

A PARENT'S GUIDE:  
UNDERSTANDING THE SPECIAL EDUCATION  
HEARING PROCESS AT THE  
OFFICE OF ADMINISTRATIVE HEARINGS

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California Office of Administrative Hearings

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## Welcome to the Office of Administrative Hearings

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The mission of the Office of Administrative Hearings (OAH) is to provide a neutral forum for fair and independent resolution of matters in a professional, efficient, and innovative way, ensuring due process and respecting the dignity of all.

OAH is a quasi-judicial tribunal, similar to a court, but less formal. OAH is divided into two statewide-divisions, which are the General Jurisdiction Division and the Special Education Division. The Special Education Division conducts hearings, mediation, and settlement services throughout the state to parties involved in special education disputes, including parents of students with disabilities, school districts, special education local plan areas (SELPA), county mental health departments, and charter schools. Even though the Special Education Division has three regional offices located in Sacramento, Van Nuys, and Laguna Hills, it operates as one OAH serving the needs of the parties across the state. Sacramento is the central office, and all papers and documents must be filed in Sacramento, regardless of your location in the state. The contact information for the Sacramento Office is listed below.

Special Education Division Offices		
(916) 376-6319 Fax (for all offices) (916) 274-6035 Statewide after-hours cancellation/settlement line		
Sacramento 2349 Gateway Oaks Drive, Suite 200 Sacramento, CA 95833 (916) 263-0880	Van Nuys 15350 Sherman Way, Suite 300 Van Nuys, CA 91406 (818) 904-2383	Laguna Hills 23046 Avenida De La Carlota, Suite 750 Laguna Hills, CA 92653 (949) 598-5850

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**Revisions:** OAH reserves the right to amend, suspend, or revoke the text of this manual at any time in its discretion. For information on how to get the most current version of this

manual, see chapter/section/forms below. For information on how to provide comments regarding this manual, see chapter/section/forms below.

**Availability of Parent Manual In Other Languages or Other Formats:** This manual is available in English, Spanish, Dutch, French, Portuguese, and \*\*\*. You may request that the manual be made available to you in a language other than these languages by sending a written request to OAH. You may prepare your request in your native language.

OAH can also make the manual available in other typefaces, in larger type, or on tape. If you have a need to have the manual made available to you in any other format, please contact OAH.

**Providing Documents to OAH:** This manual contains many references to documents filed with OAH. You may file documents with OAH only at the Sacramento Office by fax, mail, or hand delivery, but not all three. Regardless of whether you use fax, mail or hand delivery, please provide only *one copy* of each document to OAH.

**Providing Documents to Other Parties:** If any party in your due process matter is represented by an attorney, you must serve all documents (including motions, letters, requests, exhibit binders, and any other document) on the attorney, rather than on the party. Remember, you must send a copy of whatever document you send to OAH to the other parties and their attorneys. For example, if there is a school district and mental health involved in your case, you would need to send a copy of the document to both.

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## REFERENCES

“CDE” means the California Department of Education.

“Complaint” refers to a request for due process hearing, or a request for due process hearing and mediation, filed with OAH.

“FAPE” means a free appropriate public education, as defined under federal law.

“IDEA” means the federal Individuals with Disabilities in Education Act. (20 U.S.C. Sec. 1400 et seq.) Although “IDIEA” is the formal acronym based on the 2004 amendments to the IDEA, the acronym of “IDEA” is used in this Manual, and you should read it as referring to both.

“IEP” means an individualized educational program

“OAH’s Web site” refers to [www.oah.dgs.ca.gov](http://www.oah.dgs.ca.gov).

“Parents” includes parents, legal guardians, or the holder of the educational rights of a student who has a disability or is suspected of having a disability, or a student who has or is suspected of having a disability and is 18 years of age or older.

“Parties” includes any person or entity that is part of a mediation or due process proceeding before OAH.

“School district” includes local educational agencies. “Local educational agencies” is used generically to refer to all educational agencies involved in educational decisions regarding a student with a disability. The term school district may include a county mental health department, a SELPA, or a charter school.

“Students with disabilities” includes students who are eligible for special education and related services under the IDEA.

## **INTRODUCTION**

The IDEA is a federal law that recognizes that a disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. The IDEA states that improving the educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities. The California Legislature has stated its intention to ensure that students with disabilities are provided their rights to appropriate programs and services that are designed to meet their unique needs under IDEA. It is estimated that there are over 700,000 students with disabilities who are eligible to receive special education services in California's schools.

OAH is responsible for administering the procedural safeguards under the IDEA. This means that if a parent, student, or school district anywhere in California has a disagreement regarding the educational program for a child eligible for special education and related services and either party files a complaint with OAH, the OAH will resolve the dispute.

Once a party has filed a complaint with OAH, the procedural safeguards of the IDEA provide for a three-step process for complaint resolution: (1) A resolution meeting if the complaint is filed by parent or student (there is no resolution session if the school district files the complaint with OAH); (2) Mediation by a neutral mediator from OAH if the parties agree to mediation; and (3) A due process hearing during which an Administrative Law Judge (ALJ) from OAH will take evidence, including testimony and documentary evidence, and issue a written decision resolving the issues in dispute. The hearing and mediation are generally held in a location convenient to the parents, which is typically the school district office.

OAH also offers “mediation-only” for parties who have a dispute, but have not yet decided whether to file a complaint requesting a due process hearing.

OAH is an independent state agency and is not affiliated with parents or school districts. OAH provides a neutral forum for fair and independent resolution of matters, and ensures that due process is afforded to all parties. Although OAH proceedings are less formal than court proceedings, OAH decisions in special education cases are final decisions and must be appealed to state or federal court.

## **SCOPE OF THIS PARENT MANUAL**

The California Department of Education (CDE) has given OAH the responsibility for issuing this parent manual. This manual is designed to assist parents in understanding and working through California’s special education dispute resolution system. It describes how to request, prepare for, and participate in, mediation and a due process hearing.

OAH also offers outreach training sessions throughout California to help parties generally understand the OAH process. A complete listing of OAH outreach training sessions and the agencies sponsoring those sessions is available on the OAH website.

Staff in the Sacramento Special Education office is available to assist parents in further understanding the process and answering questions regarding their case. The phone number for the Sacramento office is (916) 263-0880. Information is also available on OAH's website.

### **HOW TO FIND INFORMATION ON AN ADMINISTRATIVE LAW JUDGE (ALJ) OR MEDIATOR**

OAH maintains current biographical information about its ALJs on the OAH website. The Special Education tab on the OAH website includes a listing of ALJs who hear special education matters, and the educational background of each ALJ. This is not intended to be a complete professional biography of each ALJ.

You may obtain a copy of the training records of the ALJ assigned to your case by making a written "public records act request." In order to make a public records act request, you must write a letter to the presiding judge, state that it is a public records act request, and request the training records for the ALJ assigned to your case.

## **CHAPTER 1 – OAH JURISDICTION AND SERVICES**

The special education dispute resolution process, or procedural safeguards, described in this manual are the procedures that are followed by OAH when a party files a complaint with OAH under the IDEA and seek the services of OAH to resolve the dispute.

### **CASES THAT OAH MAY HEAR (JURISDICTION)**

OAH may conduct mediations and due process hearings in special education matters only when it has jurisdiction, or the legal authority, to act. Under federal and state law, OAH has jurisdiction to act when parents and school districts disagree regarding the identification, evaluation, educational placement and services for a student with a disability or the provision of a free appropriate public education (FAPE) for that student.

### **CASES THAT OAH CANNOT HEAR (NO JURISDICTION)**

If a case does not involve the identification, evaluation, placement, or the provision of a FAPE for a student with a disability, OAH does not have authority to conduct mediation or a due process hearing in the case.

Examples of the types of cases that OAH does NOT have jurisdiction to hear include the following:

- A compliance complaint that should be directed to the CDE. For example, CDE’s compliance complaint office is the proper place to file a complaint that a school will not permit review of school records.
- Claims related to enforcement of OAH’s orders and decisions.
- A claim alleging a violation of a Section 504 Plan under the Rehabilitation Act.
- A claim for violation under the Americans with Disabilities Act.
- A claim for civil rights discrimination under 42 U.S.C. Section 1983.
- A claim for violation of the No Child Left Behind Act (NCLB), including teacher qualifications under NCLB.

### **WHAT DISPUTE RESOLUTION OPTIONS DOES OAH OFFER?**

When a disagreement arises involving a special education matter over which OAH has jurisdiction, the parent or the school district may file with OAH (1) a request for “mediation only;” (2) a request for a due process hearing; or (3) a request for a due process hearing and mediation. For purposes of discussion, a request for mediation only will be referred to as a

request for mediation only, and a request for a due process hearing or for a due process hearing will be referred to as a “complaint.”

### **WHAT IS THE DIFFERENCE BETWEEN A REQUEST FOR MEDIATION ONLY AND A REQUEST FOR A DUE PROCESS HEARING AND MEDIATION?**

When a party files a request for mediation only, the parties are offered mediation only, and not a due process hearing. The law specifically excludes attorneys and advocates from attending a mediation-only. Parties request mediation only when they have a dispute about a special education matter, but are not ready to start the formal hearing process.

When a party files a request for a due process hearing and mediation, OAH will offer mediation and will also conduct a due process hearing unless the parties reach a settlement prior to the 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, non-adversarial atmosphere. Mediation is handled in the same manner whether it is conducted as part of a mediation only or a due process filing. The mediator does not provide advocacy or legal advice to either side, but facilitates communication between the parties. The neutral mediator guides the parties through discussion and negotiations to help them reach a voluntary resolution on terms that all parties agree upon. Mediation increases the likelihood that the parties will reach a satisfactory resolution of the dispute and is successful in over 70 percent of cases filed with OAH. Over 95 percent of the cases filed with OAH are resolved without the need for a due process hearing.

### **WHO MAY FILE A REQUEST FOR MEDIATION ONLY OR A COMPLAINT?**

A parent or legal guardian of a student who has a disability, or is suspected of having a disability, may file a request for mediation only or a complaint with OAH. A school district or other educational agency, such as the county mental health department, may also file a request for mediation only or a complaint. In some cases, such as when the student is 18 years of age or older and does not have a conservator, the student may make file a request for mediation only or a complaint. If a student is over 18 years of age, the party filing with OAH must include information about whether the educational rights have been transferred to someone other than the student.

### **WHERE MAY I OBTAIN A REQUEST FOR MEDIATION ONLY FORM OR A COMPLAINT FORM?**

A sample "Request for Due Process Hearing and Mediation" (**FORM 1**) and a sample "Mediation Only Request Form" (**FORM 2**) are included in the appendix of this manual. In addition, the forms may be downloaded from the OAH website, or may be obtained 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](http://www.cde.ca.gov).

### **DO I HAVE TO USE THE FORMS?**

No, you do not have to use these forms. A party may write a request for mediation only or complaint in letter form and will be sufficient so long as it contains the required information. By using the forms described above, one can help ensure that the required information will be included in the request or complaint.

### **WHAT INFORMATION MUST BE INCLUDED?**

Your request for mediation only or complaint must include the following information:

- The name, residence address of the student, and the name of the school the student attends.
- A description of the problem or problems to be resolved, including facts relating to each problem.

Be specific and describe the how, what, when, where and why of each problem to be resolved. Be sure to include dates, such as which school year or years involved, and the date or dates of the individualized educational program (IEP) involved.

- A description of the proposed resolution. For example, describe the placement or services or other resolution you want.

### **WHAT IF I NEED ASSISTANCE IN FILLING OUT THESE FORMS?**

You may contact OAH if you have basic or general questions about filling out the forms. However, please remember that OAH may not give legal advice. If you require help with drafting your complaint, you may request that OAH provide you with the services of a mediator to assist you in completing the form. You must make this request in writing. In addition, OAH maintains a list of attorneys and advocates who provide free or reduced cost services. This list is available on OAH's website.

### **HOW CAN I FIND A FREE OR LOW-COST ATTORNEY OR ADVOCATE?**

OAH is required to maintain a list of free or low-cost attorneys and advocates and to make that list available to the public. The attorneys or advocates listed on this list self certify that they are free or low cost. You should contact the individual attorney or advocate and determine what free or low-cost services they provide. OAH does not represent that the individuals placed on the list offer free or low-cost services. It is important that if you choose to use the list that you contact the attorneys and advocates to discuss their fees. You

may obtain a copy of this list by calling OAH or CDE. This list is also available on the OAH website at [www.oah.dgs.ca.gov](http://www.oah.dgs.ca.gov).

### **WHAT IF I NEED AN INTERPRETER OR OTHER ACCOMMODATIONS?**

OAH offers services in the native language of the parents, and will honor requests for reasonable accommodations so that all parents who wish to access OAH services are able to do so at no cost to parents. If you require the assistance of an interpreter or other accommodation, please be sure to include that information in your request for mediation only or request for due process hearing. Please include your native language, the type of interpretation you require, or the type of accommodation you require.

### **WHAT DO I DO WITH THE COMPLETED REQUEST FOR MEDIATION-ONLY OR REQUEST FOR DUE PROCESS HEARING FORM?**

All requests for mediation only and all complaints are required to be filed by facsimile or mail with the Sacramento office of OAH, Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833. The Sacramento facsimile number is (916) 376-6319. You may also hand deliver your documents to the Sacramento office of OAH. Do not file your request at any regional office other than Sacramento.

At the same time that the form is sent to Sacramento, the party requesting a due process hearing must send or deliver a copy of the request or complaint to the other party or parties you are filing against, such as the school district or the county mental health department. The school district will always be one of the parties. You must indicate somewhere on your letter or the request or complaint form that you send to OAH that you have sent a copy of that letter or form to the other party or parties, the method of delivery, and when the copy was sent, faxed, or delivered. This is called a “proof of service”. If you do not provide a copy of your request or complaint to the school district and any other parties, and a proof of service to OAH, your request or complaint may be dismissed or returned to you until you provide proper notice.

As an example of a “proof of service,” if your request or complaint is in the form of a letter, you can type or write at the bottom of the page the name and address of the person or entity to which you sent the request or form. You may also use a form called a Proof of Service developed for this purpose (**FORM 3**).

If you mail the request or complaint to the other party or parties, you may want to consider sending the form with a return receipt requested or sending it by certified mail so that you have a record (document) showing the other party or parties received your request or complaint. You should keep a copy of all documents that you send and receive in connection with your case.

## **IS THE SCHOOL DISTRICT REQUIRED TO RESPOND TO MY REQUEST FOR DUE PROCESS HEARING?**

The school district is required to respond to your request for due process hearing within ten (10) days unless the school district provided you “prior written notice” about the subject matter in your complaint. OAH does not have jurisdiction over a response to a complaint and neither party is required to file the response to the complaint with OAH.

## **WHAT IF THE SCHOOL DISTRICT FILES THE REQUEST FOR MEDIATION-ONLY OR DUE PROCESS HEARING?**

Sometimes a district will file a request for mediation-only or a for due process hearing with OAH. One of the most commonly filed complaints by a school district is a request that the school district be allowed to assess the student. School districts also are required to file a complaint with OAH if the parent disagrees with a district assessment and requests an Independent Educational Evaluation, but the school district denies that request. Sometimes school districts file a complaint after making an IEP offer to a student. In this type of complaint, the school district is requesting that OAH determine that the offer made in the IEP constitutes a FAPE.

If the school district files a request for mediation only or a complaint, the school district is required to send a copy to you. In addition, OAH will send you a letter giving you information about the dates calendared or mediation (in the case of a mediation only request) or mediation and due process hearing.

If the school district files a request for a due process hearing, you are required to send a response to the complaint to the school district within ten (10) days of receiving the complaint. In your response, you must specifically address the issues raised in the complaint. You are not required to file a copy of this response with OAH.

## **WHAT HAPPENS AFTER A REQUEST FOR A DUE PROCESS HEARING IS FILED?**

When OAH receives a request for due process hearing, it is the policy of OAH that within 48 hours OAH will issue a “Scheduling Order and Notice of Due Process Hearing and Mediation” and mail it to all parties. **(FORM 4)** Please read this Scheduling Order very carefully and keep a copy of it handy. The Scheduling Order will contain important information about the process, including the name of the OAH calendar clerk assigned to your case. The OAH calendar clerk is your point of contact for all questions related to your case. If you have questions about the process, please call your OAH calendar clerk.

Your Scheduling will also give you important information about the dates assigned for mediation, a prehearing conference, and hearing. State and federal law require speedy resolution of due process matters in special education cases, and OAH is required to adhere to strict timelines to ensure that your case is handled from start to finish in a timely manner.

The matter will proceed on the dates in the scheduling order unless OAH grants a “continuance” of the hearing dates upon a showing of good cause. Continuances are discussed later in this manual. (See section XX.)

*Parent-filed cases:*

When a parent files a request for hearing or for mediation only, the following procedures are generally followed:

Resolution Session:

State and federal law require a 30-day resolution period as part of your due process proceeding in parent-filed cases. Therefore, OAH will not schedule your mediation or due process hearing during this 30-day resolution period. During this resolution period, the school district is required to schedule and convene a resolution meeting with you. The purpose of this resolution meeting is to give you and the school district the opportunity to resolve the dispute short of a due process hearing. (See Chapter \_\_\_ regarding resolution sessions.) OAH does not have any jurisdiction or authority over the resolution period.

OAH will include with your Scheduling Order a form for you to report the outcome of your resolution session. Please mail or fax the form to OAH in Sacramento. If the school district fails to convene a resolution session within 15 days of receiving your complaint, you may request that OAH advance the mediation and hearing dates. (See Chapter \_\_\_ regarding resolution sessions.)

Mediation:

Your mediation will generally be calendared on the thirty-fifth (35) calendar day after your complaint is filed. (See Chapter \_\_\_ regarding mediation.) Your Scheduling Order will include the name of the mediator assigned to your case, and the date, time, and location of your mediation.

Prehearing Conference:

Your prehearing conference will be calendared on a Monday or Friday approximately one week prior to the date scheduled for the hearing. (See Chapter \_\_\_ regarding prehearing conferences.) Your Scheduling Order will include the date and time of your prehearing conference, as well as what is required to be filed prior to the prehearing conference. The prehearing conference will be held by telephone. (See Chapter \_\_\_ regarding prehearing conferences.)

