

## **EXHIBIT A**

### **SCOPE OF WORK**

#### **I. GENERAL SCOPE**

- A. The Department of General Services (DGS), Office of Administrative Hearings (OAH or Agency) shall monitor, track, provide training, and manage cases of due process hearings (DPHs) and mediations in adherence with all federal and state laws and regulation, as described herein. Throughout the scope of this interagency agreement (IA), the OAH is referred to as the Agency.
- B. Per *Government Code (GC)* Section 7585, whenever a department or local agency fails to provide a related service or designated instruction and service as required by *GC* Section 7575 and specified in the student's Individualized Education Program (IEP), and the issue is submitted to the Superintendent of Public Instruction or the Secretary of California Health and Human Services, but cannot be resolved, the issue is submitted in writing to the Agency, who will review the issue and submit the findings to the Superintendent and the Secretary, which is binding on both parties.
- C. DGS, OAH agrees to provide Administrative Law Judges (ALJs) and clerical support to conduct oral hearings and/or written reviews for the California Department of Education (CDE) Special Education Division (SED), Nonpublic

Schools/Agencies (NPS) Unit. OAH will provide services for NPS Unit under the following circumstances: when a request for an appeal is made after an application for Nonpublic Schools/Agency (NPS/A) certification is denied, or a NPS/A certification is suspended or revoked by the CDE. The OAH will also mediate master contract disputes between NPS/As and local educational agencies (LEAs) as specified in California *Education Code (EC)* section 56366(e)(2). All decisions by the ALJ shall be completed within the timelines provided in statute and regulation. A written reasoned decision shall be the final administrative decision.

For the cases arising from the Federal Monitoring Technical Assistance Units (FMTAUs), requests for oral argument or oral argument and written reviews will first be filed with the CDE, FMTAUs. All requests for mediation or hearing shall be filed with OAH by CDE directly.

Hearings will be scheduled on an as needed basis.

In accordance with California *Education Code (EC)* Section 56366.6, the CDE must make available an impartial, unbiased party to render a final administrative decision regarding the validity of the determination to deny, revoke, or suspend a NPS/A certification.

- D. The Agency shall provide mediations of special education compliance complaints filed by parents with the CDE, upon referral from the CDE, in accordance with federal regulations.

## II. CONTRACT MONITORS

The CDE assigns Katie Maloney-Krips, <mailto:KMaloneyKrips@cde.ca.gov>, (916) 322-6638, as the State Contract Monitor to oversee this project. Said State Contract Monitor is not authorized by the State to make any commitments or make any changes which will affect the price, terms or conditions of this agreement without a formal contract amendment.

The Contractor assigns Brittany Bell, <mailto:Brittany.bell@dgs.ca.gov>, (279) 799-4074, as the Contractor Contract Monitor to oversee this project. Said Contractor Contract Monitor is not authorized by the State to make any commitments or make any changes which will affect the price, terms or conditions of this agreement without a formal contract amendment.

## III. BACKGROUND

- A. The CDE is entering into this one-year interagency agreement with the Agency. The Agency agrees to provide hearing and mediation services pursuant to and in accordance with the requirements of federal and state laws and regulations, including services specifically detailed in this agreement.

State and federal law provides that all children with disabilities are entitled to a free and appropriate public education under the Individuals with Disabilities Education Act (IDEA) 20 *U.S.C.* Section 1400 et seq. and *EC* Section 56000 et seq. Eligible students and their parents are entitled to procedural safeguards with respect to disagreements concerning decisions

about assessment, eligibility, placement, and a free appropriate public education. A request for due process, including mediations and DPHs, may be made pursuant to 20 *U.S.C.* Section 1415 et seq. and *EC* Section 56500 et seq.

- B. In the event any department or local agency fails to provide a related service or designated instruction and services under *GC* Section 7575 and as specified in a child's IEP, a written notification will be submitted by the parent, adult pupil, if applicable, or a LEA (as referenced in Chapter 26.5 of the *GC*) to the Superintendent of Public Instruction or the Secretary of Health and Human Services. If a resolution cannot be reached by the Superintendent of Public Instruction and the Secretary of Health and Human Services, the issue will be submitted by the agencies, in writing, to the Agency for a ruling. In addition, if the parent or LEA is dissatisfied with the resolution reached by the Superintendent of Public Instruction and the Secretary of Health and Human Services, either party may appeal to the Agency, whose decision shall be the final administrative determination and binding on all parties. In either case, *GC* requires that the Agency review the issue and submit findings to the Superintendent of Public Instruction and the Secretary of Health and Human Services within 30 calendar days of receipt of the case.
  
- C. In accordance with *EC* Section 56366.6, the CDE must make available an impartial, unbiased party to render a final administrative decision regarding the validity of the determination to deny, revoke, or suspend a NPS/A certification.

- D. Compliance complaints alleging a violation of special education law can be filed with the CDE pursuant to 34 *CFR* 300.151-153 and Cal. *Educ Code* 56500.2. Pursuant to 34 *CFR* 300.152(a)(3)(ii), a parent who files such a complaint, and the public agency that is the subject of the compliance complaint, have the opportunity to participate in state-level mediation consistent with 34 *CFR* 300.506 (governing mediation of due process hearing requests). Pursuant to 34 *CFR* 300.152(b)(ii), the parent and the public agency may agree to extend the CDE's 60-day timeline for resolving a compliance complaint in order to participate in mediation with a neutral, state-level mediator.

## **IV. 508 COMPLIANCE**

The Contractor will follow the CDE correspondence and style guides in the production of written products, with review and approval by the CDE Contract Monitor, and will comply with the Federal Final Rule Section 508 of the Rehabilitation Act of 1973, Part 1194, subsection E205.

## **V. TASKS**

(Tasks 1-10 apply to Special Education Due Process and Mediation, Tasks 11-12 apply to hearings under *GC 7585* unless other Tasks are specifically incorporated, Task 13 applies to Nonpublic Schools appeals process.)

### **TASK 1 – COORDINATING THE SPECIAL EDUCATION DIVISION**

The Agency agrees to maintain an SED for DPHs and mediations. The Agency shall work closely with the CDE. Unless specifically exempted, all newly created or revised

definitions, policies, procedures, and materials developed by the Agency pursuant to this agreement, shall be reviewed by the CDE prior to implementation or publication. The Agency shall provide the CDE with 20 business days to complete its review.

- a. Within 20 business days of the executed agreement, and subsequent to revisions of its policies procedures, and materials, the Agency shall provide a written statement that all existing and/or newly revised policies, procedures, and materials developed pursuant to this contract are in accordance with *EC* Section 56500 et seq. and Title 5, *California Code of Regulations* (5 *CCR*) sections 3082, 3090-3099.
- b. Unless specifically exempted, prior to implementation or publication of definitions, policies, procedures, and materials developed pursuant to this agreement, the Agency shall electronically submit such items to the CDE for review and comment.
- c. If the CDE determines subsequent revisions to definitions, policies, procedures, and materials are inconsistent with Agency's requirements under this agreement or any provision of the IDEA and implementing regulations, California EC or 5 *CCR*, the CDE will notify the Agency of those inconsistencies and such issues will be resolved prior to implementation.

#### 1.1 Use of Administrative Law Judges

For purposes of this agreement, the Agency intends to use ALJ's as hearing officers and mediators. The Agency may also use pro tem mediators for mediations at the Agency's discretion.

## 1.2 Supervisor of the Special Education Division

The Agency shall appoint a Division Chief Administrative Law Judge (DCALJ), who will be the supervisor under 5 *CCR* 3096-3096.2 of the hearing officers and mediators. The DCALJ shall have at least eight years of experience in the practice of law in civil or criminal trial courts, appellate courts, or quasi-judicial administrative proceedings, including significant experience in special education matters. This person shall also have at least eight years of experience in the mediation of disputes arising before, during, or independently of judicial or quasi-judicial administrative proceedings, including experience in special education matters. The Agency shall appoint the DCALJ of the Agency's SED on an exclusive and full-time basis.

