

# SPECIAL EDUCATION HANDBOOK

## DECEMBER 2025

Office of Administrative Hearings  
State of California

## Contents

1. PROLOGUE.....	9
<b>GENERAL INFORMATION ON SPECIAL EDUCATION.....</b>	<b>9</b>
<b>LIST OF FREE OR LOW-COST ADVOCATES OR ATTORNEYS .....</b>	<b>9</b>
<b>State Complaint Procedures .....</b>	<b>10</b>
When may I File a State Compliance Complaint? .....	10
2. SUMMARY OF EDUCATIONAL RIGHTS.....	11
<b>SPECIAL EDUCATION DUE PROCESS AND HOW IT WORKS.....</b>	<b>11</b>
Introduction.....	11
About The Office of Administrative Hearings, Special Education Division .....	13
Researching Special Education Law and OAH Decisions .....	14
<b>BRIEF SUMMARY OF EDUCATIONAL RIGHTS .....</b>	<b>15</b>
The Rights of Children with Disabilities .....	15
Determining Eligibility for Special Education.....	17
The Individualized Education Program (IEP).....	19
Due Process and Special Education .....	24
3. THE LIFE OF OAH CASES .....	28
<b>LIFE CYCLE OF A MEDIATION ONLY CASE.....</b>	<b>28</b>
<b>LIFE CYCLE OF A DUE PROCESS HEARING ONLY CASE.....</b>	<b>30</b>
<b>LIFE-CYCLE of MEDIATION AND DUE PROCESS HEARING CASES .....</b>	<b>32</b>
<b>EXPEDITED CASES.....</b>	<b>36</b>
4. FILE AND SERVE DOCUMENTS IN A SPECIAL EDUCATION CASE .....	39
<b>SERVE THE DOCUMENT .....</b>	<b>40</b>
<b>FILE THE DOCUMENT.....</b>	<b>40</b>

File the documents after serving .....	40
Types of Documents that are Filed with OAH .....	40
To File a Document with OAH .....	42
<b>PROOF OF SERVICE, ALSO CALLED STATEMENT OF SERVICE - OPTIONAL FORM .....</b>	<b>42</b>
<b>SECURE E-FILE TRANSFER SYSTEM .....</b>	<b>43</b>
<b>MAILING ADDRESS AND CONTACT INFORMATION.....</b>	<b>44</b>
<b>ALTERNATIVE FORMAT AND LANGUAGE REQUESTS .....</b>	<b>44</b>
Requesting Interpreters for Parties and Witnesses.....	44
Making a Request for an Interpreter .....	46
<b>5. THE MEDIATION PROCESS, INCLUDING VIRTUAL MEDIATIONS .....</b>	<b>48</b>
<b>MEDIATIONS AND SETTLEMENT AGREEMENTS .....</b>	<b>48</b>
The Mediator .....	48
The Virtual Mediation.....	48
<b>THE MEDIATION MEETING .....</b>	<b>54</b>
During the Mediation .....	56
The Settlement Agreement .....	57
<b>6. PREHEARING CONFERENCES .....</b>	<b>60</b>
<b>INFORMATION FOR PARTICIPATING BY VIDEOCONFERENCE.....</b>	<b>61</b>
Zoom Information and Resources .....	61
Providing Participant Information to OAH .....	62
OAH Will Schedule the Prehearing Conference Videoconference .....	63
Joining the Prehearing Conference .....	63
Participation Without the Use of Videoconference will be at the Discretion of the ALJ.....	64
Guidelines for Video Appearance .....	64
<b>PREHEARING CONFERENCE .....</b>	<b>64</b>
Prehearing Conference Statements .....	65
Prehearing Motions and Requests for Continuance.....	67
Answers to Common Questions About Prehearing Conferences.....	68

Asking for a Subpoena - Do You Need One?.....	72
Prehearing Conference Statements, Witness Lists and Exhibits Lists .....	73
The ALJ Prepares an Order Following Prehearing Conference .....	75
<b>7. DUE PROCESS HEARINGS.....</b>	<b>76</b>
<b>FREQUENTLY ASKED QUESTIONS .....</b>	<b>78</b>
May I Request to Continue a Hearing? .....	78
Do I have the Right to Have an Attorney? .....	78
<b>HIRING AN ATTORNEY? DO SO AS EARLY AS POSSIBLE.....</b>	<b>79</b>
<b>LOCATION, PROCESS AND ALJ’S ROLE .....</b>	<b>80</b>
The Location of the Hearing .....	80
Issues and Burden of Proof.....	80
The ALJ Conducts the Hearing .....	81
<b>USING ZOOM AND CONNECTING TO A VIDEOCONFERENCE HEARING .....</b>	<b>82</b>
If you are Unfamiliar with Zoom You May Find the Following Site Helpful.....	83
<b>WHAT TO EXPECT DURING THE HEARING.....</b>	<b>84</b>
Will the Videoconference Hearing be Confidential and May Parties Record the Hearing? .....	84
Communicating with Your Attorney or Client During the Hearing.....	84
The ALJ Records the Hearing .....	85
Opening Statements.....	86
Witnesses .....	86
Exhibits .....	87
Objections.....	89
Cell Phones .....	91
No Eating During the Hearings .....	91
<b>REQUEST FOR REASONABLE ACCOMMODATIONS.....</b>	<b>91</b>
<b>REQUESTS FOR INTERPRETERS .....</b>	<b>92</b>
<b>SELF-HELP TIPS FOR UNREPRESENTED PARTIES .....</b>	<b>93</b>
What to Bring to the Hearings.....	93
What to do if You are Late to the Hearing.....	93

How to Question Witnesses .....	94
Parents’ Testimony .....	97
How to Put Exhibits into Evidence .....	98
How to Present an Audio Recording at Hearing .....	99
What to do at the End of Each Day of Hearing .....	100
<b>THE LAST DAY OF THE HEARING – EVIDENCE RECONCILIATION .....</b>	<b>101</b>
<b>CLOSING ARGUMENTS .....</b>	<b>101</b>
<b>APPEALING AN OAH SPECIAL EDUCATION DECISION .....</b>	<b>103</b>
 8. ELECTRONICALLY SUBMITTING WITNESS LISTS AND EVIDENCE WITH CASE CENTER	
104	
<b>URL FOR ACCESSING CASE CENTER:.....</b>	<b>106</b>
<b>CASE CENTER QUICK START INFORMATION .....</b>	<b>106</b>
Registering to Access Case Center .....	106
<b>EXCHANGING DOCUMENTS THROUGH CASE CENTER.....</b>	<b>107</b>
<b>DOCUMENT ORGANIZATION IN CASE CENTER.....</b>	<b>107</b>
Numbering of Exhibits .....	107
Sections .....	108
Content .....	108
<b>TIMELINE FOR UPLOADING EXHIBITS .....</b>	<b>108</b>
<b>UPLOADING DOCUMENTS.....</b>	<b>109</b>
Choose a Browser .....	109
Locate Your Section .....	109
Upload Your Exhibits to Your Section .....	110
<b>NUMBERING AND NAMING EXHIBITS AFTER UPLOAD .....</b>	<b>111</b>
Numbering your Exhibits Per the Prehearing Conference Order .....	112
Naming Exhibits .....	112
Making Changes to Exhibit Names in Case Center .....	113

<b>ADDING ADDITIONAL EXHIBITS OR REMOVING EXHIBITS .....</b>	<b>114</b>
Adding Exhibits .....	114
Removing Exhibits After they have been Uploaded .....	114
<b>WITNESS ACCESS TO EXHIBITS.....</b>	<b>115</b>
 <b>9.    SUBPOENAS .....</b>	 <b>116</b>
<b>GENERAL INFORMATION ABOUT SUBPOENAS .....</b>	<b>116</b>
<b>SUBPOENAS FOR DOCUMENTS .....</b>	<b>117</b>
<b>SUBPOENAS FOR WITNESSES .....</b>	<b>119</b>
 <b>10.    SETTING A MEDIATION AND REQUESTING A CONTINUANCE OF PREHEARING CONFERENCE AND DUE PROCESS HEARING DATES .....</b>	 <b>121</b>
<b>REQUESTING AN INITIAL MEDIATION DATE IN A MEDIATION AND DUE PROCESS HEARING CASE .....</b>	<b>123</b>
<b>CANCELLING A MEDIATION DATE .....</b>	<b>127</b>
<b>REQUESTING A CONTINUANCE OF THE HEARING AND PREHEARING CONFERENCE WHEN REQUESTING A MEDIATION DATE .....</b>	<b>128</b>
<b>MOTION TO CONTINUE A MEDIATION, PREHEARING CONFERENCE OR HEARING DATES.....</b>	<b>130</b>
 <b>11.    MOTIONS .....</b>	 <b>132</b>
<b>MOTION GUIDES .....</b>	<b>133</b>
How to Prepare a Motion .....	133
How to Respond to a Motion .....	134
<b>INFORMATION ON COMMON MOTIONS.....</b>	<b>135</b>
Notice of Insufficiency .....	135
Motion or Request for Continuance.....	136
Motion for Stay Put .....	137
Motion to Dismiss.....	137
Motion to Amend the Due Process Request .....	138

Motion to Add a Party to the Case .....	138
Motion to Consolidate Two or More Cases.....	138
Motion to Challenge the ALJ Assigned to the Hearing .....	139
How to Present Evidence to Support or Respond to a Motion .....	140
 <b>12. INFORMATION FROM THE DEPARTMENT OF EDUCATION.....</b>	 <b>142</b>
<b>NOTICE OF PROCEDURAL SAFEGUARDS .....</b>	<b>142</b>
What is the Notice of Procedural Safeguards? .....	142
What is the IDEA? .....	143
May I participate in decisions about my child’s education?.....	144
Where can I get more help?.....	144
What if my child is deaf, hard of hearing, blind, visually impaired, or deaf-blind? .....	145
 <b>Notice, Consent, Assessment, Surrogate Parent Appointment, and Access to Records .....</b>	 <b>146</b>
Prior Written Notice When is a notice needed?.....	146
What will the notice tell me? .....	146
Parental Consent.....	147
Surrogate Parent Appointment.....	150
 <b>Nondiscriminatory Assessment .....</b>	 <b>150</b>
How is my child assessed for special education services? .....	150
 <b>Independent Educational Assessments.....</b>	 <b>151</b>
May my child be tested independently at the district’s expense?.....	151
 <b>Access to Educational Records.....</b>	 <b>152</b>
May I examine my child’s educational records? .....	152
 <b>How Disputes Are Resolved .....</b>	 <b>152</b>
Due Process Hearing .....	152
 <b>Mediation and Alternative Dispute Resolution .....</b>	 <b>153</b>
May I request mediation or an alternative way to resolve the dispute? .....	153
 <b>What is a pre-hearing mediation conference? .....</b>	 <b>153</b>
 <b>Due Process Rights .....</b>	 <b>155</b>
What are my due process rights? .....	155

<b>Filing a Written Due Process Complaint How do I request a due process hearing? .....</b>	<b>157</b>
<b>What does a resolution session include? .....</b>	<b>158</b>
<b>Does my child’s placement change during the proceedings? .....</b>	<b>158</b>
<b>May the decision be appealed? .....</b>	<b>159</b>
<b>Who pays for my attorneys’ fees? .....</b>	<b>159</b>
<b>To obtain more information or to file for mediation or a due process hearing, contact: .....</b>	<b>160</b>
School Discipline and Alternative Interim Educational Settings.....	161
Children Attending Private School .....	163
<b>When may reimbursement be reduced or denied? .....</b>	<b>164</b>
<b>When may reimbursement not be reduced or denied? .....</b>	<b>164</b>
<b>Senate Bill 511, Family Empowerment Centers.....</b>	<b>165</b>



# **1. PROLOGUE**

## **GENERAL INFORMATION ON SPECIAL EDUCATION**

This handbook is intended to help parties better understand due process hearings and mediations, and to prepare documents needed for each step in the special education process. Provided herein is a list of general information on the Special Education mediation and hearing process.

## **LIST OF FREE OR LOW-COST ADVOCATES OR ATTORNEYS**

For those seeking the assistance of either a Special Education Advocate or a Special Education Attorney, OAH provides, as a resource, a list of advocates and attorneys who self-certify that they provide their services free or at a low-cost. You may request a printed copy of this list either by U.S. mail or by telephone, or by submitting a request by email. The address, telephone number, and email information to obtain a printed copy of this list is shown below.

Address:

Special Education Division  
Office of Administrative Hearings  
2349 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833

Telephone Number: (916) 263-0880

Email to Request a Printed Copy: [DGSOAHFeedback@dgs.ca.gov](mailto:DGSOAHFeedback@dgs.ca.gov).

# **STATE COMPLAINT PROCEDURES**

## **WHEN MAY I FILE A STATE COMPLIANCE COMPLAINT?**

You may file a state compliance complaint when you believe that a school district has violated federal or state special education laws or regulations. Your written complaint must specify at least one alleged violation of federal and state special education laws. The violation must have occurred not more than one year prior to the date the complaint is received by the CDE. When filing a complaint, you must forward a copy of the complaint to the school district at the same time you file a state compliance complaint with the CDE. (34 CFR Section 300.151–153; 5 CCR Section 4600)

Complaints alleging violations of federal and state special education laws or regulations may be mailed to:

California Department of  
Education Special Education  
Division Dispute Resolution Unit  
1430 N Street, Suite 2401  
Sacramento, CA 95814

You may also email your complaint to [speceducation@cde.ca.gov](mailto:speceducation@cde.ca.gov)

For complaints involving issues not covered by federal or state special education laws or regulations, consult your district's uniform complaint procedures.

To obtain more information about dispute resolution, including how to file a complaint, contact the CDE, Special Education Division, Dispute Resolution Unit, by telephone at 800-926-0648; by fax at 916-327-3704; or by visiting the CDE, Special Education web page at <https://www.cde.ca.gov/sp/se/index.asp>.

