesses, who can be questioned when they testify for the district. If a witness is unwilling to appear voluntarily, a subpoena (or a subpoena for records) may be obtained from OAH and served by the party wanting to ensure the presence of the witness or the records. The requirements for serving a subpoena must be observed or the subpoena will be ineffective. Those requirements can be found in Government Code sections 11450.05 through 11450.50. The Government Code can be found in a law library or on line at <http://www.leginfo.ca.gov>.

When will the due process hearings be scheduled?

Hearings are scheduled on any regular business day, depending on the availability of an ALJ, usually on mutually convenient dates chosen by the parties. The starting time will depend on the location and the time that will be required for the ALJ to travel to the hearing site. Most hearings begin at 9:30 am and end at 5:00 pm.

Where will the hearing be held?

The law requires that the hearing be held at a place reasonably convenient to the parent and the student. Hearings are usually held in local school facilities. The hearing room, at a minimum, should have one table for Student's representatives, one table for District's representatives, one table for the ALJ with a nearby electrical outlet, and one witness table. OAH has hearing rooms available in all its offices (Sacramento, Oakland, Los Angeles, Van Nuys, Laguna Hills, and San Diego).

Will OAH send copies of documents such as the notices of due process hearings to an advocate or a particular law firm upon receipt of written notice to do so?

OAH normally sends documents notice only to the parties to the matter. A written notice of representation must be received for each case before a notice will be sent to an advocate, a lawyer or a law firm.

What happens during the hearing?

The purpose of the hearing is to allow all parties to present evidence supporting their positions and to explain to the ALJ why they believe they should prevail on the issues being heard. The hearing is not governed by formal rules of procedure or evidence. Although the hearing is less formal than a court trial, the hearing will proceed in an orderly fashion that is similar to a trial.

At the beginning of the hearing, the ALJ turns on a recorder to make a record of the hearing and, after identifying the case and the parties for the record, briefly explains how the hearing will proceed. The ALJ may only speak with a party about the case in presence of the other parties. It is important to have any substantive discussions about the case on the record.

Once preliminary matters are completed, each party is given an opportunity to make an opening statement, which should provide the ALJ with a brief summary of the party's position on the issues being heard. Then evidence is presented. The party who requested the hearing is usually the party who presents evidence first. All witnesses are sworn to tell the truth. After one party has presented its witnesses and evidence, the other parties will call their witnesses. Each party will be given an opportunity to ask questions of the other parties' witnesses, and the ALJ may also ask questions of the witnesses. The ALJ may ask the parties to be flexible as to when witnesses are called to ensure that all relevant testimony is presented. At the end of the hearing, each party is allowed to make a closing argument. In some cases the ALJ may ask the parties to make oral closing arguments. In others, closing statements will be submitted in writing after the hearing. After closing statements are received, the hearing record is closed. The ALJ will then prepare a written decision, which will be sent to the parties.

What issues can be considered at the hearing?

State and federal law prohibit the consideration at a due process hearing of any issue that is not raised in the request for due process hearing, unless the other party consents, or unless, not later than five days before the hearing, an ALJ grants permission to a party to add an issue under Education Code section 56502, subdivision (e). A party that wishes to add issues to a case must file a motion for leave to amend the complaint. If a complaint is amended, the timelines for resolution sessions, mediations, and hearing start over again.

What are the rights of the parties during the hearing?

All of the parties have the following rights during the hearing:

- Right to representation. All parties have the right to be accompanied, advised, and assisted by counsel and by persons with special knowledge or training related to the problems of disabled children.

- Right to request the exclusion of witnesses. Any party may ask the ALJ to order prospective witnesses to remain outside the hearing room while other witnesses are testifying. This practice allows the ALJ to compare the testimony of witnesses who have not heard each other testify.
- Right to present evidence and argument. All parties have the right to call witnesses and present evidence that will help them prove their cases. They will also be given the opportunity to argue the merits of their cases.
- Right to confront and cross-examine adverse witnesses. All parties have the right to be present when witnesses testify against their positions and to ask them questions concerning their testimony.
- Right to written findings of fact and decision. The ALJ must prepare a written decision setting forth his or her factual findings, analysis of the applicable law, and final decision.

Do parents have any additional rights during the hearing process?

The law provides the following special rights to parents in addition to the rights set out above:

- Right to an interpreter. If the primary language of a party is other than English, an interpreter will be provided by OAH. It is important that the parties notify OAH well before the hearing that an interpreter will be needed.
- Right to close the hearing to the public. At the parents' request the ALJ will close the hearing to anyone but the participants.
- Right to a public hearing. Parents have the right, if they choose, to allow members of the public to attend the hearing.
- Right to presence of the student. Parents have the right to have their child present during the hearing.

