OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA
SPECIAL EDUCATION DIVISION

INFORMATION SHEET FOR SUBPOENA TO PRODUCE RECORDS OR THINGS UNDER OATH WITH OR WITHOUT TESTIMONY

This document contains the following:

- Forms:
  - Subpoena to Produce Records or Things under Oath with or without testimony,
  - Proof of Service
- Instructions
  - Instructions for Party Requesting a Subpoena, and
  - Instructions for Party Responding to a Subpoena.

These are listed in the order they appear in this document. The forms and these instructions should be served together.

OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIOFRNIA
SPECIAL EDUCATION DIVISION

SUBPOENA TO PRODUCE RECORDS OR OTHER THINGS UNDER OATH WITH OR WITHOUT TESTIMONY

CASE NAME:

OAH CASE NUMBER:

TO: (NAME OF PERSON OR ENTITY SUBPOENAED):

EMAIL ADDRESS FOR PERSON OR ENTITY SUBPOENAED:

DATE DOCUMENTS OR THINGS REQUIRED:

DATE AND TIME OF TESTIMONY REQUIRED:

☐ You are not required to appear to testify at the videoconference hearing if you produce the records or things described in this subpoena, together with a declaration by the custodian of the records or things, in compliance with Evidence Code section 1560, 1561, 1562 and 1271. To do this, follow the attached instructions for uploading or delivering the documents or things subpoenaed at least five business days before the day your documents or things are required. See attached Subpoena Information Sheet for details.

☐ You are required to appear to testify at the videoconference hearing and produce the records or things described in this subpoena, with a declaration by the custodian of the records or things, in compliance with Evidence Code section 1560, 1561, 1562 and 1271. See Subpoena Information Sheet below for details. To do this, follow the attached instructions for uploading or delivering the documents or things subpoenaed at least five business days before the day your documents or things are required. Then, on the date you are scheduled to testify, follow the attached directions for joining the videoconference hearing **(see Instructions for Responding to an OAH Subpoena, below).**

PERSON REQUESTING SUBPOENA:

NAME:

ADDRESS:

TELEPHONE NUMBER:

IF YOU HAVE QUESTIONS about the time of your testimony, or about how to appear by videoconference, or if you cannot appear on the date required, contact the Person Requesting Subpoena.

DESCRIPTION OF RECORDS OR THINGS TO BE PRODUCED:

To be completed by person or entity requesting subpoena. Attach additional sheets if needed.

DECLARATION OF NECESSITY AND DESCRIPTION OF SPECIFIC RECORDS AND THINGS TO BE PRODUCED

The records and other things required by this subpoena are reasonably necessary for the proper presentation of this case because: (attach additional pages if necessary.)

I declare under penalty of perjury that the information provided in this subpoena is true and correct.

SIGNATURE OF DECLARANT:

PRINT NAME OF DECLARANT IF NOT ELECTRONICALLY SIGNED:

DATE OF SIGNATURE:

ISSUED BY: (Administrative Law Judge or Attorney Name and Bar Number):

DATE:

INSTRUCTIONS FOR PARTY REQUESTING A SUBPOENA

WHAT IS A SUBPOENA

A subpoena is used to compel a person or entity, such as a business, to produce documents or appear to testify in a hearing. Neither state or federal special education law provides for access to subpoenaed documents or for testimony under oath before the start of a hearing. Any subpoenaed documents or testimony will be for hearing only.

WHO MAY ISSUE A SUBPOENA

The California Code of Regulations allows an Administrative Law Judge, also referred to as "ALJ," to compel the production of documents and testimony at hearing via subpoena. A licensed attorney is allowed to issue a subpoena for documents to be produced to the ALJ on the first day of hearing. Unrepresented parties may ask an ALJ to issue a subpoena to produce documents or things; or to require the appearance of a witness at hearing. The person subpoenaing the documents must list what documents or witnesses they are asking for; and why the information to be provided is relevant to the hearing; and then serve the subpoena.