## 1.3 Regional Offices

The Agency shall assign SED hearing officers and mediators to regional offices throughout the State and publish its organization chart. The chart shall be organized by regional offices and include the names of all special education hearing officers and mediators who are the Agency's employees and assigned to each office. The Agency agrees to update the chart as needed.

## 1.4 Types of Staff

The Agency agrees to retain administrative, supervisory, information technology, and other support staff to operate the special education mediation and DPH program, including identified staff who shall:

- a. Provide detailed information to callers, including information regarding hearing procedures.

- b. Receive, calendar, monitor, and report on the status of cases for mediation and hearing.
- c. Issue notices, including notice of hearing date, mediation date, and pre-hearing conference date, as required by law or required to process mediations and hearings.
- d. Issue notice of reasonable accommodations and arrange for interpreters (including American Sign Language) or special accommodations as needed.
- e. Arrange for written and/or electronic transcription of administrative hearings and distribution of the record thereof.
- f. Prepare cases for storage and maintain a closed case file inventory system for paper files that are created as part of its case management process.
- g. Perform functions in connection with communication items identified in this agreement.
- h. Monitor, track, and manage cases in adherence with all federal and state laws and regulations.

#### 1.5 Availability of Translated documents

The Agency shall comply with the requirements of 5 *CCR* Section 3095 concerning the availability of forms and documents in different languages for all special education mediations and DPHs. The Agency shall prepare forms and documents in English and, at minimum, the five foreign languages most commonly spoken in California schools



as identified annually by the CDE. The Agency's website shall include a feature for requesting, by language, available forms and documents. As forms and documents are translated into additional languages the Agency shall post them on the website.

## 1.6 Archiving

The Agency shall archive all paper case-related records at the State Records Center in a manner that ensures their confidentiality. The Agency is not required to create or maintain paper records, documents, or files that are not required as part of its case management processes. The Agency shall maintain:

- a. Paperless records in the Agency's database.
- b. A seven-year retention schedule for these papers and paperless records and shall cooperate and facilitate transfer authority over these records to the CDE upon completion or termination of this agreement.
- c. Paper case files, stored in approved archive boxes with an index provided for each box.
- d. The Agency agrees, as necessary, to facilitate the CDE's access to mediation and DPH files stored in the State Records Center. The Agency also agrees to work with the CDE to resolve any accounting or billing issues related to the storage of records.

## 1.7 Hearing Records and Transcripts

- a. The Agency shall make a verbatim record of each hearing and a transcript of these proceedings shall be made available to parents or students as

appropriate, according to state and federal laws and regulations. Pursuant to *EC* Section 56505(e)(4), the verbatim record of the proceedings may be written or electronic, at the option of parents or guardians.

- b. The Agency shall produce a transcript of the proceedings requested pursuant to *EC* Section 56505(e)(5) within 90 days of receiving the request for a transcript. The following applies:
- If a transcript is not available, the Agency shall assist the parties in recreating the record.
  - If a request for a transcript is made by a party to the matter other than the parents, the Agency shall produce a transcript of the proceedings at a cost to the requestor not to exceed the actual cost to the Agency.
  - If a transcript of the proceedings is already available, the Agency shall provide a copy of the transcript to a non-parent party to the matter at the cost of duplicating and mailing the transcript to the non-parent party.

## **TASK 2 – SUPERVISING HEARING OFFICERS AND MEDIATORS**

### 2.1 Supervising Hearing Officers

The Agency's DCALJ shall:

- a. Determine when a hearing officer meets the standards for hearing officers as described in Task 6 of this agreement.

- b. Maintain a list of the names and a statement of qualifications of each hearing officer who has met the requirements, as described in Task 6, pursuant to 34 *CFR* part 300.511(c)(3) and *EC* Section 56505(m). The list and statement of qualifications for each hearing officer shall be made available to the public upon request.
- c. Supervise the work of all hearing officers.
- d. Review and approve the training and continuing education programs required herein for hearing officers.
- e. Evaluate each hearing officer not less than once every twelve months.
- f. Review the decisions of hearing officers to ensure that they are clear, concise, logical, well-reasoned, supported by appropriate legal authority, and address all issues required to be decided.

## 2.2 Quality Control and Decision Review

- a. The Agency shall have a process in place for decision review by the DCALJ or designee prior to the issuance of a decision. The review of a hearing officer's decision shall not involve altering the findings of fact, conclusions of law or hearing outcomes.
- b. The Agency shall provide a written description of the quality control mechanism used by the DCALJ to the CDE Contract Monitor within 20 business days of the executed agreement. The control mechanism shall ensure that the hearings are fair and decisions are accurate.

## 2.3 Supervising Mediators

The Agency's DCALJ shall:

- a. Decide when a mediator meets the standards for mediators as described in Task 7 of this agreement.
- b. Maintain a list of the names and a statement of the qualifications of each mediator who has met the requirements described in Task 7, pursuant to 20 *U.S.C.* Section 1415(e)(2)(c) and 34 *CFR* part 300.506(b)(3)(i). The list and statement of qualifications for each mediator shall be made available to the public upon request.
- c. Supervise the work of all mediators.
- d. Review and approve the initial training and continuing education programs required herein for mediators.
- e. Evaluate each mediator not less than once every twelve months.
- f. Review mediation results, to the extent practicable consistent with the need for confidentiality, to ensure that mediators perform competently in light of the standards and expectations set forth herein.

## **TASK 3 – COMMUNICATING AND INFORMATION SHARING**

### 3.1 Mediation and Due Process Hearing Notifications

The Agency shall comply with the requirements of *EC* Section 56502(h). Upon receipt of a written request by a party for a DPH, the Agency shall notify all parties of the request

for the hearing and the scheduled date for the hearing and shall further notify the parties of their rights relating to procedural safeguards by providing them with the CDE's "Notice of Procedural Safeguards."

- a. The Agency shall provide the CDE updates on the status of cases for new special education cases that have been filed or current cases that have closed with the OAH on a weekly basis. The Agency will identify the name of the student for each case. To ensure the protection of personally identifiable information, the student names will be provided via a secure platform, i.e. Box, or a similar platform if needed.

### 3.2 Mediation and Due Process Hearing Request Forms

- a. The Agency shall develop, and make available to the public, mediation and DPH request forms consistent with the requirements of 34 *CFR* sections 300.507–509, and EC Section 56502. The Agency will also develop and make available to the public request forms for reasonable accommodations. The forms shall be available online and in print.
- b. The Agency shall provide the CDE with 20 business days to review and provide comments.
- c. Should there be disagreement between the CDE and the Agency regarding any item, such issues shall be resolved prior to form distribution or publication.

### 3.3 Monitoring, Tracking, and Management of Cases

In accordance with *EC* Section 56504.5(d)(1), the Agency shall collect data in standardized formats that provide the CDE with information sufficient to manage and comply with federal and state reporting and monitoring requirements for mediations and DPHs.

The Agency shall permit the CDE to audit, review, monitor, and inspect the Agency's special education case files, activities, books including but not limited to the following: time and effort tracking for any OAH Special Education Division positions that are partially or fully allocated to these funds by this IA consistent with the requirements found in 2 *CFR* 200.403, 405, and 430, documents supporting operating costs, and records during the progress of the work and for three years following final payment for closed cases as allowed by law. Access to information for open cases may be restricted until the case is closed. The Agency shall also, maintain accounting records and other evidence pertaining to costs incurred and shall make them available to the CDE during the period of the contract and for three years after final payment.