## **2. SUMMARY OF EDUCATIONAL RIGHTS**

### **SPECIAL EDUCATION DUE PROCESS AND HOW IT WORKS**

#### **INTRODUCTION**

This section of the Handbook explains how due process works, walking through each step of the process and explaining how to participate in each step.

All children with disabilities have a right to a free appropriate public education. Below is a discussion of these rights. The acronym "FAPE" is used to mean a free appropriate public education. The federal law that gives these rights is the Individuals with Disabilities Education Act. The federal law is also known as the IDEA.

The California version of the law is in California's Education Code. This portion of the website has two goals. The first goal is to help students and their families understand their rights under the law. The second goal is to help families use what is called "due process" if they believe their child is not receiving a FAPE.

This section describes what "due process" is in the context of special education and how it works in California. The IDEA intended parents to be able to use due process without an attorney. However, parents have a right to an attorney, at their own expense. Some, but not all, parents choose to have an attorney represent them. Parents also have the right to be accompanied by persons with specialized knowledge, although non-attorneys cannot represent parents in mediations or in hearings. This Handbook is meant to help parents understand due process whether or not they have an attorney or other help. The Office of Administrative Hearings cannot give legal advice to anyone, but

it is easier to be a part of a mediation and a due process hearing if you understand the process. This Handbook will refer to the Special Education Division of the Office of Administrative Hearings as "OAH."

Due process begins when someone sends a request for a due process hearing to OAH. This request is often called a "complaint" or a "request for hearing." OAH has a form to use to request a due process hearing and other forms to use during the proceedings. The forms have instructions printed on them and the instructions are also provided in this handbook and on OAH's website. All of these instructions explain what forms are available and how to use them. Forms are available through OAH's website or by asking for them from the OAH office in Sacramento. (See the Prologue section in this handbook for contact information.) You may also find contact information on OAH's website by copying and pasting the following URL into your browser or by clicking on the link: <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/About>.

There are many different people and agencies involved in due process proceedings. "Parents," as used in this Handbook, includes parents, legal guardians, or any person or entity who is legally responsible for protecting a student's educational rights. Students who are 18 or older have the same rights as "parents" as that term is used here. The term "District" is used in this Handbook to refer to all educational agencies involved in making educational decisions for a student. These agencies include:

- School districts;
- Special Education Local Plan Areas (commonly called SELPAs);
- Charter schools; and
- Other state agencies that provide services to children with disabilities.

Lastly, the term “party” means a parent, person, district or other educational agency involved in a due process proceeding.

## **ABOUT THE OFFICE OF ADMINISTRATIVE HEARINGS, SPECIAL EDUCATION DIVISION**

OAH is a neutral state agency that helps solve disagreements between individuals and government agencies. The Special Education Division handles mediations, prehearing conferences and due process hearings.

OAH provides mediators and administrative law judges who help parents and districts work out their differences in mediation or as the result of a hearing. Judges and mediators are trained not to take sides. Their goal is to ensure students with disabilities receive a FAPE, and to make sure everyone follows the law. The people employed by OAH work very hard to make sure both sides receive a fair hearing process.

OAH’s website provides access to the Special Education case calendar, the judges assigned to a case and each judge’s profile, and access to OAH’s special education decisions. You will also find on OAH’s website information about OAH’s Advisory Committee and lists of attorneys and advocates who self-certify that they provide special education services free or at a low cost. The website also has optional Special Education forms that may be filled out online or printed and completed by hand.

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The Special Education Division has an online document filing system called the Secure e-File Transfer (SFT) system. Private information contained in documents sent to and from OAH using SFT is more secure than other methods used to send documents.

- For instructions for using the SFT please see the information on OAH's website by copying and pasting the following URL into your browser or by clicking on the link.
  - [Link to information on SFT](#)
  - <https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/File-or-Upload-OAH-Case-Documents>.

## **RESEARCHING SPECIAL EDUCATION LAW AND OAH DECISIONS**

To access Federal and California Special Education statutes and regulations, the California Department of Education maintains a website with this information, <https://caser.specialedreference.com/>. To research decisions issued by OAH, go to <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Page-Content/Special-Education-Services-List-Folder/Search-Special-Education-Decisions-and-Orders> for instructions on how to search and access the decisions.

## **BRIEF SUMMARY OF EDUCATIONAL RIGHTS**

### **THE RIGHTS OF CHILDREN WITH DISABILITIES**

Children with disabilities have a right to a free appropriate public education, no matter what type of disability they have. In California, disabled students between the ages of 3 and 22 may be eligible for special education and related services.

#### **FAPE**

"FAPE" means special education and related services that are provided at public expense and are designed to meet a student's unique needs. The student's education must be designed to help the student make progress in school. Special education must also be designed to help the student learn skills for independent living.

#### **SPECIAL EDUCATION**

"Special Education" means teaching that is designed to meet a student's particular needs. This education is free, may be taught in a general classroom or can be provided in a separate classroom for all or part of the school day. Often, the student is taught by a teacher who has been trained in special education. Sometimes the student can be taught at home, in a hospital, or in temporary placement like Juvenile Hall.

#### **RELATED SERVICES**

"Related Services" are things such as transportation to and from school, speech therapy, and occupational therapy. Other related services may also be necessary to help a student with disabilities access their education.

## APPROPRIATE EDUCATION

An "Appropriate Education" means that the student's education must be reasonably calculated to provide some educational benefit to the student. The United States Supreme Court stated this definition in a case called *Board of Education of the Hendrick Hudson Central District v. Rowley*. The actual decision can be found by typing the case citation 458 U.S. 176 (1982) into your website browser. The case was decided in 1982, and it is still the law today.

In 2017, the United States Supreme Court wrote another decision about special education. This case is called *Endrew F. v. Douglas County School District*. The Supreme Court said that school districts need to offer a special education student a program that is reasonably calculated to enable the student to make progress according to the student's circumstances. The actual decision can be found by copying and pasting the following citation into your internet browser: *Endrew F. v. Douglas County School District Re-1*, 137 S. Ct. 988.

All special education students must have an individualized education program, often referred to as an IEP. An IEP is a document that contains many different kinds of information about a student's education. Included in an IEP are:

- A description of how well the student is doing in school at the time the IEP is written;
- What the student's strengths and weaknesses are;
- What areas the student will work on (called "goals");
- What type of special education the student needs;
- What sort of classroom the student will be in;



- What type of related services the student will get; and
- What accommodations and modifications the student may need to be able to be successful at school.

IEPs are discussed in more detail below.

## **DETERMINING ELIGIBILITY FOR SPECIAL EDUCATION**

School districts determine if a student is eligible for special education using a process called “assessment” or “evaluation.” These terms mean the same thing.

Many different people can ask a district to assess a student for special education. These people include the student’s parents, student's teachers or other school personnel, and doctors and other service providers.

A district must get written consent from a parent before the district can assess a student. The district must send parents an assessment plan written in the parent’s native language, which must explain what areas are being assessed and how the assessment will be done.

An assessment includes many different parts:

- Written tests given to the student;
- Reviews of the student’s records, including past assessments that may have been done; and
- Interviews with the student’s teachers and parents.

The assessment is usually done by district staff members who are trained in how to give the tests and interpret the results, and who must be knowledgeable about the assessment and the tests used.

The assessment methods must be

- Fair,
- Accurate,
- Appropriate for the student, and
- Free of racial, ethnic, cultural, or gender bias.

If a student's native language is not English, the student does not communicate in English, or the student has communication disabilities, the portion of the assessment directly involving the student must be in their primary language or mode of communication.

The district must assess the student in all areas of suspected disability that might affect the student's ability to benefit from their education. The district must use a variety of assessment tools and strategies to gather relevant information about the student, including information provided by parents. No single testing or assessment procedure can be the only means of deciding about whether a student is eligible for special education. The district shall consider all available information when it assessed student for special education eligibility, including information provided by parents.

The people who do the assessment must make a written report of all parts of their assessment. The district must then schedule a meeting with the student's parents to discuss the assessments. The district must make sure that the student's parents have a copy of all the assessment reports no later than the time of this meeting. Either the people who did the assessments or other district staff who are knowledgeable about the particular assessments must also come to the meeting to discuss the assessments and

the assessment reports. The purpose of this meeting is to determine, based on the assessment results, if the student is eligible for special education. School districts must provide an interpreter to attend the meeting if parents need that service.

If a student is found eligible for special education, the student must generally be given a new assessment at least every three years. The same rules that apply to the student's first assessment apply to reassessments.

If parents disagree with the district's assessments, parents may ask the district to pay for an independent educational evaluation (IEE). If the district does not want to pay for an IEE, the district must explain its reasons for refusing to provide the IEE to the parents in writing and file a request for a Due Process Hearing with OAH to prove this. The district will need to prove that the assessment was done in such a way that it was "legally compliant." The judge will decide if the district's assessment was legally compliant or whether the district must pay for the parents' IEE. If the district does not file a complaint (due process request) the parents may file a complaint with OAH to ask OAH to order the district to pay for the IEE.

## **THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)**

If a student is eligible for special education the district must offer an individualized education program (IEP) for the student. Each student's IEP must be reviewed at least once a year by the student's IEP team and must be changed as the student's needs change.

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## **THE IEP TEAM**

The IEP must be developed by a team which must include:

- The student's parents or guardians;
- A special education teacher;
- A general education teacher (if the student is or may be placed at least part of the time in a general education classroom); and
- A school administrator who has authority to make decisions about a student's IEP, such as the Special Education Director or the Principal.

The student may be part of the IEP team if that is appropriate. Sometimes, specialists such as a school psychologist may be part of the IEP team. Someone knowledgeable about the student's assessments must participate when assessments are discussed at the IEP team meeting. People who are required to be part of the IEP team must attend unless parents excuse them in writing. Parents may bring other people to the IEP team meeting to provide information to the team or to advise parents during the meeting. An example of such a person is someone with special knowledge or training about the problems of children with disabilities, a relative, a private service provider for the student, or some other professional who may have assessed the student.

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## **THE IEP TEAM MEETING**

The IEP team should review the

- Student's assessments;
- Observations of the student, the progress the student has made; and
- Whether the student is eligible, or continues to be eligible, for special education.

Parents are full members of the student's IEP team.

Parent attendance at IEP meetings is important. The district must try to get the parents to attend and participate in the IEP team meetings. The district must send a written notice to the student's parents in advance telling them the date, time, and place the district is planning to have the IEP team meeting. If the date and time are not convenient for the parents, the parents may request a different date and time. The district must provide an interpreter if parents need that assistance.

Team members will discuss a number of things at the IEP team meeting.

For example:

- Formal and informal assessments;
- The impact of the student's disability on academics and social skills;
- The student's goals and current level of performance;
- Related services needed to assist the student to benefit from the student's education;
- Accommodations for the student in and out of the classroom;

- Modifications to the curriculum or specialized instruction to assist the student to benefit from the student's education; and
- The types of placement that might be appropriate to meet the student's needs.

District personnel must allow parents to fully participate in the IEP team meetings. Parents may ask questions, provide information and offer opinions about the student's needs and programming. Parents may offer suggestions for placement, programming, services, and supports. School districts must consider everything a parent says or asks for. However, the district is not required to adopt proposals made by a student's parents.

The district may not place a student in a special education program or provide related services without their parent's written consent to all or part of the IEP. School districts may only implement a student's IEP without their parent's consent if the district has filed a request for due process and a judge from OAH has conducted a hearing and given the district permission. The district must prove that the proposed special education and related services would provide the student a free appropriate public education (FAPE).

## **WHAT THE IEP DOCUMENT MUST INCLUDE**

An IEP must be in writing and must include the student's:

### **Present levels of performance:**

The IEP must have a statement of the student's present level of educational performance and special needs. The teachers and service providers working with the

student will share information about the student and how far the student has progressed during the past year based on assessment results and/or progress on goals and class work.

**Goals:**

Goals are statements of what the student receiving special education and services can reasonably be expected to accomplish in areas of need during the following year. Annual education goals address the student's needs. The student's IEP team develops the goals each year and the goals can be modified as needed.

**Related services:**

A description of the related services that are necessary for the student to benefit from their education will be listed in the student's IEP.

**Time with non-disabled peers:**

The IEP includes the amount of time the student will participate in general education classes or activities and the amount of time the student will spend in specialized instruction settings and/or will receive related services.

**Implementation, frequency and duration of placement and services:**

This section of the IEP states when a program or service will start, for how long it will continue, and for how long it will take place.

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**Developing skills for independent living:**

Independent living skills include career, vocational education, and alternatives for meeting requirements for graduation if required. Additionally, during the year the student turns 16, the IEP will contain an individual transition plan that addresses how the student will prepare for life after high school.

**Placement:**

This section of the IEP discusses the location where the student will receive instruction.

Parents are entitled to a free copy of the student's IEP at no cost to them. A District must give a parent a copy of the IEP in the parents' primary language at the parents' request.

The IEP must be "reasonably calculated to allow a child to make progress appropriate in light of the child's circumstances." The student's IEP must be reviewed by student's IEP team at least once a year.

**DUE PROCESS AND SPECIAL EDUCATION**

Sometimes, parents and their district do not agree on whether the student is eligible for special education, how the assessments were done or the results of the assessments, or what the student's educational program should be. If that happens, the law gives parents certain rights to resolve their disagreements with the district. Those rights include a system called "due process."



“Due process” is the name given to the rules that must be followed by governmental agencies when people’s rights are in dispute. It means that the government has to follow established laws, rules and legal principles. Under due process, every person has the right to their day in court.

In special education, “due process” means the rights and procedures that apply to deciding disagreements between parents and districts. Special education due process procedures occur over a period of time. Each step builds upon the previous steps. It is important for parents to understand how these procedures work so they can participate.

A “due process hearing” is the formal procedure used to decide disagreements between parents and a district. A hearing can take place if parents and a district cannot fix the problem without a hearing. Both parents and districts have the right to file a request for due process.

The Educational Rights holder is the person who has the legal authority to make educational decisions for the child. Parents, except in unusual circumstances, hold the Educational Rights for their minor child and can file a request for due process for their minor child. When a student turns 18 years old, their educational rights transfer to the

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student (California Education Code section 56041.5). At that point, the student with exceptional needs and not their parent must file the due process hearing request. There are some exceptions. They include:

- A student who has been determined to be incompetent under state law and “conserved” through a court order that identifies who can make educational decisions for the student.
- A student who transfers their educational rights, in writing, to another person. This other person may be their parent or someone else.

In certain circumstances, after the student turns 18, the parent may file for due process on claims that arose before the student turned 18 years old. An example is when a parent seeks reimbursement for money spent by parent to educate student caused by the district’s failure to provide a free appropriate public education.

The kinds of disagreements that may be decided by a due process hearing are:

- Whether a student needs special education and related services;
- Whether the assessments of a student were complete and proper;
- Whether a district has to pay for an IEE;
- Whether a student's IEP provides a free appropriate public education (FAPE);
- Whether the related services in the student's IEP meet the student’s needs; and
- Whether the placement offered in the student's IEP meets the student’s needs in the least restrictive environment.

There are four basic principles of due process procedures. They are:

- Notice of what is happening;
- A way for the parties to try to solve the problem themselves;
- An equal opportunity to be heard at a due process hearing if needed; and
- A fair decision from an impartial person after a hearing.

In California, OAH provides due process services. Judges who work for OAH are the impartial people who make the decisions at due process hearings. These judges are trained in special education law and in administrative hearing procedure in order to conduct the hearings.

Some of these things which judges must decide are:

- What each side is supposed to do to solve the problems;
- Who is responsible for doing the things in the agreement;
- When everything needs to be done; and
- When parents will Notify OAH that their case should be closed.

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### **3. THE LIFE OF OAH CASES**

OAH Special Education cases come in four types, depending on the relief requested and the issues presented. The simplest type of case is the case where the parties only want a mediation. This is called a "Mediation Only Case."

The most common type of case is the case that offers both a mediation and a due process hearing. This type of case is called a "Mediation and Due Process Hearing Case." Most of these cases settle at mediation or before the hearing begins.

The third type of case occurs when the party filing the case only wants a hearing. This is called a "Hearing Only Case."

The last type of case is either an "Expedited Case" or a "Dual Case," which is a combination of an expedited case and a regular case. These may be either a hearing only case or a case with both a mediation and a due process hearing.

More information on each type of cases is provided below.

#### **LIFE CYCLE OF A MEDIATION ONLY CASE**

A district or parent may file a Request for Mediation Only with OAH requesting OAH set a mediation date. Upon receipt, OAH will send to the other party and to the party requesting the mediation a Notice of Mediation advising all parties of the date for mediation.

If the other party agrees to attend mediation, then the mediation will be held. If the other party does not agree then the case will be closed as mediation is voluntary. If the mediation is held, the parties will either reach an agreement or they will not.

Once mediation has been held, OAH will close the case. If the parties did not reach an agreement, then the party that originally asked for the mediation is still able to seek a due process hearing with OAH by filing a new action as either a Request for Due Process Hearing and Mediation or as a Request for Due Process Hearing Only.

- For further information regarding OAH mediations, please go to the section “The Mediation Process Including Virtual Mediations” in this handbook. You may see this same information on OAH’s website by copying and pasting the URL into your browser or by clicking on the link:
  - [Link to Mediation Information](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/The-Mediation-Process-Including-Virtual-Mediations>
- For further information regarding preparing and filing with OAH a Request for Mediation, or to reschedule an existing mediation date, please go to the handbook section “Setting a Mediation and Requesting a Continuance of the Prehearing Conference and Due Process Hearing Dates.” You may see this same information on OAH’s website by copying and pasting the following URL into your browser or by clicking on link:
  - [Link to information on filing a Request for Mediation](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/How-to-Set-the-Initial-Mediation-Date>

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- For further information regarding how to file documents with OAH in general please go the handbook section “File and Serve Documents in a Special Education Case.” You may see this same information on OAH’s website by copying and pasting the following URL into your browser or by clicking on the link:
  - [Link to information on filing and serving documents](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Page-Content/Special-Education-Services-List-Folder/File-and-Serve-Documents-in-Special-Education-Case>
- For further information regarding filing documents with OAH electronically using OAH’s Secure e-File Transfer (SFT) system, please see OAHS’s website by copying and pasting into your browser the following URL or by clicking on the link:
  - [Link to information on using the SFT](#)
  - <https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/File-or-Upload-OAH-Case-Documents>

## **LIFE CYCLE OF A DUE PROCESS HEARING ONLY CASE**

Occasionally, a party may decide to seek only a Due Process Hearing. This may occur when the parties have already unsuccessfully tried mediation – such as a mediation only case – or when the parties have reached an impasse on their issues.

When a complaint is filed starting a “Hearing Only” case, OAH will send a Scheduling Order showing the dates OAH has scheduled for a prehearing conference and a due process hearing. **Read the Scheduling Order carefully. It contains important information.**

Compared to a hearing and mediation case, this is a simplified case as it proceeds directly to a prehearing conference and then to hearing.

- For further information regarding OAH Due Process Hearing and Mediation Cases, and Hearing Only cases, go the section in this handbook titled, “Due Process Hearings.” You will find the same information on OAH’s website by copying and pasting the following URL into your browser or by clicking on the link:
  - [Link to information on Due Process Hearings](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Due-Process-Hearings>
- For further information regarding preparing and filing a Request for Due Process Hearing and Mediation, or Request for Hearing Only, see OAH’s website by copying and pasting the following URL into your browser or by clicking on the link:
  - [Link to information on filing](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Page-Content/Special-Education-Services-List-Folder/Request-Special-Education-Due-Process-Hearing>

- For further information regarding how to file documents with OAH in general go to OAH's website at the following URL or by clicking on the link:
  - [Link to information on how to file documents](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Page-Content/Special-Education-Services-List-Folder/File-and-Serve-Documents-in-Special-Education-Case>
- For further information regarding filing documents using OAH's Secure e-File Transfer (SFT) see OAH's website by copying and pasting into your browser the following URL or clicking on the link:
  - [Link to information on OAH's SFT](#)
  - <https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/File-or-Upload-OAH-Case-Documents>

## **LIFE-CYCLE OF MEDIATION AND DUE PROCESS HEARING CASES**

"Mediation and Hearing" is the most common type of due process request. A due process request is often called a complaint.

When a complaint is filed starting a "Mediation and Hearing" case, OAH will send a Scheduling Order showing the dates OAH has scheduled for a prehearing conference



and a due process hearing. The Scheduling Order does not set a date for mediation but does set a deadline for requesting mediation. **Read the Scheduling Order carefully. It contains important information.**

To set a mediation in a Mediation and Hearing case, the parties must agree to a mediation date and submit the request for mediation. It is a good idea for the parties to include a second date for the mediation as their second choice. An optional form is provided by OAH to request a mediation date. This form is called "Request to Set Mediation (and Continue Due Process Hearing, if needed)."

- To obtain copy of this form go to OAH's website by copying and pasting the following URL into your website's browser or by clicking on the link:
  - [Link to a copy of Request to Set Mediation form](https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Request-to-Set-Mediation-and-for-Continuance-of-Initial-Due-Process-Hearing-if-Required)
  - [https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Request-to-Set-Mediation-and-for-Continuance-of-Initial-Due-Process-Hearing-if-Required.](https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Request-to-Set-Mediation-and-for-Continuance-of-Initial-Due-Process-Hearing-if-Required)

Requesting a mediation date is a motion and must follow motion rules. Like other motions, a Request to Set Mediation must be filed with OAH no later than three business days before the date of the prehearing conference. Although a mediation date may also be set during the prehearing conference if no mediation date has been previously set, the parties will be expected to provide a good reason (called "good cause") for the delay in requesting a mediation.

If parents or students are not represented by an attorney, OAH staff will contact them within seven days after the Scheduling Order has been sent to help in calendaring a mediation date. It is a good idea to schedule a mediation before the prehearing

conference because getting ready for the prehearing conference and hearing takes a lot of time and work. If the parties settle at mediation the parties will avoid all the time and work getting ready for the prehearing conference and hearing.

If the parties reach an agreement at mediation, then the case will be closed and there will not be a hearing. If the parties either do not elect to have a mediation or do have a mediation but do not reach an agreement, then OAH will hold a prehearing conference where the assigned ALJ will discuss the case with the parties, clarifying the unresolved issues, and confirming the dates of the hearing. The parties will then proceed to the hearing. After the hearing the ALJ will issue a decision.

- For more information regarding Prehearing Conferences go to OAH's website by either copying and pasting into your browser the following URL or click on the link:
  - [Link to information on Prehearing Conferences](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Prehearing-Conferences>.
- For further information regarding OAH's Due Process Hearings go to OAH's website at the following URL or click on the link:
  - [Link to information on OAH's Due Process Hearings](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Due-Process-Hearings>

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- For further information regarding OAH's Mediations in general go to OAH's website at the following URL or click on the link:
  - [Link to information on Mediations](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/The-Mediation-Process-Including-Virtual-Mediations>
- For further information on Preparing for Hearings and filing a request for Due Process Hearing and Mediation, go to OAH's website at the following URL or click on the link:
  - [Link to information on Preparing for Hearings](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Preparing-for-Hearing>
- For further information on the forms and their instructions go to OAH's website at the following URL or click on the link:
  - [Link to information on the forms and instructions](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms>
- For further information regarding how to file documents with OAH go to OAH's website at the following URL or click on the link:
  - [Link to information on how to file documents](#)
  - <https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/File-or-Upload-OAH-Case-Documents>

## **EXPEDITED CASES**

When either a Request for Hearing Only or a Request for Due Process Hearing and Mediation is filed, OAH will review the complaint and, where appropriate, will identify those issues which should be expedited based on the law. An issue will be expedited if it involves the discipline of a student or if a district wants to change the student's school because the district is concerned that the student may harm themselves or others.

When a complaint is identified as having issues which should be expedited, it will be identified as either a "dual" case or an "expedited" case. When a case is identified as "dual" this means that there are both expedited issues and non-expedited issues. When a case is identified as "expedited" this means that all of the issues require the case to be resolved on a faster timeline. The expedited hearing must start within 20 school days after the expedited complaint is filed. OAH must issue the expedited decision within 10 school days after the completion of the expedited hearing. OAH cannot continue the start of the expedited hearing or decision due date for the convenience of the parties.

If the case is expedited OAH will send the parties a Scheduling Order setting dates for mediation, prehearing conference, and hearing. The parties will not need to submit a separate request for mediation. The parties may attend mediation or elect to not have mediation. If the parties reach agreement at mediation, then the case will be closed. If the parties do not choose to attend mediation, mediation will be cancelled and the matter will proceed to prehearing conference and hearing, following the same process as set forth above, but on a faster timeline.

If the case is identified as having both expedited and non-expedited issues, it is called a "dual" case. When the Scheduling Order is sent for a dual case there will be two separate sets of dates. One set of dates will be for the dual issues, and the second set of

dates will be for all the other issues in the case. The first set of dates will show dates for mediation, prehearing conferences and hearing on the expedited issues. The second set of dates will show the deadline date by which the parties must submit a request for mediation, the date set for the prehearing conference, and the date set for the hearing for all the other issues. The result will be two prehearing conference dates, two hearing dates, one mediation date and one date by which to submit a request for mediation on the non-expedited issues. It is possible for one case to result in two decisions when a case is identified as "dual".

- For further information regarding Due Process Hearings and Mediation in general go to OAH's website at the following URL or click on the link:
  - [Link to information on Due Process Hearings and Mediation](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Due-Process-Hearings>
- For further information regarding preparing and filing a Request for Due Process Hearing go to OAH's website at the following URL or click on the link:
  - [Link to information on filing Request for Due Process Hearing](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Page-Content/Special-Education-Services-List-Folder/Request-Special-Education-Due-Process-Hearing>

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- For further information regarding how to file documents with OAH in general go to OAH's website at the following URL or click on the link:
  - [Link to information on filing documents with OAH](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Page-Content/Special-Education-Services-List-Folder/File-and-Serve-Documents-in-Special-Education-Case>
- For further information regarding filing documents using OAH's Secure e-File Transfer (SFT) system go to OAH's website at the following URL or click on the link:
  - [Link to information on OAH's SFT](#)
  - <https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/File-or-Upload-OAH-Case-Documents>

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## **4. FILE AND SERVE DOCUMENTS IN A SPECIAL EDUCATION CASE**

A complaint, as well as other documents sent to OAH, must be "filed" with OAH and "served" on all parties to a case. All documents used to communicate with OAH about the case must be "served" on the other party or parties in the case. All parties must be served before a document is filed with OAH because OAH will only accept a document that has been served on the other parties.

Proof of serving a document on the other parties must be sent to OAH, along with the document you wish to file with OAH. The proof of service shows that the other parties have a copy of the document. This is called either a "Statement of Service" or "Proof of Service." "Proof of Service" and "Statement of Service" are used interchangeably.

Information on how to serve a party is discussed below in the "Serving the Document" section. The Statement of Service lets OAH know that anything one side is saying to the judge has been told to the other parties.

"Filing" a document means that a document has been sent to OAH where a document is intended to be part of a case and seen by a judge. Anyone who files a document with OAH must send a copy of the entire document, including any attachments, to all of the other parties involved in the case. For example, if a parent files a complaint against a district, the parent must send a copy of the entire complaint to the district. If a district files a complaint with OAH, it must send a copy to the parent or parents.

## **SERVE THE DOCUMENT**

Serving a document means sending an exact copy to another party. Serving a document may be done by mail or in person. You may also serve by fax or e-mail if the other party has agreed in advance to accept service in one of those ways. It is important to remember that you must provide a copy to the other parties before sending the document to OAH. OAH will not accept a document for filing unless it has a completed Proof of Service included in the documents you are asking to file with OAH.