WHAT INFORMATION MUST BE INCLUDED IN A SUBPOENA

Unrepresented parties and attorneys may issue subpoenas for the production of documents and “things” such as recordings or photographs. In addition to the name and contact information for the person being subpoenaed, if a party is asking that documents or things be produced the subpoenas must describe, in detail, what the requesting party is asking to have produced, and why the information sought is “reasonably necessary” to prove the party’s case, in order for the subpoena to be valid. (Cal. Code Regs., tit. 5,

§ 3082.) A party may choose whether they want only documents produced or whether they want the person or organization that has the documents or things to testify about them at hearing.

SPECIAL RULES FOR SUBPOENAING PRIVATE DOCUMENTS

There is a special notice, called a Notice to Consumer, that must accompany a subpoena for private records such as medical and other healthcare records, school records, employment records and others. In addition to the inclusion of the Notice to Consumer form, and served with the subpoena to the record holder, the subpoena and notice must be served on the person whose records are sought, to allow that person an opportunity to object. The notice must give the responding party at least 20 days from the date it is signed by the ALJ or attorney, or 15 days from the date the subpoena was served, whichever gives the respondent more time, to produce the documents. Extra time is required if the notice is mailed. A party seeking private records is responsible for complying with all rules related to protecting the consumer's privacy and properly serving the documents. The Notice to Consumer form is available from Judicial Council of California at:

https://selfhelp.courts.ca.gov/jcc-form/SUBP-025

SERVING A SUBPOENA

All subpoenas must be properly served in order to require the person receiving the subpoena to do what the subpoena requests. The party serving the subpoena is responsible for determining a service method that complies with California law. Generally, subpoenas are required to be served sufficiently in advance of the date of the witness' appearance at the hearing to give people adequate time to comply. Subpoenas seeking private records have special rules regarding the amount of notice required. Service is

usually required to be completed by someone who is not a party to the lawsuit. The notice can be sent via first class mail, personally delivered by a delivery service such as FED EX or UPS or by a private person; or in some instances may be served by email if the person receiving the subpoena agrees.

Subpoenas must also be served on all the other parties in the case. For example, if the case involves two school districts and one of them subpoenas records or documents, a copy of the subpoena must be served on the attorney for the other school district and on the attorney for the Parents and Student. If a party, such as a parent or school district, is not represented by an attorney the subpoena must be served on the party. Finally, if the subpoena is for records or documents, the party serving the subpoena is required to send a copy to OAH and include the email address for the person who is receiving the subpoena so OAH can send them an invitation to upload the requested documents into Case Center.

WHEN TO SERVE A SUBPOENA

A subpoena must be served far enough in advance of the hearing to give the person being subpoenaed a reasonable amount of notice. The person receiving the subpoena is asked to submit documents to OAH five business days prior to the first day of the hearing. Beginning three days prior to the start of the hearing, the electronic evidence system will not allow documents to be uploaded. The admission of any additional documents after that time must be addressed during the hearing to be determined by the ALJ. At the time of the prehearing conference, parties may be asked if there are any documents expected pursuant to subpoena so the ALJ can issue an invitation to upload the documents for ALJ review.

WHAT HAPPENS AFTER THE SUBPOENA IS SERVED

The subpoena includes instructions for the party receiving the subpoena. These instructions explain how to upload the documents to Case Center for purposes of ALJ review. Case Center is OAH's electronic evidence system. Documents should be loaded into the section mentioned in the instructions and not be uploaded into either party's section on Case Center without permission of the ALJ.

If the person who was served with the subpoena is unable to upload documents to Case Center, they may contact OAH at OAHSEOPs@dgs.ca.gov and will need to provide the case number and the name of the person or entity requested to produce the records.

Parties are not allowed access to the documents or physical things requested prior to the beginning of the hearing. The documents may be subpoenaed and used for hearing only. Prior to hearing, the ALJ will review the documents to determine whether they are relevant to the case. If the documents are deemed relevant, on the first morning of the hearing, the ALJ will allow the attorney or unrepresented party to look at the documents on Case Center to see if there are any documents they wish to use as exhibits at hearing. If there are documents the party wishes to add to their exhibits, the party will be given the ability to include those documents in their Case Center section. The party requesting the documents will be given access to download documents they intend to use for impeachment or rebuttal. Issues regarding disclosure of documents a party wishes to include in their Case Center evidence section, that are not being used as impeachment or rebuttal, will be resolved at the time of the hearing.