### 3.4 Website

During the agreement period, the Agency shall maintain its website in accordance with the terms set forth herein. The Agency shall, at minimum, update its SED site annually and allow the CDE to create applicable links. The Agency agrees to conduct monthly audits to ensure that all special education due process decisions have been uploaded to its website. The Agency shall provide the CDE with a liaison for issues pertaining to its

SED website. The Agency's website shall include, at a minimum, links to online legal resources including, but not limited to, applicable Sections of the U.S.C., 34 *CFR*, California EC, 5 *CCR*, and:

- a. A brief description of resources and their relevance to hearings and/or mediations, within each of its links.
- b. Additional language inviting the public to submit feedback and suggestions regarding the Agency's DPHs and mediations.
- c. Pursuant to *EC* Section 56502(h), a current list of persons and organizations providing free or reduced cost representation or other assistance in preparing for DPHs. The Agency shall provide this list to parents or students who are not represented at the time they file a request for a DPH, or upon request; and publish this list by geographic area. Persons and organizations seeking to be added to the list shall self-certify that they meet the requirements of *EC* Section 56502(h).
- d. Notice that assistance is available to the public on its website, including but not limited to, filing for mediation and DPHs pursuant to the provisions outlined in Task 3.10.
- e. All redacted decisions on its website by uploading them on a monthly basis (*EC* Section 56505(d)(5))
- f. Information and instructions for inclusion regarding a listserv in which interested parties may receive electronic copies of redacted decisions (see paragraph "3.6. Listserv") on the Agency's SED website.
- g. A link to the CDE SED website.

- h. Rulings on procedural or dispositive motions that the Agency's SED supervisor deems to be of sufficient importance to be of assistance to members of the public appearing before the Agency on special education matters and shall upload such rulings on a monthly basis.
- i. A list of all available and downloadable documents. The Agency shall prepare forms and documents in English and, at minimum, the five foreign languages most commonly spoken in California schools as identified annually by the CDE. The Agency's website shall include a feature for requesting, by language, available forms and documents.
- j. Forms and documents in additional languages as requested and shall post them on the website.

### 3.5 CDE Distribution List

The Agency shall provide electronic copies of hearing decisions, with the students' names and identified districts, using a mutually agreed upon data encryption system.

### 3.6 Listserv

The Agency shall maintain a listserv to allow interested parties to receive electronic copies of the redacted decisions as they are issued. The Agency shall post information regarding this listserv and instructions for inclusion on the listserv on the Agency's SED website.



### 3.7 Brochure

The Agency shall maintain and make available a consumer brochure. The consumer brochure shall provide a general overview of the due process and mediation process and assist interested parties in accessing these services.

### 3.8 Special Education Due Process Hearings and Mediation Manual

Pursuant to 5 *CCR* Section 3091, the Agency shall maintain and make available a Special Education Due Process Hearing and Mediation Manual ("Guide to Understanding Special Education Due Process Hearings" or "Manual"). The manual shall provide a general overview of the due process and mediation process and assist interested parties to access these services. The manual shall provide, at a minimum, detailed guidance in areas related to DPHs and mediations to include, but not be limited to:

- a. How to file a due process complaint, including a model form to assist parents and guardians in filing a request for due process
- b. A description of the DPH process
- c. A description of the mediation process, including how to prepare for mediation and participate in mediation
- d. How to request a reasonable accommodation
- e. How to properly communicate with the mediator, hearing officer, and other parties
- f. How to compel attendance of witnesses and compel production of documents

- g. How to prepare for a DPH
- h. How to properly present evidence
- i. How to access applicable statutes and regulations
- j. How to file and serve pre-hearing motions
- k. How to research and locate special education decisions issued by the Agency.

### 3.9 Translations of Brochure and Manual

The Agency shall prepare the consumer brochure and manual in English and, at a minimum, the five foreign languages most commonly spoken in California schools as identified annually by the CDE. The Agency shall annually review the consumer brochure and manual and revise them as necessary.

### 3.10 Steps When a Party Inquires About Filing a Complaint

The Agency agrees that when a party inquires about filing a complaint, the Agency shall:

- Inform the party of the form used to request mediation, reasonable accommodations, and/or a DPH. The request for mediation and DPH form shall include a written statement that assistance is available for preparing the form.
- Upon request, provide assistance to the public that shall be limited to an explanation of the process and documentation required to file a request for mediation or a DPH. Such assistance shall not include providing legal advice.

- Comply with *EC* Section 56505(e)(6), concerning providing mediator assistance to a parent who is not represented by an attorney.

### 3.11 Evaluation Forms

The Agency shall provide evaluation forms to the parties of a mediation or DPH. The forms shall contain questions aimed at assessing the Agency's timeliness and effectiveness and are to be completed on a voluntary basis by the parties. The Agency shall review the forms and provide the CDE with a summary report of the evaluations, including cumulative information to date, on a quarterly basis.

### 3.12 California Public Records Act

The Agency shall comply with California's requirements under the California Public Records Act pertaining to DPH and mediation information and records maintained by the Agency. If necessary, the Agency shall work with and assist CDE personnel to ensure that requests under the California Public Records Act are responded to appropriately and within the required timeframes.

### 3.13 Complaints Against the Agency

Complaints alleged against the Agency's procedures, policies, or practices received by the CDE shall be directed to the CDE Contract Monitor for further review. The CDE shall notify the Agency's SED supervisor of the complaint. Within 30 business days of receipt of a complaint or upon the CDE's request, the Agency shall conduct an investigation of the alleged incident, systems, procedures, or policies in question and make a determination of the alleged events. Upon completion of the investigation, the Agency shall provide the

CDE with a written account of the investigation, findings, and appropriate next steps or corrective actions taken to resolve the issue. The CDE may request additional corrective actions pursuant to this agreement and special education law as appropriate.

### 3.14 Transition to a New Contract

The Agency and subcontractors shall cooperate fully with the CDE and the current Agency and any future agencies to allow for a smooth transition between administrations as well as to potential new agencies for future services. At the beginning of the contract, the new agency shall receive from the current Agency all reports, electronic data files, applications, supporting documentation, and other materials developed pursuant to the special education mediations and DPHs contract, including data, publications, forms, and procedures specific to the hearings. At the end of the contract, the current Agency shall deliver these items to the future agency of the special education mediations and DPHs and/or the CDE at a scheduled time determined by the CDE. The Agency shall also have staff available to work with the new agency and establish regular meetings during the overlap of contracts.

### 3.15 Requests for Other Documents

Upon written request by the CDE, the Agency shall provide documents related to OAH cases, i.e. complaint filings, scheduling orders, dismissals, or other documents as needed relative to state set aside complaints filed with the CDE.

## **TASK 4 – COLLECTING DATA AND REPORTING**

The Agency shall comply with 5 *CCR* Section 3092(f), concerning new reporting requirements. The Agency shall report to the CDE a timeline and mechanism to implement any new reporting requirements contained in the California or federal

current year's Budget Act, or any information that is required to be reported to a federal or state agency including, but not limited to, the federal Office of Special Education Programs (OSEPs). The Agency shall submit this report to the CDE within 60 calendar days from the postmark date of the CDE's written notification to the Agency of such a reporting requirement. Additionally, the OAH agrees to provide data on mediation use by LEAs to the CDE at least annually, and/or periodically upon CDE's request. The CDE, in consultation with, and agreement by OAH, will specify the scope of the information requested including specifying the elements to be included in the report.

#### 4.1 Hearing Decisions

The Agency shall comply with the California *EC* Section 56504.5(d)(3), by providing electronic and, upon request, hard copies of all hearing decisions to the CDE. The Agency shall also provide a written index of the decisions being provided, organized by students' names and case numbers. The copies of the decisions and the index shall be provided no later than the fifteenth (15th) of each month following the issuance of the decision.

#### 4.2 Quarterly Reporting

The Agency shall provide a quarterly report to the CDE. The Agency shall comply with *EC* Section 56504.5(d), and 5 *CCR* Section 3092 concerning filing quarterly reports with the CDE quarterly reports filed by the Agency shall be received by the CDE no later than 30 calendar days after the end of the quarter.

For the purposes of this contract, "quarter" refers to each one-fourth of the state fiscal year, which begins on July 1 of the previous calendar year and ends on June 30 of the immediately following year. Each quarterly report shall be sent to the CDE via electronic mail.

Pursuant to 5 *CCR* 3092(e), the Agency shall make all data collected in the quarterly reports described by Task 4.3 of this agreement available on the Agency website, and make the data available for placement on the CDE's website.

Quarterly reports shall reflect data from the reporting quarter and cumulative year-to-date data. The Agency shall ensure that each quarterly report contains all required elements (see below) and shall immediately correct omissions or mistakes once identified.

#### 4.3 Elements of Quarterly Reports

Each quarterly report shall include:

- a. Mediations
  1. Number of mediation requests total
  2. Number of mediations referrals received related to complaints filed with the CDE
  3. Number of mediations held related to a complaint filed with the CDE
  4. Number of mediations agreements related to complaints filed with the CDE
  5. Number of mediations not related to hearing requests
  6. Number of mediations related to hearing requests
  7. Number of mediation agreements related to hearing requests
  8. Number of mediation agreements not related to hearing requests
  9. Number of mediations not held, including number of mediations pending

- b. Due process hearings
  - 1. Number of hearing requests total
  - 2. Number of resolution sessions
  - 3. Number of settlement agreements
  - 4. Number of hearings held (fully adjudicated)
  - 5. Number of decisions within timeline
  - 6. Number of decisions within extended timeline
  - 7. Number of decisions issued after timelines and extension expired
  - 8. Number of hearings pending
  - 9. Number of expedited hearings conducted
  - 10. Number of hearing requests resolved without a hearing.
  
- c. Expedited hearing requests related to disciplinary decisions
  - 1. Number of expedited hearing requests total
  - 2. Number of resolution sessions
  - 3. Number of settlement agreements
  - 4. Number of expedited hearings (fully adjudicated)
  - 5. Number of changes of placement ordered.
  
- d. As required by *EC* Section 56504.5(d)(1), each quarterly report shall contain data to provide the CDE with information needed to comply with federal and state law for monitoring local programs. The CDE shall inform the Agency of the specific data required to comply with federal and state laws.

Specifically, these reports shall provide the following data as requested by the federal OSEPs and any state laws imposing a requirement upon the CDE to report data related to the above including:

1. The total number of cases won by each side
2. The number of issues decided in favor of each side in split decisions
3. How often schools and parents were represented by attorneys
4. How many prehearing motions were filed by each side
5. The number of students by race and ethnicity accessing the system
6. How often non-English-speaking people used the system
7. How long the hearings took
8. How many of the hearing requests were from parents
9. How many of the hearing requests were from school districts
10. From which districts parent-filed requests for due process came
11. What issues, within special education, generated DPH requests during the quarter
12. What disabilities generated DPH requests during the quarter
13. What age groups (preschool, primary, junior high, high school) generated hearing requests during the quarter
14. How many hearing decisions were appealed to court during the quarter
15. How many cases were totally resolved in mediation by agreement
16. How many cases were totally resolved in the mandatory resolution session.



#### 4.4 Agency Productivity

The Agency shall report on a quarterly basis statistical data as determined and analyzed by the Agency on the productivity of hearing officers and mediators. The Agency shall use measurements as determined by the Agency to quantify the "productivity" of hearing officers and mediators. The quarterly reports shall also include costs of hearings and mediations on both an aggregate and individual basis.

#### 4.5 Resolution Sessions

The Agency agrees to collect local resolution session outcome data on behalf of the CDE. The Agency shall collect information regarding mandatory local resolution sessions that districts are required to hold prior to a DPH pursuant to 34 *CFR*, part 300.510, and *EC* Section 56501.5. The Agency shall send a resolution session outcome reporting form, developed in consultation with the CDE, to districts with the initial scheduling packet that the Agency disseminates to the parties upon receipt of a request for a DPH. The resolution session outcome reporting form shall specify that the CDE requires districts complete the form in its entirety and remit to the Agency within 5 calendar days of the resolution session. Upon receipt of the completed resolution session outcome reporting form, the Agency shall enter the data into the Practice Manager System. Based on information collected from the districts, the Agency shall generate a report upon the CDE's request, but not less than quarterly, containing:

- a. Student name
- b. Case number
- c. District name

- d. Date district received notice of due process complaint
- e. Whether or not a resolution session was held and, if not, for what reason
- f. Date/s the resolution session meeting/s took place
- g. Whether or not the matter was resolved during the resolution session meeting
- h. Whether or not the resolution session resulted in a written settlement agreement
- i. Whether or not the resolution session was waived, in writing, by both parties.

#### 4.6 Costs for Independent Assessments and Expert Witnesses

The Agency agrees that for any costs associated with complying with *EC* sections 56505.1(e) and (g), it shall provide documentation to support the particular costs, including, but not limited to, the name of the case and the name and hourly rate of the expert or witness.

#### 4.7 Federal Table

The CDE shall submit Federal Table 7 (Office of Management and Budget (OMB) Circular No. 1820-0677) to the Agency. The Table, to be completed by the Agency, is due to the CDE by September 1st of each year of this agreement. The completion of Table 7 is required by the federal OSEP for use in the State Performance Plan (SPP) /Annual Performance Report (APR). Upon written request from the Agency, the CDE will provide weblinks to additional information regarding the SPP and APR.

The SPP/APR is written by the CDE SED, for submission to OSEP every year. Table 7 requires completion of the Report of Dispute Resolution under Part B, of the IDEA including:

### **SECTION B: Mediation Requests**

- (2) Total number of mediation requests received through all dispute resolution processes
  - (2.1) Mediations held
    - (a) Mediations held related to due process complaints
      - (i) Mediation agreements related to due process complaints
    - (b) Mediations held not related to due process complaints
      - (i) Mediation agreements not related to due process complaints
  - (2.2) Mediations pending
  - (2.3) Mediations withdrawn or not held

### **SECTION C: Due Process Complaints**

- (3) Total number of due process complaints filed
  - (3.1) Resolution meetings
    - (a) Written Settlement agreements reached through resolution meetings
  - (3.2) Hearings fully adjudicated
    - (a) Decisions within timeline (include expedited)
    - (b) Decisions with extended timeline
  - (3.3) Due process complaints pending
  - (3.4) Due process complaints withdrawn or dismissed (including resolved without a hearing)

## **SECTION D: Expedited Due Process Complaints (Related to Disciplinary Decision)**

- (4) Total number of expedited due process complaints filed
  - (4.1) Resolution meetings
    - (a) Written Settlement agreements
  - (4.2) Expedited hearings fully adjudicated
    - (a) Written settlement agreements
  - (4.3) Expedited due process complaints pending
  - (4.4) Expedited due process complaints withdrawn or dismissed

### 4.8 Information Privacy and Security Requirements, Exceptions and Exclusions

The Agency is obligated to follow all applicable state and federal laws including, the Family Educational Rights and Privacy Act of 1984 (FERPA; 20 U.S.C. Sec. 1232g), the Protection of Pupil Rights Amendment (PPRA), the Information Practices Act (California Civil Code Sec. 1798, et seq.), the Children’s Online Privacy Protection Act (COPPA), and the California *Education Code* sections 49069 to 49079, with respect to any personal or confidential information disclosed to the Agency, or collected, created, stored, transmitted, or used pursuant to this agreement with the Agency. The following information security requirements, exceptions, and exclusions shall only apply to any records maintained by the Agency under this agreement.

1. The DGS Information Security Office (ISO) has been designated by the Agency as the Security Officer to oversee its compliance with this agreement and for communicating with CDE on technical matters concerning this agreement. The Agency shall coordinate all communications between the CDE and DGS ISO.