### Due Process Hearing:

Your due process hearing will generally be set on the fifty-fifth (55) calendar day after your complaint is filed. (See Chapter \_\_\_ regarding due process hearings.) Your Scheduling Order will include the date, time, and location of your due process hearing.

### Continuances:

Although OAH is required to adhere to the timelines provided by statute, OAH may reschedule the initial mediation date based on a request of the parties, and may continue the prehearing conference and due process hearing dates if the parties mutually agree to a continuance. A continuance may also be granted if one party files a request for a continuance based on good cause even if the other side does not agree to the continuance. Your Scheduling Order will be accompanied by a form to request to change the due process hearing date initially assigned to your case. The forms are also available on the OAH website.

### *School district-filed cases:*

In cases filed by school districts, the timelines for hearing are shorter. In district filed cases, there is no resolution session required or scheduled, the mediation will be set generally on the fifteenth (15) day after the complaint is filed, and the due process hearing will generally be set on the twenty-fifth (25) day after the complaint is filed. The prehearing conference will be scheduled on a Monday or Friday approximately one week before the hearing.

### *Expedited due process filings:*

In cases involving “expedited” due process hearings, the timelines are much stricter from those described above. An expedited hearing usually involves a disciplinary matter, and are generally filed after a manifestation determination hearing is held at a school. The law requires that an expedited due process hearing occur within twenty (20) school days from the date the complaint is filed, and that a decision by OAH be issued within ten (10) school days after the hearing. Your Scheduling Order in any case involving an expedited due process hearing will be assigned a mediation date, a prehearing conference date, and due process hearing date based on the timelines applicable to expedited due process matters. In cases involving “expedited” due process hearings, the mediation will be set on the tenth (10) day after the filing, a prehearing conference will be set on the fourteenth (14) day after the filing, and the expedited due process hearing will be set on the twentieth (20) school day after the filing. Expedited matters cannot be continued. If the matter is filed as an expedited case, the strict timelines outlined in your scheduling order will be enforced and you should anticipate having the hearing on the dates listed.

## **WHAT HAPPENS AFTER A REQUEST FOR MEDIATION ONLY IS FILED?**

When OAH receives a request for mediation-only, OAH will send to all parties a “Scheduling order for Mediation Only.” (FORM 4.5) The Scheduling Order which will contain the date, time, and place of mediation and the name of the mediator. The mediation is required to be held within fifteen (15) days of the filing of the request for mediation-only. (See Chapter \_\_\_ regarding mediation-only filings.) Your Scheduling Order in a mediation-only case will be accompanied by a form for you use to request a continuance of the date assigned by OAH for mediation. If the mediation only is not successful, the matter will be closed and no hearing will occur unless one of the parties decides to file a new request for mediation and due process hearing.

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## **CHAPTER 2 - THE RESOLUTION SESSION**

### **WHAT IS A RESOLUTION SESSION?**

When a parent files a complaint with OAH, the school district is required to convene a meeting called a "resolution session" within 30 days of the date of filing. A resolution session not required when a school district files a complaint or if either party files a request for mediation only. The resolution session is mandated by federal law, and the purpose of the resolution session is to give the parties the opportunity to resolve the dispute as quickly as possible. The process described in this chapter is consistent with federal law.

OAH does not have jurisdiction over resolution sessions. These sessions are between the school district and the parents. However, OAH does not calendar any mediations or hearings within the first 30 days after a request for due process has been filed in order to allow the statutorily mandated 30 days for the school district and parties to complete the resolution session. As described below, OAH may advance the dates for mediation and hearing if the parties waive a resolution session and notify OAH in writing, or either party fails to participate in the resolution session.

### **WHEN IS THE RESOLUTION SESSION HELD?**

Within fifteen (15) calendar days from the time a school district receives a copy of a complaint filed with OAH by a parent, the school district is required to hold a resolution meeting. The school district is required to hold the resolution meeting within thirty (30) calendar days from the time the school district receives a copy of the complaint. \

### **IS THERE A WAY TO CANCEL, OR WAIVE, THE RESOLUTION SESSION?**

The parents and the school district may agree to cancel (meaning to waive or to give up) the resolution meeting. **(FORM 5)**. When the parties waive the resolution session, they must provide OAH with a written agreement to waive, signed by both parties. When OAH receives a written waiver of the resolution meeting signed by both parties, the matter will proceed directly to mediation and hearing. When you waive a resolution meeting and notify OAH in writing, most likely the dates for hearing will be advanced so that the hearing will occur sooner.

### **AM I REQUIRED TO PARTICIPATE IN THE RESOLUTION SESSION?**

Yes. The resolution process is mandatory and the parents and the school district must both attend. If either the district or the parents decline to participate in the resolution process, certain consequences may occur, as described below.

If the parents do not participate in the resolution meeting, and the parties have not otherwise waived the meeting in writing, a due process hearing may not take place until the parties hold

the meeting. If the school district is unable to obtain the parents' participation in the resolution meeting after the school district has made reasonable efforts to obtain it, and the school district can document those attempts, the school district may request that OAH dismiss the complaint. OAH has the discretion to dismiss the complaint if the parents demonstrate an unwillingness to participate in the resolution process. OAH will not dismiss a parent's complaint without giving the parent three (3) days to respond to the school district's motion to dismiss. (See Section \*\*\*)

If the school district does not schedule a resolution meeting within the required time (15 days) or is unwilling to participate in the meeting, parents may request that OAH set the matter for due process hearing immediately (advance the hearing dates). . (See FORM \*\*\*)  
If the hearing dates are advanced based on the school district's failure to schedule or participate in a resolution meeting, the due process hearing may be held before the 30 days allowed for the resolution session have passed.

### **PURPOSE OF A RESOLUTION SESSION**

The purpose of the resolution meeting is to give you and the school district the opportunity to work together to resolve the dispute raised in the complaint before a hearing is held. The resolution session is intended to be less adversarial than a hearing, and result in early resolution of the dispute, and may help repair relationships and open lines of communication between you and the school district.

Although there is no guarantee that you will reach an agreement during the resolution meeting, if you and the school district do reach an agreement, you will have three (3) business days to rescind, or cancel, that agreement by notifying the school district in writing of your intention to cancel the agreement. If it is not rescinded within three days, it is legally binding and enforceable in state or federal court.

### **MAY I BRING MY ATTORNEY OR ADVOCATE TO THE RESOLUTION SESSION?**

You may bring an attorney or advocate to the resolution session. If you do bring an attorney or advocate, then the school district may bring its attorney. If you do not bring an attorney or advocate, the school district may not bring an attorney. You should know that a parent is not entitled to legal fees for his or her attorney's time at a resolution session, and a parent is never entitled to fees for an advocate in a special education due process proceeding, unless the school district agrees otherwise. For example, the parties may agree in a settlement agreement reached during the resolution meeting that the school district will pay your attorney fees incurred as a result of the resolution meeting, but the school district is not required to pay your attorney fees for a resolution meeting.

### **WHAT IF I NEED AN INTERPRETER FOR THE RESOLUTION SESSION?**

OAH does not have jurisdiction over resolution sessions, and does not have authority to provide interpreters for resolution sessions. If you require an interpreter for your resolution session, you should contact the school district.

### **WHAT IF THE CASE IS SETTLED DURING THE RESOLUTION SESSION?**

If the case is settled at the resolution meeting, both parties are required to sign a settlement agreement. The parties are also required to notify OAH in writing that the case has settled by faxing or mailing a letter indicating the case has settled. The OAH fax number for this purpose is (916) 376-6319. Either party may rescind an agreement made at the resolution session within three business days of the agreement.

### **WHAT IF THE CASE DOES NOT SETTLE DURING THE RESOLUTION SESSION?**

If you do not reach an agreement at the resolution meeting, the matter will proceed to mediation and a due process hearing on the dates sent to you in the Scheduling Order. (See Section \*\*\*) You are not required to inform OAH that you are unable to reach agreement at the resolution session. If OAH does not receive a letter from you and the school district saying you have settled, OAH will assume that the resolution meeting was unsuccessful and the matter will proceed to mediation and hearing on the dates calendared in the Scheduling Order.

### **WHAT IF THE SCHOOL DISTRICT DOES NOT IMPLEMENT THE AGREEMENT REACHED AT THE RESOLUTION SESSION?**

The settlement agreement is a legally binding agreement and if one party fails to comply with the agreement, the other party may seek enforcement of the agreement by filing a compliance complaint with CDE or by filing a complaint in state or federal court. OAH does not have authority to enforce these agreements.

### **WHAT IF I ENTER AN AGREEMENT AT THE RESOLUTION SESSION, AND THEN CHANGE MY MIND AND WANT TO CANCEL IT?**

Under federal law, either you or the school district can withdraw from any agreement that is reached at the resolution meeting within three (3) business days of the agreement's execution. If the agreement is cancelled, then the matter will proceed to mediation, prehearing conference, and due process hearing according to the Scheduling Order issued by OAH. (See Section \*\*\*)).

OAH does not have jurisdiction over resolution sessions. Therefore, OAH does not have a procedure for withdrawing from an agreement reached at a resolution session. If you wish to withdraw from such an agreement, you should contact the school district. To avoid any

confusion, you may also wish to deliver a letter to your school district and any other parties, within three (3) business days of the day you signed the agreement, clearly stating that you are withdrawing from the agreement.

If your case has been dismissed by OAH because of the settlement you later canceled, you may refile your request for due process hearing with OAH.

### **WHAT IS THE DIFFERENCE BETWEEN A RESOLUTION SESSION AND MEDIATION?**

Mediation is a voluntary process in which both parties voluntarily agree to meet with a trained neutral person to facilitate settlement discussions. A resolution session is required by statute in certain circumstances. Congress added the requirement of a resolution session to the IDEA in 2004 as another means of encouraging parents and school districts to directly resolve their differences as early in the process as possible and without the need for a due process hearing. In a resolution session:

- There is no third party to assist the parties' discussions and settlement process. In mediation, OAH provides a mediator to assist the parties in reaching settlement.
- If you do not bring an attorney to a resolution session, the district may not bring one. The school district may bring an attorney to mediation whether you do or not. (The exception to this is that neither party may bring an attorney to a mediation-only (see Section \*\*\*).)
- In a resolution session, you may change your mind and revoke the agreement within three-business days after a resolution agreement is reached. A settlement agreement reached at mediation is a final agreement, and neither party may rescind it.
- Discussions between you and the school district during a resolution session are not confidential. This means that the school district may use those discussions as part of the evidence in a later due process hearing. Discussions during mediation are confidential, and that confidentiality is protected by law. Evidence of those discussions may not be introduced at a due process hearing. However, the parties at a resolution session may make the discussions confidential by entering a written agreement signed by both parties that the discussions are confidential and protected in the same way as discussions at mediation.

### **WHO ATTENDS THE RESOLUTION SESSION?**

You and the school district determine which members of the individualized education program (IEP) team will attend the resolution meeting. Participants should include you, a school district representative who can make decisions on behalf of the school, and any IEP team member who has relevant information about the issue or issues that the parties will discuss at the meeting. It may be appropriate to have your child attend the meeting as well.

This is a decision that you must make. You may also have an attorney, advocate, or supporting friend attend with you and/or help you prepare for the meeting. School districts may not bring an attorney to the resolution meeting unless you bring an attorney.

### **HOW DO I PREPARE FOR THE RESOLUTION SESSION?**

There is no required agenda for a resolution meeting. The school district may prepare an agenda and/or take the lead in the discussion, so it is important that you prepare for the meeting in advance. You may prepare an agenda of items that you would like to cover at the meeting and/or take the lead in the discussion if you wish to do so. Here are some suggestions for preparing for the meeting:

- Prepare a statement that addresses all issues required for due process hearing, outline what you believe your child needs, and include ideas for possible solutions that you believe will resolve the situation. It is helpful to come prepared to discuss, and to be open to, a variety of possible solutions.
- You should organize your documents. You may record dates and notes on a sticky note attached to your documents, but you should not write on them. You should bring to the meeting any documentation that supports your position regarding your child's educational needs, such as testing or assessments that you may have obtained on your own and that you may not have previously given to the school district.
- If you are uncomfortable in this type of meeting, or if you do not have experience with settlement discussions, it may help you to practice making your statement to an advocate, a family member, or a friend before going to the resolution meeting.
- It may be helpful to identify sections of the law or regulations with which you feel the school district may not be complying.
- It is also helpful for you to prepare a list of questions you may have of the school district, to anticipate questions the school district may have or responses they may have to your position or suggestions. Be ready to answer the questions or respond to the school district's position with concrete examples.
- A resolution meeting may be an emotional experience for you and school district personnel. It may be helpful to be prepared for the emotion and try to focus on future solutions rather than past problems.
- Be prepared to listen to the points raised by the school district. If you and the district staff listen carefully to each other, the meeting is more likely to result in an agreement.

### **WHAT HAPPENS TO THE DUE PROCESS PROCEEDING WHEN AN AGREEMENT IS REACHED AT A RESOLUTION SESSION?**

If neither party cancels the agreement, after three (3) business days, the agreement is final. The parties should notify OAH in writing that a final agreement has been reached, and OAH will close the case.

## **CHAPTER 3 - MEDIATION**

### **WHAT IS MEDIATION?**

OAH is required by state and federal law to offer mediation to parties in due process proceedings. Mediation is voluntary, and a party in a due process proceeding is not required to participate in mediation. However, the parties in most due process proceedings with OAH voluntarily participate in mediation, and most settle their cases through the mediation services offered by OAH. OAH strongly encourages all parties to participate in mediation.

Mediation is a process during which the parties, facilitated by a mediator, work to resolve the dispute. The mediator is a neutral third party who helps the parties communicate their concerns to each other. With the assistance of the mediator, all parties are involved in the decision-making process and everyone has an opportunity to express concerns, offer opinions, make suggestions, and generate solutions. The focus of the mediation is on solving the disagreements between you and school district staff and on arriving at a solution that satisfies all the parties.

### **WHAT ARE THE BENEFITS OF MEDIATION?**

Mediation has proven to be a highly effective and successful method to resolve disputes. OAH data shows that seventy (70) percent of cases resolve on the day of mediation. In addition, the parties are more likely to maintain a cooperative relationship in the future if the settlement of the dispute is by mutual agreement. Settlement by mutual agreement also allows the parties to have a great deal of flexibility in reaching a mutually acceptable settlement/written agreement. Mediation allows the parties to negotiate for what they believe is most important to them in resolving the dispute. If a dispute goes to a due process hearing, the ALJ makes the final decision, and that decision may not be completely satisfactory to either party. Mediation is less costly than a hearing in terms of time, money, and personal stress, and allows the parties to control the outcome.

### **CAN PARTICIPATING IN MEDIATION HURT MY CASE?**

All discussions during mediation are confidential. Therefore, the discussions during the mediation cannot be used in future proceedings between the parties. There is no cost to you for the mediation except for cost of legal representation if you chose to retain an attorney. You may consult with an attorney prior to mediation to obtain legal advice regarding how to proceed at mediation.

### **WHAT IF I NEED INTPRETATION SERVICES OR REASONABLE ACCOMMODATIONS AT MY MEDIATION?**

If you require the assistance of an interpreter or other accommodation, please be sure to make the request in your request for mediation only or your request for due process hearing. Please also indicate your native language, the type of interpretation you require, or the type

of accommodation you require. If your mediation date is approaching and you have not previously notified OAH of your need, please contact OAH as soon as possible. Interpreters sometimes come from far away, as does the mediator, so it is important to give OAH advance notice of your need for interpretation or accommodations. These services are offered at no cost to the parent.

### **WHEN IS MEDIATION AVAILABLE?**

There are two situations in which mediation is available to you: (1) when you have filed a request for mediation-only; and (2) when you have filed a request for due process hearing.

### **WHAT IS MEDIATION-ONLY, AND WHEN IS IT HELD?**

Either you or a school district may file a request for “Mediation-Only.” OAH will schedule a mediation to occur within fifteen (15) days. Your mediation date will be set by OAH within 48 hours after OAH receives a request for mediation-only, and you will be informed of this date in the Scheduling Order sent to you by OAH. (See Section \*\*\*)

A request for “mediation-only” will result in mediation only, and it will not result in a resolution session or a due process hearing. Neither you nor the school district may have an attorney participate in a mediation-only, although advocates are not excluded from mediation-only mediations.

If you do not resolve your dispute as a result of the mediation provided by OAH, OAH will close the case. However, you may still file for due process hearing.

### **IS MEDIATION OFFERED BY OAH IN EVERY CASE IN WHICH A REQUEST FOR DUE PROCESS HEARING IS FILED, AND WHEN IS IT HELD?**

OAH will schedule a mediation in all cases in which a party has requested a due process hearing. You will be informed of the mediation date in the Scheduling Order sent to you by OAH. (See Section \*\*\*)

After a parent files a request for a due process hearing, OAH will schedule a mediation date to be held approximately 35 calendar days after the request is filed. The mediation is scheduled 35 calendar days after the request is filed in order to give the parties 30 days to hold a resolution session (see Section \*\*\*\*.) The date, time, and location of the mediation will be contained in the Scheduling Order you receive from OAH (see Section \*\*\*).

If the school district filed the due process request, OAH will schedule the mediation for approximately 15 calendar days after the district files its request. This is because a resolution session is not required by law when a school district files the request.

## **HOW CAN I RESCHEDULE THE MEDIATION DATE IF I CANNOT ATTEND ON THE DATE SCHEDULED?**

OAH will reschedule the initial mediation date that is contained in the Scheduling Order if all parties agree to a new date. All parties should sign the form setting the new agreed upon mediation date that is sent in the Scheduling order. **(FORM 6)**. Because mediation is a voluntary process, either party may decide to cancel the mediation at any time.

## **HOW LONG DOES MEDIATION LAST?**

OAH schedules a mediation to last from 9:30 a.m. to 5 p.m. Generally, there will be a break for everyone to have lunch during the course of the mediation. If a settlement is going to be finalized on the day the mediation takes place, the parties normally will need to start drafting the agreement no later than 3:00 p.m.

Mediations in Los Angeles Unified School District are scheduled on Tuesdays, Wednesdays, and Thursdays, either in the morning, from 9:00 a.m. to about 12:30 p.m., or in the afternoon, from 1:30 p.m. to 5:00 p.m.

## **WHAT IF ONE OF THE PARTIES DOES NOT WANT TO PARTICIPATE IN MEDIATION?**

Since the mediation process is voluntary, either you or the school district may cancel (waive) mediation if either of you does not wish to participate. There is no requirement that a party provide any reason for its decision to decline to participate in the mediation process. OAH will cancel the mediation if either the school district or you notify OAH that they do not wish to participate.