INSTRUCTIONS FOR RESPONDING TO AN OAH SUBPOENA

HOW TO PRODUCE DOCUMENTS OR THINGS OR APPEAR AS A WITNESS BY VIDEOCONFERENCE

Producing Documents

This document provides instructions regarding a subpoena for documents that you received. The subpoena was served by an attorney or party to the case. The subpoena requires you to produce the documents requested to the Administrative Law Judge hearing the case.

Do not send the requested documents to the person who requested them.

The Office of Administrative Hearings, also called OAH, uses a software program called Case Center for managing evidence electronically. You will need to upload the documents described in the subpoena into Case Center. There is a box for your email address on the subpoena. If the box does not contain your email address or your email address is incorrect, you may call OAH at (916) 263-0880 and speak to a case manager. The case manager will ask you for the case number, which you will find on the first page of the subpoena.

OAH must have your email address so that you can upload your response to Case Center. Shortly after you have been served with a subpoena, OAH will send you an email through Case Center. The email will be from "noreply@caselines.com." The email

will contain a link to upload your documents into the program at the time requested in the subpoena. The email will specify how long you have access to the link to upload documents.

UPLOADING DOCUMENTS INTO CASE CENTER

Once you receive the email from Case Center click on the link to upload files. The email link will open a new webpage for you to upload the documents. You can **"drag and drop" or "Add Files" to the "Select Files" box**.

Follow the instructions below for your preferred method.

Drag & Drop:

- To drag and drop, highlight the document you want, and drag the file to the Select Files Box. Drop it where the box says, "Drag Files Here." To Drag several documents, hold the control or "ctrl" button while you highlight files and drag them to the "Select Files" box as a group.

Directly Add Files:

- To Add Files directly to the "Select Files" box without drag and drop, click "+Add Files" at the bottom of the "Select Files" box. The program will open your computer's document list.

- Highlight the file you want to upload and click "open" at the bottom of your computer's file list screen. The file will populate in the "Select Files" box of Case Center.

- To add several files at a time, hold down the control or “ctrl” button (Windows” or “command” button (Mac), to highlight several files, then click open at the bottom of the file list screen. All of the selected files will populate the Select Files box in Case Center.

- If you add a file you did not intend to include, click on the minus sign in the circle to the right of the document title in the “Select Files” box to remove it.

Once you’ve added the files you want to upload to Case Center, click “Start Upload” at the bottom of the “Select Files” box. The more documents you add at a time, the longer the upload time for each group. You may add multiple groups of files by repeating this process until you are finished. Ensure the status of each document is 100% before closing the window. You will not have access to Case Center to confirm the documents uploaded correctly.

APPEARING AS A WITNESS

OAH will be conducting this hearing by videoconference. Your testimony is required. The Administrative Law Judge and all other participants will also be attending the hearing by videoconference.

Instead of requiring you to appear in person at the hearing location, all participants will join the hearing online using the Zoom application. These are the instructions to appear as a witness using the Zoom application:

1. You will need an email address and a computer, preferably with a camera, and a web browser.

2. You must supply your direct email address and your direct telephone number (no extensions) to the party that subpoenaed you within 24 hours of receipt of the subpoena. The party or their attorney will contact you to confirm the date and time you will be required to testify.

3. Shortly before your appearance, the person who sent the subpoena, or OAH, will send you an email containing the information for you to join the hearing to provide your testimony. You will need to be ready to testify at the time stated in the email. If you will be testifying using a computer join the hearing by holding down the control key (or the command key, if using a MAC) and click on the link in the email. A new window will open. Select an option for joining Zoom (either through the website or using the App.) A window will open. Click Join. The Administrative Law Judge will admit you into the videoconference hearing when it is time for you to testify.

4. Your appearance using a computer, tablet, or other device that allows you to be seen and heard, is required unless otherwise ordered by an Administrative Law Judge. If you cannot join the hearing by videoconference, you must contact the person who sent the subpoena, explain why you are unable to appear by videoconference, and provide a direct telephone number on which you can be reached. That person may submit a written request to the Administrative Law Judge to allow you to appear for the hearing by telephone. Another option is to submit a written request to testify by telephone, including a direct telephone number, to OAH' secure filing system, along with a proof of service indicating that you sent a copy of the request to the representatives of all parties in the hearing. The proof of

service form is available on OAH's website. Whether you will be allowed to testify by telephone is a decision made by the Administrative Law Judge.

