

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPECIAL EDUCATION DIVISION  
STATE OF CALIFORNIA

## INSTRUCTIONS FOR JOINING THE DUE PROCESS HEARING BY VIDEOCONFERENCE

The Office of Administrative Hearings, referred to as OAH, is authorized to conduct due process hearings by videoconference or telephone. (5 C.C.R. § 3082, subd. (g).) All special education prehearing conferences and due process hearings scheduled with OAH will occur by videoconference using the Zoom application, unless otherwise ordered.

Zoom is an application that contains videoconferencing capabilities and allows participants in different locations to participate in prehearing conferences and due process hearings by computer or telephone. Instead of appearing in person for the hearing, all participants will join through Zoom. The hearing participants will simultaneously appear on the computer screens through a live video and audio stream.

OAH will send an email invitation to join the hearing. The participants are not to otherwise respond to this email invitation or communicate with the Administrative Law Judge, or ALJ in any way outside of the hearing. Any attempt to correspond with the ALJ via email, shall be considered an improper ex parte communication. All questions shall be directed to the assigned OAH case manager.

At the designated time for the hearing, participants will join the hearing using the Zoom link in their email invitation. For more [information on the virtual hearing process](https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Virtual-Prehearing-Conferences-and-Hearings), please visit OAH's website at <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Virtual-Prehearing-Conferences-and-Hearings>.

As to the witnesses called by each party, each party or their representative will be responsible for providing the email invitation to the witnesses so that they can be available at the time they are to be called. This can be done by forwarding the email that the participant received to join the hearing to the witnesses.

The parties are encouraged to carefully review the instructions and conduct a test accessing Zoom before their scheduled prehearing conference. A [test Zoom meeting](#) can be conducted at <https://zoom.us/test>.

Participants are not required to download the Zoom application to join a Zoom meeting. Zoom meetings may also be accessed using an internet browser by clicking on the "Join Zoom Meeting", or by using the meeting URL provided in the email invitation, then selecting "Join from Your Browser" towards the bottom of the webpage. Parties that have not previously used Zoom may find informative [instructions on Zoom's support site](#) at <https://support.zoom.us/hc/en-us/categories/200101697>.

Participants may have trouble joining the Prehearing Conference or Hearing if they do not have the most updated version of Zoom. For instructions on identifying your version of Zoom, and for [updating to the most current version of Zoom](#), please visit the following webpage at <https://support.zoom.us/hc/en-us/articles/201362233>.

Parties will join the hearing by computer and appear by videoconference unless they do not have the required computer equipment. In that situation, at the discretion of the ALJ, parties may be permitted to appear by using Zoom for audio only or by telephone.

The participants should take reasonable efforts to minimize background noise and maintain adequate room lighting. Virtual background images may be used by participants at the discretion of the ALJ.

## HEARINGS BY VIDEOCONFERENCE AND TELECONFERENCE FAQ'S

### OAH WILL CONDUCT SPECIAL EDUCATION MEDIATIONS AND DUE PROCESS HEARINGS BY VIDEO CONFERENCE.

OAH is empowered to conduct all or part of a due process hearing, held under the Individuals with Disabilities Education Act, by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe exhibits. (5 C.C.R. § 3082(g); 20 U.S.C. § 1415(f).)

### HOW WILL I CONNECT TO A VIDEOCONFERENCE HEARING?

OAH is using Zoom to hold the videoconference prehearing conference and due process hearing. All participants must be in a quiet private location, unless otherwise ordered. All participants will be required to connect to the Zoom by computer and appear by videoconference unless they do not have the required computer equipment. In that situation, parties may be permitted at the discretion of hearing Administrative Law Judge, to appear using Zoom by audio only, or by telephone. The Administrative Law Judge is referred to as ALJ.

### MAY I OPT OUT OF A VIDEOCONFERENCE HEARING?

Parties will **not** have the option to "opt out" of proceeding to hearing by videoconference. A due process hearing must be conducted, and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) Parties are encouraged to request mediation to attempt to resolve their dispute before hearing.

## MAY I REQUEST A CONTINUANCE?

OAH will consider timely written continuance requests from parties. Parties must establish good cause to continue a due process hearing. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. **OAH will consider these and other bases for good cause if supported by a declaration.** (Ed. Code, § 56505, subd. (f)(3); Cal. Rules of Court, rule 3.1332(c).)

## DO I STILL HAVE THE RIGHT TO HAVE AN ATTORNEY?

Parties have the right to be represented and advised by an attorney at the due process hearing. If a party wants to have individuals who are not active members of the California State Bar, with special knowledge or training relating to the child with special needs, to advise them during hearing, the hearing ALJ will provide the conditions for that person's participation at the mediation, prehearing conference and hearing. (Ed. Code section 56505(e)(1).)

## HOW DO I ARRANGE FOR WITNESSES AT HEARING?

Parties have the right to confront and cross-examine witnesses. (Ed. Code section 56505(e)(2).) The hearing ALJ will discuss the scheduling and appearance of witnesses at the prehearing conference and on each day of hearing. All witnesses will be required to connect to the Zoom by computer and appear by videoconference unless they do not have the required computer equipment. In that situation, at the hearing ALJ's discretion, witnesses

may be permitted to appear using Zoom by audio only, or by telephone. Parties who want to subpoena a witness can get more information about subpoenas by visiting the [Subpoenas webpage](https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena) at <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena>.

## WILL THE VIDEOCONFERENCE HEARING BE CONFIDENTIAL?

Parties are prohibited from video recording the hearing. The videoconference hearing will remain confidential, unless otherwise ordered. The audio recording made by the hearing ALJ will be the official record. The parties may request to audio record the hearing. If a hearing is open to the public at the request of a parent or student, an audio recording of the hearing will be made available at the end of the proceeding.

## HOW WILL I COMMUNICATE WITH MY ATTORNEY OR CLIENT DURING THE HEARING?

Attorneys may arrange, at their sole discretion, for their client to attend the hearing in the same location as the attorney. The client and the lawyer must each have the required equipment. Otherwise, where an attorney and client appear for a videoconference hearing from different locations, the attorney and client will be provided a virtual break out room to have confidential communications, or the attorney and client can communicate by other means, which can be utilized throughout the hearing, at the discretion of the ALJ.

## WHAT IF A PARTY OR WITNESS REQUIRES THE ASSISTANCE OF AN INTERPRETER?

OAH will provide interpreters at hearing for participants who require them. Interpreters will appear either by videoconference or telephonically.

## WILL I STILL BE ABLE TO OFFER EXHIBITS, INCLUDING FOR REFRESHING RECOLLECTION, REBUTTAL OR IMPEACHMENT?

Yes. The parties will be required to upload their exhibits electronically according to the instructions provided in the Prehearing Conference Order and the Order Setting Procedures for Filing Exhibits Electronically. The hearing ALJ will address the issue of exhibits offered for refreshing recollection, rebuttal, or impeachment on a case by case basis when it is raised at hearing.