2. DGS utilizes "Securing the Human" training in accordance with State Administrative Manual – Information Technology requirements which can be found at <http://sam.dgs.ca.gov/TOC/5300.aspx>. All persons working with Protected or Confidential Information and Personally Identifiable Information (PCI and PII) must sign a Security, Privacy, & Acceptable Use Acknowledgment upon completion of the training. That training acknowledgment will be retained by the Agency in accordance with applicable record retention requirements and may be provided to CDE upon request.
3. The Agency shall take the action that it deems appropriate (in its sole discretion on such employees and other contractors under the Agency's direct control) who intentionally violate any data security requirements or any provisions of this agreement.
4. The Agency or its assigned DGS ISO, shall notify CDE immediately by telephone call and email upon the discovery of a breach or security incident or within 24 hours by email of the discovery of any security incident unless a law enforcement agency determines that the notification will impede a criminal investigation, in which case the notification required by this section shall be made to CDE immediately after the law enforcement agency determines that such notification will not compromise the investigation. Notification shall be provided solely to the Information Security Officer at the California Department of Education. CDE has identified Mark Lourenco as the designated contact at 1430 N Street, Suite 3712, Sacramento, CA 95814-5901, (916) 322-8334, or [mlourenco@cde.ca.gov](mailto:mlourenco@cde.ca.gov). If there is a change to the CDE

Information Security Officer (ISO), it is the responsibility of the CDE Contractor Monitor to provide the Agency prompt notice of such change. If the breach or security incident is discovered after business hours or on a weekend or holiday and involves PCI or PII under this agreement, in electronic or computerized form, notification to CDE shall be provided using the contact information listed as above.

5. The Agency shall take:
  - a. Prompt corrective action to mitigate any risks or damages involved with the breach or security incident and to protect the operating environment; and
  - b. Any action pertaining to a breach or security incident required by applicable federal and state laws, including, specifically, California Civil Code section 1798.29.
  
6. Investigations of Breach of Security Incident:
  - a. The Agency or its assigned DGS ISO, shall immediately investigate such breach or security incident. As soon as the information is known and subject to the legitimate needs of law enforcement, the Agency or the DGS ISO shall inform the CDE ISO of:
    - i. what data elements were involved and the extent of the data involved in the breach or security incident, including, specifically, the number of individuals whose personal information was breached;
    - ii. a description of the unauthorized persons known or reasonably believed to have improperly used the protected

or confidential information and/or a description of the unauthorized persons known or reasonably believed to have improperly accessed or acquired the PCI or PII, or to whom it is known or reasonably believe have had the PCI or PII improperly disclosed to them;

- iii. a description of where the PCI or PII is believed to have been improperly used or disclosed;
- iv. a description of the probable causes of the breach or security incident; and
- v. whether Civil Code sections 1798.29 or any other federal or state laws requiring individual notifications of breaches have been triggered.

7. From time to time, CDE, with the approval and supervision of the DGS ISO, may inspect the facilities, systems, books and records retained by the Agency in the performance of this agreement, to monitor compliance with this agreement. The Agency will allow audits or inspections by individuals authorized by the CDE ISO at the Agency's premises during regular business hours, with a minimum of five (5) business day's prior notice for purposes of determining compliance with the terms of this agreement. The Agency or the DGS ISO shall promptly remedy any violation of any provision of this agreement and shall certify the same to the CDE Information Security Officer in writing. Any CDE Information Security audits in accordance with this section are subject to prior discussion with the Agency and the DGS ISO on the scope of the audit in order to ensure it does not violate any

of the Agency's security policies, interagency agreements, or third party confidentiality protections. At no time, shall CDE access open or pending case records or any matter to which CDE is a party. ALJs drafts, notes, or opinions are not PCI or PII for purposes of this agreement.

8. Return or Destruction of PCI and PII on Expiration or Termination:
  - a. On expiration or termination of the agreement between the Agency and CDE for any reason, the Agency shall return or destroy the PCI and PII in accordance with the DGS ISO Data Standards and the Agency's Record Retention Policy. If return or destruction is not feasible or violates the Agency's obligations under the PPRA, Record Retention Policy, or other applicable statute or regulation, the Agency shall explain to the CDE ISO, why, in writing, using the contact information above.
  - b. Retention Required by Law: If required by state or federal law, the Agency may retain, after expiration or termination, PCI and PII for the time specified as necessary to comply with the law.
  - c. Obligations Continue Until Return or Destruction: The Agency's obligations under this agreement shall continue until the Agency returns or destroys the PCI and PII; provided however, that on expiration or termination of the agreement between the Agency and CDE, the Agency shall not further use or disclose the PCI or PII except as required by state or federal law or other legal authority.



- d. Notification of Election to Destroy PCI and PII: The Agency shall destroy electronic or paper records in accordance with the Agency's current Record Retention Schedule and any applicable DGS ISO Data Standards.

## **TASK 5 – WORKING WITH THE ADVISORY COMMITTEE**

Pursuant to 5 *CCR* Section 3094, the Agency shall maintain an Advisory Committee composed of attorneys, advocates, parents, and representatives of the LEAs, including school districts, county offices of education, or other public educational agencies that have jurisdiction under the IDEA. The majority of the Advisory Committee shall be any combination of parents, advocates for parents, and/or attorneys for parents. The Agency is encouraged to consider the wide range of disabilities, ethnicities, races, socioeconomic populations, and other variables within the special education population. The Agency shall establish the total number of members and the terms of appointment for the advisory committee. The Agency shall publish on the website the process for becoming a member of the Advisory Committee. The Advisory Committee is responsible for providing recommendations for mediations and DPH procedures. The committee's recommendations shall not be binding upon the Agency.

### 5.1 Meetings with Advisory Committee

The Agency shall schedule four meetings with the committee, at a minimum, one in northern California and one in southern California, in the first half of the year, and one in northern California and one in southern California in the second half of the year. The Agency may conduct meetings of the Advisory Committee by videoconference

simultaneously in northern and southern California. Meetings may include Web-based platforms to accommodate attendees. The Agency may consult with the Advisory Committee, as needed, between semiannual meetings.

## 5.2 Advisory Committee Members

The Agency agrees to publish and maintain a description of the role of the Advisory Committee on the Agency's website. The Agency may publish, with subsequent revisions as necessary, the names and status (e.g., parent, student, attorney, advocate, etc.) of Advisory Committee members.

## 5.3 Compliance with the Bagley-Keene Open Meeting Act

The Advisory Committee shall comply with the Bagley-Keene Open Meeting Act, *GC* Section 11120 et seq. The Agency shall publish the dates, locations, agendas, and a summary of items discussed and outcomes from all Advisory Committee meetings on the Agency's website. Dates and locations of meetings shall be published at least two months before meetings are held. The Agency shall consult with the Advisory Committee in developing all applicable meeting agendas and distribute agendas to its members and interested others, in advance of meetings. All Advisory Committee meetings shall include a public comment period.

## 5.4 Consulting with the Advisory Committee

The Agency shall consult with the Advisory Committee in areas such as, but not limited to, revisions to the Agency's website, forms, documents, scheduling procedures, staff training, the Special Education Due Process Hearing and Mediation Manual, the consumer brochure, and outreach to families and students.

## **TASK 6 – ENSURING QUALIFICATIONS OF HEARING OFFICERS**

Hearings shall be conducted by a hearing officer who is knowledgeable in administrative hearings who satisfies the requirements set forth herein and who is employed by, or under contract with, the Agency.

### **6.1 Minimum Hearing Officers Qualifications**

Hearing officers shall be attorneys licensed to practice law in California for at least five years immediately preceding their appointments, of which at least two years shall have involved contested cases in a trial court or formal hearings or inquiries, and shall have involved experience in the presentation of evidence and examination of witnesses before trial courts or quasi-judicial administrative bodies. Experience acquired as a hearing officer in formal quasi-judicial administrative proceedings may be substituted year for year for the required two years of experience.

### **6.2 Additional Hearing Officer Qualifications**

In addition to the "Minimum qualifications" as set forth in Task 6.1 above, *EC* Section 56505(c), and 5 *CCR* Section 3097, no hearing officer may serve as a hearing officer in a special education DPH until the Agency's SED supervisor determines the hearing officer possesses:

- a. Knowledge of the provisions of title 20 *U.S.C.* Section 1400 et seq., federal and state regulations pertaining to that title, and legal interpretations of that title by federal and state courts.
- b. Knowledge of the provisions of *EC* Sections 56000 et seq. and related state statutes and implementing regulations, and legal interpretations of those statutes and regulations by federal and state courts.

- c. Knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice.
- d. Knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

## **TASK 7 - ENSURING QUALIFICATIONS OF MEDIATORS**

A mediation conducted pursuant to this agreement shall be conducted by a mediator or pro tem mediator knowledgeable in the mediation of disputes who satisfies the requirements set forth herein and who is employed by, or under contract with, the Agency.