5. If you are allowed to testify by telephone only, shortly before your appearance, the person who subpoenaed you will give you a telephone number to call and a Conference ID number which is identified by the hashtag or pound symbol (#). When it is time for your appearance, you will join the hearing by calling the number and entering the Conference ID number including the hashtag/pound symbol. The judge will admit you into the hearing when it is time for you to testify.

When you testify, you should be alone in a location that allows your testimony to be confidential. Your cell phone should be turned off. You are not allowed to have notes or documents for reference other than those supplied by the attorneys at the time of your testimony. The Administrative Law Judge will administer the same oath as would be administered if the hearing was taking place in a courtroom. Your testimony will be audio- recorded by the Administrative Law Judge. You are not permitted to record, photograph, or stream the hearing proceedings.

If you have difficulty joining the hearing you should immediately call the person requesting the subpoena, who is listed on the subpoena, for further instructions or assistance. You may also refer to the OAH Special Education Division's website for information on joining a videoconference hearing using Zoom.

PROOF OF SERVICE

INFORMATION

Federal and state laws require you to send or deliver a copy of the attached document to each of the named parties. Additionally, you must send or deliver a copy to the Office of Administrative Hearings. Retain a copy for yourself.

Please indicate that you have sent copies of the attached document by checking the appropriate box or boxes below.

This Proof of Service may be used to confirm service to more than one party.

Different methods of service may be used for different parties as needed. For example, if serving more than one school district indicate which method of service is used for each school district by checking the appropriate boxes. If one school district is served by fax, a second school district may be served by fax, U.S. mail or by any other method listed below. For each method of service used provide the indicated information for that type of service for each party served.

REQUIRED INFORMATION:

NAME OF DOCUMENT BEING SERVED:

I have provided a copy of the document identified above to all the named parties and to the Office of Administrative Hearings by the method of service identified on the following pages.

TYPE OF SERVICE

Check applicable box and provide the information indicated. (If service of more than one person or entity is included in this Proof of Service, additional sheet may be added.)

☐ **PERSONAL DELIVERY:**

NAME AND ADDRESS OF PERSON SERVED:

NAME OF PERSON PERSONALLY SERVING THE DOCUMENT AND THE DATE AND TIME OF DELIVERY:

☐ **FIRST CLASS MAIL (U.S. MAIL)**

NAME AND ADDRESS OF PERSON SERVED:

DATE MAILED:

☐ **MESSENGER OR OVERNIGHT DELIVERY SUCH AS UPS, FEDEX, OR OTHER COURIER SERVICE**

NAME OF PERSON SERVED AND ADDRESS WHERE DOCUMENT WAS DELIVERED:

NAME OF MESSENGER OR DELIVERY SERVICE USED:

DATE SERVED:

RECEIPT IS ATTACHED (CHECK BOX TO CONFIRM RECEIPT IS ATTACHED): ☐

☐ **FAX (ALSO CALLED FACSIMILE TRANSMISSION)**

NAME AND FAX NUMBER OF PERSON SERVED:

DATE AND TIME OF FAX:

☐ **EMAIL**

BY CHECKING THIS BOX I ASSERT THAT THE PERSON OR AGENCY BELOW HAS AGREED TO ACCEPT DOCUMENTS BY EMAIL.

NAME AND EMAIL ADDRESS OF PERSON SERVED:

DATE AND TIME OF EMAIL:

SIGNATURE OF PERSON COMPLETING THIS PROOF OF SERVICE

PRINT THE NAME OF THE PERSON COMPLETING THIS PROOF OF SERVICE IN THE SPACE BELOW.

The person completing this Proof of Service must sign in the space below and write the date of the signature next to the signature.

BY TYPING MY NAME BELOW I AM AGREEING THAT I HAVE ELECTRONICALLY SIGNED THIS FORM ON THE DATE PROVIDED BELOW.

DATE OF SIGNATURE: