

MEDIATION AND DUE
PROCESS HEARING
INFORMATION PACKET

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Information

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1. Mediation Process

Mediation is a managed process during which the parties discuss their dispute in an attempt to reach a mutually acceptable resolution. The manager of the process is called the mediator. OAH provides trained mediators at no cost to the parties. The mediator is neutral and skilled in methods of facilitating effective communication between the parties. In mediation, the parties themselves determine if a resolution is reached, and if so, the terms of their agreement. Mediation in special education cases has produced mutually satisfactory resolutions in the vast majority of cases. The Office of Administrative Hearings strongly encourages participation in mediation. If mediation is unsuccessful, the matter will proceed to the prehearing conference and due process hearing, unless the filing party only requests a mediation in their case.

MEDIATION V. DUE PROCESS HEARING		
	MEDIATION	HEARING
A neutral, trained mediator helps parties in an informal setting	✓	
Offers to settle are kept confidential	✓	
Parties control the outcome of the case	✓	
Settlement can be implemented right away	✓	
Less focus on legal arguments and more focus on solutions	✓	
Requires presenting evidence and witnesses		✓
A more formal setting		✓
An Administrative Law Judge controls outcome of the case		✓
No changes to program and services until a hearing decision		✓

Effective November 6, 2017, parties must ask OAH in writing to schedule mediation

What is mediation?

The manner in which the mediation is conducted will vary somewhat depending on the methods that a particular mediator has found most successful, and the needs of the parties participating in the mediation. Typically, the mediator will begin with his or her own introductory remarks explaining his or her role, the roles of the other participants, and the steps that will be followed during the mediation. The introduction will include a discussion of proposed “ground rules” or guidelines to be agreed upon by the parties before engaging in mediation. These guidelines often include an agreement not to interrupt another person while speaking, a promise not to personally attack another party, and commitments not to engage in sarcasm or other counterproductive behavior.

After opening remarks, the mediator may ask each side to give brief remarks concerning the dispute and what they want as a result of the mediation. It is best to focus remarks in joint session on the solutions each party wishes to reach. The mediator will next invite parties to begin the most important part of the mediation, the negotiation stage. Most of the mediation will be spent in negotiation with the parties exploring all reasonable options for resolution of the dispute. During this stage, the parties may be in a room together or may meet with the mediator in private. This is often called a “caucus.”

During the private caucus with the mediator parties can discuss the details of their case; what they feel are the strengths of their case; and, what concerns they may have. The mediator will facilitate discussion and exchanges of settlement offers. It is important to tell the mediator what a party wants to share with the other party and what they want to keep confidential during the negotiations.

CONFIDENTIALITY: By federal and state law, all settlement discussions during mediation are confidential and may not be used by any participant as evidence in a later due process hearing or civil proceeding.

SETTLEMENT AGREEMENT: Once the agreement is signed by the parties, the document becomes a binding contract. Each party signs the agreement and each will receive a copy. The terms of the agreement may be enforced in court or, if the parent believes a school district or other agency is not complying with the agreement, by filing a compliance complaint with the state Department of Education

REQUIRE MORE INFORMATION: Multiple mediation sessions are generally not required. However, if the parties agree that critical information is not available, they may agree to continue the mediation for a short time to obtain the information. This might include an additional evaluation, an opportunity for parties to observe a proposed placement, or participation by one or more experts in the mediation.

2. Requesting Mediation

The parties are encouraged to work together to find a mutually acceptable date for mediation. The joint request for mediation must be made in writing to OAH via U.S. mail or secure e-File at <https://www.applications.dgsapps.dgs.ca.gov/oah/oahsftweb>. OAH will notify parties within 2 business days as to the status of their requested mediation date.

Unrepresented parents/guardians may contact the case manager listed on the scheduling order if they need assistance in scheduling a mediation date. OAH staff will also contact unrepresented parties to see if they need assistance in scheduling mediation.

Parties should carefully choose the day for mediation. Requests to cancel mediation without a good reason, may result in a denial of a subsequent request for mediation. The parties should notify OAH of any mediation cancellation by noon on Friday the week before the scheduled date or as soon as the need for cancellation arises.

Parties may ask to continue the due process hearing or prehearing conference, to participate in mediation. If the requested mediation date is after the currently scheduled hearing date, the parties may request a continuance of the hearing and provide OAH with proposed continued hearing dates.

You must file the request for continuance with OAH, Special Education Division at the Sacramento location, via U.S. mail or Secure e-File and serve the request upon the opposing party. Parties are encouraged to meet and confer as to available dates for the continued due process hearing.

Parties may use the Request to set Mediation (and for Continuance of Initial Due Process Hearing, if required) Form. The form is not required and parties may submit their requests in a letter or as a motion. The request **must** be filed with OAH by the due date indicated on the scheduling order.