### **7.1 Minimum Mediator Qualifications**

A mediator shall hold a minimum of a Bachelor of Arts or Bachelor of Science degree from an accredited college or university and shall have completed the minimum training as provided in this agreement before serving as a mediator.

### **7.2 Additional Mediator Qualifications**

No mediator or pro tem mediator shall serve as a mediator in a special education mediation until the DCALJ or designated presiding administrative law judge (PALJ) determines that the mediator possesses the skills and knowledge necessary to serve as a mediator, pursuant to the 5 *CCR* Section 3097.

A mediator or pro tem mediator of a special education dispute as described in this agreement shall be knowledgeable in all laws and regulations relating to the provision of special education and related services, and in the process of reconciling differences in a non-adversarial manner.

## **TASK 8 – TRAINING PROVIDED TO HEARING OFFICERS**

The Agency shall ensure that hearing officers are trained to conduct special education DPHs.

### 8.1 Subjects of Hearing Officer Training

Pursuant to 5 *CCR* Section 3098.2(a), the Agency shall ensure every hearing officer has completed at least 80 hours of training before conducting a DPH which shall include, but not be limited to:

- a. Due process and the role of the hearing officer
- b. Ethical requirements for hearing officers
- c. Creating and maintaining a bias-free proceeding
- d. Case management
- e. Motions and other pre-hearing practices and procedures
- f. Settlement practice
- g. Hearing preparation
- h. Making, completing, supplementing, and preserving a record
- i. Opening and closing a hearing
- j. Hearing room control and demeanor
- k. Strategies for protecting the rights of parties not represented by attorneys
- l. Dealing with a party's default
- m. Handling and preserving documents and exhibits
- n. Credibility of witnesses
- o. Qualifying and evaluating expert witnesses
- p. Common evidentiary issues in administrative proceedings
- q. Closing briefs and arguments and submission

- r. Writing decisions
- s. Resources for hearing officers
- t. Americans with Disabilities Act (ADA) and Rehabilitation Act, Section 504 requirements, including, but not limited to, ADA accessibility at locations where DPHs are conducted

## 8.2 Hearing Officer Training in the Adjudication of Special Education Disputes

Pursuant to 5 *CCR* Section 3098.2(b), as part of the 80 hours of training set forth in Task 8.1 above, a hearing officer's initial training shall include at least 20 hours of training in the adjudication of special education disputes, which may include practical, clinical, or simulated training, and which shall include, but not be limited to:

- a. The substantive and procedural laws relating to the IDEA (20 *U.S.C.* Section 1400 et seq.)
- b. The substantive and procedural laws relating to 34 *CFR*, part 300 et seq.
- c. The substantive and procedural laws relating to *EC* Section 56000 et seq.
- d. The substantive and procedural laws relating to 5 *CCR* Section 3000 et seq.
- e. Federal and state statutes and regulations related to the laws and regulations identified in Task 8.2(1)-(4) of this agreement
- f. Court and administrative rulings interpreting or implementing all of the above
- g. Common disabilities and their impact on human functioning
- h. The impact of common disabilities on student academic, developmental and functional needs in an educational environment

- i. Disability awareness
- j. Options for the accommodation of disabilities in education and elsewhere
- k. Services and supports available to students with exceptional needs
- l. Adaptation of general education strategies for students with disabilities
- m. Participation of children with exceptional needs in special education disputes
- n. Participation of parents, guardians, and representatives of children with exceptional needs in special education disputes
- o. Participation of teachers, instructional assistants, educational support personnel, and administrators in special education disputes

### 8.3 Hearing Officer Continuing Education

Pursuant to 5 *CCR* Section 3098.2(c), in addition to the initial 80 hours of training, a hearing officer annually shall complete at least 20 hours of continuing education during each fiscal year. This continuing education shall include continuing education in the adjudication of administrative disputes and special education disputes, which may include practical, clinical, or simulated training, and which shall include, but not be limited to, the subjects set forth in the immediately preceding Tasks 8.1 and 8.2.

### **TASK 9 – TRAINING PROVIDED TO MEDIATORS AND OTHERS**

The Agency shall ensure that mediators, pro tem mediators, and hearing officers are trained to conduct special education mediations and support personnel are also trained to perform their duties as outlined in Task 1.3 of this agreement.

## 9.1 Mediation Training

Pursuant to 5 *CCR* Section 3098.1(a), mediator, or pro tem mediator shall have completed at least 20 hours of training in mediation theory, techniques, and practices, which may include practical, clinical, or simulated training, and shall include, but not be limited to:

- a. Mediation purposes
- b. Evaluating cases for mediation
- c. Mediation and mediator's ethics
- d. Confidentiality in and after mediation
- e. Negotiation theory
- f. Approaches to conflict resolution
- g. Preparation for mediation
- h. Mediator's opening
- i. Stages of mediation
- j. Identification and narrowing of issues
- k. Communications skills
- l. Use of caucuses
- m. Strategies for dealing with recurring mediation problems
- n. Recognizing opportunities in mediation
- o. Recognizing and dealing with impasse and closure
- p. Multi-party mediation
- q. Post-mediation issues
- r. Resources for mediators



- s. ADA and Rehabilitation Act, and Section 504 requirements, including, but not limited to, ADA accessibility at locations where mediations are conducted

## 9.2 Mediator Training in Special Education

Pursuant to 5 *CCR* Section 3098.1(b), in addition to the initial training identified in Task 9.1 of this agreement and prior to conducting a mediation, a mediator shall have completed at least 20 hours of initial training in special education disputes, which may include practical, clinical, or simulated training, and which shall include, but not be limited to, those subjects identified in Task 8.2 of this agreement.

## 9.3 Mediation Related Continuing Education

Pursuant to 5 *CCR* Section 3098.1(c), in addition to the initial 40 hours of training described in Tasks 9.1 and 9.2 of this agreement, a mediator shall complete at least 20 hours of continuing education during each fiscal year. This continuing education shall include training in mediation and the mediation of special education disputes, which may include practical, clinical, or simulated training, and which shall include, but not be limited to, further study of, and developments in, those subjects identified in Tasks 9.1 and 9.2 of this agreement.

## 9.4 Training Documentation

The Agency agrees to provide the CDE, quarterly, with training documentation for hearing officer, mediator, or pro tem mediator that identifies training and continuing education programs taken during the previous quarter. Documentation for all trainings shall include the name of each hearing officer, mediator, or pro tem mediator who attended the program, the title of each program, the date of each program, the name

of the trainer, whether the training meets mediator, or hearing officer training requirements as required by law, and the number of hours of each program. The Agency shall maintain sufficient documentation that each mediator, or pro tem mediator has received the required training and continuing education programs and the Agency shall provide supporting documentation to the CDE upon request. The documentation retained by the Agency may include, but is not limited to, evidence of hearing officer, mediator, or pro tem mediator attendance at the programs, program agendas, program descriptions, etc. The Agency shall make all required documentation and evidence of training and continuing education programs available to the CDE for periodic review and reconciliation.

- a. Within 20 business days of the executed agreement, the Agency shall assure in a writing containing a list of the names and dates of hire that all current ALJ's conducting DPH's and/or mediations have met the initial training requirements specified in special education law.
- b. For newly trained hearing officers and mediators, the Agency shall assure in a writing that the initial training has been completed. The writing shall include the names, dates of hire, and dates of training completion and must be sent to CDE within 20 business days of the completion of the initial training.

#### 9.5 Ongoing Training for Other Staff Members

The Agency shall also provide ongoing training to administrative, supervisory, information technology, and other support staff in the above areas. The training shall include, but not be limited to, confidentiality of students' and parents' identities and information as provided for in EC Section 56515.

## **TASK 10 – CONDUCTING MEDIATIONS AND DUE PROCESS HEARINGS**

### 10.1 Timelines

The Agency, its hearing officers, mediators and pro tem mediators shall comply with all federal and state laws and regulations and legal authorities related to the timing and conduct of DPHs and mediations, including the timing of expedited hearings, and the timeline for issuance of DPH decisions and their contents.