## **FILE THE DOCUMENT**

### **FILE THE DOCUMENTS AFTER SERVING.**

Once you have served the documents on the other side, you can file the documents with OAH. All documents have to be filed with OAH if you intend an ALJ to review them.

### **TYPES OF DOCUMENTS THAT ARE FILED WITH OAH**

The types of documents that are filed with OAH include an original request for hearing, request for mediation, request for a continuance, any motion asking the court to take action other than ruling on merits of a case, etc.

Parties DO NOT file with OAH any evidence that a party wishes the judge to consider as part of the final ruling on the case. Any documents or other evidence you wish to present during the hearing are called "Exhibits" and they are NOT sent to OAH. Exhibits are submitted separately.



For more information on how to submit exhibits please see the sections titled, "Preparing for Hearing" and "Electronic Submission of Witnesses Lists and Evidence through Case Center" in this document or visit OAH's website at the following URLs. You may click on the URL as each is an active link or copy and paste the URL into your browser.

- Preparing for Hearing: Either copy and paste into your browser the following URL or click on the link:
  - [Link to information on Preparing for Hearing](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Preparing-for-Hearing>
- Electronic Submission of Witness Lists and Evidence through Case Center: Either copy and paste the URL into your browser or click on the link:
  - [Link to information on submission of witness list and evidence](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Electronic-Submission-of-Witness-Lists-and-Evidence-Through-CaseCenter>

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## **TO FILE A DOCUMENT WITH OAH**

To file a document with OAH, the document should be sent to OAH in one of the following ways:

- Sent via the internet using OAH's Secure e-File Transfer (SFT) system,
- Mailed,
- Hand delivered, or
- Sent by overnight delivery.

The address for mailing, hand delivery, or overnight mail is:

Special Education Division  
Office of Administrative Hearings  
2349 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833

If a parent is unable to either e-file documents using SFT, to send documents by mail or overnight delivery, or hand deliver the documents, please call OAH at (916) 263-0880 for assistance.

## **PROOF OF SERVICE, ALSO CALLED STATEMENT OF SERVICE - OPTIONAL FORM**

A Proof of Service, which is also called a Statement of Service, is a document that states that you have provided a copy of the documents you are filing to all parties in your case. An optional version of the Statement of Service is available on OAH's website in English, Arabic, Chinese Traditional, Chinese Simplified, Spanish, and Vietnamese. (Other languages may be made available upon request.)

NOTE: you must download a form and save it to your laptop's desktop before filling out the form or print it out before filling in a form.

- For an Optional Statement of Service form go to OAH's website by copying and pasting into your browser the following URL or click on the link:
  - [Link to Statement of Service form](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Page-Content/Special-Education-Services-List-Folder/File-and-Serve-Documents-in-Special-Education-Case>

## **SECURE E-FILE TRANSFER SYSTEM**

The OAH Secure e-File Transfer (SFT) system allows users to send to OAH, and receive from OAH, electronic documents. It does not allow users to serve other parties in a case.

- For more information on how to file documents with OAH electronically go to OAH's website by copying and pasting into your browser the following URL or click on the link:
  - [Link to more information on filing documents with OAH](#)
  - <https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/File-or-Upload-OAH-Case-Documents>

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## **MAILING ADDRESS AND CONTACT INFORMATION**

If you wish to file a document by mailing it to OAH, mail it to the following address:

Special Education Division  
Office of Administrative Hearings  
2349 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833

If you have any questions, you may call the number below and leave a message asking to speak to a case manager. If you have already filed a case, please provide the case number so the appropriate person returns your call.

Main Contact Number: (916) 263-0880

## **ALTERNATIVE FORMAT AND LANGUAGE REQUESTS**

All forms and publications on OAH's website are available in alternative formats or languages. If you would like a copy of a form or publication in an alternative format or language, please contact OAH either by telephone at the number shown section "Mailing Address and Contact Information," above, or send OAH an email at [DGSOAHFeedback@dgs.ca.gov](mailto:DGSOAHFeedback@dgs.ca.gov).

## **REQUESTING INTERPRETERS FOR PARTIES AND WITNESSES**

### **INTERPRETERS FOR PARTIES**

If parents are not comfortable speaking or understanding English, they can ask OAH for an interpreter in their native language. This request should be made in writing.

It is best if parents or their attorney ask for an interpreter in their complaint. If the request for an interpreter has not been made in the complaint, the parties or their attorney should ask OAH for an interpreter as soon as they realize an interpreter is needed. Parents may request an interpreter even if they are able to write the complaint in English.

Once a party or their attorney has requested an interpreter for the parent or parents OAH will make sure the interpreter is there for all proceedings.

See below for more information on how to submit a written request for an interpreter.

## **INTERPRETERS FOR WITNESSES**

Parties or their attorney may also request an interpreter for witnesses or other participants in OAH hearings. This request should be made as soon as they realize an interpreter is needed.

Once a party or their attorney has requested an interpreter for the parent or parents OAH will make sure the interpreter is there for all proceedings

See below for more information on how to submit a written request for an interpreter.

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## **MAKING A REQUEST FOR AN INTERPRETER**

### **WHAT TO INCLUDE IN THE REQUEST FOR AN INTERPRETER**

When making a request for an interpreter, whether the request is for a parent or a witness, the request must specify the language needed. For example, if parents need a Chinese interpreter, then parents need to specify if either Simplified Chinese or Traditional Chinese is needed so that OAH may obtain the correct interpreters.

### **HOW AND WHEN TO SEND THE WRITTEN REQUEST FOR AN INTERPRETER TO OAH, IF THE REQUEST HAS NOT PREVIOUSLY BEEN MADE IN THE COMPLAINT**

A written request may be mailed, hand delivered, sent by overnight delivery, or sent through OAH's Secure e-File Transfer (SFT) system.

- For more information on OAH's SFT system see the section in this handbook titled "File and Serve Documents in a Special Education Case." To access the same information on OAH's website either copy and paste into your browser the following URL or click on the link:
  - [Link to information on OAH's SFT system;](https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Page-Content/Special-Education-Services-List-Folder/File-and-Serve-Documents-in-Special-Education-Case)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Page-Content/Special-Education-Services-List-Folder/File-and-Serve-Documents-in-Special-Education-Case>

The request may be made at any time, up to the date of the Prehearing Conference.

- For more information on Prehearing Conferences see the section in this handbook titled "Virtual Prehearing Conferences." To access the same information on OAH's website either copy and paste into your browser the following URL or click on the link:
  - [Link to Prehearing Conference Information](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Prehearing-Conferences>

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## **5. THE MEDIATION PROCESS, INCLUDING VIRTUAL MEDIATIONS**

### **MEDIATIONS AND SETTLEMENT AGREEMENTS**

#### **THE MEDIATOR**

A trained mediator from OAH is always present at the mediation to help the parties solve the issues. The mediators are judges. However, the judge who is the mediator in a case will not be the judge at the hearing if the case does not settle.

The mediator is a neutral participant at the mediation. That means that the mediator does not take sides. The mediator is not there to tell the parties what to do. Rather, the mediator is like a guide. The mediator tries to help the parties come to an agreement by asking questions about the case. The mediator may also suggest possible ways to solve the problems in the due process complaint. Neither side has to follow those suggestions. Only the parties decide if they want to agree to settle the case.

#### **THE VIRTUAL MEDIATION**

The OAH Special Education Division is conducting mediations by videoconference and telephone. The information on this section provides resources for parties to be able to fully participate in this new process. OAH is currently using Zoom to conduct its mediations. **Zoom can be used for both video and telephonic mediations. You will**



**not have to purchase or download any software to participate.** See the section "Information on Zoom," near the end of this section for more information on how to use Zoom.

**Please review the information in the "Outline" section, below, to participate in the telephone or video mediation.**

## **OUTLINE FOR PARTICIPATION IN VIRTUAL MEDIATIONS**

### **1. Filing Party to Provide Mediator with Detailed Opening Settlement Proposal**

At the time of the mediation, the filing party shall provide the mediator with a detailed, opening settlement proposal. The proposal should contain each element of the filing party's proposed settlement, including the cost, proposed vendors or placement locations, if possible, and any other details necessary to start a meaningful settlement discussion. The filing party may include questions, if the answers are needed before a proposal can be made. The mediator will not share the settlement proposal with the other side(s) until discussing it with the filing party first.

- Please do NOT send this settlement proposal to OAH.
- The opening settlement proposal, and the questions, may be made to the mediator orally.

### **2. The Mediation will Start with a Pre-Session**

The mediation starts with a pre-session where technology is tested to make sure it is working properly. During this pre-session confidentiality agreements about settlement offers and counter-offers will be discussed and agreements reached before the mediation starts. All parties must be present for those discussions to proceed.

### **3. Updated or Changed Email Addresses and Direct Telephone Numbers**

**No later than 24 hours before the start of the scheduled mediation:** Please provide OAH Staff with any updated or changed email addresses and direct telephone numbers for the attorney and all clients participating in the mediation. You may do so by calling OAH at 916-263-0880 or by sending the information in writing using the Secure e-File Transfer (SFT) system. You may not submit this information through email.

**Will the other participants be able to see my email address?** In some cases, the other participants may be able to see the email addresses of other participants.

### **4. Separate Meetings or “Caucus,” for Each Side Will be Available through Breakout Rooms**

Once the participants have joined the mediation videoconference, the mediator may, if appropriate, create breakout rooms so that each party may have an opportunity to meet privately with their attorneys or other support persons, or even with the mediator, if needed.

### **5. The Same Confidentiality Rules Apply to Telephonic and Video Conference Mediations that Apply to In-Person Mediations**

The same confidentiality rules will apply to telephonic or video conference mediations that apply to in-person mediations. There will be no video or audio recording of any mediation processes under any circumstances. The parties may not copy documents by any means, including by cell phone photograph, without the express permission of all parties to the mediation. The mediator will go over the rules of confidentiality prior to the beginning of the mediated discussions.

## **6. Interpreters Must be Requested, If Needed**

OAH will provide an interpreter for a party if a party or their attorney requests an interpreter. OAH's forms provide a space for requesting an interpreter when filing a request either for a mediation or a hearing. If a request for an interpreter was not previously requested, a party or their attorney may request an interpreter by contacting the assigned case manager as soon as possible either by telephone or in writing using OAH's Secure e-File Transfer system (SFT).

## **INFORMATION ON ZOOM MEETINGS, INCLUDING TECHNICAL INFORMATION**

The Office of Administrative Hearings uses Zoom Software to host mediations. Zoom can be used for both video and telephonic conferencing. You will NOT have to purchase or download any software to participate.

### **If Joining the Mediation by Computer**

If joining the meeting by computer, the mediator will schedule a meeting, and the participants will receive invitations, called "evites," via email. Parents will get their own evites as will their attorney if they have one. The district representative will also receive an evite as will the district's attorney.

At the scheduled time for the mediation, click on the blue "Join" button in the Zoom evite. Once you join the meeting you will need to wait for the mediator to admit you into the mediation.

## **If Joining the Meeting by Telephone Only**

If joining the meeting by telephone only, your case manager will be contacting you to provide the call-in phone numbers and the Conference ID numbers you will need for your mediation. You will receive information for the Mediation Meeting.

At the scheduled time for the mediation, you will call in to the Mediation Meeting first. Upon calling the number, you will hear a welcome message and be instructed to enter the Conference ID number, followed by the pound (#) sign. You will then be prompted to record your name, then press pound (#) again. Your recorded name will be played when you join the meeting to alert others that you have joined.

## **Zoom Technical Information**

If you are unfamiliar with Zoom you may find the following sites helpful:

- To view the Order Setting Videoconference Mediation Procedures go to OAH's website either by copying and pasting the following URL into your browser or click on the link:
  - [Link to Order](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/The-Mediation-Process-Including-Virtual-Mediations>
- For information and questions about using Zoom, including (a) how to get started with Zoom, (b) if your browser is supported by Zoom,

or (c) how to join a meeting go to Zoom Support's website, either copy and paste into the following URL into your browser or click on the link:

- [Link to Zoom Support](#)
- <https://support.zoom.com/hc/en>.
- If you already have Zoom, check your version of Zoom to ensure it is updated before joining the mediation. For instructions on identifying your version of Zoom, and for updating to the most current version of Zoom, go to Zoom Support's Website either by copying and pasting the following URL into your browser or click on the link:
  - [Link to Zoom Support](#)
  - <https://support.zoom.com/hc/en>

## **MEETING INVITATIONS ARE ONLY TO BE USED TO CONNECT PARTIES TO THE MEDIATION AT THE SCHEDULED TIME**

The meeting invitation is intended for the sole purpose of connecting parties to the mediation at the scheduled time. Do not reply to any invitation emails, simply use the link to join the meeting. If you need to communicate any information regarding your case, please contact your case manager, including if you cannot participate in the mediation.

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## **ADDITIONAL PARTIES**

If you feel that additional parties or persons should be involved in the mediation, please contact your case manager with that information so that it may be provided to the mediator when setting up the mediation. The meeting invitations should NOT be forwarded to other parties unless instructed to do so.

## **PLEASE DO NOT CALL OAH BEFORE YOUR SCHEDULED MEDIATION TIME WITH QUESTIONS**

Questions other than issues related to connecting with the mediation itself should be directed to the mediator during the mediation.

## **THE MEDIATION MEETING**

If the mediation is part of a mediation only case, an attorney or independent contractor used to provide legal advocacy services may not accompany a parent or district per California Education Code Section 56500.3(a). However, California Education Code Section 56500.3(b) does not preclude the parent or public agency from being accompanied or advised by non-attorney representatives in mediations and parties may consult with an attorney before or after the mediation. If the mediation is part of a hearing and mediation case, the parties choose if they want to have an attorney represent them or be accompanied and advised by someone with special knowledge or training about the problems of children with disabilities.