If both or all parties later decide that mediation will be helpful, OAH will reschedule a mediation date. Mediation is available at any time to the parties, even during a due process hearing.

## **WHO ARE THE MEDIATORS?**

The mediator is an Administrative Law Judge employed by OAH. All ALJs are also attorneys and have received extensive training both in mediation and special education and have been practicing law for a minimum of five years, but generally more.

## **WHAT IS THE ROLE OF THE MEDIATOR?**

Federal and state law require that the mediator be someone who has received specific training in mediation and who is knowledgeable regarding special education and related services laws and regulations.

The role of the mediator is *not* to act as a judge and make factual findings and/or conclusions of law about the issues. The mediator does the following:

- Facilitates open communication between you and the district and any other party.
- Attempts to create a safe environment that permits the parties to interact with each other and communicate their differences as well as their points of agreement.
- Assists the parties in understanding each other's viewpoint and ultimately attempts to help them reach a mutually satisfactory resolution to the dispute.
- Clarifies points of agreement and disagreement between the parties to assist in identifying options that may be available to resolve the case.
- Assists as a disinterested party, who is unbiased and impartial, and who has no stake in the outcome of the case.

You will not receive any pressure to settle your matter at mediation. It is up to you to decide if the agreement is appropriate for you. If you cannot resolve the matter on terms acceptable to both parties, the matter will proceed to hearing.

Mediation is different from a resolution session. (See Section XX about resolution sessions.)

### **WHO GENERALLY ATTENDS THE MEDIATION?**

Participants at mediation include the parents, a school district representative who can make decisions on behalf of the school, and any IEP team member who has relevant information about the issue that the parties will discuss at the meeting.

The parties may bring an attorney to the mediation unless the request is for mediation-only. A parent may also bring an advocate or a supporting friend to the mediation.

### **MAY I TAPE RECORD THE MEDIATION?**

No. All discussions at mediation are confidential, and no one may tape any portion of mediation.

### **HOW DO I PREPARE FOR THE MEDIATION?**

Preparation for the mediation is similar to the preparation for a resolution session. Usually, the mediator will start the discussions at the mediation.

The following are some suggestions for parents in preparing for the mediation. If an attorney or advocate represents you, you should discuss the mediation with them. Your attorney or advocate will most likely discuss what you need to do to prepare for the mediation and who will be making the initial opening remarks regarding the disputes in the case.

- You may want to outline what you believe your child needs, and include ideas for possible solutions, which you believe will resolve the situation. It is helpful to come prepared to discuss, and be open to, a variety of possible solutions.
- You should organize your documents. You should make any notes of important dates or other matters on sticky notes, and avoid writing on your documents. You should bring to the meeting any documentation that supports your position regarding your child's educational needs, such as testing or assessments that you may have obtained on your own, which you may not have previously given to the school district.
- You may wish to consult with an attorney or advocate prior to the mediation. If an attorney or advocate represents you, it may be helpful to discuss the issues, and possible solutions, with them in advance.
- It may be helpful to identify sections of the law or regulations with which you feel the school district may not be complying.
- It may be helpful for you to anticipate questions the school district or mediator may have or responses they may have to your position or suggestions, and be ready to answer the questions or counter the school district's position with concrete examples.
- Mediation can be an emotional experience for all parties. It may be helpful to be prepared for the emotion and try to focus on future solutions rather than on past problems.
- You and the school district should try to listen to each other's points. If you and the district staff listen carefully to each other, the meeting is more likely to result in an agreement.

### **WHAT IS THE MEDIATOR'S PURPOSE AT MEDIATION?**

The mediator's purpose is to act as a neutral third party and to facilitate discussion between you and the school district so that you, not an ALJ, make the decisions about programs and services for your child. During mediation, the parties work together and they are in control of the outcome. It is not the purpose of mediation to have a mediator make decisions regarding any issue in your case. The mediator is there to help the parties discuss the issues and reach an acceptable resolution for both sides.

### **WHAT ARE THE BENEFITS OF MEDIATION?**

Mutual agreements generally result in greater satisfaction for all parties. Mediation assists everyone better to understand differing points of view. Mediation may be less costly than going to hearing and disagreements are resolved more quickly than traditional litigation procedures. Written agreements resulting from mutual resolution frequently result in higher rates of compliance. Remedies that would not be ordered by an ALJ in an administrative proceeding may be available through mediation. Most importantly, the parties control the outcome of the mediation.

## **WHAT HAPPENS DURING MEDIATION?**

The mediator will greet the people attending the mediation, facilitate the introductions, and seat everyone at a table. The mediator then will make some introductory remarks explaining the purpose of mediation, the mediator's role, and how the mediation will proceed. The mediator will ask all the parties present to sign in on an OAH form that shows who participated in the mediation. If you have questions about the process or any aspect of the mediation, you should feel free to ask at any time.

After introductory remarks by the mediator, the mediator will ask the party who filed the request for due process or request for mediation-only to give an overview of the issues in the case, what issues have been resolved, if any, and what issues are still in dispute, and what resolution the filing party would like to see. When the filing party has finished, the mediator will ask the other party to give his or her perspective on the issues. Afterward, the mediator will assist the parties in discussing each issue and ideas for resolving the dispute.

The parties may ask to speak alone with the mediator, outside the presence of the other party. This is called a caucus. If the parent asks to caucus with the mediator, the school district staff will generally go into another room so that the parent may have a private discussion with the mediator. If the mediator caucuses with one party, the mediator will also caucus with the other party. At times the parties may ask to speak privately without the other side and without the mediator present. Each mediation is different. It is possible that throughout the course of the day, the parties will caucus alone or with the mediator several times during the mediation. Settlement offers may be discussed during the caucuses and the parties may ask the mediator to convey offers and counter offers to the other party.

With the exception of LAUSD cases, mediations may last an entire day. If necessary, and at the request of both parties, the mediator will continue the mediation to another day if settlement discussions are ongoing and the parties believe that another day of mediation will be beneficial.

## **WHAT HAPPENS IF WE SETTLE THE DISAGREEMENT AT MEDIATION?**

The parties may resolve some or all of the issues at the mediation. If you reach a settlement in full or in part, the parties must confirm their agreement in a written settlement document which is drafted by the parties.

The parties and their representatives will review the settlement language and make suggestions and changes as necessary. After the parties and their representatives have all agreed on the terms and language of the settlement agreement, the parties will sign the document.

Sometimes, a school district's internal rules may require that its school board approve the agreement. If that is the case, the settlement agreement will generally include a statement to that effect. The hearing will be postponed until after the school district meets to discuss the

mediated agreement. If the school board does not approve the agreement, the parties should notify OAH, and the matter will proceed to another mediation if the parties agree, and then to due process hearing if the matter is not settled. In most cases, agreements presented for school board approval are approved.

Once the mediated settlement agreement is signed and final, the mediator will have the parties sign an OAH form that will result in the dismissal of the case. The mediator does not sign the settlement agreement because he or she is not a party to the agreement.

### **WHAT HAPPENS IF NO AGREEMENT IS REACHED AT THE MEDIATION?**

If the matter is a “mediation-only,” the case will be dismissed by OAH after the mediation. If the matter involves a request for a due process hearing and is not resolved at the mediation, the matter will proceed to a prehearing conference (see Section \*\*\*) and a due process hearing. (see Section \*\*\*) If the matter is not resolved at the mediation, the mediator will discuss with the parties the dates for the prehearing conference and hearing to confirm the existing dates or to set new dates.

### **WHAT IF WE DO NOT RESOLVE THE CASE AT MEDIATION, BUT WANT ANOTHER MEDIATION TO TRY AGAIN?**

Mediation is available at any time during the due process proceedings so long as both parties agree to participate. If the parties believe it will be helpful to have an additional mediation, they should agree to a date for the mediation and make the request to OAH. OAH will then calendar the mediation date. Most often, a second mediation will result in a delay of the hearing.

## **CHAPTER 4 - SETTLEMENT CONFERENCE**

### **IS THERE ANY OTHER PROCESS AVAILABLE TO ASSIST THE PARTIES IN SETTling THEIR DISAGREEMENT BEFORE THE HEARING?**

If you have filed a request for due process and have been unable to resolve your dispute, you may also request a Voluntary Settlement Conference to assist you in resolving your special education dispute prior to hearing. OAH is committed to assisting parties to resolve the issues in their due process filings, and will provide an ALJ for a Voluntary Settlement Conference if requested by all of the parties. A Voluntary Settlement Conference generally occurs close to the time of the due process hearing.

### **WHAT IS A VOLUNTARY SETTLEMENT CONFERENCE?**

A Voluntary Settlement Conference is a meeting between an ALJ, you, your attorney if you have one, and the other party or parties and their attorney(s), during which the ALJ assists the parties in attempting to settle their case. Typically, the parties would request a Voluntary Settlement Conference before a due process hearing and only after they have participated in mediation and were unable to reach a settlement agreement.

### **HOW DOES A VOLUNTARY SETTLEMENT CONFERENCE DIFFER FROM MEDIATION?**

A Voluntary Settlement Conference is more formal than mediation, and the ALJ assigned may be more “evaluative” than a mediator would be at mediation. In other words, the ALJ may tell the attorneys and parties how he or she might rule on certain issues, based on the facts. The ALJ may structure the Voluntary Settlement Conference to meet the needs of the particular dispute. For example, you may be in the same room as the other party or parties during, or you may be in separate rooms. In mediation, the ALJ is there to help facilitate discussions and let the parties come up with a resolution is acceptable to both sides. In a Voluntary Settlement Conference, the ALJ is likely to be expressive about what resolutions are appropriate and the likelihood a party might prevail at hearing.

### **HOW DO I REQUEST A VOLUNTARY SETTLEMENT CONFERENCE?**

Before preparing your request for a Voluntary Settlement Conference, you should contact the other party or parties, and ask them if they are willing to participate in a Voluntary Settlement Conference. If the other party, or at least one other party, is not willing to participate, you may not request a Voluntary Settlement Conference. Once you have agreement from the other party or parties that they are willing to participate, you may request a Voluntary Settlement Conference by a letter to OAH, sent by mail or by facsimile transmission to (916) 376-6319.

The request should contain pertinent information about the case, such as the case name and number. The request should state that you want to participate in a Voluntary Settlement

Conference to try to settle the case, and should propose dates that you and the other party or parties are available to participate in a Voluntary Settlement Conference. You must send a copy of your request to the other party or parties in the due process proceeding (hand delivery, mail, or fax), or to their attorneys if they are represented, at the same time you send it to OAH.

If your request is granted, OAH will set the date and time for the Voluntary Settlement Conference and will provide written notice of the date, time, and place to you and the other parties. **(FORM 7)**

### **WHERE IS THE SETTLEMENT CONFERENCE HELD?**

The Voluntary Settlement Conference will be held at the offices of OAH, unless otherwise ordered. Each party or representative who attends is required to be fully familiar with the facts and issues in the case, and is required to have the authority, or to be able to obtain authority immediately by telephone, to negotiate settlement terms, and to reach a settlement in the case.

### **WHAT ARE SETTLEMENT CONFERENCE STATEMENTS?**

You may be required to file a Confidential Settlement Conference Statement at least three (3) business days prior to the Voluntary Settlement Conference. Your Confidential Settlement Conference Statement should describe the factual and legal issues and the status of any previous settlement discussions in the case.

### **WHAT SHOULD I BRING TO THE SETTLEMENT CONFERENCE?**

You should bring any pertinent documents and a draft of any settlement proposal on computer disk or in writing.

### **IS THE SETTLEMENT CONFERENCE CONFIDENTIAL?**

The settlement materials and discussions are deemed confidential unless you and the other party or parties agree otherwise.

### **MAY I TAPE RECORD THE SETTLEMENT CONFERENCE?**

Settlement conference discussions are confidential, and no one may tape any discussions at a settlement conference.

### **WHAT HAPPENS AT THE CONCLUSION OF THE SETTLEMENT CONFERENCE?**

If you reach a settlement at the Voluntary Settlement Conference, the settlement is required to be written in a, settlement agreement and the case will be dismissed.

Sometimes school districts must get approval of a settlement from the superintendent of the school district or school board. The settlement will become final when the school district receives final approval. The hearing will generally be postponed while the board approval is pending. If the school board does not approve the agreement, the parties should notify OAH, and the matter will proceed to another mediation or voluntary settlement conference if the parties agree, and then to due process hearing if the matter is not settled. In most cases, agreements presented for school board approval are approved.

If no agreement is reached, the ALJ will confirm the hearing dates with the parties and the matter will proceed to a due process hearing.

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## **CHAPTER 5 - THE PREHEARING CONFERENCE**

### **WHAT IS A PREHEARING CONFERENCE?**

A Prehearing Conference is a telephonic conference held between the ALJ, you, and the other party or parties for the purpose of discussing and planning for the due process hearing. You will discuss things such as names of witnesses who will testify at the hearing and how long each witness testimony will take, how your exhibits (documentary evidence) are to be marked for the hearing, and your estimate of the amount of time necessary to complete the hearing. The issues for hearing will also be settled at the Prehearing Conference. The Prehearing Conference enables you, the other party or parties, and the ALJ to be prepared for, and to know what to expect during, the due process hearing.

All rules regarding prehearing conferences discussed in this chapter are applicable to all parties, although the discussion is aimed at parents in accordance with the purpose of this parent manual, which is to assist parents. School districts are required to adhere to all requirements outlined in this chapter.

### **WHAT IF I DECIDE TO GET AN ATTORNEY OR ADVOCATE PRIOR TO THE PREHEARING CONFERENCE?**

Although a party is not required to have an attorney, at any point in due process proceedings with OAH, sometimes people whose cases have not settled by the time of the prehearing conference decide they want to have an attorney or advocate. If you decide you want to be represented, you are required by law to inform the school district and any other parties that you are represented at least ten (10) days prior to the due process hearing. Your attorney or advocate is required to file a “notice of representation” with OAH and to serve all other parties with this notice.

You may be able to recover attorney fees if you prevail in your case. However, you will not be able to recover fees for an advocate.

Under limited circumstances, the school district may be able to recover attorney fees from you if it prevails and a determination is made that the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.<sup>1</sup>

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<sup>1</sup> In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs--(I) to a prevailing party who is the parent of a child with a disability; (II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or (III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

## **HOW WILL I KNOW WHEN THE PREHEARING CONFERENCE IS TO BE HELD?**

The date for the Prehearing Conference is generally set a week before the hearing on a Monday or Friday. You will receive the date for the Prehearing Conference in the Scheduling Order sent to you by OAH after the complaint is filed.

## **WHAT HAPPENS IF I DON'T HAVE A PREHEARING CONFERENCE?**

Although OAH makes every effort to ensure that a Prehearing Conference is held in every case that goes to hearing, if a Prehearing Conference is not held for some reason, you are still bound by the laws requiring you to serve your exhibits and witness list on the other party. The law requires that within five (5) business days before the due process hearing, you must send to the district, and any other parties, copies of all documents (exhibits) you intend to use as well as a list of witnesses you intend to call to give oral testimony at due process hearing (see further discussion below in the section titled The Prehearing Conference).

A Prehearing Conference will give you and the other parties the opportunity to talk to the ALJ prior to the hearing, and to ensure that you have done what you need to do prior to the hearing. Therefore, if your due process hearing is approaching and you do not have a Prehearing Conference on calendar, you should request one by writing a letter to OAH, stating your request that a Prehearing Conference be calendared, and serving all other parties.

## **WHEN WILL THE PREHEARING CONFERENCE BE HELD?**

The Prehearing Conference is held approximately five (5) to ten (10) business days prior to the due process hearing. Prehearing Conferences are generally held on a Monday or Friday.

## **DO I NEED TO ATTEND THE PREHEARING CONFERENCE?**

If you are representing yourself at the due process hearing, you are required to attend the Prehearing Conference. If you have an attorney, the attorney may attend on your behalf. All Prehearing Conferences are held telephonically, unless otherwise ordered.

## **WHO WILL PRESIDE OVER THE PREHEARING CONFERENCE?**

Typically, the ALJ assigned to preside at your due process hearing will also preside over the Prehearing Conference. The ALJ will initiate the Prehearing Conference by calling you or your attorney and the other party on the date and time specified in the notice. You must be available for the Prehearing Conference and you should call OAH 30 minutes before the scheduling Prehearing Conference and let OAH know the best number to reach you.

You may go to OAH's Web site at [www.oah.dgs.ca.gov](http://www.oah.dgs.ca.gov) to find out which ALJ is assigned to your case and view the OAH calendar.

### **WILL THE PREHEARING CONFERENCE BE RECORDED?**

All prehearing conferences are recorded by the ALJ presiding over the Prehearing Conference. The recording will become part of the official record of the due process proceedings.

### **MAY I RECORD THE PREHEARING CONFERENCE USING MY OWN EQUIPMENT?**

You must have permission from OAH to record the Prehearing Conference. You may record your prehearing conference only if you provide notice to the OAH and the other parties prior to the prehearing conference that you wish to record the prehearing conference. The ALJ hearing your case may rule on the matter prior to the prehearing conference, or may rule at the commencement of the prehearing conference. At the commencement of the prehearing conference, the ALJ may ask you why you wish to record the prehearing conference, or about the feasibility of recording the prehearing conference. For example, recording the prehearing conference may not be feasible unless all parties are using a speaker phone. The ALJ will ask the other parties if they have any objection to you recording the prehearing conference. The ALJ will then make a ruling, in his or her discretion, as to whether you may record prehearing conference. Unless you have the permission of the ALJ, you may not record the prehearing conference. If you are permitted to record the prehearing conference and do so, your recording will not be the "official" record of the hearing. The recording done by the ALJ will be the official record. If you are permitted to record the prehearing conference, you must turn the recording off whenever the ALJ says off the record.

### **DO I NEED TO PREPARE FOR THE PREHEARING CONFERENCE?**

Three (3) business days prior to the Prehearing Conference, you or your attorney are required to file with OAH, and send to the opposing parties, or their attorneys, a Prehearing Conference Statement. **(FORM 9)**. The other party is required to file a Prehearing Conference Statement with OAH and send you a copy as well. This Prehearing Conference Statement is required to include the following:

- Your estimate of the number of days necessary to complete the due process hearing. You should include in this estimate the time required for the presentation of your case only, and an estimate of the time required for the entire hearing.
- A concise statement of the issues to be decided at the due process hearing, and the proposed resolution of each issue, based only on those issues raised in the due process hearing request. You may not raise any new issues in your Prehearing Conference

Statement. You must not simply state that the issues are those in your complaint, but must list the issues in your prehearing conference statement.