The joint request for mediation must be made in writing to OAH via U.S. mail or Secure e-File at: <https://www.applications.dgsapps.dgs.ca.gov/oah/oahsftweb>

3. 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 the ALJ.

Each party is required to submit a Prehearing Conference Statement at least **3 business days before 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 Secure e-File to <https://www.applications.dgsapps.dgs.ca.gov/oah/oahsftweb>. The parties need not mail a hard copy of any document sent by Secure e-File.

More information on the mediation process can be found in the Special Education Handbook <http://www.documents.dgs.ca.gov/oah/SE/SE%20Handbook.pdf> You may contact the case manager listed in the Scheduling Order if you would like a hardcopy of Special Education Handbook to be sent to you.

The Prehearing Conference Statement shall include the following:

Each party's estimate of the time necessary to complete the due process hearing;

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;

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;

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;

A list of documentary evidence that the party intends to present, and a description of any physical or demonstrative evidence; and,

The need for an interpreter or special accommodation at the due process hearing.

*Prehearing Conference
Statement is due 3
business days before the
Prehearing Conference*

4. Prehearing Motions and Continuance

All prehearing motions including requests for continuances shall be served upon the opposing party and filed with the OAH, Special Education Division at the Sacramento location, or via Secure e-File

<https://www.applications.dgsapps.dgs.ca.gov/oah/oahsftweb>. 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.

Any prehearing motion is due to OAH no later than the date the prehearing conference statements are due or show good cause why it was not possible to file the motion by that date. Absent an order continuing the matter, the prehearing conference statements must be filed, even if there is a pending motion to continue.

If you wish to continue the due process hearing or prehearing conference, you must file your request with OAH. The parties are encouraged to meet and confer as to available dates for the due process hearing. If the parties reach agreement on dates, the scheduling order includes a form that can be used to request new dates; however you are not required to use the form.

*All filings must be filed with OAH, at
the Sacramento location or via
Secure e-File
<https://www.applications.dgsapps.dgs.ca.gov/oah/oahsftweb>*

5. 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. If you represent yourself, you may be accompanied or advised by a person knowledgeable about your child or special education matters.

1. **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.
2. **Attorney Representation:** You must also inform the other party (or parties) **at least 10 calendar days in advance**, if you plan to be represented by an attorney at the hearing.
3. **Evidence:** At least **5 business days** before the hearing, you must give the other party 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. The parties need not submit their exhibits to OAH before the hearing. Exhibits must be pre-marked prior to the hearing, and placed in binders and tabbed. Each tabbed exhibit binder must contain a detailed index of its contents, including page numbers. Any documentary exhibit more than four pages in length must be Bates-stamped or internally paginated. In the event of duplicate exhibits, the most legible version will be used. Each side must 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.

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. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.) and all laws governing accessibility of government facilities to persons with disabilities. 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 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.

REQUEST FOR REASONABLE ACCOMMODATION: OAH complies with the Americans with Disabilities Act, the Rehabilitation Act of 1973 (the Unruh Civil Rights Act 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, at (916) 263- 0880.

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 contacting OAH Sacramento Special Education Division at (916) 263-0880.**

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. A peremptory challenge is not allowed if it is made after the hearing has commenced.

A peremptory challenge must be directed to the Presiding ALJ, served on all parties if made in writing, and filed in compliance with the time requirements in section 1034. If at the time of a scheduled prehearing conference, an ALJ has been assigned to the hearing, any challenge of the assigned ALJ must be made no later than commencement of the prehearing conference. To determine the identity of the Administrative Law Judge who will hear the case contact **[case manager name]** (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).

*Final settlement
agreement after hours call
in line
(916) 263-6035*

6. SETTLEMENT

If the parties reach settlement in the case, OAH must be notified as soon as possible. Notification is to be in writing, but need not include the entire contents of the settlement agreement. It is 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 will also suffice. The matter will remain on calendar and will not be dismissed until OAH receives the proper notification.

If the parties reach settlement and finalize an agreement after hours or need to cancel a mediation at the last minute (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 or the mediation needs to be cancelled and that an ALJ will not need to attend the hearing or mediation. 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 sent by Secure e-File to OAH at <https://www.applications.dgsapps.dgs.ca.gov/oah/oahsftweb> or a written notice of [cancelled mediation](#).

7. Service of Documents

Rather than being served with copies of all documents relevant to your case by U.S. mail, you have the option of having these documents served on you electronically by way of Secure e-Filing to an email address you select.

To select service of documents by way of Secure e-File, please complete the consent to electronic service agreement (**CESA**) form located on our website: <http://www.dgs.ca.gov/oah/SpecialEducation/Forms.aspx> and submit it to:

[case manager name]
Office of Administrative Hearings
Email: <https://www.applications.dgsapps.dgs.ca.gov/oah/oahsftweb>