### 10.2 Separation of Task Assignments

The Agency shall assign a qualified hearing officer to the hearing and a different mediator, or pro tem mediator to the mediation. In no case shall the Agency assign the hearing officer who facilitated a mediation to preside over a hearing in the same case.

### 10.3 Conflicts of Interest

Pursuant to 5 *CCR* Section 3090.1(b) a conflict of interest is a dealing or relationship that reasonably raises a question of bias. Pursuant to the 5 *CCR* Section 3099, the Agency shall require mediators and ALJs to prevent conflicts of interest. Any involvement by a hearing officer, or mediator with the subject matter of the dispute or any relationship between a hearing officer, or mediator with any party, prospective participant, or prospective witness, whether past or present, personal or professional, that reasonably raises a question of the hearing officer's or mediator's impartiality, whether an actual or potential conflict of interest, shall be disclosed to the parties as soon as practicable after the hearing officer, or mediator becomes aware of such circumstance. After disclosure, the mediator or ALJ shall decline to mediate or adjudicate the dispute unless all parties

choose to retain the mediator, or hearing officer. The Agency agrees to submit written reports to the CDE pertaining to instances of conflict of interest under *GC* Section 11425.40 that have been substantiated after a hearing officer has been assigned to a case. Reports shall be submitted within five business days of conflicts being substantiated.

#### 10.4 Ex Parte Communication

Pursuant to the 5 *CCR* Section 3084 there shall be no communication to a hearing officer, direct or indirect, while special education DPH proceedings are pending, regarding any issue in the proceeding, from an employee or representative of a party or from an interested person unless the communication is made on the record at the hearing. A proceeding is pending from the date of receipt by the Agency of the request for hearing. If a hearing officer receives a communication in violation of this section, the ALJ shall follow the procedures set forth in Section 3084.

#### 10.5 Disqualification

A hearing officer assigned to a hearing is subject to disqualification for bias, prejudice, or conflict of interest in the proceeding as provided by *GC* Section 11425.40. A hearing officer assigned to a hearing is also subject to disqualification for receipt of an ex parte communication in violation of the provisions contained in 5 *CCR* Section 3084.

Pursuant to *GC* Section 11425.40(b), it is not alone or in itself grounds for disqualification, without further evidence of bias, prejudice, or interest, that the hearing officer:

- a. Is or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of that group.

- b. 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.
- c. 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.

#### 10.6 Notice to Parties

The Agency shall provide notice to the parties of the identity of the hearing officer assigned to conduct a hearing at least five business days before the hearing, unless operational needs require otherwise, so that any motions regarding a conflict of interest may be timely made and heard.

#### 10.7 Peremptory Challenges

Pursuant to 1 *CCR* Section 1034, a party to a special education due process proceeding is entitled to one peremptory challenge (disqualification without cause) of a hearing officer. Information related to peremptory challenges shall be maintained by the Agency and made available to the CDE and to the public via the Agency website. Any changes made to this policy by the Agency will be provided to the CDE for review as required by Task 1 subparagraphs (a) through (c) of this Agreement.

#### 10.8 Mediation Outcomes

A mediator assigned to a particular case shall be responsible for managing mediation of the case through to either impasse or resolution and, if to a resolution, shall be responsible for facilitating the process by which a written agreement of the parties can be prepared. A single paper or paperless case file may be maintained and may include

materials related to both the mediation and hearing, but all materials related to the mediation shall be sealed and not reviewed by or discussed with the hearing officer presiding over a subsequent DPH if the matter fails to reach resolution during mediation.

#### 10.9 Location of Hearings and Mediations

As stated in 10.10, the Agency shall conduct hearings and mediations in ADA accessible facilities, and provide reasonable accommodations for the mediations and hearings. The Agency shall conduct mediations and hearings at locations convenient to the parents or guardians and students as required by *EC* Sections 56500.3(h) and 56505(b), concerning the time and location of mediations and hearings and shall be ADA accessible. The Agency may also conduct all or part of the mediation or hearing by telephone or videoconference if each participant has an opportunity to participate in and hear the entire mediation or hearing; and for a hearing, is able to observe the exhibits pursuant to 5 *CCR* Section 3082(g).

#### 10.10 Reasonable Accommodations and Locations for Mediations and Due Process Hearings

The Agency shall conduct mediations and hearings at locations, certified by the school districts that the facilities to be provided are accessible pursuant to federal and state laws, that are convenient to the parents or guardians of students as required by *EC* Sections 56500.3(h) and 56505(b), concerning the time and location of mediations and hearings.

The Agency shall maintain policies, procedures, practices, and notices to ensure that special education hearings and mediations are conducted in facilities that have been certified by school districts as accessible and usable to qualified individuals with

disabilities and others requiring reasonable accommodations as required by law. The Agency shall meet its obligations to ensure hearings and mediations are conducted in accessible and usable facilities as required by law and in accordance with the following items:

- a. Maintain its policies, procedures, practices, and notices to ensure special education hearings and mediations are conducted in facilities accessible and usable to individuals with disabilities and others requiring reasonable accommodations, as required by law.
- b. Maintain a procedure to ensure special education hearing and mediation participants are informed of the process by which they can request and receive reasonable accommodations. The Agency shall:
  1. Inform parties how to request reasonable accommodations in the scheduling order.
  2. Communicate the requirements to school districts and other entities that provide facilities, prior to the scheduling of proceedings.
  3. Notify the proceeding participants in advance that the facility shall be accessible, and how the Agency shall respond if the participants arrive at the proceeding and find the facility is not accessible.
- c. Maintain a policy that any facility where the Agency conducts special education hearings or mediations shall be accessible to individuals with disabilities, and maintain a procedure for ensuring this requirement is met.

- d. Notify the public of its obligation to conduct special education proceedings in accessible facilities and provide reasonable accommodations (e.g., on the Agency's website)
- e. The Agency shall notify students, parents/guardians, and other special education hearing and mediation participants with disabilities including:
  - 1. How to request accommodations
  - 2. How the Agency shall respond to such requests
  - 3. How the Agency shall provide reasonable accommodations as required by law
- f. The Agency's procedure shall include a means for:
  - 1. Notifying participants in advance of the availability of accommodations and a process to request them.
  - 2. Responding and appropriately resolving situations in which participants arrive at a proceeding and find that previously requested accommodations are not available.
- g. The Agency shall ensure complaints alleging failure to conduct proceedings in accessible facilities or provide reasonable accommodations are reviewed and responded to in accordance with Task 3.13 of the executed agreement. This procedure shall include a means to:
  - 1. Review and monitor the Agency's investigations, findings and corrective actions by the CDE, consistent with Task 3.13 of the executed agreement.



2. Inform the public of the Agency's obligation to conduct special education proceedings in accessible facilities and provide reasonable accommodations, the process for requesting reasonable accommodations, and how to obtain the policies and procedures including:
  - i. Updating the Agency's SED website to include this information and links to any related forms.
  - ii. Providing the information and forms in the Agency's printed literature, such as its consumer brochure and Special Education DPH and Mediation Manual.
  - iii. Providing instructions for requesting accommodations in the notice of the date and time of hearings/ mediations sent to parents/guardians and districts.
- h. The Agency shall submit to the CDE the policies, notices, and procedures referenced in this contract, within thirty (30) calendar days of execution of the amendment.

#### 10.11 Interpreters

The Agency shall comply with the requirements of 5 *CCR* Section 3095 concerning the availability of interpreters, including sign language interpreters, for due process participants as appropriate. Hearings and mediations shall be conducted in the English language. When the primary language of a party or a witness to a hearing is other than

English, an interpreter shall be provided by the Agency and shall be competent as determined by the hearing officer or mediator. Cost for an interpreter shall be borne by the CDE. Interpreters shall take an oath to interpret the hearing fully and accurately.