What authority does the Administrative law Judge have at the hearing?

The ALJ has the authority to take all actions necessary to complete the hearing in an efficient and expeditious manner, and to render the final administrative decision. By law, the hearing officer is given additional specific authority to:

- Question a witness on the record before any of the parties does;
- With the consent of all parties, request that conflicting experts discuss an issue with each other while in the record;

- Visit the proposed placement site when the physical attributes of the site are at issue;
- Call a witness to testify at the hearing if all the parties consent, or if the hearing is continued for at least five days prior to the testimony of the witness;
- Order that an impartial assessment of the pupil be conducted (the cost of which will be paid by OAH);
- Put reasonable time limits on the hearing; and
- Initiate contempt sanctions and/or impose expenses and attorneys' fees against a party, attorney, or other representative for misconduct.

May I request that security be present at the hearing?

OAH will arrange for the presence of a security officer on request or when deemed necessary.

What happens if I do not attend the hearing?

If the person who requested the hearing does not appear at the hearing, the request for hearing may be dismissed or the hearing may proceed without that party, and a decision may be rendered based upon the evidence presented during the hearing.

How long will the hearing be?

Before the hearing, the ALJ and the parties will make an estimate of the time the hearing will take, and the ALJ will reserve that number of days on OAH's calendar. If it appears that the hearing will take longer, the ALJ has the discretion to obtain additional hearing days.

Does OAH set time limits for witness testimony?

The ALJ has the power to do so in any particular case.

Is telephonic testimony permitted?

Yes, telephonic testimony is permitted at the discretion of the ALJ. A witness testifying by telephone must have available all of the exhibits of both parties.

Are the technical rules of evidence followed in hearings?

The technical rules of evidence do not apply in a special education due process hearing. The rules for admitting evidence in due process hearings can be found in Title 5 of the California Code of Regulations, section 3082(b).

What legal rules apply to the hearing?

The ALJ is required to decide the hearing according to the legal principles set forth in the federal and state law, and in the decisions of courts interpreting those principles. OAH also relies on prior decisions of its own ALJs and of its predecessor agency, the Special Education Hearing Office, which by law may be used as persuasive, but not binding authority.

Where can I find prior OAH decisions?

OAH posts its decisions on its web site at www.oah.dgs.ca.gov. The OAH website also includes a link to the California Department of Education website which contains all hearing decisions

How do I file a document with OAH?

OAH accepts documents delivered by mail, personal delivery, or facsimile (fax) between 8:00 a.m. and 5:00 p.m. on regular business days. It is not necessary to file a document by more than one method. A party may not fax any document exceeding 35 pages in length. Usually, documents will be considered filed on the day received. However, documents not fully received by fax until after 5:00 p.m. will be considered filed on the next business day. A party faxing a document should not wait until just before 5:00 p.m. to fax it. OAH's fax number is 916-376-6319. As previously mentioned, OAH is unable at this time to accept any documents via email; however, OAH is working towards offering this filing option to parents, students, and educational agencies.

Must I send a document to the other party or parties at the same time?

A document is not considered properly filed unless the document itself shows that the party filing it delivered the document to all other parties on the same day it was sent to OAH.

What happens when a filing deadline falls on a weekend or a holiday?

When a filing deadline falls on a weekend or holiday, the deadline is automatically extended to the next business day.

How long does the process take?

Most disputes must, by law, be heard and decided within 45 calendar days of the receipt of a request for a due process hearing. This timeline does not include time used by a continuance (postponement) requested by a party and granted by OAH, or time used by the resolution session process. Expedited hearings, which involve student discipline, must be held within 20 school days of the receipt of the complaint, and a written decision must be issued within 10 school days after the hearing.

What if I disagree with the decision?

Any party has the right to appeal the decision to a state or federal court of competent jurisdiction within 90 days of the receipt of the decision, but no later. The hearing is recorded, and parents have the right to a written verbatim transcript of the hearing. If a parent wishes to have such a transcript, the parent should submit a request in writing to OAH.

What can a parent do if a school district fails to comply with a mediation agreement or hearing decision?

If a school district or other agency does not comply with the provisions of a settlement agreement or hearing decision, a parent may file a complaint with the California Department of Education, Special Education Division, Procedural Safeguards Referral Service, 1430 N Street, Sacramento, CA 95814, Attention: PSRS intake, telephone: 800-926-0648, facsimile: 916-327-3704. A parent may also file a lawsuit in an appropriate court.

How can I get answers to questions that are not answered here?

Anyone may call OAH at 916-263-0880 for further information about the due process hearing and mediation system. OAH staff cannot give legal advice, but will answer any procedural questions a parent or a district may have.