- The name of each witness you 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. If either party does not include this information as to any witness in his or her prehearing conference statement, that witness may be barred from testifying at the hearing by the ALJ.
- The name of each expert you may call at the due process hearing, a brief summary of the subject of the expected testimony of the expert, and a description of the issue to which the expert's testimony relates.
- A list of the exhibits that you intend to present at the due process hearing, and a description of any physical or demonstrative evidence. Exhibits are typically documentary evidence, such as your child's IEP, that you want to rely on during the hearing to prove your case.
- The names of any witnesses, if any, you would like to have testify telephonically at the due process hearing.
- The need, if any, for an interpreter or special accommodation at the due process hearing.

### **WHAT IS DISCUSSED AT THE PREHEARING CONFERENCE?**

During the Prehearing Conference, you or your attorney should be prepared to discuss all matters necessary to enable the ALJ to make orders that will make the hearing proceed smoothly and in an organized manner. The matters that will be discussed include the following:

**Location and Time:** The Due Process Hearing date, time, and location.

**Issues:** The issues to be heard at the due process hearing and decided by the ALJ in a written decision. During the Prehearing Conference, the ALJ and the other parties will be given the opportunity to ask questions to clarify the issues. For example, clarifying which school years your issue involves.

**The proposed resolutions:** During the Prehearing Conference, the ALJ and parties will be given the opportunity to ask questions to clarify the requested outcome the parties are seeking. For example, clarifying the remedies you are seeking in the due process hearing.

**Exhibits:** The ALJ will discuss with you the requirements for exhibit binders, numbering your exhibits, the number of copies of the exhibit binder you will need to take to the hearing, and when you will need to provide your exhibit binder to the other party. Regarding exhibit

binders, all of your exhibits must be placed in a binder, with each exhibit separated by a tab. The binder tabs must be numbered, with a designation of “S” for Student exhibits and a “D” for school district exhibits. (Example: S1, S2, etc.) Your exhibit binder must contain a table of contents listing all exhibits by number. Unless otherwise ordered by the ALJ, you must provide a copy of your exhibit binder, with exhibits properly numbered in the binder, to the other party or parties five (5) business days prior to the due process hearing. If the other party or parties are represented by counsel, you must provide a copy to counsel, and not directly to the party, unless you reach an agreement with the attorney to serve the exhibit binder on the party, such as the school district. The exhibit binder for the ALJ and a single exhibit binder for all witnesses to use when testifying should not be sent to OAH, but should be brought with you to the hearing on the first day. The school district is required to do all of the above as well with respect to its case. If a party does not comply with these provisions, the party’s evidence may be barred at hearing.

**Witnesses:** During the Prehearing Conference, you will be expected to discuss matters relating to the witnesses you intend to call at hearing. You are responsible for getting your witnesses to attend the due process hearing. However, if a witness you intend to call is employed by the school district, you may request that the ALJ order that the school district make the witness available during the due process hearing. Generally, each side is asked and agrees to make their witnesses reasonably available at the hearing without the need for subpoena. You should ask the school district if they will do so in your case. (See Chapter 6 for more information regarding calling witnesses.)

**Telephonic testimony:** Witnesses may be allowed to testify telephonically. Generally, it is preferred that the witness appear at the hearing. During the Prehearing Conference, you should be prepared to discuss whether any witnesses you wish to be allowed to testify by telephone at the due process hearing. If the other party objects to telephonic testimony, you will be expected to explain the reasons why this witness cannot testify in person. The ALJ will rule whether the witness will be permitted to testify telephonically. If the ALJ authorizes telephonic testimony, you will be required to provide a copy of all exhibit binders, including the exhibit binders from the other parties, to the witness who will testify telephonically prior to the witness’s testimony. This will enable the other parties to cross-examine that witness and will also enable the ALJ to question that witness if necessary.

**Witness Time Estimates:** During the Prehearing Conference, you will be expected to provide estimates of the time you will need to question each of your witnesses.

**Prehearing motions:** During the Prehearing Conference, you will be expected to discuss any motions you intend to file prior to the due process hearing. Prehearing motions might include, for example, a motion to change the location of the hearing.

**Public or private hearing:** Special education hearings are “closed” to the public unless the parent requests that the hearing be open for the public to attend. During the Prehearing Conference, the parents will have the opportunity to request that the hearing be open to the public.

**Courtroom decorum:** During the prehearing conference, the ALJ will discuss the expectations of the conduct of parties and attorneys at the hearing. (See Section \_\_\_ regarding Courtroom Decorum.

### **WHAT IS A PREHEARING CONFERENCE ORDER?**

After the hearing, the ALJ will issue a written Prehearing Conference Order and will send a copy to you and the other parties. That order will include an outline of the matters discussed at the Prehearing Conference and any orders (directions) that must be followed. **(FORM 10)**.

You are required to comply with the orders that are contained in your Prehearing Conference Order. If you do not comply with the orders, the ALJ may impose sanctions (penalties) against you. For example, if you do not provide your exhibits to the other parties five (5) business days prior to the due process hearing, the ALJ may not allow you to introduce your exhibits during the due process hearing.

### **CAN I REQUEST MEDIATION AT THE PREHEARING CONFERENCE?**

It is important to keep in mind that you may request mediation, or another mediation if you have already had one, at any time during the proceeding, including during the Prehearing Conference. You may request mediation during the Prehearing Conference by asking the ALJ to schedule one. Mediation is voluntary, so the ALJ will ask the other party or parties if they are willing to mediate. If the other party or parties agree to mediate, the ALJ will schedule mediation for you, to occur prior to the dates scheduled for the due process hearing, and OAH will provide a mediator (see Section \*\*\*).

### **WHAT ARE MY OPTIONS IF I CANNOT GET MY PREHEARING CONFERENCE STATEMENT PREPARED AND SERVED THREE BUSINESS DAYS PRIOR TO THE PREHEARING CONFERENCE, OR IF I CANNOT ATTEND THE PREHEARING CONFERENCE?**

If you cannot be prepared to proceed with the Prehearing Conference, you may request an extension of the time to file your Prehearing Conference Statement and/or to continue the actual Prehearing Conference. This request must be in letter form and served on all other parties at the time you file the letter with OAH. This document can be hand-delivered, mailed or faxed to OAH at (916) 376-6319. A sample Request for Continuance of the Prehearing Conference is attached. **(FORM 11)**.

## **CHAPTER 6 – PREPARING FOR DUE PROCESS HEARING AND OTHER THINGS YOU NEED TO KNOW BEFORE THE DUE PROCESS HEARING**

### **WHAT IS A DUE PROCESS HEARING?**

The Due Process Hearing is held as a result of a party filing a request for due process hearing. As discussed in Section \*\*\*, the Due Process Hearing dates are set by OAH within 48 hours of the time the request for due process hearing is filed, and you will be notified of the dates by way of the Scheduling Order. If the case has not settled prior to the time of the Due Process Hearing, the Due Process Hearing will be held.

The subject of the Due Process Hearing will be the issues contained in the request for due process hearing, as clarified during the Prehearing Conference. During the Due Process Hearing, the party who filed the request for due process hearing is given the opportunity to present his or her case. In addition, the party against whom the request for due process hearing is filed is given the opportunity to present evidence as well by putting on his or her case. During the Due Process Hearing, each party puts on his or her case through “evidence,” which consists of testimony and documentary evidence (exhibits).

It is important that you understand that only “relevant evidence” is admissible in a Due Process Hearing. “Relevant evidence” means evidence that has a tendency to prove a fact in dispute in the case. Therefore, all evidence, whether documentary or through testimony, must be evidence that has a tendency to prove a fact in dispute, or it is not admissible. All evidence must be related to the issues that are to be heard and decided by the ALJ or it will not be relevant.

### **WHAT ARE EXHIBITS AND HOW ARE THEY PREPARED?**

Exhibits are the documents you intend to use at the due process hearing to prove your case. Exhibits typically consist of IEPs, assessment reports, CDE compliance complaints or corrective actions, and other documents related to the case that you wish to rely on in proving your case at the Due Process Hearing. No later than five (5) business days before the hearing you must give the district and any other party a copy of your documents. (Saturdays, Sundays, and state and federal holidays do not count as business days for this purpose.) This is commonly referred to as an “exhibit binder.” The school district and any other party must also give you a copy of his or her exhibit binder by this time as well. You must also make two extra copies of your exhibit binder and bring both to the hearing. One will be for the ALJ and the other will be for the witnesses to use.

When you are preparing your exhibit binder, make sure that all of your exhibits are complete and in the correct page order. For example, do not include as an exhibit only one page of an IEP or other document. You should include the entire IEP or document, not just one or two pages of it. You should also write page numbers on each exhibit so that a witness can refer to the Exhibit number and page so that all the parties in the hearing can tell which page a

witness is looking at. When you receive the District's exhibit book, you should review it to make sure that the District has included all pages of the IEPs and other documents. You will also want to read the documents. Make notes about the documents that you want to object to at the hearing, or that contain some information that you may want to ask a witness about at the hearing.

### **MAY I USE AN AUDIO RECORDING OF AN IEP MEETING AS AN EXHIBIT AT THE DUE PROCESS HEARING?**

You may use an audio recording of an IEP meeting as an exhibit at the due process hearing. However, you must provide a copy of the recording and a transcript of all relevant portions of the record to the ALJ and to all parties along with your other exhibits, unless the ALJ orders otherwise.

### **CAN I REVIEW MY CHILD'S SCHOOL RECORDS?**

You have a right to inspect and review all education records relating to your child that the school or the District collects, maintains, or uses regarding the identification, evaluation, and educational placement of your child and the provision of a free appropriate public education (FAPE) to your child.

### **HOW DO I REQUEST MY CHILD'S SCHOOL RECORDS?**

The law provides that your request for school records may be made to the school orally or in writing. However, it is always best to make your request in writing, and keep a copy of your letter to the school or to the District for yourself, so that you have evidence that you made the request and when it was made. The District must respond to the request without unnecessary delay before the due process hearing, but no later than five (5) business days after you request them. (Saturdays, Sundays, and state and federal holidays do not count as business days for this purpose.) You also have the right to receive a response to your reasonable requests for explanations and interpretations of the records. The school district may charge you a reasonable fee for making the copies. However, the school district may not charge you for searching for and retrieving the records, or for clerical staff time required for making copies. Also, the fee for making the copies may not be in such an amount that it would effectively prevent you from inspecting and reviewing the records. If you cannot afford to pay for the copies, they must be provided to you free of charge.

You also have the right to receive from the school district a response to your reasonable requests for explanations and interpretations of your child's school records.

### **WHAT IF THE SCHOOL DISTRICT DOES NOT GIVE ME THE RECORDS?**

If the school district does not give you the records you have requested, you may file a compliance complaint with CDE. In addition, a school district's failure to provide you with copies of your child's records may constitute "good cause" for a continuance of the due

process hearing. You should notify the OAH in writing if a school district does not comply with your request for records in a pending due process matter and you are unable to prepare for hearing. OAH may grant a continuance for the purpose of obtaining records from the school district.

### **HOW DO I OBTAIN NON-SCHOOL RELATED DOCUMENTS?**

There are special requirements to obtain medical records or employment records about someone other than your child. In the unlikely event that you need to obtain medical records of a person other than your child, you need to be aware of the requirements of California Code of Civil Procedure section 1985.3, which requires notice to the person whose records you are seeking. In particular, Code of Civil Procedure section 1985.3 requires that you serve a copy of the subpoena on the person whose records you are seeking at their last known address at least 10 days prior to the date you want to get the documents and five days prior to the date that you serve the subpoena on the person or company that is holding the documents (for example, a doctor's office). Failure to give the required notice may make the subpoena unenforceable.

### **WHAT DO I NEED TO KNOW ABOUT WITNESSES I WANT TO HAVE TESTIFY AT THE DUE PROCESS HEARING?**

You must exchange witness lists with the school district five (5) business days prior to the hearing. (Again, Saturdays, Sundays, and state and federal holidays do not count as business days for this purpose.) If you do not do so, the ALJ may exclude (prevent) your witnesses from the hearing. You must also include a list of witnesses in the Prehearing Conference statement you are required to file.

In the days before the hearing, think about the facts you want the hearing ALJ to know, and what witnesses you will need to testify about those facts. Think about what you want to ask the witnesses. It is a good idea to write out the questions you want to ask the witness in advance, so that you do not forget anything. You should also consider the order in which you want the witnesses to testify. However, keep in mind that sometimes witnesses cannot be scheduled to testify in the order you would prefer. Often witnesses testify "out of order."

Scheduling witnesses is not always easy, because sometimes it is hard to predict how long a witness will testify. Still, do your best to have witnesses lined up throughout the hearing day so that there are not long periods of time when the parties and the ALJ at hearing are waiting around for a witness to appear. When you are scheduling witnesses remember that, if you filed the due process complaint, then you will be presenting your case first at the hearing, so you must have witnesses available on the first day of hearing.

Let your witnesses know what day and time you want the witness to be present at the hearing, and let them know where the hearing will take place. It is best to do this by writing them an e-mail or a letter. You may also use a subpoena to obtain the presence of a witness at the hearing. (See Section \_\_\_\_ regarding subpoenaing witnesses.)

## **HOW TO I GET A WITNESS TO APPEAR IF THEY DO NOT AGREE TO APPEAR?**

**Unwilling Witnesses:** Sometimes people do not want to testify at a due process hearing and will not appear voluntarily. In addition, sometimes people will not voluntarily provide to you documents that you may want to use as exhibits at your hearing. This section describes what to do when someone you want to testify at the hearing will not attend voluntarily, and how to get documents that you need for your hearing. This section concerns documents other than school records, which school districts are required to provide.

**Subpoenas for Unwilling Witnesses:** A subpoena is used to compel people to provide documents or testimony. (**FORM 16**). A subpoena is a legal document that compels production of documents or attendance at a hearing. Although OAH itself cannot hold people in contempt, a subpoena is enforceable by seeking a contempt order from the Superior Court in your county.

Attorneys can sign subpoenas themselves. However, if you are not an attorney and do not have one, you can obtain subpoenas from OAH prior to the due process hearing by requesting them in writing or by telephone from the OAH support staff person that is assigned to your case. Ask to speak to the OAH staff person assigned to your case, and request that your staff person provide subpoena forms to you. You will need to specify whether you are requesting subpoenas for persons or documents, or both.

The OAH staff person assigned to your case will prepare the subpoena forms to be faxed or sent to you, and the subpoena form will be signed by the Presiding ALJ for OAH. However, once you receive the subpoena forms signed by the Presiding ALJ, it will be up to you to fill in the subpoena to include the details. Your subpoenas for documents must identify the person or entity from whom you are seeking documents and the documents that you are seeking. Your subpoenas for people to testify must name the person and the time, date and place of the due process hearing. If your hearing is continued and you have a witness subpoenaed for the incorrect hearing date, you must subpoena the person with a new subpoena with the correct hearing date.

After the hearing has begun, you may still be able to obtain a subpoena by having the ALJ who is conducting your hearing sign the subpoena for you.

Remember, it is easier to try to work with other people's schedules so that they can attend the hearing voluntarily. Thus, if a witness is unavailable on the date or time that you want them to testify, work with person and the hearing ALJ to determine another time when the witness can testify voluntarily. (See Code Civ. Proc., §§ 1985.1 & 1985.2.)

School districts generally make witnesses employed by the district available for the hearing. You should inquire whether your district will do so and work with the district to establish a schedule for the witnesses to appear. This will save you the cost and effort associated with subpoenaing these witnesses. You should discuss this with the school district or its attorney

prior to or during the Prehearing Conference in your case. Most districts will work with you, but they are not required to do so.

**Proper Service of a Subpoena is Required:** To be enforceable, subpoenas must be properly served. Proper service means that you can show that the subpoenas actually got to the person or place who was supposed to receive it. In general, personal service is required for a subpoena that requires someone to testify. (See Code Civ. Proc., § 1987.) Personal service means handing the subpoena to the person. Personal service is important because unless the person had actual notice of the hearing, it is difficult to compel the person to attend. The law requires that witnesses who are compelled to attend the Due Process Hearing by subpoena be paid witness fees and mileage. You are responsible for paying the witness fees and mileage of any witnesses you subpoena to the hearing, unless the witness waives fees and mileage. The witness fee and mileage are established in the Government Code and are \*\*\*\*\*. The witness you have subpoenaed will typically ask the party who subpoenaed him or her for witness fees and mileage, and also to inform that person of the number of miles driven for purposes of calculating mileage fees.

For documents, you may be able to serve the subpoena by mail, provided that you add five (5) days to the service time or by facsimile if the party to whom you are serving the subpoena agrees in writing. (See Code Civ. Proc., § 1013.)

### **WILL THERE BE AN INTERPRETER FOR THE HEARING?**

Due process hearings are conducted in English. If you, or any of your witnesses, do not speak English well or at all, you can request that an interpreter be present at the hearing. If you are deaf or hard of hearing, you may request an interpreter that purpose as well.

The request for due process hearing form contains a space to mark that you need an interpreter and the language that the interpreter should speak. If the District filed the request for due process hearing against you and you require interpretation, you should call or write to OAH/Special Education Division to request an interpreter as soon as possible after you receive the request for due process hearing.

If the hearing date is approaching and you have not yet made OAH aware of your need for an interpreter, call OAH/Special Education Division in Sacramento immediately and let the staff know that you require an interpreter for the due process hearing. It is the responsibility of OAH to arrange for the interpreter, but OAH staff needs to know before the date of the hearing whether you need an interpreter and for what language.

### **WHAT IF I WANT TO USE AN EXPERT WITNESS?**

If you filed the request for due process hearing, you will likely bear the burden of proof at the hearing and it may be essential that you have an expert witness testify regarding certain issues in your case. Expert witnesses usually are professionals, like a psychologist or someone who assessed your child,

If you think you need testimony from an expert, you should contact that person as early as possible and ask the person if he or she would be willing to come to the due process hearing and testify. If you cannot afford to pay that person for his or her time, you may ask the person if he or she will testify as an expert without cost. In the Prehearing Conference statement you must file, you are required to disclose any experts that you are using at the hearing.