The parties meet virtually in a Zoom meeting for mediations.

Sometimes before the mediation, the mediator will talk separately to parents and separately to district representatives before all parties meet together. To do this the mediator will create separate Zoom meeting rooms, called breakout rooms. Some examples of the reasons a mediator may talk separately with each of the parties include:

- To discuss what happens at the mediation if parents have never before attended mediation;
- To discuss some of the issues in the case; or
- To discuss the issues with the mediator, if one of the parties wants to meet with the mediator alone.

Generally, everyone first will meet together in the Zoom meeting. The mediator will introduce themselves and explain their role in mediation. The mediator will explain what mediation is and that the meeting is confidential. Generally, the mediator will ask everyone to follow some simple rules, such as not talking when someone else is talking, turning off cell phones, and being polite to each other. The mediator will also explain that during the mediation the parties will often separate into different Zoom meeting rooms, called breakout rooms, to discuss the issues alone or just with the mediator without the other party there.

Participants will have an opportunity to complete and submit a survey form to OAH; OAH will provide participants a link to the survey. The survey form asks the parties to let OAH know what went well at the mediation or to let OAH know if something could be done better to help the mediation process be successful. The parties may have a copy of all forms at the end of the mediation if they wish.

## **DURING THE MEDIATION**

The mediator will ask the party who filed the case to talk about the issues that still need to be settled. Sometimes, not all the issues written in the complaint are still in disagreement at the time of mediation. The mediator will also ask the party who filed the case what they want the other side to do in order to settle the case. The mediator will ask the other party to share their concerns. It is important to determine exactly what the disagreements are so that all parties can find ways to resolve them.

Once the issues have been discussed, the mediator will often start meeting separately with each party. There will be separate breakout rooms for the parties to meet alone with the mediator. The mediator will often go between the two breakout rooms to discuss issues with each party. Often, the mediator will go back and forth between the parties to discuss offers of settlement made by one party to the other one. During these meetings, the mediator will ask questions about the case. The mediator will sometimes make suggestions about ways to resolve the issues.

Sometimes, a party may want to meet alone with their attorney or other representative without the mediator being there. They may ask the mediator to let them speak alone. The mediator will leave the Zoom breakout room and will wait until requested to return.

Whatever the parties say when they meet alone with the mediator is confidential unless the party tells the mediator that it can be discussed with the other party.

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Usually, mediators do not take a lunch break. However, feel free to bring food into your Zoom meeting. There can be long stretches of down-time in mediation while the mediator talks to the other side. However long mediation takes, it is generally a faster process than holding a hearing which usually takes most of a week and sometimes considerably longer.

## **THE SETTLEMENT AGREEMENT**

If the parties agree on some or all of the issues, they must put the agreement in writing. Often, the district's attorney or the district representative will type a proposed agreement, sometimes using a form that they have for this purpose. If no one is able to type the agreement, it can be done in handwriting.

The agreement will include the name of the student and the district as well as the OAH case number. The agreement will include the issues that the parties have agreed on. It will then state what the parties have agreed to do in order to settle the case. Finally, the agreement will say when the parties will do all the things they have agreed to do.

The parties making the agreement must sign the agreement. If they have an attorney, the attorney often will sign showing that the attorney approves the form of the agreement. Each party will get a copy of the agreement.

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To dismiss the case, the party will notify OAH in writing, and it is recommended that parties use this optional form, "Request by Party to Dismiss Due Process Hearing Request."

- To access the form Request by Party to Dismiss Due Process Hearing Request on OAH's website either copy and paste the following URL into your browser or click on the link:
  - [Link to form](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Request-for-Dismissal-or-Withdrawal>

Once all the parties have signed the agreement, it is final. All the parties must do what they agreed to do in the agreement. OAH does not have the power to force the parties to follow the settlement agreement. If one of the parties fails to do something that they are supposed to do by the terms of the agreement, the other side can go to court. They can ask the court to order the party to follow the settlement agreement.

## **WHEN APPROVAL BY THE SCHOOL BOARD IS NECESSARY**

Sometimes, a settlement agreement is only final after approval by a school board. The mediator will find that out early in the process. If board approval is necessary, it may delay the final approval of the settlement by a few weeks as school board meetings are planned in advance. Settlement approvals are handled by school boards confidentially, meaning that the agreement and any facts pertaining to the student will not be public.

If school board approval is needed, the parties will notify OAH of the date of the school board meeting and OAH will set a date for dismissing the case. If a case is dismissed it means that OAH will close the case. The date chosen for dismissing the case will be 30 days after the date the school board was supposed to meet to vote on the settlement agreement. If the school board does not meet, does not vote on the settlement agreement, or does not approve the settlement agreement, the parties must notify OAH that the case has not been settled to prevent the case from being dismissed. If a dismissal is filed, the case is closed.

### **IF THERE IS NO AGREEMENT**

Mediators are trained to help the parties talk to each other and try to reach an agreement, even if the parties are not getting along. However, sometimes the parties cannot come to an agreement at the mediation. If that happens, the parties may still continue talking to each other about the issues and possible ways to solve their differences. They will have time before the due process hearing to do this. If they still are not able to come to an agreement, the due process hearing will go forward, unless the party who filed the case decides to withdraw it.

### **ENFORCEMENT OF THE SETTLEMENT AGREEMENT**

When all parties sign the settlement agreement it becomes a binding contract. OAH does not enforce settlement agreements. Parents can seek assistance from the California Department of Education to help them enforce an agreement if it is not honored. Parents can also choose to go to state or federal court to ask a judge to

enforce the agreement. Occasionally, a failure to do what was agreed to in the settlement agreement is a denial of FAPE for a student and can form the basis of a new complaint at OAH.

## **6. PREHEARING CONFERENCES**

The Office of Administrative Hearings, referred to as 'OAH,' Special Education Division conducts Prehearing Conferences and Hearings by Videoconference and telephone. The information on this page provides resources for parties to be able to fully participate in this process. OAH is currently using Zoom.Gov to conduct its Prehearing Conferences and Hearings.

- To view the Order Setting Videoconference Prehearing Conference Procedures go to OAH's website either by copying and pasting into your browser the following URL or by clicking on the link:
  - [Link to Order Setting Videoconference Prehearing Conference](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/The-Mediation-Process-Including-Virtual-Mediations>

The information provided in this section includes the information needed to participate by videoconference, as well as the information needed for prehearing conferences. This section of the handbook provides resources for parties to be able to fully participate in this process.

Zoom is software that provides videoconferencing capabilities and allows participants in different locations to participate in prehearing conferences by computer. Instead of a telephonic prehearing conference, all participants will join through the Zoom application using an invitation sent by OAH. The prehearing conference participants will appear at the same time on the computer screens through a live video and audio stream. Participants do not need to download to their computer the Zoom application to participate.

The information provided in this section is an exact copy of the information provided to all parties in the Scheduling Order at the beginning of each due process hearing case. Following the sub-section "Information for Participating by Zoom," below is the sub-section "Prehearing Conferences." The Prehearing Conferences section provides more detailed information on prehearing conferences, including how to prepare for them. A separate section of this handbook covers hearing information.

## **INFORMATION FOR PARTICIPATING BY VIDEOCONFERENCE**

### **ZOOM INFORMATION AND RESOURCES**

If you are unfamiliar with Zoom you may find the following sites helpful:

- **Getting Started with Zoom/Joining a Meeting:** For information and questions about using Zoom, including how to get started with Zoom or how to join a meeting go to Zoom Support's website either by copying and pasting the following URL into your browser or click on the link:
  - [Link to Zoom Support](https://support.zoom.com/hc/en)
  - <https://support.zoom.com/hc/en>.

- **Zoom Version:** If you already have Zoom and have difficulty joining a prehearing conference, check your version of Zoom to ensure it is updated before joining the mediation. For instructions on identifying your version of Zoom, and for updating to the most current version of Zoom, go to Zoom Support's Website either by copying and pasting the following URL into your browser or click on the link.
  - [Link to Zoom instructions](#)
  - <https://support.zoom.com/hc/en>.

## **PROVIDING PARTICIPANT INFORMATION TO OAH**

Videoconference invitations are sent by email to everyone that is expected to be involved in the prehearing conference. This requires OAH to have the email addresses for everyone who is going to participate in the prehearing conference.

Two business days before the prehearing conference, the parties must file with OAH a form called "Participant Information for Prehearing Conference and Video Due Process Hearing." The parties do not serve this form on the opposing side.

The form collects contact and technology information for the attorneys, parties, and anticipated due process hearing witnesses. OAH requires the parties and attorneys to confirm that they meet the minimum technology requirements to participate in a videoconference. This form is confidential and OAH only uses the information provided to conduct the prehearing conference and hearing.

## **OAH WILL SCHEDULE THE PREHEARING CONFERENCE VIDEOCONFERENCE**

As stated above, OAH will send an email invitation to the parties or their attorneys to join the prehearing conference, based on the information provided in the "Participant Information for Prehearing Conference and Video Due Process Hearing." The email will include the date and time of the prehearing conference. As this email account is only used for outgoing Zoom invitations, the participants should not reply to this email as the email account is not monitored.

### **Will the other participants be able to see my email address?**

In some cases, the other participants may be able to see the email addresses for other participants.

## **JOINING THE PREHEARING CONFERENCE**

At the designated time for the prehearing conference, click on the blue "Join" button in the Zoom invitation. You do not need to download Zoom to participate in the videoconference as you will automatically connect to the meeting.

Enter your first and last name where indicated. You will see a message informing you that you will be "allowed to enter the meeting shortly." The Administrative Law Judge, referred to here as "ALJ," will open the meeting to you.

The parties are encouraged to review the Zoom information in the section above under the heading "Zoom Information" before their scheduled prehearing conference.

## **PARTICIPATION WITHOUT THE USE OF VIDEOCONFERENCE WILL BE AT THE DISCRETION OF THE ALJ**

In some circumstances a party might not be able to participate by videoconference. Participation without video will be allowed only at the discretion of the ALJ.

## **GUIDELINES FOR VIDEO APPEARANCE**

Participants shall appear at the prehearing conference from a location free from distractions. The participants should take reasonable efforts to minimize background noise and maintain adequate room lighting. Virtual background images are at the discretion of the ALJ. All participants are required to be on camera unless otherwise authorized by the ALJ.

## **PREHEARING CONFERENCE**

A prehearing conference typically takes place a week or 10 days before a hearing, on a Monday or a Friday. The date and time of the prehearing conference is stated in the scheduling order sent to the parties at the beginning of the case. OAH will tell the parties if the date and time of the prehearing conference changes.

As stated above, a prehearing conference is conducted by videoconference using Zoom. The ALJ and the parties discuss and clarify the due process hearing issues, witness schedules, and other prehearing matters. OAH will send invitations to the parties to participate in the video prehearing conference according to the Participant Information sheet discussed in the above section "Providing Participant Information to OAH." The prehearing conference will be initiated by the ALJ.



## **PREHEARING CONFERENCE STATEMENTS**

Each party is required to submit a Prehearing Conference Statement to OAH at least three business days before the prehearing conference, along with their Witness List and Exhibits List. Prehearing Conference Statements must be filed with OAH on time even if there are pending pretrial motions, such as a request to continue the hearing. The only exception to filing the Prehearing Conference Statement at least three business days before the prehearing conference is if there is an order from OAH continuing the prehearing conference and the hearing.

The calendar and the name of the ALJ assigned to the case are posted on OAH's website on the Calendar page. It is a good idea to check the calendar before the prehearing conference because the ALJ might change from time to time. Any peremptory challenge to the ALJ must be made before the prehearing conference begins. The calendar is located on OAH's website.

- To access the calendar either copy and paste the following URL into your browser or click on the following link:
  - [Link to OAH's calendar](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Calendar>

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The Prehearing Conference Statement shall include:

- Each party's estimate of the time necessary to complete the due process hearing;
- A concise statement of the issue or issues raised in the due process hearing request that remain to be decided at the due process hearing and the proposed resolution of such issues;
- The name of each witness the party may call at the due process hearing and, for each witness,
  - A brief summary of that witness's expected testimony, and
  - A description of the issue to which their testimony relates;
- The name and address of each expert witness the party intends to call at the due process hearing and, for each expert witness,
  - A brief summary of that expert's expected opinion, and
  - A description of the issue to which their testimony relates;
- A list of documentary evidence that the party intends to present, and a description of any physical or demonstrative evidence;
- A list of subpoenas for witnesses for testimony or documents that have been issued or served; and
- Whether an interpreter or special accommodation at the due process hearing will be needed.

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## **PREHEARING MOTIONS AND REQUESTS FOR CONTINUANCE**

All prehearing motions, including requests for continuances, shall be served upon the opposing party and filed with OAH, Special Education Division. Prehearing motions include motions for continuance, dismissal, stay put, or any other request for a ruling by an ALJ, which affects the rights of the parties. A party's opposition to a motion must be received by OAH no later than three business days after service of the motion on the other parties in the case. If a party's opposition to a motion is sent to OAH by U.S. mail, by messenger service, or personal delivery it must be received at OAH's Sacramento location no later than three business days after service of the motion on the other parties in the case.

Prehearing motions must be filed with OAH on or before the date the prehearing conference statements are due to OAH. (As stated in the above "Prehearing Conference Statements", the prehearing conference statements must be filed with OAH at least three business days before the prehearing conference.) If the party fails to file a prehearing motion on time, then the party filing the pretrial motion must demonstrate good cause explaining why it was not possible to file the motion on or before the required date. Absent an order continuing the matter, the prehearing conference statement must be filed, even if there is a pending motion to continue.

If a party wishes to continue the due process hearing or prehearing conference, the party must file a request in writing with OAH. This type of request is called either a "motion to continue" or a "request to continue." The parties are encouraged to

communicate and agree (this is called “meet and confer”) as to the dates the parties wish to continue the due process hearing. If the parties agree on dates, a form is available on OAH’s website for purposes of submitting this request or motion. This form is called “Request for Continuance of Due Process Hearing Dates.”