#### 10.12 Conducting Mediation of Special Education Compliance Complaints

The provisions relating to mediation of special education due process hearing requests, described above, apply generally to the mediation of special education compliance complaints. When a parent files a special education compliance complaint with the CDE, and the CDE receives parent and public agency agreement to participate in state-level mediation (and any extension of the CDE's 60-day timeline in order to do so), the CDE will refer the matter to the Agency for mediation. Prior to submitting the referral to Agency, CDE will obtain agreement upon dates for mediation from the parent and public agency filed against that are 10 to 21 days from the date of referral to the Agency.

The Agency will conduct a mediation on a mutually agreeable date no later than 30 days from the date of the referral, consistent with procedures for its mediation of special education due process hearing requests. Once the mediation process is completed, the Agency will report within two business days, the result to the CDE.

The Agency will inform CDE when the mediation is closed and whether the mediation has been:

- a. Resolved;
- b. Dismissed; or
- c. partially resolved, and the status of each of the allegations in the complaint for which they provided mediation.

## **TASK 11 – CONDUCT HEARINGS PURSUANT TO GOVERNMENT CODE 7585**

For the period of this one-year Agreement, the Agency agrees to provide qualified ALJs to conduct hearings pursuant to GC Section 7585 and *California Code of Regulation*, Title 2 Section 60600. The CDE agrees to compensate the Agency for these services.

### 11.1 Staffing

Interagency Dispute Hearings will be adjudicated by ALJs in the Special Education Division who meet the training and qualifications requirements set forth in Sections 3097-3098.2 of the *California Code of Regulations* and in Tasks 6-9 of this interagency agreement.

### 11.2 Dispute Referrals

Upon receipt of a referral of an Interagency Dispute jointly from the Superintendent of Public Instruction and the Secretary of Health and Human Services or an appeal from a parent or LEA, the Agency shall assign the matter to an ALJ who will determine the nature of the hearing necessary to adjudicate the issues, such as a review of the written record, a review of the written record and oral argument, or an in-person hearing.

### 11.3 Calendaring

Based on the above determination, the Agency shall calendar the proceedings appropriately. The Agency shall provide written notification of scheduled hearing within five business days.

## 11.4 Decisions

The Agency shall submit a written decision to the Superintendent of Public Instruction, the Secretary of Health and Human Services, the CDE Contract Monitor, and named parties within 30 days of decision issuance.

An electronic copy of each written decision will be provided to the CDE Contract Monitor within 30 days of decision issuance. If the Agency dismisses a case for any reason, a notification of dismissal, including the reason, shall be sent to the Superintendent of Public Instruction, the Secretary of Health and Human Services, and the CDE Contract Monitor as soon as possible, but not later than 30 calendar days of receipt of the case, following the ruling.

### **TASK 12 – REPORTING**

#### 12.1 – Due Dates

The Agency shall provide the CDE Contract Monitor with two progress reports for the one-year term of this contract (January 15th and July 15th). However, if no Interagency Disputes were received by the Agency in the applicable timeframe during the term of this contract, then no progress report is required.

The progress reports shall include the following information and may be presented in a spreadsheet format:

1. Date each Dispute Resolution was received by the Agency;
2. Number of Dispute Resolutions received during the reporting period and Case Numbers;

3. Date each decision was issued;
4. LEA and/or Public Agency/(ies) involved in each dispute;
5. Date each Interagency Dispute was dismissed by the Agency and the reason for dismissal, if applicable;
6. Total number of Interagency Dispute Hearings received during the Fiscal Year.

### **TASK 13 – NONPUBLIC SCHOOLS (NPS) APPEALS PROCESS**

#### OAH'S RESPONSIBILITIES:

Detailed description of work to be performed and duties of all parties is described herein.

#### Description of Work and Services to be Performed:

1. OAH agrees to provide ALJs and clerical support for mediating NPS/A and contracting LEA master contract disputes in accordance with the provisions of *EC* Section 56366(c)(2).
2. If a request for hearing or mediation is filed with OAH, that request will not be accepted and will be forwarded to the CDE Contract Monitor.
3. OAH agrees to provide ALJs and clerical support for hearing or written review of an appeal of the CDE's denial, revocation, or suspension of a NPS/A certification pursuant to *EC* Section 56366.6.
4. OAH agrees to schedule interpreters and provide document translation as requested by a party for the above-referenced services.

5. OAH will electronically record the hearings unless a party requests a court reporter.
6. All decisions by the ALJ shall be completed within thirty (30) days of the appeal of the CDE's decision to deny, revoke, or suspend NPS/A certification pursuant to EC Section 56366.6. Continuances ordered may extend these timelines.
7. All requests for mediation of the master contract shall be scheduled within thirty (30) days of the request for mediation in accordance with the provisions of EC Section 56366(c)(2).
8. All decisions rendered by the ALJ shall be written reasoned decisions and shall constitute the final administrative determination.
9. Transcripts prepared from electronic recordings shall be coordinated through the OAH transcript administrator.
10. Requests by CDE for transcripts of electronically recorded hearings shall be prepared in accordance with the current contract rates and billed through the terms of this Agreement. Requests by all other parties shall be billed in accordance with normal OAH billing procedures. Requests for transcripts of proceedings in which a Court Reporter was provided shall be coordinated with the party and the Court Reporter directly. OAH will provide the Court Reporter billing information upon request.
11. Upon CDE's request, OAH will provide contracts with any subcontractors that provides services related to this IA to the CDE monitor.

## THE CALIFORNIA DEPARTMENT OF EDUCATION RESPONSIBILITIES:

1. The CDE shall provide training to the OAH ALJs with respect to NPS/A and LEA master contract requirements on a date agreeable to both OAH and CDE.
2. The CDE will file all requests to mediate NPS/A master contract disputes with OAH using the secure case filing system. The CDE will provide OAH with the current names and address of all parties and all appropriate case documents along with a request for mediation.
3. The CDE shall provide training to the OAH ALJs with respect to the process used to certify NPS/As on a date agreeable to both OAH and CDE.
4. The CDE will file all appeals in regard to the denial, revocation, or suspension of the certification of a NPS/A with OAH using the secure case filing system. The CDE will provide OAH with the current names and addresses of all parties and all appropriate case documents along with a request for hearing.

The CDE shall reimburse the OAH for all actual expenditures to include but not limited to transcripts, document translation, copy services and interpreters.

### **TASK 14 DELIVERABLES**

#### 14.1 Invoices

The Agency shall provide invoices for costs associated with providing the dispute resolution hearings required by *GC* Section 7585, along with documentation to support the costs incurred, on a monthly basis, only in months where charges occur.

The budget and corresponding invoices must not contain line items that are or will be reimbursed/paid by another source of funding during the period covered by this Agreement. Unexpended funds for a fiscal year shall not be carried over to another fiscal year. The Agency shall maintain records that fully disclose the amount of funds received under this agreement, a clear accounting of how the Agency expends the funds, the total cost required to implement this agreement, any share of cost provided from other sources, and any other records to facilitate an effective audit (i.e. detailed invoices, subcontract agreements, and time and effort records that clearly identify the relative benefit to the federal award)

Timeline for Contract Deliverables for Due Process Hearings

July 1, 2023 through June 30, 2024												
TASK	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
1	X	X	X	X	X	X	X	X	X	X	X	X
2	X	X	X	X	X	X	X	X	X	X	X	X
3	X	X	X	X	X	X	X	X	X	X	X	X
4	X	X	X	X	X	X	X	X	X	X	X	X
5	X	X	X	X	X	X	X	X	X	X	X	X
6	X	X	X	X	X	X	X	X	X	X	X	X
7	X	X	X	X	X	X	X	X	X	X	X	X
8	X	X	X	X	X	X	X	X	X	X	X	X
9	X	X	X	X	X	X	X	X	X	X	X	X
10	X	X	X	X	X	X	X	X	X	X	X	X
11	X	X	X	X	X	X	X	X	X	X	X	X
12	X	X	X	X	X	X	X	X	X	X	X	X
13	X	X	X	X	X	X	X	X	X	X	X	X
14	X	X	X	X	X	X	X	X	X	X	X	X

Figure 1 Timeline for Contract Deliverables