Do not be surprised if doctors, psychologists, or other professionals expect to be paid to appear and render expert opinions. This is common, particularly when these people make money by seeing patients or providing service and any time away from their work reduces their income. A subpoena cannot be used to compel someone to provide professional opinions at no cost. Rather, a subpoena may be used only to compel testimony from a person about what the person saw. If you cannot pay for their testimony, it may be possible to subpoena the person to provide limited testimony about his or her observations.

Another alternative is to see if you can minimize the disruption to the professional's schedule by taking telephonic testimony, which is generally shorter and can be fit in to the person's schedule. If you think you need to take testimony by telephone, you should ask the ALJ at the beginning of the hearing or the ALJ who conducts your Prehearing Conference if he or she will allow telephonic testimony from your witness. Be sure to explain that you are asking because it is difficult to get the professional to appear in person at the Due Process Hearing. However, keep in mind that the ALJ may be able to glean more from the expert's testimony if the expert testifies in person.

Expert witness fees are not recoverable, meaning that even if you win the case, you cannot recover expert witness fees from the school district or any other party. A portion of expert fees may be reimbursable by the school district, however, if the expert provided an independent educational evaluation under applicable law.

### **WHAT IF I NEED TO CONTINUE (OR POSTPONE) THE INITIAL DATES SET FOR DUE PROCESS HEARING?**

OAH assigns an initial hearing date when the case is filed, and sends a Scheduling Order to the parties advising them of this date. (See Section \*\*\*) The Scheduling Order comes with a continuance form, which you and the school district and any other parties may fill out and send to OAH to jointly request a continuance of the initial hearing date designated in your Scheduling Order. **(FORM 12)** All parties must agree upon the dates to use the form.

Read and follow the instructions on the form before you and the school district fill it out and send it to OAH because it contains important information. For example, the regulations that govern OAH require that the parties "meet and confer" (which means discuss) new hearing dates. Also, the new hearing dates must be within 90 days of the date initially assigned for hearing by OAH and included in your Scheduling Order. If the dates you agree upon for hearing are beyond 90 days from the date initially assigned for hearing by OAH, you must

include an explanation as to why the hearing dates are selected. After the parties have reached agreement on the dates, all parties must sign the form.

If the parties are unable to agree to new hearing dates, the parties must submit with the form the dates on which they are unavailable, and OAH will select the dates for the parties. Additionally, you may, in this form, request that OAH set dates for you within 90 days of the date initially set by OAH for hearing.

OAH will grant a continuance only when a complete form is submitted. Failure to submit a complete form may result in denial of your request. **(FORM 12)**

If any party opposes a continuance, the party requesting the continuance may file a written request for a continuance with OAH, serve a copy of the request on the other parties, and include “proof of service” with the continuance request filed with OAH. OAH will review the request and will grant the request only if it is based on “good cause.” That means that the reasons why you want the continuance must be good reasons, and your request must explain why there is “good cause” for the continuance. The request will be ruled on by an ALJ. Until the ALJ has made a ruling on the request for continuance, you and the District and all other parties must be prepared to go to hearing on the date set because the continuance may be denied if good cause has not been established. **(FORM 13)** **You may not use the forms provided with your scheduling order for a continuance unless all parties agree to the continuance.** Information regarding continuance guidelines, and continuance forms, are available on the OAH website.

### **WHAT ARE SOME EXAMPLES OF GOOD CAUSE?**

Good cause might include an illness, although the ALJ may require a physician’s statement regarding the illness, pre-paid trips, witness unavailability, or difficulty hiring an attorney. It is difficult to say what is or is not good cause, so you should always submit a letter saying why you need a continuance and let an ALJ decide.

Good cause does not include failure to prepare for hearing, the failure to serve witnesses with a subpoena requiring their attendance, or the fact that a compliance complaint is pending with CDE.

### **WHAT IF I NEED AN ADDITIONAL CONTINUANCE?**

If you have been granted a continuance and need another continuance of the hearing, contact the District and any other parties and see if they will agree to a continuance. If all other parties agree, you may jointly request a continuance from OAH. Even if the parties agree to continue the matter a second time, you should include a brief explanation about why the matter is being continued. If the District or any other party will not agree to a continuance, you should send your request for a continuance to OAH, and serve it on the District and to all other parties, as described in the previous section. Your request must be supported by good cause, as described in the previous section. Again, until the ALJ has made a ruling on the

request for continuance, you must be prepared to go to hearing on the date set. You may not use the form provided with your scheduling order to request this continuance unless all parties agree to the continuance. A sample of a form that you may use to request a continuance in this situation is included in the appendix. **(FORM 14)** Information regarding continuance guidelines, and continuance forms, are available on the OAH Web site.

### **ARE THERE OTHER IMPORTANT THINGS I SHOULD KNOW BEFORE THE DUE PROCESS HEARING?**

You should bring pens and plenty of paper to the hearing, so that you can take notes. It may also be helpful for you to bring sticky notes (“post-its”). You should also bring the following: (1) the exhibit binder that the school district sent to you; and (2) three copies of the exhibit binder that you sent to the school district, so that there is one for the ALJ, one for the witnesses to use, and one for you to use.

You have the right to be represented by an attorney at the Due Process Hearing at your own expense. No attorney will be appointed for you. There is a list of attorneys on the OAH website [www.oah.dgs.ca.gov](http://www.oah.dgs.ca.gov) who have agreed to represent parents at a lower fee, or for free.

You are not required to have an attorney at the hearing. Some parents hire an advocate to represent them at the hearing. Some parents choose to represent themselves at the hearing. Be aware that usually, but not always, Districts are represented by attorneys at the hearing. Any party who is going to be represented by an attorney at the hearing must notify all other parties to the hearing of that fact at least ten (10) calendar days before the hearing date.

### **WHERE IS THE DUE PROCESS HEARING HELD?**

Due process hearings generally take place at the District’s offices, but, on occasion, may take place at one of the OAH hearing offices. Parents can also request that the hearing be held at a location other than the district’s offices.

### **IN WHAT KIND OF ROOM WILL THE HEARING BE HELD?**

The due process hearing may be held in a conference room at the District, or in the “Board Room” where the school board holds its meetings. When you arrive at the District’s offices, the receptionist will help you find where the hearing will take place.

If possible, the ALJ will have the room set up to look like a courtroom, with the witness chair to the side of the ALJ, and the parents and the District representatives sitting in front of the ALJ. . The parents should have a table, and the district should have a table, and these tables should be parallel to each other facing the ALJ. Sometimes the room is not of the correct size or the furniture is shaped or sized in such a way that the room cannot be set up like a courtroom. The ALJ will set up the room as he or she thinks is best.

## **WHEN SHOULD I ARRIVE AT THE HEARING?**

The time and location of the hearing is contained in the Scheduling Order. It is a good idea to get to the hearing early, so that you can find the hearing room and have time to get organized before the hearing starts.

## **WHAT SHOULD I DO IF I AM RUNNING LATE TO THE HEARING?**

If you are going to be late, you should call OAH's office in Sacramento and tell the staff there that you will be late. The OAH staff in Sacramento will know how to contact the ALJ and let the ALJ know that you will be late.

If you are late to the hearing, and you have not called, your request for due process hearing may be dismissed. If the District filed a due process complaint against you, then the ALJ can hear the District's side of the case even though you are not present. Therefore, it is important to appear in person and on time at the Due Process Hearing.

## **WHAT SHALL I DO JUST BEFORE THE HEARING BEGINS?**

Before the hearing starts, you will give one of your exhibit binders to the ALJ and put another of your exhibit binders by the witness chair. Similarly, the District representative will give one of the District's exhibit notebooks to the ALJ and put the District's other exhibit binder by the witness chair.

## **WHERE WILL MY WITNESSES BE?**

If your witnesses for the first day of hearing are present at the hearing room, you should ask them to wait outside the hearing room until they are called to testify. Except for the parties, witnesses are usually not allowed to sit in the hearing room and hear the testimony of other witnesses.

## **ARE CELL PHONES PERMITTED?**

The ALJ will expect that you and everybody in the hearing room will have turned off their cell phones and PDAs before the hearing starts. You should also remind your witnesses to turn off their cell phones and PDAs before they come into the hearing room to testify.

## **WILL THE HEARING BE RECORDED?**

All due process hearings are recorded using digital equipment, which is connected to the ALJ's laptop computer. There are four microphones: one for the witness, one for the ALJ, one for the parents' side of the table, and one for the District's side of the table. The microphones record everything that is said at the hearing. OAH maintains the recorded hearing record at OAH.

## **WHO IS RESPONSIBLE FOR THE RECORDING EQUIPMENT?**

Before the start of the hearing, the ALJ will set up the recording equipment in the hearing room. To ensure the equipment is set up properly, the ALJ may ask that the parties leave the room to avoid any distractions. Throughout the hearing, the ALJ will check the sound and make sure that the hearing is being recorded correctly.

The ALJ will turn the recording equipment off during breaks at the hearing, and will announce when he or she has turned the recording equipment on or off. When the recording equipment is turned on, that is called “going on the record.” When the recording equipment is turned off, that is called “going off the record.”

The ALJ will invite you and the District personnel back into the hearing room when the ALJ has finished setting up the recording equipment and is ready to start the hearing. The ALJ may direct you and the District representative where to sit. If the room is set up like a courtroom, it is customary for the person who filed the due process complaint to sit on the side closest to the witness chair.

## **WHAT IF I WANT TO RECORD THE HEARING USING MY OWN EQUIPMENT?**

If you wish to record the hearing yourself, you may ask the permission of the ALJ to do so. Although this request should be made at the prehearing conference, you may also make the request at the due process hearing. The ALJ has discretion to grant your request, and will consider factors such as whether your recording of the proceeding is distracting to the process or the parties. If the ALJ does permit you to record the hearing, your recording will not be the official record of the proceedings. The ALJ’s recording will be the official record. When the ALJ says “off the record,” you must stop your recording and not turn it back on until the ALJ says “on the record.”

## **WILL THE ALJ BE WEARING A BLACK ROBE?**

Most ALJs wear a judicial robe during the hearing, though some do not.

## **AFTER THE PARTIES ARE SEATED WHAT WILL HAPPEN FIRST?**

When the parties are seated in the hearing room, but before the ALJ turns on the recording equipment, the ALJs may ask whether there is anything that anyone wants to discuss. This can be a good time to mention things that might affect the progress of the hearing, such as scheduling of witnesses, or if you did not receive some or all of the school district’s exhibits. Sometimes things come up after the prehearing conference that you think that the ALJ should know, and this is an opportunity to mention them to the ALJ. Sometimes, if the parties are close to settling the matter, they will use this time to ask the ALJ whether the ALJ will give them some additional time to discuss settlement before the hearing starts. It is up to the ALJ to decide whether to grant such a request. You should be prepared to start your hearing on the first day at the scheduled time.

## **WHAT IF I DECIDE TO GET AN ATTORNEY OR ADVOCATE PRIOR TO THE DUE PROCESS HEARING?**

Although you are not required to have an attorney at any point in due process proceedings with OAH, sometimes people whose cases have not settled by the time of the due process hearing decide they want to have an attorney or advocate. If you decide you want to be represented, you are required by law to inform the school district and any other parties that you are represented at least ten (10) days prior to the due process hearing. Your attorney or advocate is required to file a “notice of representation” with OAH and to serve all other parties with this notice. If you retain an attorney or advocate less than ten (10) days before the due process hearing, your attorney or advocate may request a continuance of the hearing to ensure that the school district and other parties have proper notice.

You may be able to recover attorney fees if you prevail in your case. However, you will not be able to recover fees for an advocate.

## **WHAT IF I DECIDE ANOTHER MEDIATION MIGHT RESOLVE THE CASE PRIOR TO THE DUE PROCESS HEARING?**

Mediation is available at all stages in the proceeding, so long as the parties agree to participate in mediation. If you decide you want an additional mediation, you should contact the school district and other parties and ask if they are willing to participate in mediation. If so, you may contact OAH and request mediation before the hearing. OAH encourages the parties to work out their differences and will help the parties whenever possible. OAH strongly encourages the use of mediation for due process hearings. (See Section \*\*\*)

## **CHAPTER 7 – THE DUE PROCESS HEARING**

### **HOW WILL I KNOW WHEN THE DUE PROCESS HEARING OFFICIALLY BEGINS AND IT IS BEING RECORDED?**

Before the ALJ turns on the recording equipment, the ALJ will usually say something like, “We are going on the record now.” The hearing does not officially start until the ALJ has turned on the recording equipment. When the recording equipment has been turned on, the ALJ will announce the name and number of the case, identify himself or herself, and state the date and time for the record. This is called “opening the record.”

### **“PARTY APPEARANCES FOR THE RECORD” AND THE “OATH”?**

The ALJ will also ask the parties to state their “appearances,” which means to introduce themselves. If your name is “John Doe,” and you are the parent, you will say, “I am John Doe, and I am the father of Jane Doe, the Student in this case. My name is spelled J-O-H-N D-O-E.” Each person then takes turns stating their full name and spelling their name and stating whom they represent.

If there is an interpreter, the interpreter must also state and spell his or her name, and identify himself as an interpreter. The ALJ will then “swear in” the interpreter by having the interpreter stand, raise his or her right hand, and swear (or affirm) to properly interpret the proceedings.

If you are representing yourself at the hearing, some ALJs may also ask you to rise, raise your right hand, and take the witness oath by which you swear (or affirm) to tell the truth. This is done so that there will not be any concern about whether what you say during the hearing is argument (telling the ALJ how you think he or she should interpret the evidence) or evidence (testimony or exhibits). The ALJ will let you know when the ALJ wants to “swear you in.”

### **OTHER PROCEDURAL ISSUES**

After everybody has made their appearances, the ALJ may discuss certain matters that the ALJ believes should be mentioned while “on the record.” These matters vary depending upon the case, but they may include preliminary matters, such as motions or evidentiary issues that have arisen since the prehearing conference, or scheduling matters. The ALJ may mention certain of his or her practices and preferences regarding the hearing, such as when the lunch break or other breaks will be taken. If you are representing yourself, the ALJ will describe the hearing process for you, and perhaps give you more details than you will find in this Manual.

During any of these discussions, and during any part of the proceedings, only one person speaks at a time. Nobody should interrupt anybody else, and nobody should interrupt the

ALJ. If you have something to say, you must wait until it is your turn to say it. If you are afraid you will forget what you want to say, write it down, and wait until it is your turn to speak. Not speaking at the same time and waiting for your turn to talk helps insure that the hearing recording is accurate.

### **HOW DO I CONDUCT MYSELF DURING THE HEARING (COURTROOM DECORUM)?**

The ALJ is bound by canons of ethics that govern his or her behavior during the hearing, and attorneys are bound by rules of ethics and a code of conduct that govern their behavior during a hearing. Parties who are not attorneys are not bound by those rules. However, every ALJ will expect and require every party to conduct themselves in a civil manner that is conducive to completing the hearing in a timely manner. It is within the authority of the ALJ to establish guidelines for behavior during the hearing. It is, in fact, the obligation of the ALJ to conduct and complete the hearing, to establish guidelines for conduct of the parties, and to ensure that those guidelines are followed. If your conduct is not acceptable to the ALJ at any time during the hearing, or if your conduct interferes with the conduct or completion of the hearing, it is the obligation of the ALJ to inform you of this and take steps to prevent this from occurring.

As some examples, you may not interrupt the ALJ, the attorney for the other side, or any other person during the proceeding. You may not talk to the ALJ about the case or your child during breaks in the proceeding. You must follow all orders of the ALJ. You must not yell or provide comments while a witness is testifying.

If you have any questions about whether something is or is not acceptable, you may ask the ALJ at any time.

### **HOW WILL THE DUE PROCESS HEARING PROCEED?**

The manner in which the due process hearing will proceed is within the discretion of the ALJ. It is the duty of the ALJ to complete the hearing and get all of the evidence he or she requires to write the decision on the issues presented in the request for due process hearing. The ALJ is given flexibility and discretion to fulfill his or her obligation of completing the hearing.

The ALJ may order that the hearing proceed in the manner of a trial in a civil case, which is described below, in which case the party who filed the request for due process hearing would put on his or her case first and question all of his or her witnesses, and then the party against whom the request was filed would put on his or her case.

However, the ALJ has the discretion to order that each witness will testify only once, and that each party must question the witness when the witness is there to testify. In this type of situation, neither party puts on his or her case "first."

You should feel free at any point in the proceeding to ask questions of the ALJ, and clarify in advance how the hearing will proceed.

## **WHAT ARE OPENING STATEMENTS?**

An opening statement is a brief introduction that explains what you expect the hearing to be about and what the witnesses and evidence will show. The opening statement should tell the ALJ what the case is about, what your evidence will show, and how that evidence will prove your case. A good opening statement is like a “road map” of the case.

In general, the party who filed the due process complaint presents his or her case first, so the ALJ will start with that party. The party who did not file the due process complaint presents his or her case after the party who filed the request for due process hearing presents his or her case. Therefore, the ALJ will ask each party, in turn, whether the party wishes to make an opening statement. No one is required to make an opening statement.

In a student-filed case, after your opening statement, or if you choose not to make an opening statement, the ALJ will ask the party against whom the request for due process hearing has been filed to give his or her opening statement. The party may give his or her opening statement at that time, or may “reserve” his or her opening statement and give it at the time the party presents his or her case.

In a school district-filed case, you may give your opening statement at the beginning of the hearing, or you may “reserve” your opening statement and give it until it is time for you to present your case.

An example of an opening statement might be: “This case is about my daughter, Jane, who has autism. I disagree with the speech and language and occupational therapy assessments performed by the District. I want Jane to have independent speech and language and occupational therapy assessments. Also, Jane receives group speech and language and occupational therapy services now, but she is also entitled to receive clinic speech and language services and clinic occupational therapy services. I will be proving my case through testimony and exhibits.”

You may then say who the witnesses are and what they will say, or what the documents prove. For example, you could say, “I intend to call Mary Smith at the hearing. Mary Smith was my daughter Jane’s second-grade teacher. She attended the IEP meeting on January 22, 2007, where the IEP team discussed the speech and language and occupational therapy assessments. I expect her to testify that Jane needs clinic-based speech and language services.”

You may then say something similar for each of your witnesses. You need not say very much about each witness. It is enough if you state just a sentence or two about who they are and what you expect them to say at hearing.

Based on your opening statement, the ALJ will know what to expect as the hearing progresses, and can begin to think about the case from your point of view.

## **WHAT IS THE ORDER OF WITNESS TESTIMONY?**

After opening statements have been given, the ALJ may ask the party who is presenting his or her case first, to call his or her first witness. That party will go out of the hearing room and bring the witness in. The witness will stand by the witness chair. The ALJ will give the witness the oath, and then ask the witness to sit down. The ALJ will ask the witness to state and spell his or her name for the record. After that, the ALJ may explain to the witness a few things about the hearing process and the fact that the hearing is being recorded.

The party who has called the witness asks questions of the witness first. This is called “direct examination.” The purpose of direct examination is for the person who called the witness to prove part of his or her case through the witness’s testimony, or through “testimonial evidence.”

When the party who called the witness has asked all of the questions he or she wants to, the ALJ will give the other party the opportunity to ask questions. This is called “cross-examination.” The purpose of cross-examination is to test the credibility of the witness, and to further examine the witness on particular points raised on direct examination. Cross-examination is limited to the areas of examination on direct examination unless the witness has been called by both parties.

After the other party has finished the cross-examination, the first party may ask additional questions. This is called “re-direct” examination, and is generally limited to asking questions about what was said on cross examination. Then, the second party may wish to ask more cross-examination, and that is called “re-cross” examination, and is generally limited to asking questions about what was said on re-direct examination. The questioning goes on like that until both parties have finished asking questions. The ALJ has discretion to limit how much re-direct or re-cross examination is permitted.

After both parties have questioned the witness, the ALJ may have some questions for the witness. After the ALJ has finished asking questions, the ALJ will ask the parties if they have any further questions, based upon what the ALJ has asked. If so, the party who went first will go first again.

After the parties and the ALJ have finished with their questions, the ALJ will ask whether the witness may be excused. If the parties say “yes,” then the ALJ will tell the witness that he or she can leave.

The due process hearing proceeds in that manner, witness by witness, until all witnesses are called and examined by the party who filed the request for due process hearing. When that party has finished calling all of its witnesses, the ALJ will ask if that party “rests” his or her case.

Then it is the other party's turn to call his or her witnesses. If that party has "reserved" opening statement, he or she will have the option of beginning with his or her opening statement, and will then call his or her witnesses, one at a time, for questioning. The questioning will proceed in the same manner as described above.

Please be aware that the ALJ conducting the hearing has the discretion to establish the manner in which the due process hearing will proceed. Some ALJs allow only two rounds of questioning of a witness per party, and other ALJs allow continued rounds of questioning until all questions are exhausted.

### **WILL I HAVE TO TESTIFY?**

You may call yourself as a witness, or the District may call you as a witness. You will then go to the witness chair. The ALJ will "swear you in" if you have not already been "sworn in". If you have called yourself as a witness, you do not need to ask yourself questions. You may just tell the ALJ the facts that you know about the case and that you need to establish through your testimony to prove your case. The ALJ may ask you some questions while you are testifying, and may even ask you some questions at the beginning of your testimony to get you started.

The school district may call you as a witness as well. If the school district has called you as a witness, the attorney for the school district will ask you questions first.

### **WHAT DO I DO IF I DISAGREE WITH A QUESTION BEING ASKED BY ANOTHER OR WITH A DOCUMENT REFERRED TO BY A WITNESS OR THE OTHER PARTY?**

Whenever a witness is testifying, it is important to listen carefully to the questions that the other party is asking a witness, because you have the right to object to a question that is asked if you believe it is improper. The objection is properly made before the witness starts to answer the question, but after the question is asked. You may also object to a document when a witness is asked about it.

To make any type of objection, you say, "Objection," and briefly tell the ALJ the reason for the objection. The ALJ may ask to hear arguments from the other party and from you about the objection, or may simply make a ruling on the objection without hearing arguments.

If the ALJ says "overruled," then the ALJ has denied your objection, and the ALJ will instruct the witness to answer the question, or will permit the witness to testify about the document. If the ALJ says "sustained," then the ALJ has granted your objection, and the witness will be instructed not to answer the question or not to testify about the document.

If you are asking a question and the other party makes an objection, the ALJ will let you know if he or she wants to hear argument from you about the objection. Many times, parties

will start arguing about the objections before the ALJ has asked for argument. This is not proper way to proceed. Wait until the ALJ asks for argument on an objection before you start arguing.

If you are the witness, you have the right to object to the school district attorney's questions and to the documents that the attorney for the school district may show you. For example, if the attorney for the school district asks you a question that is not relevant to the proceedings, you may object. Or if the school district's attorney shows you a document that you have not seen before, or that was not provided to you in the school district's exhibit binder, you may object.

Sometimes, you or another party will ask a witness a question, and the witness will not only answer the question, but will say additional things that do not respond to the question. If you do not want the ALJ to consider that additional information, you can try to have it "stricken" (that is, removed) from the record.

For example, if the witness answered "yes," and then added something after the "yes," that you thought did not really answer the question that was asked, you would say, "I move to strike everything after yes." The ALJ will then decide whether your motion to strike will be granted or denied. As with objections, do not argue about the motion to strike unless the ALJ asks for argument. You should remember that a witness has the right to answer the questions to the best of the witnesses' ability and even though you may think the question only called for a yes or no, the witness may be permitted to explain the answer.

If a witness is shown a document (exhibit) during the questioning, the ALJ will mark the document for identification so that during the hearing when a witness is asked about a document, everyone will know what document is being discussed. At some point during the hearing, the party who wants to have the document entered into evidence will ask ("move") that the document be admitted into evidence. Some ALJs may ask that you "move" the document into evidence after you have shown it to the witness and the witness has testified about it. Some ALJs will prefer that you "move" any such documents into evidence after the witness has finished testifying, but before the witness leaves the witness chair. Other ALJs may ask that the document be "moved" into evidence at the end of each day of hearing. The ALJ will let you know what he or she prefers.

When the ALJ "moves" the documents into evidence, the ALJ will ask whether there are any objections to having the document moved into evidence. If you have an objection to the opposing party's documents, now is the time to make it. For example, if the other side wants to have moved into evidence a document that was not referred to at all during the Due Process Hearing, you may object. Or you may object if no one identified what a document is during direct or cross-examination. The ALJ will rule on your objections. The other party may also make objections to the documents you "move" into evidence. The ALJ will also rule on those objections. As before, the ALJ will let the parties know whether the ALJ wants you to argue over the objections. The ALJ decides which evidence is admitted into the hearing and the ALJs ruling on the evidence stands even over an objection.

## **IS TELEPHONIC TESTIMONY PERMISSIBLE?**

Sometimes a witness cannot be present to testify in person at the hearing. The witness may be ill, have an emergency, be out-of-town, or be otherwise unavailable to testify in person at the hearing. Under those circumstances, you can make a motion, preferably in writing, to the ALJ to have the person testify at the hearing over the telephone. This should be done at the Prehearing Conference. Sometimes there is an emergency, however, and the unavailability of the witness is not known until the Due Process Hearing starts or is underway. In that situation, you should make the request for telephonic testimony as soon as you know the witness will not be present at the hearing.

You must receive the permission of the ALJ to have a witness testify by telephone. If the ALJ grants permission for a witness to testify by telephone, you must make sure that the witness testifies on a land-line phone, and not on a cell phone. The witness must be alone in the room when he or she is testifying, and the witness must have the exhibit binders of all parties in front of him or her when she is testifying. This means that you will have to make copies of all of the exhibit binders, and any additional exhibits that have been presented, and send them to the witness before the witness is scheduled to testify so that the witness will have them in time for his or her testimony.

## **WHAT IF I NEED TO HAVE TESTIMONY PLAYED BACK TO ME DURING THE HEARING?**

The digital recording equipment used by OAH has the capability of playing back testimony, and all ALJs at OAH know how to use this feature. However, there are limitations to this feature. For example, when a portion of the recording is being played back, the system cannot record the proceedings when the “playback” is occurring. Thus, while this feature is available, whether a particular circumstance warrants the playing back of testimony during the hearing is within the discretion of the ALJ based on the particular issues and circumstances at the hearing. Playing back the testimony is not encouraged and should be used sparingly.

## **WHAT IS THE LENGTH OF THE HEARING DAY AND WHAT ABOUT BREAKS AND LUNCH?**

On the first day of hearing, the hearing customarily starts at 9:30 a.m. After the first day of hearing, the time that the hearing begins each day is usually 9:00 a.m., but the ALJ may change the time the hearing starts, depending upon when the witnesses are scheduled. The hearing day usually ends in the late afternoon, at approximately 4:30 p.m. or 5:00 p.m. Again, depending upon when witnesses are scheduled, and how long a particular witness testifies, the hearing day may end a little earlier or a little later. In general, a good rule-of-thumb is to have approximately 6 hours of testimony a day, not including breaks and lunch.

Each hearing day, it is customary to have a brief break in the morning and in the afternoon, as well as a lunch break. The ALJ determines when these breaks occur and for how long they last. However, you may request a break as well. When it is time to take a break or go to lunch, the ALJ will go “off the record,” and turn off the recording equipment. After the break, or after lunch, when the parties have returned to the hearing room, the ALJ will go “back on the record.” The ALJ will then turn on the recording equipment, and will announce the date, the time, and identify the parties who are present. Then, the hearing will proceed where it left off.

At the end of the hearing day, the parties will decide where the exhibit binders for the witnesses will be stored. Often, there is a reasonably secure place in the District’s office where the witness’ exhibit books can be stored, so that the parties do not have to carry them to and from the hearing. You will want to take your copies of your exhibit books home with you at the end of the hearing day, as well as your notes, so that you can prepare for the next day’s hearing.

At the end of each hearing day, the ALJ will ask what witnesses are expected to testify the next day, and when they are expected to testify.

### **WHAT SHOULD I DO AT THE END OF A HEARING DAY?**

After the hearing day ends, you may have to call the witnesses you have scheduled for the next day to update them on what time to appear for hearing the next day. If you have time, look over the notes you took at the hearing. Think about the questions you want to ask the witnesses for the next day, and the exhibits you want to present or ask the witness about. Make notes about matters that you will want to include in your closing argument. You may even want to start writing out your closing argument, and add to it at the end of every hearing day, so that you will be ready to read it to the ALJ at the end of the hearing.

### **HOW IS THE HEARING CONCLUDED?**

After both parties have rested, they have the opportunity to offer “rebuttal.” Rebuttal is evidence to explain or disprove facts that the opposing party has put into evidence. Note that rebuttal is not simply repeating testimony and evidence that you have already given at the hearing. The ALJ will not let you repeat testimony that the ALJ has already heard. Rebuttal evidence is very specific evidence that has not been presented before in the hearing that contradicts evidence that was introduced by the other party. Be aware that there is often not enough time during the due process hearing for parties to find rebuttal evidence, and, most of the time, the parties do not offer any rebuttal evidence. Further, the ALJ has the discretion to permit or deny a request for rebuttal testimony. You should make sure that you present any evidence or testimony that you want the ALJ to hear during the hearing and not try to keep it for possible rebuttal evidence to “surprise” the other side.

After rebuttal, the ALJ will ask whether the parties wish to make oral closing arguments.

Regarding closing arguments, unless you have made previous arrangements with the other party and the ALJ, the ALJ might expect that you are ready to give a closing argument right then and there. As with opening statements, it is up to each party as to whether the party wants to give an oral closing argument.

If you want to make an oral closing argument, you should summarize the evidence that has been presented, and tell the ALJ why the evidence shows that the he or she should rule in your favor on each issue.

If you prefer to make a written closing argument, you should make this request early in the due process hearing. A written closing argument is called a “closing brief.” It is up to the ALJ as to whether he or she wishes to allow a closing brief, although closing arguments are done by written briefing in most cases. If the ALJ gives the parties permission to file a closing brief, the ALJ will tell you the date that the brief is due and will announce the due date “on the record.” You must fax the closing brief to Sacramento (916-376-6319) for filing, and serve it on the other parties, by no later than the due date set by the ALJ. Remember that the closing brief should only discuss the evidence that has been presented at the hearing. You may not use the closing brief to attempt to have additional evidence admitted.

In some cases, ALJs have allowed each party to file a “reply brief” to the opposing party’s closing brief. This is something that should be requested before the hearing concludes.

At some time after the last witness testifies, and before the hearing concludes, the ALJ may go over all of the exhibits that have been marked and/or admitted into evidence, to make sure that there are no exhibits missing. Any exhibit that has not been admitted into evidence should be moved into evidence at that time.

When all of the above is completed, the hearing is concluded. The ALJ will go “off the record,” and turn off the recording equipment for the last time.

Before you leave the hearing room, be sure to take your exhibit binders, including the exhibit binder you prepared for the witness, with you. Before you leave, the ALJ may return to the parties all exhibits that were in their exhibit binders, but that were not marked and/or admitted into evidence.

### **WHEN MAY I EXPECT A DECISION?**

When you file a case, the law requires that the mediation and due process hearing take place, and the written decision be issued, within 45 days after the end of the 30-day resolution period. If the parties agree not to have a resolution session, then the law requires that the mediation, if any, and the due process hearing take place, and the written decision be issued, within 45 days after the due process complaint has been received or the date the parties waived the resolution session. OAH will provide a copy of the decision to the parties by \*\*\* delivery. In addition, the decision will be posted on OAH’s website. Names of the child or parents will not be included in the decision.

When the school district files a case, there is no resolution period. In that situation, the law requires that the mediation and due process hearing take place, and the written decision be issued, within 45 days after the request for due process hearing has been received by the party against whom it has been filed. The parties may agree to extend the 45-day period, or to waive it entirely. Any such agreement should be in writing. The 45-day period is extended whenever the due process hearing is continued for any reason.

At the end of the hearing you may ask the ALJ the “due date” for your decision.

After the hearing is over, the ALJ will write a decision that will be faxed or sent to the parties. The decision will state the issues in the case, and the facts that the ALJ found to be true. Often the decision will discuss what witnesses the ALJ believed, and why. At the end of the decision, the ALJ will state who won, or prevailed on, each issue. This part of the decision is called the Order. Sometimes one party will have won the entire case, or every issue in the case. Sometimes, one party will win on some of the issues, and another party will win on other issues.

The Order will also state what the remedies are, if any. The law gives the ALJ much freedom to determine the remedies to be awarded, if any. If you have won, the decision may not necessarily award you the remedy that you asked for.

### **WHAT IF I DON'T AGREE WITH THE DECISION?**

If you do not agree with the decision, you may appeal the decision. You have 90 days from the date of the decision to file an appeal. An appeal can be filed in federal court or in state court.

In order to appeal, the reviewing court requires a written transcript of the proceeding, so you must request that OAH transcribe the digital recording of the hearing. **(FORM 15)** You, as parent, are entitled to one copy of the transcript in either written or electronic form at no cost to you. You are also entitled to one copy of the administrative record (OAH's file), including copies of exhibits, at no cost to you.

## **CHAPTER 8 – EVIDENCE AT THE DUE PROCESS HEARING**

### **WHAT IS THE BURDEN OF PROOF?**

The term “burden of proof” refers to which party to a dispute has to produce evidence. The term also can refer to how much evidence it will take to win.

As to which party has to produce evidence, the United States Supreme Court in (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387]) ruled that unless there is an exception under state law, the burden of proof is on the person who filed for due process.

For example,

- If a parent files for due process on behalf of a child, then the parent has the burden of proof.
- If a school district files for due process, then the school district has the burden of proof.

However, the burden of proof may not always rest with the party who filed the request for due process hearing, depending on the facts of the case. You may ask the ALJ who bears the burden of proof on each issue at the due process hearing.

At the conclusion of the due process hearing, the ALJ conducting your hearing will make a ruling based on whether the party who filed the request for due process hearing proved his or her case by a “preponderance of the evidence.” A “preponderance of the evidence” means that it is more likely than not that the party who filed is entitled to relief. Some people describe a “preponderance of the evidence” as 51 percent likely, or, if you imagine a scale, the scale tips slightly in one direction.

### **ARE THERE RULES ABOUT GETTING TESTIMONY AND DOCUMENTS ADMITTED AT THE DUE PROCESS HEARING?**

By the time you attend the hearing you will already have gathered your documents (exhibits), put them in a binder for use at the hearing, and provided a copy of those documents to the school district and any other party. You will also have identified the witnesses that you intend to call at hearing and provided that information to the school district and any other party.

When you go to your due process hearing, the technical rules of evidence that lawyers use in court do not apply. However, the evidence that you produce still needs to be shown to be reliable and relevant (related to the hearing issues) in order to be admissible as evidence. For example, hearsay evidence, which means statements that were not under oath that are offered for the truth, is usually not admissible in court. However, in a due process hearing, the ALJ may consider hearsay evidence if there is evidence to corroborate it or show that it is reliable.

## **WHAT DO I HAVE TO SHOW TO HAVE A DOCUMENT FROM MY EXHIBIT BINDER ADMITTED INTO EVIDENCE AT THE DUE PROCESS HEARING?**

To have a document from your exhibit binder “admitted into evidence,” you must show or establish through the testimony of a witness that the document is “authentic,” meaning drawn up at or around the time of the event being documented and that the document is unaltered. In other words, you have to show that the document is what you say it is and that it is an accurate copy. You may do this through your own testimony, or through the testimony of another witness. You will then ask the ALJ to admit the document into evidence. You do not need to remove the document from your binder because the ALJ has a copy of the document and will be keeping track of the documents that are admitted as exhibits. Before admitting any document into evidence, the ALJ will ask the other side if he or she has any objection to the document coming into evidence.

Whether the exhibits will be considered for admission into evidence when they are introduced or at another time is within the discretion of the ALJ. The ALJ has the discretion to admit evidence in a manner that is consistent with the needs of the case and consistent with ensuring that the parties are provided due process or a fair hearing. Therefore, the ALJ may admit each document at the time you request that it be admitted, or the ALJ may simply mark the exhibit for identification and rule on the admissibility of the exhibits at the end of the day or at the end of the hearing.

## **HOW DO I SHOW THAT THE DOCUMENT IS AUTHENTIC?**

As discussed above, showing that a document is “authentic” means showing, usually through testimony from a witness, that the document drawn up at or around the time of the event being documented, that the document is unaltered, and that the document is what the witness says it is. Documents can be authenticated by showing them to the person who wrote the document or participated in making it and then asking questions. Your questions should focus on establishing that the document is what it says it is and is an accurate copy.

The following questions are an example of how to authenticate a document with a witness who wrote it or participated in writing it:

- Q: Take a look at Exhibit \_ . Do you recognize it?
- Q: How do you recognize it? [If applicable]
- Q: Is that your signature on it?
- Q: Does Exhibit \_ appear to be an accurate copy?

The above questions should work to establish the authenticity of most documents, such as an IEP.

Documents can also be shown to be authentic because they were kept by a government agency or business in the regular course of business. For example, sometimes documents

like attendance records are kept by a school office. To have a record like that admitted, the following questions should work:

- Q: Take a look at exhibit \_\_. Do you recognize it?
- Q: How do you recognize it?
- Q: Was the information recorded by a person with knowledge?
- Q: Was the information recorded in the regular course of business?

The above questions are examples that can both establish whether the document is what you say it is and can also prove that the statements in the document are reliable.

In general, when you want to have testimony like the opinions of people that have assessed your child and prepared reports, it is important to have them appear at the hearing. That way, the person can both authenticate the report and more importantly, can testify about his or her conclusions.

### **HOW DO I GET TESTIMONY ADMITTED AT HEARING?**

Testimony is oral evidence that is taken under oath. To provide testimony, each witness has to swear or affirm under penalty of perjury that he or she will tell the truth. The answer the witness gives to questions asked under oath is the evidence. The questions themselves are not evidence. In other words, questions asked at hearing only give context to the witnesses' answers.

#### **Lay witnesses:**

If you want to prove something during your due process hearing, it is best to have testify at the hearing the witnesses who actually saw the events you want to prove, or who have personal knowledge about the events you want to prove. These witnesses who actually observed the events or have personal knowledge of the events you want to prove are called "lay witnesses."

It is not a good idea to rely on witnesses who "heard" about the events from another person, and can therefore only give "hearsay" evidence of the events. In other words, you should not expect to rely on "hearsay" to prove your claims. "Hearsay" is an out-of-court statement used to prove the truth of the matter asserted. As discussed above, although hearsay (statements made by people outside the hearing) may be admissible, the ALJ may not rely on it in his or her decision unless there is a showing that the hearsay is reliable. Therefore, it is always better to get witnesses who were present at the time of an event.

For example, you may want to ask questions about the events at an IEP team meeting in order to prove a claim in your request for due process hearing. You would want to prove your claim through the testimony of someone who was present at the IEP meeting, rather than someone who heard about the IEP meeting. The following sample questions how to ask

questions when the witness is first called and then show how to establish that the witness was present:

- 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's for [child's name]?
- Q: Did you attend the IEP on [date]?

The above sample establishes that the witness has knowledge of what he or she going to testify about--for example, your child and what happened at an IEP. The remainder of your questions should focus on the basics: who, what, when, where and why, depending on the facts that you think you need to prove your case.

For example:

- Q: Who was at the IEP team meeting?
- Q: What did \_\_\_\_\_ 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?

### **Expert Witnesses:**

Some witnesses are called expert witnesses. Expert witnesses are witnesses who are testifying regarding matters outside common knowledge. Expert testimony can be used if it is helpful to the ALJ (who, in hearing your case will be deciding what facts are true) and is also given by a person with sufficient training to give an expert opinion. For example, an expert witness might have professional knowledge about a topic, such as assessments given to students with disabilities, and have sufficient training and experience to give an expert opinion on that topic.

If you want to present expert testimony, you should obtain a copy of the expert's curriculum vitae (resume) prior to the hearing and have a copy for the other party or parties and the ALJ. This will make it easier for you to establish the expert's qualifications.

To present expert opinion testimony, you may want to ask questions like the following:

- Q: What do you do for a living?
- Q: What is your educational background?
- Q: Is this your CV?
- Q: Is everything in this CV 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?

It should be noted that a witness does not need to be an expert to give an opinion about things that commonly happen in life.

### **IS THERE ANOTHER WAY TO GET TESTIMONY AND DOCUMENTS ADMITTED INTO EVIDENCE?**

A *stipulation* is a substitute for testimony or documents. A stipulation is simply an agreement between the parties that documents are admissible or that certain facts are true. Stipulations have the same effect as evidence.

To see if the school district will stipulate, just ask their representative or attorney whether he or she would be willing to enter a stipulation about the documents or facts that you think are not disputed. They will likely be willing to stipulate to the authenticity of documents like IEPs or assessments conducted by the school district, which are easily proven to be accurate and authentic.

You may also stipulate to facts that are easily proven or not disputed such as: whether you live in the school district, your child's eligibility for special education services (unless this is an issue in the case), where your child goes to school, or when your child enrolled in the district.

You should always consider trying to obtain stipulations, as this makes it easier to present evidence on the facts that truly are disputed in the case. If you and the school district are able to stipulate, make sure that you put it in writing and submit the writing to the ALJ at the hearing.

The ALJ conducting the hearing will verify that the parties agree to the stipulation and will make sure that the stipulation is part of the record of the due process hearing.

### **HOW DO I OBJECT TO DOCUMENTS OR TESTIMONY?**

Even though the technical rules of evidence do not apply at due process hearings, the evidence still needs to be shown to be relevant and reliable. A party may object to evidence or testimony.

A common objection includes "lack of foundation." "Lack of foundation" means a document has not been established to be authentic or that a witness does not have sufficient knowledge to testify about a subject. This type of objections can usually be overcome by asking more questions to establish the "foundation," which means asking the witness questions to establish the witness knows what the document is, or when it was prepared.

Another common objection is “relevance.” Relevant evidence is evidence having some tendency to prove or disprove a fact that is at issue in the case. If the ALJ asks you to argue why the evidence is relevant, try to explain how the fact you are trying to establish proves or disprove a fact relating to the issues you have asked the ALJ to decide.

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## **CHAPTER 9 – GETTING INFORMATION ABOUT THE ALJ ASSIGNED TO YOUR CASE, AND CHALLENGING THE ALJ ASSIGNED TO YOUR CASE**

### **HOW WILL I KNOW WHO IS ASSIGNED AS THE ALJ FOR MY DUE PROCESS HEARING?**

The ALJ assigned to the matter can be determined by calling the OAH staff person assigned to your case or by looking at your case on the OAH website. OAH maintains current biographical information about its ALJs on the OAH website. The Special Education tab on the OAH website includes a listing of ALJs who hear special education matters, and the educational background of each ALJ. This is not intended to be a complete professional biography of each ALJ.

### **HOW CAN I FIND OUT IF THE ALJ ASSIGNED TO MY CASE MEETS THE TRAINING REQUIREMENTS?**

The ALJs at OAH are all required to complete certain training in the area of special education and in the conduct of administrative hearings before they may preside over a due process hearing. All ALJs meet the stringent training requirements before they are fully authorized to conduct the hearing. In addition, all ALJs at OAH are licensed California attorneys.

OAH maintains training records for each ALJ, and you may obtain a copy of the training records of the ALJ assigned to your case by making a “public records act request.” In order to make a public records act request for the training records of a particular ALJ, you must write a letter to the presiding judge, state that it is a public records act request, and request the training records of the ALJ assigned to your case.

### **CHALLENGING YOUR ALJ**

Due process requires an impartial tribunal for administrative hearings. Parties to a due process hearing are permitted to seek disqualification of an ALJ or other presiding officer from hearing an administrative case. If you decide you want to “challenge” the ALJ, you may do so using the “peremptory challenge” or “challenge for cause” procedures described below. Your challenge must be filed in a timely manner, as described below. There are two methods by which a party can seek disqualification of an ALJ – peremptory challenge and challenge for cause.

### **WHAT IS A PEREMPTORY CHALLENGE?**

Each party is entitled to one peremptory challenge (disqualification without cause) of an ALJ assigned to an OAH hearing, provided that the challenge is timely made. You must do the following: (1) direct your letter challenging the ALJ to the Presiding Administrative Law Judge; (2) you or your attorney or authorized representative must send it; (3) it must be made in writing or orally on the record in substantially the form set forth in the regulation; (4) it

must be served on all parties if made in writing; and (5) it must be filed within the required time limits.

The time limits for making a peremptory challenge are set forth in California Code of Regulations, title 1, section 1034:

(c) If, at the time of a scheduled prehearing conference, an ALJ has been assigned to the Hearing, any challenge to the assigned ALJ shall be made no later than commencement of that prehearing conference.

(d) Except as provided in (c), if the Hearing is to be held at an OAH regional office, the peremptory challenge of the assigned ALJ shall be made no later than 2 business days before the Hearing.

(e) Except as provided in (c), if the Hearing is to be held at a site other than an OAH regional office, the peremptory challenge of the assigned ALJ shall be made by noon on Friday prior to the week in which the Hearing is to commence.

In no event will a peremptory challenge be allowed if it is made after the hearing has commenced.

#### **WHAT IS A CHALLENGE FOR CAUSE?**

You can also seek to disqualify the ALJ for cause. Government Code section 11425.40 establishes the criteria for disqualification of the presiding officer and provides in relevant part that:

- (a) The presiding officer is subject to disqualification for bias, prejudice, or interest in the proceeding.
- (b) It is not alone or in itself grounds for disqualification, without further evidence of bias, prejudice, or interest, that the presiding officer:
  - (1) Is or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of that group.
  - (2) Has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the proceeding.
  - (3) Has as a lawyer or public official participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of which is in issue in the proceeding.

The case law in this area is well established that, with certain exceptions, bias and prejudice are not to be presumed and a factual showing of actual bias or prejudice is required.

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## **CHAPTER 10 - MOTIONS**

### **WHAT IS A MOTION?**

In the legal world, a “motion” is a specific request asking a judge to do something and is usually made in writing, and includes relevant facts and any necessary legal analysis to convince an ALJ to grant the motion. In plain language, and for purposes of due process proceedings before OAH, a motion is typically a letter through which a party requests that the ALJ take some action prior to or during the due process hearing. Any party to the proceeding may file a motion with OAH. The ALJ’s decision or “ruling” on a motion filed prior to the due process hearing will be sent to the parties in a document called an “Order.” If a party files or orally makes a motion at the Due Process Hearing, the ALJ will likely rule on the motion during the hearing.

### **WHAT SHOULD A MOTION CONTAIN?**

Because the due process hearing procedures are more informal than those in other types of legal proceedings, and because these procedures are intended to be accessible to parents who are not represented by counsel, OAH does not require formality in motions filed by parties. You may write your motion in a letter and simply state what you want and the reasons why.

Your motion must also contain a statement that you sent a copy to the district (give name and address to whom sent) and any other parties at the same time you sent it to OAH. Give the name and address of the persons to whom you sent the document and state whether you mailed, hand-delivered or faxed that copy.

### **WHERE DO I FILE A MOTION?**

Motions, as with all documents in a special education matter, are filed with the Sacramento OAH office. 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 the time you mail or fax your motion to OAH, you must mail or fax a copy of the motion to the district and any other parties. If an attorney represents the district or another party, you must send the copy to that attorney. The district and other parties, if any, will have three business days after they receive the motion to file a response with OAH and to send a copy to you or your representative.

### **HOW DO I RESPOND TO A MOTION FILED BY THE DISTRICT?**

If the district files a motion, the district will send a copy to you or your representative. You will then have three business days to file a response with OAH to the district’s motion. You must provide the district and any other parties with a copy of your response. If you cannot

file your response within the required timeline, you may write a letter to OAH, with a copy to the school district or the school district's attorney if the school district is represented, and request additional time to respond.

## **WHAT ARE SOME EXAMPLES OF MOTIONS?**

- Notice of Insufficiency to challenge the sufficiency of the complaint. This is usually filed when there is a question as to whether the complaint has sufficient facts necessary to allow the district to respond to the complaint
- Motion to Continue the hearing dates
- “Stay put” motion to ensure your child remains in his last agreed upon and implemented placement while you resolve the dispute with the district
- Motion to Dismiss some of the issues in the complaint, or maybe even the entire complaint. Some of the commonly seen grounds for a Motion to Dismiss include:
  - issues alleged by the parent are not within the jurisdiction of OAH,
  - Student is not a resident of district (residency does not relate to immigration status), or
  - that the parents refused to participate in a resolution session convened by district.
- Motion to Amend the Complaint – this is typically a motion to add a claim or claims to the complaint.
- Motion to Set Hearing Dates - based on a district's failure to convene a resolution session within 15 days after the parent filed the complaint.
- Motion to Add Another Party - typically the district or parents request that OAH add as a party another school district or county mental health agency that may be responsible for providing special education services to the student.
- Motion to Consolidate - the district and parents may have filed separate complaints that involve similar issues. Instead of two separate hearings, either the district or parents will file a motion to consolidate both cases into one matter so that there is only one hearing.

## **WHAT IS A NOTICE OF INSUFFICIENCY**

Federal and state law require that a complaint include the child's name, age, address and the school the child presently attends. Further, the complaint must include specific allegations regarding the nature of the problem, and a requested remedy.

The law allows a party to challenge whether the due process complaint filed by the other party contains sufficient facts to support the claims.

A party has 15 days after receiving the complaint to file a NOI with OAH. If a party does not file a NOI within 15 days, the complaint will be considered sufficient. OAH has five days after it receives the NOI to issue an order. While the Party who files the complaint may submit a response, OAH will rule on the NOI whether it receives a response or not because the ruling is to be made based on the face of the complaint in order to determine whether the complaint contains adequate allegations.

In ruling on an NOI, OAH does not consider whether the claims have merit or whether the Student will prevail. Also, when ruling on an NOI, OAH does not consider defenses such as whether the allegations are outside the two-year statute of limitations or barred by a previous settlement agreement. OAH looks to the complaint itself to see if the complaint sufficient.

If OAH determines your complaint to be sufficient, the mediation and hearing will proceed as indicated in the Notice of Hearing issued by OAH.

If OAH determines that your complaint does not contain sufficient allegations, OAH will cancel the mediation and hearing dates, and give the party who filed the complaint 14 days to submit to OAH and the other parties an amended complaint that contains sufficient facts.

Finally, OAH may issue an order that finds some allegations sufficient and other allegations insufficient. If OAH finds the complaint to be partially sufficient, the party who filed the complaint will be given 14 days to file an amended complaint that includes both the allegations found sufficient and additional facts to correct deficient allegations.

- If you do not file an amended complaint, all originally scheduled dates for hearing will remain on calendar and the matter will proceed on the issues that were determined to be sufficient.
- If a party files an amended complaint, OAH will cancel the mediation and hearing dates and send out a new Notice of Hearing with new dates for the Prehearing Conference and due process hearing.

**Examples of insufficient allegations:**

- The district denied student a FAPE by not providing Student with needed services.

This allegation is not sufficient because it does not identify the services (such as occupational therapy) that student requires, why student requires this service to

receive FAPE, what IEP includes the service, and when the district failed to provide student this service.

- The district failed to identify student as a child who requires special education services.

This allegation is not sufficient because it does not identify when the district should have identified student as a child who might requiring special education and the facts that put the district on notice that student might require special education services. Nor does it identify the alleged disability for the child.

- The IEP proposed by the district will not allow student to make some educational progress.

This allegation is not sufficient because it does not identify the specific IEP at issue, student's unique need (such as speech and language or reading deficits), the services, if any, the district offered, and why the district's offer is not adequate.

- The district did not assess student in all areas of suspected disability.

This allegation is not sufficient because it does not identify the areas of suspected disability, the assessment(s) that the district needed to conduct, and when this occurred.

- Student requires an Independent Educational Evaluation.

This allegation is not sufficient because it does not identify the assessment that the district conducted or failed to conduct, why the district's assessment is not adequate or why the district needed to assess student. It does not state when parents requested that the Independent Educational Evaluation and the district's response to the request.

## **MOTION FOR STAY PUT**

Federal and state law requires that a Student remain in his or her last agreed upon and implemented educational program during the pendency of due process proceedings, unless the parties agree otherwise. This is known as "stay put."

If you and the district cannot agree upon what constitutes the student's last agreed upon and implemented program, or if the school district refuses for any reason to provide what you believe is the last agreed-upon and implemented program, you may want to file a Motion for Stay Put. If you file a motion for stay put, you need to include in your motion a description of student's last agreed upon and implemented educational program, and the areas of dispute between you and the district regarding

the educational program. You will also need to include with your motion a copy of the last agreed upon and IEP and any other documents such as IEP addenda or settlement agreements that you believe help to define the last agreed-upon and implemented program.

Any statements you make in support of your motion should be supported by a declaration under penalty of perjury.

### **MOTION TO AMEND COMPLAINT**

If you want to amend your complaint to include new allegations or issues, you must first get the approval of OAH (by motion requesting an amendment), except when OAH had already issued an order that permitted a party to file an amended complaint, such as an order finding a complaint insufficient after a motion for NOI. The law permits a party to amend the complaint before hearing if the party gets the approval from the other side to amend the complaint or with the approval of OAH if the other side did not consent to the filing of the amended complaint. However, OAH can only grant a motion to amend a complaint no later than five (5) days before the due process hearing, so you must file your motion to amend the complaint well before that hearing date. An amended complaint restarts all timelines including the thirty (30) day resolution meeting.

### **MOTION TO DISMISS THE COMPLAINT OR CERTAIN ISSUES WITHIN THE COMPLAINT**

A motion to dismiss is different than a NOI because the ALJ may consider facts outside those alleged in the complaint, such as declarations and documents. A motion to dismiss may seek to dismiss the entire complaint, or just selected parts of the complaint. If OAH grants a motion to dismiss as to the entire complaint, OAH will cancel all hearing dates and close the matter.

The party whose complaint is dismissed may appeal the dismissal order to federal or state court. If OAH dismisses a portion of the complaint, only those parts of the complaint that OAH did not dismiss will proceed to hearing.

### **MOTION TO CONSOLIDATE**

Both parents and the district may file separate complaints that involve similar questions of law and fact, such as whether the district needs to provide parents with an IEE or if a particular IEP provides Student with a FAPE.

Instead of having two hearings on similar legal and factual issues that involve the same witnesses and evidence, either parents or the district may make a Motion to Consolidate the two complaints. The motion needs to include both case numbers that the party wants consolidated and an explanation regarding the similar legal and

factual issues as the reason why OAH should grant the request. If OAH grants the Motion to Consolidate, the order will state the case that will be the primary case to determine the start of the 45 day period for OAH to hear and issue a decision.

### **MOTION TO ADD A PARTY**

If parents filed the complaint then the district may file a Motion to Add a Party to include another school district or public educational agency, such as the county mental health agency, who the district contends is wholly or partially responsible for the issues alleged in the complaint.

Additionally, if a district files a complaint, parents may file a Motion to Add a Party to include another educational agency.

A Motion to Add a Party is often filed if questions exist regarding a student's place of residency and which public educational agency is responsible for student's education.

The Motion to Add a Party is also filed when multiple public educational agencies are providing services to student or questions exist regarding the legal responsibility to provide services.

### **MOTION TO CONTINUE THE PREHEARING CONFERENCE OR DUE PROCESS HEARING (OR BOTH)**

State and federal law require that a hearing be conducted and a decision rendered within 45 days from the end of the 30-day resolution period unless an extension is granted. Speedy resolution of the due process hearing is mandated by law and continuance of due process hearings may be granted only upon a showing of good cause. (See section XX for examples of good cause.)

## **CHAPTER 11 - LAWS THAT APPLY TO SPECIAL EDUCATION HEARINGS AND HOW TO FIND THEM**

### **INTRODUCTION**

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. Each section will begin with a brief explanation of the law that applies, followed by information on how to find the law.

### **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 and 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 the State of California Department of Education to apply to the implementation of the IDEA. With limited exceptions, the California Education Code and the California Code of Regulations are consistent with federal law.

#### **Interpretations of Statutes and Regulations**

As discussed above, statutes and regulations define the rights and responsibilities of students, their parents or guardians, and school districts and other agencies responsible for providing education. 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. In addition,

another source of interpretation may be comments to the United States Department of Education regulations.

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

Another possible source of information about the interpretation of the federal regulations is “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 was intending when it published the regulations.

Finally, it is important to understand what cases are most persuasive. 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. However, decisions of circuits other than the ninth circuit of the United States Court of Appeals 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?**

There are two main sources for legal research: books and the internet. This section will set forth a list of places that you may want to go to obtain books, and a list of websites that provide access to materials about the IDEA and the statutes and regulations themselves.

### **In Books**

Your local county law library may be able to provide statutes and case law in book form. Information about your county law library may be found at <http://www.publiclawlibrary.org/find.html> . This website also contains information about how to perform legal research.

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

State of 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.

“A Composite of Laws” is published annually by the California Department of Education. This book contains all of the California statutes and regulations applicable to special education. It is free to parents of students with disabilities. It can be ordered by calling (800) 995-4099 or on the internet at <http://www.cde.ca.gov/re/pn/rc> .

### **On the Internet**

<http://www.oah.dgs.ca.gov/Special+Education/Default.htm> is OAH’s website, which contains information about OAH procedures, links to special education law and access to prior special education decisions. When researching prior OAH decisions you will be asked to enter search terms.

<http://www.disabilityrightsca.org> is the website of Disability Rights California (formerly Protection and Advocacy, Inc. (PAI)), a non-profit organization whose mission includes assisting people with disabilities in advocating for their rights. <http://www.pai-ca.org/PUBS/504001SpecEdIndex.htm> provides access to PAI’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.ed.gov/news/fedregister/index.html> provides a link to the Federal Register, which publishes the Code of Federal Regulations.

[http://www3.scoe.net/speced/laws\\_search/searchLaws.cfm](http://www3.scoe.net/speced/laws_search/searchLaws.cfm) offers a searchable database of California statutes and regulations.

<http://findlaw.com> is a website 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.

<http://ccr.oal.ca.gov/linkedslice/default.asp?SP=CCR-1000&Action=Welcome> offers access to the California Code of Regulations.

<http://www.cde.ca.gov/sp/se/lr/> offers links to sources of information about California and federal law.

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

[http://www.access.gpo.gov/nara/cfr/waisidx\\_02/34cfrv2\\_02.html](http://www.access.gpo.gov/nara/cfr/waisidx_02/34cfrv2_02.html) provides the text of the Code of Federal Regulations sections relating to special education.

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

<http://www.wrightslaw.com> is a website for a parent that contains useful references and information.

## **HOW DO I DO LEGAL RESEARCH?**

One of the first principles of legal research is “don’t reinvent the wheel.” What this means is that many sources of information have already been organized by someone else, which makes it easier on you. Thus, in general, it is always best to start with a source like a book or website that discusses special education law. The author or authors 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.

Another important principle is to be able to identify the key words that describe the dispute. Whether you are using a book or an internet 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 website, 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.” Thus, to start your legal research, it is suggested that you make a list of key words about your dispute.

Once you have written out a list of 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 “search” box on the website. 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.

## CHAPTER 12 – SPECIAL EDUCATION ACRONYMS AND GLOSSARY OF TERMS

<b>Acronym</b>	<b>Term</b>	<b>Definition</b>
	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 strengthen 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.
<b>ADL</b>	Activities of Daily Living	Activities that make a student independent in his or her environment such as dressing, eating, and toileting.
<b>APE</b>	Adapted Physical Education	Specialized physical education for students with disabilities not able to participate effectively in general education or physical education.
	Administrator/Designee	A representative designated by administration, other than a pupil's teacher.
	Affective	A term which refers to emotions and attitudes.
<b>ADR</b>	Alternative Dispute Resolution	An interest based approach to resolving disagreements between two parties.
	Alternative Education Setting	Or Interim Alternative Education Setting, (IAES) 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 AES. 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).
	Annual Goals	A required component of an IEP. Goals are written for the individual student and can be for a maximum of one year.
	Applied Behavioral Analysis	Behavior-analytic approach frequently used to teach student with autism. 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.
	Assistive Technology Device	Refers to any item, piece of equipment, product, or system-whether acquired commercially off the shelf, modified, or customized that is used to increase, maintain, or improve the functional capabilities of the students with disabilities.
<b>ADHD</b>	Attention Deficit Hyperactive Disorder	A condition identified as a medical diagnosis by the American Psychiatric Association's Diagnostic and Statistical Manual IV-Revised (DSM IV-R). Related to condition of Attention Deficit Disorder (ADD). Although it is not an eligibility category under IDEA, children with this condition may be eligible for special education under other categories or under Section 504. (See Ed. Code § 56339)
<b>ASD</b>	Autism Spectrum Disorder	A group of disorders that includes autism and non-autistic pervasive development disorders (PDD) not otherwise specified. (NOS), Fragile X Syndrome, Rett's Syndrome and Childhood Disintegrative Disorder.
	Assessment	Observation and testing of children to identify the strengths and weakness of the child. To monitor progress in order to develop an appropriate education plan.
	Behavior Interventions	The systematic implementation of procedures that results in lasting positive changes in the individual's behavior.
<b>BICM</b>	Behavioral Intervention Case Manager	A designated certificated school/district SELPA staff member or other qualified personnel contracted by the school district that has been trained in behavioral analysis and positive behavioral interventions.
<b>BIP</b>	Behavioral Intervention	A written document, which is developed when an individual exhibits a serious

	Plan	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.
<b>CARD</b>	Center for Autism & Related Disorders	One of many NPAs providing Lovaas type programs.
	Categorical Placement	Special Education programs in which students are grouped on the basis of their IDEA eligibility category. Alternative models include "non-categorical" placement and "cross-categorical" placement.
	Chapter 26.5	The section of the California Government Code that governs interagency responsibilities for the delivery of mental health services to eligible students under the IDEA and related California laws. The services are frequently referred to by the Assembly bills that created the laws, <b>AB 3632</b> and <b>AB 2726</b> .
	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. (20 U.S.C § 1412(a)(3); Cal. Ed. Code, § 56301.)
	Cognitive	A term which refers to reasoning or intellectual capacity.
<b>CALP</b>	Cognitive Academic Language Proficiency	A level of competence required in oral and written language related to literacy and academic achievement.
	Community Advisory Committee	A group of parents, community members, and district staff appointed by, and responsible to the governing board of the District. It advises the District in the development and implementation of the local plan for special education. It also assists in parent education and public involvement in the development of the local plan and supporting activities on behalf of students with disabilities.
	Community Based	When skills are taught at varied locations in the community rather than in the classroom. This is done in order to facilitate generalization and application.
	Comp Ed.	Compensatory education and/or related services provided to remedy a denial of FAPE.
	Continuum of Services	The range of services which 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 subject in middle and high school, usually English, social studies, math and science.
	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.
	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.
	Delay	Generally refers to intellectual or skills development not occurring within expected time ranges.
<b>DIS</b>	Designated Instruction and Services	Transportation and such development corrective and other supportive services as may be required to assist a student with a disability to benefit from Special Education.
	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.
<b>EC</b>	California Education Code	The body of regulations, which governs education in the State of California.
<b>EHA</b>	Education for all Handicap Children Act	A Federal law more commonly identified as P.L. 94-142. It became effective in 1975 and has been significantly modified by the Individuals with Disabilities Education Act (1977).
<b>ED</b>	Emotionally Disturbed	An emotional problem that has existed for a period of time, which interferes with learning.
	Expedited Hearing	A provision of the IDEA that streamlines a due process hearing when the student has breached a code of student conduct.
<b>ESD</b>	Extended School Day	A provision for a special education student to receive instruction for a period longer than the standard school day. This sometimes includes "double" kindergarten, later

		afternoons, or earlier starting times.
<b>ESY</b>	Extended School Year	The special education program provided between school sessions when the IEP team determines they are needed to prevent regression of skills.
	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 individual education program, and placement of individuals with exceptional needs.
<b>FERPA</b>	Family Education Rights and Privacy Act	A federal law that regulates the management of student records and disclosure of information from those records. FERPA mandates confidentiality of special education matters, including confidentiality of names of special education students. FERPA has its own administrative enforcement mechanism (not covered by due process hearings).
	Fine Motor	Functions which require tiny muscle movements. For example, writing or typing would require fine motor movement.
<b>FAPE</b>	Free Appropriate Public Education	Every school age child with a disability is entitled to an education that meets his/her individual needs, which is at no cost to parents.
<b>FAA</b>	Functional Analysis Assessment	Under California law, school districts must conduct an FAA when a student demonstrates a “serious behavior problem,” which is defined in tit. 5, Cal. Code of Regs., § 3001. An FAA is also referred to as a “Hughes Bill” assessment.
<b>FBA</b>	Functional Behavioral Assessment	Under federal law, school districts must conduct an FBA when the student’s behavior impedes his or her own learning or that of others. (34 C.F.R. § 300.356.) FBAs may also be required in relation to some disciplinary actions.
	Functional Curriculum	A curriculum focused on practical life skills and usually taught in community based settings with concrete materials that are a regular part of everyday life. The purpose of this type of instruction is to maximize the student’s generalization to real life use of his/her skills.
<b>IEE</b>	Individualized Education Evaluation	A private evaluation typically obtained by parents when they do not agree with the results of an evaluation performed by the LEA. If parents disagree with an LEA’s evaluation, the parents may seek an IEE at public expense. (Cal. Ed. Code, § 56329(b).)
<b>IEP</b>	Individualized Education Program	A written document, 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.
	IEP Meeting	A gathering required at least annually under IDEA in which an IEP is developed for a student receiving special education. The IEP meeting usually includes the student’s parents and classroom and resource teachers.
<b>IEPT</b>	Individualized Education Program Team	The team is composed to an administrator of 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.
	Inclusion	A placement for a student with a disability that includes the student in a classroom with typically developing peers (non-disabled students). The term is related to mainstreaming and LRE.
<b>IFSP</b>	Individualized Family Service Plan	An individualized education plan for eligible children from birth to age three, this is a written plan, that includes the child’s present levels of physical, cognitive, communication, social emotional, and adaptive development, and the family’s resources, priorities and concerns about their child’s development. The plans outline the major outcomes to be achieved. Specific services and supports the child and family will receive to meet the goals and responsibility for providing the services.
<b>IDELR</b>	Individuals with Disabilities Education Law Reporter	Specialized full text reporting service publishes policy letter and administrative level actions as well as case law.
<b>IWEN</b>	Individuals With Exceptional Needs	Individuals from infancy through 21 identified by an individualized education program team as having a disability or condition that requires specialized instruction and/or services.
	In-home interventions	Special education services delivered in a child’s own home.
<b>LD</b>	Learning Disability	An eligibility category under IDEA and California Education Code. Technically

		known as “specific learning disability,” as listed below. Includes dyslexia.
<b>LRE</b>	Least Restrictive Environment	A learning environment for a student with exceptional needs that meets his/her learning needs while providing maximum interaction with the general school population in a manner appropriate to the needs of the student and his/her peers.
<b>LEP</b>	Limited English Proficiency	Students whose primary language is other than English, who lack competence in the English language, and for whom linguistically appropriate goals, are developed.
<b>LEA</b>	Local Education Agency	i.e., a local public school district.
	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 controversial 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). A manifestation determination is a meeting held if a school disciplines a student for a period exceeding ten days. At the meeting, the LEA, IEP members and parents attempt to determine if the student’s problematic behavior arose from the student’s disability. If the behavior manifests from the disability, the IDEA protects the student from expulsion or suspension.
	Mediation	A voluntary dispute resolution process that is offered immediately to all parties involved in special education due process hearings.
	Mediation Only	A type of special education case in which the petitioner has requested mediation but not a due process hearing.
<b>MR</b>	Mental Retardation	Student with significantly below average general intellectual functioning, existing concurrently with deficits in adaptive behavior.
<b>MDC</b>	Multidisciplinary Conference	A requested gathering under IDEA and is the only body that can make certain determinations – specifically about a child’s eligibility for special education.
	Multidisciplinary Team	Using a combination of the skills of several persons with specialized areas of training for a common purpose, i.e. assessment of student to determine eligibility for services.
<b>NCLB</b>	No Child Left Behind	A federal school reform law that seeks to improve the quality of Public schools around the United States.
<b>NPA</b>	Non Public Agency	Private agency providing services. ALJs can award reimbursement to parents for NPA services in some cases, but can only order prospective (future) placement at an NPA if it is certified by the California Department of Education.
<b>NPS</b>	Non-Public Schools	Essentially the same as an NPA, but providing school type services.
<b>OT</b>	Occupational Therapy	A special education related service which addresses areas including fine motor skills, gross motor skills, self help skills, and activities of daily living, sensory integration and sensory processing.
<b>OCR</b>	US Office of Civil Rights	An agency of the federal government’s executive branch within the Department of Education. It is charged with enforcing a number of civil rights statutes including Section 504.
<b>OSEP</b>	US Office of Special Education Programs	A federal office charged with assuring that the various states comply with IDEA.
<b>OHI</b>	Other Health Impaired	Students who have chronic or acute health conditions resulting in limited strength, vitality or alertness, which, adversely affect a student’s educational performance, may require special education services.
<b>OH</b>	Orthopedically Handicapped	Students with specific orthopedic or physical needs that adversely affect their educational participation or performance.
<b>PDD</b>	Pervasive Developmental Disorders	Also known as autistic spectrum disorders. Autism is one type of Pervasive Developmental Disorder. If a child displays some characteristics of autism but does not meet all the criteria, another possible diagnosis is PDD-NOS (not otherwise specified).
<b>PECS</b>	Picture Exchange Communication System	Program wherein children with limited communication ability use pictures of items to communicate their wants and needs. Teachers may also set up a picture schedule so

		the child will understand what his/her daily schedule is.
	Placement	The setting in which the special education service(s) are delivered to the student. It must be derived from the student's IEP.
	Policy	Refers to a procedure, philosophy or standard that has been formally adopted by the Board of Education 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
	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.
	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 complaint is filed, school must arrange this session and attempt to cure any problems within 30 days. If the school does not cure the issue within 30 days, a hearing is scheduled and the 45 day hearing timeline begins.
	Resource Placement	(See RSP below). A special education placement for less than half a child's school day. Such a classroom is usually called a "resource room."
<b>RSP</b>	Resource Specialist Program	Provides students with special education instruction for a portion of their day.
	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 do not involve Section 504 claims, and OAH does not have jurisdiction to hear Section 504 claims.)
	Sever Discrepancy	Part of the criteria used to determine whether a child is eligible for special education due to a specific learning disability (SLD). California Code of Regulations, title 5, section 3030(j) uses the phrase "severe discrepancy between intellectual ability and achievement in one or more of the academic areas specified in Section 56337(a) of the Education Code".
<b>SDL</b>	Severe Disorder of Language	Students who have a severe impairment in the ability to use or understand language.
<b>SLD</b>	Specific Learning Disabilities	A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations.
<b>SELPA</b>	Special Education Local Plan Area	A service entity identified by the California Department of Education. This is funded to provide programs and services to students requiring Special Education and operates as described in the Comprehension Plan for Special Education, which is submitted by the agency to the California Department of Education.
<b>SEA</b>	State Education Agency	i.e., California Department of Education.

<b>SLD</b>	Specific Learning Disability	An eligibility category for special education under the IDEA and the California Education Code.
<b>SST</b>	Student Success 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.
	Standardized Tests	Tests which 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	Referring to IDEA 20 U.S.C. § 1415(j). Once a due process hearing complaint is filed, the student must stay-put, or remain in the current educational placement. This is often determined to be the “last agreed upon IEP.”
	Supplementary Aids & Services	Accommodations which could permit a student to profit from instruction in the least restrictive environment. They are required under IDEA.
	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. (California Government Code § 7579.5.;20 U.S.C.§ 1415(b)(2).)
<b>TEACCH</b>	Treatment and Education of Autistic and Related Communication Handicapped Children	A method of instruction used for children with autism. (TEACCH stands for Treatment and Education of Autistic and Related Communication Handicapped Children, but that will never come up.
	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 14-1/2. 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.
<b>TBI</b>	Traumatic Brain Injury	TBI is an acquired injury to the brain caused by an external physical event resulting in total or partial functional disability or psychosocial impairment that adversely affects a student’s educational performance.
	Typically Developing Peers	Preferred terminology used to identify age-level peers who do not have disabilities. Also sometimes referred to as general education peers or non-disabled peers.
	Unilateral Placement	Placement by parents acting unilaterally, without approval of the school. A unilateral placement does not constitute the student’s stay put placement. Parents generally cannot receive reimbursement for unilateral placements unless they provided the LEA with ten days advance notice of the placement.
<b>VI</b>	Visually Impaired	A visual impairment, which even with correction adversely affects a student’s educational performance.