- To access a copy of this form either copy and paste into your browser the following URL or click on the link.
  - [Link to Request for Continuance of Due Process Hearing Dates](https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Request-to-Continue-Due-Process-Hearing-Form)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Request-to-Continue-Due-Process-Hearing-Form>

## **ANSWERS TO COMMON QUESTIONS ABOUT PREHEARING CONFERENCES**

### **WHAT ARE PREHEARING CONFERENCES? HOW DO THEY WORK? HOW DO I PREPARE?**

A prehearing conference typically takes place between 7 to 10 days before a hearing. Prehearing Conferences are only held on a Monday or a Friday. The date and time of the prehearing conference is stated in the scheduling order sent to the parties at the beginning of the case and is usually at either 10:00 a.m., 1:00 p.m., or 3:00 p.m. If the dates in a case change, a new order will be sent to the parties identifying the new dates and times.

A prehearing conference is conducted by videoconference using Zoom software. During the prehearing conference the ALJ and the parties will discuss and clarify the due process hearing issues, will identify the witnesses that will be called, and discuss other prehearing matters. The prehearing conference will be initiated by the ALJ.

Each party is required to submit a Prehearing Conference Statement at least three business days before the date on which the prehearing conference is scheduled. The Scheduling Order, which is sent out at the beginning of a case, contains a list of things that each party should state in their Prehearing Conference Statement.

The calendar and the name of the ALJ assigned to the case are posted on OAH's website on the Calendar page. To find dates for your case, go to OAH's website page titled "Special Education Hearing and Mediation Calendar."

- You may get to this website page by copying and pasting into your browser the URL shown below, or by clicking on the link. Once on the page, find the contact box titled "Special Education Calendar." In that blue box are the words "Access Calendar" written on it. Click on this blue box.
  - [Link to Special Education Calendar](https://www.dgs.ca.gov/en/OAH/Case-Types/Special-Education/Calendar)
  - <https://www.dgs.ca.gov/en/OAH/Case-Types/Special-Education/Calendar>

It is recommended that you read the information on the webpage before clicking on the blue button and accessing the calendar.

It is a good idea to check the calendar before the prehearing conference because the assigned ALJ might change from time to time. To object to the assigned ALJ, a motion called a "Peremptory Challenge" must be filed. Any peremptory challenge to an ALJ must be made before the prehearing conference begins.

For more information on motions please OAH's website page "Motions."

- To access the Motions webpage copy and paste into your browser the following URL or click on the link.
  - [Link to Motions webpage.](#)
  - [https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Motions.](https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Motions)

## **THE PURPOSE OF THE PREHEARING CONFERENCE**

The ALJ will discuss and plan the due process hearing with the parties. The discussion will include:

- The date and time for the hearing;
- The projected length of the hearing;
- The issues presented in the request for due process hearing;
- The proposed resolutions for the issues presented in the request for due process hearing;
- The requirements for submitting exhibits to Case Center, which is the software application used by OAH for managing exhibits for hearings;
- The witnesses who are expected to testify at hearing and whether the district will be able to make district employees available to testify without subpoenas;
- Whether any witness is unavailable or if a party is requesting permission to have a witness testify by telephone;

- Any motions that need to be considered such as a motion to change the dates of the hearing, to privately record the hearing or to limit evidence;
- If there is a need for an interpreter or a reasonable accommodation; and
- The instructions the parties should follow if the parties reach a settlement agreement between the time of the prehearing conference and the date of the hearing.

Special education hearings are closed to the public unless a student's parents want it to be opened to the public. During the prehearing conference, the ALJ will ask if the parents want an open or closed hearing. If the parents ask for the hearing to be open, the hearing may remain open as long as the proceedings are not disrupted. The ALJ will keep control over the hearing so that everyone is provided with due process of law.

## **HOW TO PREPARE FOR THE PREHEARING CONFERENCE**

When you prepare for the prehearing conference you are actually beginning to prepare for the hearing. You should start preparing for the hearing as soon as you file your case. Contact witnesses and gather all the documents needed as early as possible. Parents should allow themselves enough time to meet the requirements for the prehearing conference. The last day for you to identify your witnesses and the evidence you want to present at the hearing is shortly after the prehearing conference. Completing the required preparations for the prehearing conference will help you prepare for the final evidence and witness disclosures that are required before the hearing begins.

Read the information sent with the Scheduling Order. The information and the Scheduling Order are sent to all parties shortly after the case is filed.

The information sent with the Scheduling Order contains important information about the prehearing conference. The scheduling order has information about how to:

- Reach someone who can answer questions;
- Prepare for the prehearing conference;
- Prepare witness and exhibit lists;
- Prepare a prehearing conference statement; and
- Change the date and time of the hearing, or prehearing conference.

The information sent with the Scheduling Order also explains the deadlines for filing the prehearing conference statement, witness and exhibit lists, and for exchanging copies of exhibits with other parties.

## **ASKING FOR A SUBPOENA - DO YOU NEED ONE?**

To make sure a witness will be at the hearing, parents may need to get a subpoena from OAH. A subpoena is a legal document that requires someone to provide testimony at the hearing.

There are two reasons to get a subpoena: (1) if the witness may not want to provide testimony and (2) if your witness needs to show an employer a subpoena as a condition for missing work. Parents may want to discuss subpoenas with the ALJ during the prehearing conference.



How to get a subpoena is described in this handbook in the section on Subpoenas and is also discussed on OAH's website in the Self-Help section of the website under "Subpoenas." You can access the Subpoena information on the website by copying and pasting into your browser the following URL, or by clicking on the link.

- [Link to Subpoena information.](#)
- <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Subpoenas>

OAH has two separate subpoena forms: (1) to require just the witness to appear at the hearing, which is called "Subpoena for Witness Testimony"; and (2) to require documents to be provided as evidence, which is called "Subpoena for Production of Documents and/or Things." The Subpoena for Production of Documents and/or Things is also called a "Subpoena Duces Tecum." The Subpoena Duces Tecum can also compel a witness to appear if that person is considered the "custodian of records" for those documents. Each subpoena form has additional information regarding completion of the subpoena and service of the subpoena. To access the forms, use the above link.

## **PREHEARING CONFERENCE STATEMENTS, WITNESS LISTS AND EXHIBITS LISTS**

As previously stated, the Prehearing Conference Statement, along with the Exhibit List and the Witness List, must be filed on or before the date identified in the Scheduling Order, a date which is at least three business days before the prehearing conference. Parents must also send copies of this information to all other parties with a proof of service.

The district and any other parties will also send their Prehearing Conference Statement, Exhibit List, and Witness List to parents. Parents should read these documents, so that they can talk about them with the judge during the prehearing conference.

**Do not send copies of your evidence to OAH. You will upload the evidence documents to Case Center, which is a software application, during a specific period of time after the Prehearing Conference. The ALJ will explain this process at the Prehearing Conference.**

Additional information about uploading documents into Case Center may be found in this handbook in the “Preparing for Hearing” section and on OAH’s website.

- To access the “Preparing for Hearing” section copy and paste the following URL into your browser, or click on the link.
  - [Link to access information on Case Center](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Electronic-Submission-of-Witness-Lists-and-Evidence-Through-CaseCenter>.

The Prehearing Conference Statement, along with the Exhibit List and the Witness List, must be filed on or before the date identified in the Scheduling Order, a date which is at least three business days before the prehearing conference.

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## **THE ALJ PREPARES AN ORDER FOLLOWING PREHEARING CONFERENCE**

The judge will prepare a written order after the prehearing conference called an Order Following Prehearing Conference. The order will be sent to all parties. The order will discuss the things discussed during the prehearing conference and any directions that must be followed. The Order Following Prehearing Conference will repeat the specific directions about how parties must prepare the evidence they wish to submit at the hearing.

All parties must comply with the order. There may be sanctions or penalties for failing to follow the prehearing conference order, including the possibility that evidence will not be allowed to be submitted or witnesses will not be allowed to testify. For example, if a party does not provide copies of their exhibits to the other parties at least five business days prior to the due process hearing, the judge might not allow those documents into evidence during the due process hearing.

When the Order Following Prehearing Conference is issued, parties that are registered in the Secure e-File Transfer (SFT) system will get an email from OAH telling them that they have a new document in their file.

- To access the Secure e-File Transfer (SFT) system either copy and paste into your browser the following URL or click on the link below.
  - [Link to SFT system](#)
  - <https://www.applications.dgs.ca.gov/oah/oahsftweb>

## 7. DUE PROCESS HEARINGS

This section of the handbook covers preparing for the hearing all the way through what happens on the last day of hearing.

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).) Presently, all OAH Special Education due process hearings are conducted by videoconference using Zoom software.

Parties do **not** have the option to “opt out” of proceeding to hearing by videoconference. If a party wants an in-person hearing, the party must file a motion with OAH that explains why the hearing must be in person and suggest a convenient location for the hearing. In person hearings take place at a location convenient to parents. A convenient location is often a district office or a school. Some hearings take place at OAH hearing rooms in various locations. A due process hearing must be conducted, and a decision issued 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.

Most parties reach an agreement before the due process hearing. A majority of cases settle with the help of a mediator. Mediation is available at any time during the due process proceedings. Even if the parties have cancelled mediation or want a second

mediation, they may agree to a date for the mediation and send a written request to OAH to schedule the mediation. OAH will generally schedule the mediation on the date selected by the parties. Occasionally, mediation may be scheduled on the first day of the hearing. If that happens the mediator will be either one of OAH's trained mediators or an Administrative Law Judge (referred to in this handbook as "ALJ") other than the ALJ assigned to preside over the hearing.

A due process hearing is the next step if the case is not settled. The information provided here includes information on hearings in general as well as some information specific to conducting hearings by videoconference.

This section of the handbook describes the hearing process beginning with a description of a hearing, and includes the following:

- Answers to some of the more common questions related to conducting a hearing by videoconference,
- What to expect during the hearing,
- How to prepare for a hearing, and
- Tips for parents that are representing themselves and their child.

If a party disagrees with the final decision in the case, the party has the right to appeal. The party may file an appeal in either the state superior court or the federal district court. An appeal must be filed within 90 days of the date the party receives the decision.

## **FREQUENTLY ASKED QUESTIONS**

### **MAY I REQUEST TO CONTINUE A HEARING?**

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 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).)

## **HIRING AN ATTORNEY? DO SO AS EARLY AS POSSIBLE.**

When parents hire an attorney for the hearing, parents must notify the district at least 10 days before the due process hearing. An attorney must file a "notice of representation" with OAH and must serve all other parties with this notice. If parents hire an attorney less than 10 days before the due process hearing, the attorney may request a continuance of the hearing.

OAH has a list of attorneys who have agreed to provide legal services free or at a reduced cost. The List of Low Cost or Free Attorneys or the List of Low Cost or Free Advocates may be found on OAH's website. To access this list from the website either copy the URL shown below and paste it into your browser or click on the link. You may also contact OAH to request that a printed copy be mailed to you.

- To access the Lists of Low Cost or Free Attorneys or the List of Low Cost or Free Advocates either copy and paste into your browser the following URL or click on the link.
  - [Link to the lists](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Page-Content/Special-Education-Services-List-Folder/Access-List-of-Low-Cost-or-Free-Attorneys-and-Advocates-for-Special-Education>

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## **LOCATION, PROCESS AND ALJ'S ROLE**

The hearing is a trial-like proceeding. All parties have the opportunity to present their evidence and arguments. All witnesses are placed under oath. Each party may testify, ask witnesses questions, and present their evidence. Usually, the party that filed the complaint goes first.

### **THE LOCATION OF THE HEARING**

Presently, OAH conducts all hearings by videoconference. If a party wants an in-person hearing, the party must file a motion with OAH that explains why the hearing must be in person and suggest a convenient location for the hearing. In person hearings take place at a location convenient to parents. A convenient location is often a district office or a school. Some hearings take place at OAH hearing rooms in various locations.

All hearing locations are required to be accessible for individuals with disabilities. If a hearing is held at a school district's offices or a school, the school district is required to submit a document certifying the accessibility of the location.

### **ISSUES AND BURDEN OF PROOF**

The hearing will focus on the issues in the due process request. The evidence offered by each party must be relevant to those issues. "Relevant evidence" means evidence that tends to prove or disprove a fact that is in dispute in the case. The ALJ will allow only relevant evidence during the hearing. The ALJ will not accept evidence that is not relevant.



The party that filed the request has the burden of proof. The burden of proof refers to which party must produce enough evidence to prove their case. For example, if parents filed the due process request, then parents have the burden of proof. If the district filed the due process request, then the district has the burden of proof.

How much evidence is needed to win the case is called the standard of proof. The standard of proof is a preponderance of the evidence. A preponderance of the evidence is a measurement that compares the evidence from both sides to see which side is stronger. Some people describe a preponderance of the evidence as the 51 Percent Rule, or, as if a scale tips slightly in one direction. If the party with the burden of proof does not meet their burden, they do not win the case. The ALJ decides if the burden has been met.

## **THE ALJ CONDUCTS THE HEARING**

The ALJ that conducts the hearing has extensive training in special education law. They also have specialized training in how to conduct hearings.

Keep in mind that the ALJ hearing the case will not know the details of the case until the evidence is presented. The complaint and response are not evidence so you must prove each piece of your case during the hearing. You are telling the ALJ your side of the story and showing the ALJ any documents you have that prove what you are saying is the truth. The other side will do the same. The ALJ will listen to the evidence and read the documents. Some documents will be “admitted” into evidence. Those are the documents the ALJ will consider in making the decision. Some documents may not

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be admitted, usually on the ground that the ALJ does not think they are relevant. If that happens, the documents will be returned to the parties at the end of the hearing and will not be considered when making a decision about the case.

ALJs do not work for school districts and they do not have access to student records.

ALJs do not decide the case until they have heard all the evidence. The only facts the ALJ has about a student or the student's program come from the testimony and evidence the ALJ has accepted into evidence at the hearing.

## **USING ZOOM AND CONNECTING 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 application 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 ALJ, to appear using Zoom by audio only, or by telephone. Additional information on using Zoom may be found on OAH's website.

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## **IF YOU ARE UNFAMILIAR WITH ZOOM YOU MAY FIND THE FOLLOWING SITE HELPFUL**

### **INFORMATION ON ZOOM**

- **Getting Started with Zoom or How to Join a Meeting:** For information and questions about using Zoom, including how to get started with Zoom, either copy and paste the following URL into your browser or click on the link:
  - [Link to Zoom support.](https://support.zoom.com/hc/en)
  - [https://support.zoom.com/hc/en.](https://support.zoom.com/hc/en)

### **CHECK YOUR ZOOM VERSION TO ENSURE IT IS UPDATED BEFORE JOINING THE VIDEOCONFERENCE**

Participants may have trouble joining the Prehearing Conference or Hearing if they do not have the most updated version of Zoom.

If you already have Zoom, check your version of Zoom to ensure it is updated before joining the mediation.

- For instructions on identifying your version of Zoom, and for updating to the most current version of Zoom, go to Zoom Support's Website either by copying and pasting the following URL into your browser or click on the link:
  - [Link to Zoom support.](https://support.zoom.com/hc/en)
  - [https://support.zoom.com/hc/en.](https://support.zoom.com/hc/en)

## **WHAT TO EXPECT DURING THE HEARING**

### **WILL THE VIDEOCONFERENCE HEARING BE CONFIDENTIAL AND MAY PARTIES RECORD THE HEARING?**

The videoconference hearing will remain confidential, unless otherwise ordered. The audio recording made by the hearing ALJ will be the official record. Parties are prohibited from recording the hearing by video. 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.

### **COMMUNICATING WITH YOUR 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.

If the attorney and client appear for a videoconference hearing from different locations, the attorney and client will be provided a virtual break out room allowing them to have confidential communications during the hearing. If the attorney and client communicate by other means, which can be utilized throughout the hearing, they may do so at the discretion of the ALJ.

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## **THE ALJ RECORDS THE HEARING**

The entire hearing is recorded. The ALJ will record videoconference hearings with the Zoom software. For in person hearings, OAH uses digital equipment. The recording is the official record of the hearing. At the beginning of each day, the ALJ will start recording and say something like "We are on the record." The ALJ will state the name and number of the case, identify him or herself, and will state the date and time. This is called "opening the record."

The ALJ will ask the parties to state their "appearances" at the beginning of each day. Each person then takes turns stating their full name, spelling their name and stating whom they represent.

Occasionally, an administrative detail that does not have to be on the record will be discussed or there will be a short delay while a witness is located and brought into the hearing. On those occasions, the ALJ will announce they are going "off the record" and will stop recording the Zoom videoconference. The Zoom videoconference will continue while the non-recorded task is completed. The ALJ will say "on the record" when the ALJ turns the recording back on. This will happen throughout the day. At the end of the day the ALJ will "go off the record" and turn off the recording. If parties have been granted permission to make their own recordings of the hearing, they are required to go off the record when the ALJ goes off the record and only turn their own recordings back on when the ALJ announces they are back "on the record."

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## **OPENING STATEMENTS**

Parties may make an opening statement at the beginning of the hearing. An opening statement is a short summary of your case and it is optional. Although an opening statement is not required, it does help the ALJ understand what the evidence and witness testimony will show.

The opening statement is not evidence. The purpose of an opening statement is to give the ALJ an idea of what each party expects the evidence to show.

## **WITNESSES**

Witnesses will not be in the virtual or in person hearing room until it is time to testify. Except for the parties, witnesses are usually not allowed to be in the hearing room and hear the testimony of other witnesses.

The ALJ will “administer an oath” to each witness and each party before they testify. This is also called “swearing in” a witness or party. The ALJ will swear in the witness by asking the witness to raise their right hand and swear to tell the truth.

The person who called the witness to the hearing will start the questioning. Once that person is finished asking questions, one person from the other side may ask questions of the witness. Questioning may go back and forth a few times as questions asked by one side might raise questions in the mind of the other side. So long as the questioning is relevant and adds new information to the case, the ALJ will usually allow the parties to ask questions until they are finished.

The ALJ may also ask questions of the witness occasionally. When an ALJ asks questions of a witness, the parties may make objections to the questions and ask follow-up questions.

## **HOW DO I ARRANGE FOR WITNESSES AT THE HEARING?**

Parties have the right to confront and cross-examine witnesses. (Ed. Code § 56505(e)(3).) 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 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 in the Subpoenas chapter of this Handbook or by visiting OAH's website by copying and pasting into their browser the following URL or by clicking on the link.
  - [Link to Subpoena information](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena>

## **EXHIBITS**

OAH does not use paper exhibits for hearings. OAH uses an electronic exhibit system called Case Center. Detailed instructions for using Case Center are in this handbook in the section called Electronic Submission of Witness Lists and Evidence through Case Center.

- To view this information on OAH's website either copy and paste into your browser the following URL or click on the link
  - [Link to information on submission of witness lists and evidence](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Electronic-Submission-of-Witness-Lists-and-Evidence-Through-CaseCenter>

When a witness is shown an exhibit, the ALJ will mark the exhibit with an exhibit number. The exhibit numbers identify each specific exhibit allowing the ALJ to indicate which exhibits were admitted into the official record as evidence at the end of the hearing.

When the party is finished questioning a witness about a document, the party who wants to have an exhibit entered into evidence will ask the ALJ to admit the exhibit into evidence. The legal term for this is to "move the exhibit into evidence." Parents do not need to say the right words; they may simply ask the ALJ to put the exhibit into evidence. Usually, people say, "your honor, I move that this document be admitted into evidence". The ALJ will respond by asking the other side if they have an objection. Often there is no objection, and the attorney or other representative will say, "no objection." The ALJ will then say, "Exhibit (for example, D-1 or Exhibit S-14) is admitted into evidence." **It is important that the rules for preparing exhibits for Case Center are carefully followed so the ALJ can properly identify your evidence for the record.**

Parents that are uncertain about how, or when, to put their exhibits into evidence may ask the ALJ how to do it. ALJs cannot give legal advice but they can explain the process to parents.



If the party who is not asking to admit the document into evidence has an objection, they must state the legal reason for their objection. Often that reason is that the document is unreliable for some reason, is incomplete or is not relevant to the hearing. Objections are usually stated by saying, "objection- relevance," or "objection, lacks foundation." (See section "Objections" below.).

The ALJ will let the parties know if the ALJ wants to hear more details about the parties' arguments on the objections. The ALJ decides which evidence is admitted into the hearing. Once the ALJ's ruling is made, the case proceeds.

## **OBJECTIONS**

A party may object to evidence if there is a question about its relevance, reliability, or admissibility. When parents testify, they have the right to object to the questions asked of them by the other party's attorney and to object to documents shown to them by the other party's attorney.

A common objection is "lack of foundation." "Lack of foundation" means a document has not been established to be authentic (e.g., it has been altered or is an incomplete copy) or from a reliable source. It can also mean that a witness does not have personal knowledge about the subject. If the ALJ "sustains" the objection (agrees with the objection), the ALJ will give directions if more information is needed to establish a proper foundation. If directed by the ALJ, a party can ask more questions to establish whether the witness knows what the document is, the basis for their personal knowledge about the subject or their knowledge about the source of the document. If the ALJ does not agree with the objection, they will say "Objection overruled."

Another common objection is "relevance." Relevant evidence is something that tends to prove or disprove a fact that is at issue in the case. If the ALJ sustains a relevance objection, it means the ALJ agrees the evidence is not relevant. That evidence is not discussed any further and everyone moves on to the next question.

The formal rules of evidence do not apply in an administrative hearing. For instance, hearsay (testimony by one person about what they heard another person say) is allowed in an administrative hearing if the ALJ determines it is reliable information or the kind of information on which people base serious decisions.

Sometimes the ALJ will admit evidence at the hearing but when considering the case will evaluate its "weight," that is, how persuasive it is. For instance, a document may be admitted into evidence, but a ALJ might determine that the facts disclosed about how it was discovered or created are suspect, ultimately giving it little weight when making the decision in the case. In response to an objection, you might hear the ALJ say, "Overruled-that goes to the weight of the evidence, not its admissibility."

Parents who are not represented by an attorney will be allowed to object to documents and to questions of witnesses by saying "objection" and briefly telling the ALJ the reason for the objection. If parents do not know a legal basis for an objection, the ALJ might ask the parties to explain why the evidence should or should not be allowed. The ALJ will decide if the evidence is allowed to become part of the record.

Whenever a witness is testifying, it is important to listen carefully to the questions that are asked. A parent may object to the way a question is asked. The objection must be made after the question is asked but before the witness starts to answer the question. Parents may also object to a document when a witness is asked about it.

ALJs say "sustained" if the ALJ agrees with the objection. ALJs say "overruled" if the ALJ does not agree with the objection. The ALJ will then tell the witness to answer or not to answer the question. The ALJ will also tell the parties whether or not the evidence will be admitted. "Admitted" means that evidence will become part of the official record and considered by the ALJ when the ALJ makes the final decision on the issues in the case.

## **CELL PHONES**

Unless a party is using a cell phone to participate in the hearing, all cell phones should be turned off and put away during the hearing. Even if a cell phone is just vibrating, it can be disruptive. Cell phones may not be used for recording unless the ALJ has given someone permission to record the hearing in advance.

## **NO EATING DURING THE HEARINGS**

During a hearing, parties shall not eat. Drinking water is permitted. Breaks are scheduled throughout the day, including a lunch break.

## **REQUEST FOR REASONABLE ACCOMMODATIONS**

Any hearing participant with a disability that restricts their ability to participate in a legal proceeding before OAH may request what is called a "reasonable accommodation." The Americans with Disabilities Act (42 U.S.C. § 12101, et seq.), commonly known as the ADA, is a federal civil rights statute that requires state governmental entities, such as the Office of Administrative Hearings, to accommodate the needs of qualified individuals who have an interest in our activities, programs and services.

For more information on Reasonable Accommodations, including how to request reasonable accommodations, please see the section in this handbook titled “Reasonable Accommodations.” Alternatively, you may access this same information on OAH’s website.

- To access information on Reasonable Accommodations either copy and paste into your browser the following URL or by clicking on the link:
  - [Link to information on Reasonable Accommodations](#)
  - <https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Request-Reasonable-Accommodations-for-OAH-Legal-Proceedings?search=reasonable%20accommodation>.

## **REQUESTS FOR INTERPRETERS**

If a party or a witness requires an interpreter, the attorney or the party (if the party is not represented by an attorney) must inform OAH that an interpreter will be needed. OAH will provide interpreters at the hearing for participants who require them. A request for an interpreter must be made in writing and sent to OAH. The request must include the language needed and the days the interpreter will be needed. While there is currently no deadline by which the request must be made, it is recommended that the request be submitted a week before the interpreter’s services will be needed. This will allow OAH staff the time needed to secure the interpreter from OAH’s vendor. Requesting an interpreter after that time may result in a delay in the proceedings.

Interpreters will appear either by videoconference or by telephone. The ALJ will instruct the parties on accessing the interpreter’s services during the hearing.

## **SELF-HELP TIPS FOR UNREPRESENTED PARTIES**

### **WHAT TO BRING TO THE HEARINGS**

Parties may wish to have set of paper exhibits during the hearing. However, the ALJ will be using the electronic version of the exhibits that the parties electronically loaded into Case Center prior to the hearing. Each party should have already loaded their exhibits into Case Center at least five business days before the start of the hearing.

To access this more information on Preparing for Hearing please go to the section in this handbook called "Preparing for a Hearing." This same information may be viewed on OAH's website.

- To view this information on OAH's website either copy and paste into your browser the following URL or click on the link.
  - [Link to information about preparing for hearing](https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Preparing-for-Hearing)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Preparing-for-Hearing>

### **WHAT TO DO IF YOU ARE LATE TO THE HEARING**

Anyone who is going to be late to the hearing must call the Sacramento OAH office as soon as they know they will be late. If the party who filed the complaint is late and does not call OAH, the case may be dismissed. If the district filed a complaint against parents, and parents are late, the ALJ may hear the district's side of the case without the parents present. Similarly, if a district filed a complaint against a student and the district's attorney is late, the ALJ may hear the parents' side of the case without the

district's attorney being present. Therefore, it is important to appear on time at the due process hearing. The Sacramento OAH Office will let the ALJ assigned to the case know if anyone is running late.

## **HOW TO QUESTION WITNESSES**

If you want to prove something during your hearing, it is best to have witnesses testify who actually saw or have personal knowledge of the events you want to prove. It is not a good idea to rely on witnesses who "heard" about the events from another person. That kind of evidence is called "hearsay."

The definition of "hearsay" is testimony by someone who heard a statement made by someone who is not testifying. The person testifying wants to tell the ALJ the other person's statement and that the statement is true. Generally, the ALJ will consider hearsay to be very weak evidence unless it is supported by other evidence. An ALJ will not rely on hearsay when making their decision unless the hearsay is reliable. Reliability must be proven. Therefore, it is always better to get witnesses who actually made the statement to come in and testify.

As discussed above, questions should be carefully planned in advance. Think about your case and the facts you need to prove to win the case. Who can testify to those facts? What do they need to say? Are there documents that could help prove the facts you need to show? Who could testify that the documents are genuine and reliable and explain to the judge why they are important?

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## **TIPS FOR WRITING YOUR QUESTIONS**

### **Ask Simple Questions**

After the witness takes the oath and is seated, ask them to identify themselves and ask basic questions to show the basis for their personal knowledge about the subject.

For example:

Question: What is your name?

Question: Do you know [child's name]?

Question: How do you know [child's name]?

Then, consider what facts you need this witness to tell the ALJ. Is the witness a doctor who can testify about the child's disability and how it affects their ability to learn? Is the witness a teacher who sees the limits of the child's attention span? Is the witness a tutor who has used some strategies for helping the student with success? List the information you need the witness to talk about and then write questions to have the witness tell that information to the ALJ.

You might ask questions about a person's participation in an IEP meeting to show the ALJ what happened at the meeting or who was present at the meeting.

Question: Have you attended any IEP team meetings for [child's name]?

Question: Did you attend the IEP team meeting on [date]?

Sometimes it helps to focus on the basics, following the "who, what, when, where, and why" format. This format helps to establish the facts by using questions that identify "who" did or said something, "what" did that person do or say, "when" did they do it or say it, "where" were they when they said or did it, and "why" did they do or say it.

For example:

Question: Who was at the IEP team meeting?

Question: What did these individuals say to you?

Question: What did the IEP team discuss about [child's name]'s physical therapy needs?

Question: Were you able to provide your input to the IEP team?

Keep in mind that you do not need to prove the same fact several times. One good piece of evidence, either testimony, a document, or some other kind of evidence is enough to establish a fact.

## **HOW TO QUESTION EXPERT WITNESSES**

Expert witnesses are usually professionals. Their job is to explain something or give an opinion about something. In special education, experts are often professionals such as doctors, psychologists, speech pathologists, and occupational therapists. Parents should contact a potential expert as early as possible. Experts usually charge a fee to testify and require that parents confirm they are needed in advance so they can put the hearing on their calendar. Parents are required to put their experts on their witness list and discuss their testimony at the prehearing conference.

When questioning an expert witness, focus on the expert's training, experience, and knowledge. Always ask for your expert's resume or Curriculum Vitae ("CV" is another name for professional resume). You can add this to your exhibits and use it to help establish that the expert is qualified to give an opinion.



Once you establish their credentials and that they examined or worked with your child, ask the expert to give their opinion. For example:

Question: What do you do for a living?

Question: What is your educational background?

Question: Is this your resume?

Question: Is everything in this resume accurate?

Question: Have you received any other training in this area?

Question: Do you know [child's name]?

Question: How do you know him or her?

Question: (Have them describe the work or evaluation they did with the child.)

Question: Do you have an opinion [for example, recommended amounts of services (such as speech therapy or occupational therapy or behavioral therapy); or about placing the student in the placement being recommended by the school or the placement parents prefer]

Question: What is your opinion?

Question: What is the basis of that opinion?

## **PARENTS' TESTIMONY**

Parents do not have to ask themselves questions. Parents may tell the ALJ about the events and facts that they know and what they need to establish to prove their case. The ALJ may ask parents questions while they are testifying and might ask parents some questions at the beginning of their testimony to get them started. Another way for a parent to testify is by giving the ALJ a list of questions. The ALJ asks the questions and

the parent can answer them. Other parties may call a parent as a witness. The attorney for the other party will ask the parent questions first, and then the parent will have the opportunity to testify about any matters relating to those questions.

Once the parent finishes asking questions of their witness, the attorney for the district has a chance to ask questions if they want. This is called "cross-examination." Parents will also have a chance to ask questions of the people the district calls as witnesses. The ALJ will often ask the witnesses questions as well.

## **HOW TO PUT EXHIBITS INTO EVIDENCE**

To have an exhibit "admitted into evidence," parents must show that the document is "authentic." This means that the document is what it says it is and that it is an accurate, unaltered copy. Parents may prove this through their own testimony or with the testimony of another witness (as discussed in the next paragraph). Before testifying about an exhibit or questioning a witness about an exhibit, parents should ask the ALJ to mark the exhibit for identification. The ALJ will then put an electronic sticker on the exhibit with the exhibit number.

A document must be "authenticated" before it may be admitted into evidence. This means that a witness must testify that it is what it appears to be. A document is authenticated by showing the document to a witness. Ask the witness (1) if they recognize it, (2) to identify and describe it, and (3) if the document appears to be a correct copy.

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Another way to authenticate some kinds of documents is to show that a government agency or a company kept them in the regular course of business. For example, sometimes a school keeps attendance records. To have a record like that admitted, ask the witness if the information was recorded by a person with knowledge of the routine for keeping the records and in the regular course of business.

After the exhibit has a numbered sticker and has been authenticated by a witness ask the ALJ to admit the exhibit into evidence. The ALJ may ask the other side if they have any objection to the document coming into evidence. Parents may need to respond to the objections by telling the ALJ what the document is and why they want it admitted into evidence. Parents do not need to know the law or rules of evidence. Technical rules of evidence do not apply in due process hearings. Parents may simply offer an exhibit and let the ALJ decide if it should be admitted.

During a hearing, evidence may be used in different ways, including to “refresh recollection” of a witness, to “rebut” a statement that a witness has made, or to “impeach” a witness’s testimony. 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.

## **HOW TO PRESENT AN AUDIO RECORDING AT HEARING**

A portion of an audio recording of an IEP team meeting may be played as evidence in a hearing if the ALJ agrees. This is usually only allowed if the recording offers important evidence that cannot be provided with testimony by the person who attended the meeting.

To have a portion of an audio recording admitted, the exact date and minutes of the recording the party wants admitted must be identified and the person speaking must be identified. Usually, a written transcript of the portion of the recording being offered is required. The person who prepares the transcript will need to submit a declaration stating their name, who they are, the date the transcript was prepared, and that the transcript offered is an accurate transcript of the recording. Both the transcript and the recording are exhibits and should be included on your exhibit list. If they are not, the ALJ may not allow the recording to be submitted. Whether any part, or how much of the recording, may be played is up to the ALJ.

## **WHAT TO DO AT THE END OF EACH DAY OF HEARING**

At the end of each day, the ALJ will ask about the witness schedule for the next day. The ALJ and the parties may review which exhibits have been admitted or may defer that review to the end of the hearing. The ALJ may also talk with the parties about other scheduling or evidence issues that have come up during the day. The ALJ cannot give legal advice. However, the ALJ may answer questions about the hearing procedures.

After the hearing day ends, parents should call the witnesses they have scheduled for the next day to let them know what time to appear for hearing the next day. It is a good idea to go over the questions you have prepared to ask the witnesses for the next day, and the exhibits you plan to ask the witnesses about.

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## **THE LAST DAY OF THE HEARING – EVIDENCE RECONCILIATION**

Once all testimony is finished, the ALJ and the parties will review the evidence that has been admitted. Everyone will confirm the exhibits submitted from each side that were admitted. This is done by the ALJ going through the exhibits on Case Center and stating which exhibits their records show were admitted. If one party or the other has a different record, notes and the hearing recording can be consulted to determine what was entered as evidence. In some cases, an exhibit that was not admitted can be admitted at the end of the hearing on request of the party. However, it is best to ask to have the exhibit put in evidence when it is discussed in case there is an objection that needs to be cleared up.

For any evidence that was not admitted due to an objection in the exhibit binder, the ALJ will mark the exhibit as “not admitted” so it is not relied on as evidence when the ALJ makes their decision.

## **CLOSING ARGUMENTS**

The last thing the parties and the ALJ discuss are closing arguments. The ALJ will ask the parties if they want to make written or oral closing arguments. Oral closing arguments are made at the end of the hearing. If oral closing arguments are made, the official record ends on the last day of the hearing and the case is submitted to the ALJ for decision.

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Most people prefer to submit written closing arguments. Written closing arguments are sometimes called "closing briefs." A written closing argument allows you to think about the evidence presented by both sides and take some time to tell the ALJ why your evidence proved your case and why the other side's evidence did not prove their case.

The ALJ usually gives the parties a couple of weeks to write and submit their closing arguments. Sometimes, a longer period is allowed if there is a good reason to ask for a longer time. The ALJ will tell the parties the date by which their written closing arguments must be filed with OAH and served on the other parties. The case is continued until the deadline for the written arguments. The official record is closed on the date the written closing arguments are due and the case is considered submitted to the ALJ for decision.

A written closing argument does not have to be submitted in any particular format. Parents who are not represented by attorneys may write a letter. Usually, the ALJ will give the parties a page limit for the closing briefs.

A closing argument is a summary of the evidence. Good closing arguments highlight a party's most favorable evidence, and states why the evidence shows the ALJ should decide in favor of the party writing the brief.

Closing arguments explain why a witness is credible or why one witness should be believed instead of another. Closing arguments should discuss only the evidence that was presented at the hearing. It should not attempt to offer new evidence. The closing argument should end by telling the ALJ what the ALJ should do about each issue.

Closing arguments may discuss what law applies. However, parents who do not have an attorney are not expected to know all the law that applies to their case. The ALJ is an expert in the law that applies. Therefore, parents are able to make very good closing arguments even if they are not familiar with legal vocabulary or special education law as the most important information to discuss is the evidence that was presented and why it proved your case.

Written closing arguments must be filed and served by the due date and must include a proof of service. If your written closing argument is late, it may not be considered by the ALJ.

## **APPEALING AN OAH SPECIAL EDUCATION DECISION**

If a party disagrees with the final decision in the case, the party has the right to appeal. The party may file an appeal in either the state superior court or the federal district court. An appeal must be filed within 90 days of the date the party receives the decision.

The state superior court or the federal district court will require a written transcript of the hearing. A party may request a transcript of the hearing by sending a written request to OAH. OAH form "Transcript Request" may be used to ask for a transcript. The Transcript Request may be found by clicking on the "Forms" tab at the top of the screen. Parents are entitled to one free copy of the transcript in either written or electronic form. Parents are also entitled to one free copy of the administrative record. The administrative record is the OAH file. The administrative record includes copies of the exhibits that were accepted into evidence during the hearing. Detailed instructions on how to order a transcript are provided in the instruction page for the form.

## **8. ELECTRONICALLY SUBMITTING WITNESS LISTS AND EVIDENCE WITH CASE CENTER**

The Office of Administrative Hearings, referred to in this Handbook as OAH, uses the Case Center platform to process exhibits for its hearings. Case Center is an electronic evidence application that is accessed through the internet and is described as a “digital evidence management system.”

Case Center’s system allows parties to upload their evidence and exhibits into its data base via the internet for use during the hearing. Parties, attorneys, and the Administrative Law Judge, referred to here as ALJ, are able to access the evidence and exhibits during the videoconference hearing in a controlled process. This section provides information on how to use Case Center. Use of Case Center is free of charge to the parties. All of the information presented in this section of the handbook is available on OAH’s website.

- To access Case Center information on OAH’s website copy and paste into your browser the following URL or click on the link.
  - [Link to Case Center information](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Electronic-Submission-of-Witness-Lists-and-Evidence-Through-CaseCenter>

Parties and the ALJ can access the documents from a web browser during the hearing. The documents can be viewed, searched, and used while examining witnesses. Using Case Center allows all hearing participants to look at the exact same documents, at the same time, during the hearing.



Case Center has a wide-ranging “Support” section on its website. This support includes videos and written summaries for using various aspects of the system.

- To access Case Center’s support on its website either copy and paste into your browser the following URL or click on the following link.
  - [Link to Case Center support](#)
  - <https://training.thomsonreuters.com/legal-case-center>

The instructions provided in this handbook are a courtesy “Quick Start” guide. If the information you need is not included here, consult the Support section of the Case Center website. If, after reviewing this Quick Start guide and using the Case Center Resources, you are still in need of assistance, please contact OAH at 916-263-0880.

This Quick Start guide summarizes information regarding

- Registering for Case Center,
- Uploading documents,
- Accessing exhibits (yours, and the other parties’),
- Using exhibits when examining witnesses, and
- Offering exhibits as evidence in the case.

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## URL FOR ACCESSING CASE CENTER:

- Access to Case Center's Getting Started page at the URL below. Either copy and paste this URL into your browser or click on the link. Please note that this is the correct URL – Case Center recently changed its name from CaseLines but has not yet updated its URL.
  - [Link to Case Center's Getting Started page](#)
  - <https://usgov.caselines.com/>.

## CASE CENTER QUICK START INFORMATION

### REGISTERING TO ACCESS CASE CENTER

An ALJ will email you an invitation to access your case. The emailed invitation will show the email "noreply@casecenter.com" as the sender and a subject line with the name of your case. The email will include a link to register as a user for Case Center. When you click on the link sent to you Case Center will open in your browser. Follow the prompts to register to gain access to your case. You MUST select a role.

Case Center will confirm your registration by sending you an email with a link to confirm your email address. Once you have registered with Case Center you will simply log in using your user name and password.

- If you need to find Case Center independently of the email invitation, either copy and paste the following URL into your browser or click on the link.
  - [Link to Case Center](#)
  - [https://usgov.caselines.com.](https://usgov.caselines.com/)

Invitations will only be sent to the attorneys or parties identified in a case. If you need to add additional persons within your organization to the case in Case Center, you may do so yourself. To add someone to a case in Case Center, you will first need to register, then access your case. After accessing the specific case you will then have the ability to add those persons to that case in Case Center.

## **EXCHANGING DOCUMENTS THROUGH CASE CENTER**

Parties “exchange” documents through Case Center. Each party is given access to their case to upload the evidence they intend to introduce for a limited period of time. This period of time meets the requirements of Education Code 56505(e)(7). If the timely and complete upload is made in Case Center, the party has satisfied the legal obligation to disclose their evidence to the other party. Each party will have the ability to view their own submitted exhibits as well as any exhibits submitted by other parties in the case.

Approximately one week prior to the hearing, the parties will receive an invitation from OAH to upload their documents into Case Center. After logging on and opening up the case, each party will see a “Section” assigned to them. (Student, District, Charter, etc.) The parties must upload their documents into the Section assigned to them. Once documents are uploaded, they are viewable by everyone who has been given access to the case by an ALJ. If you have not received an invitation five business days before the hearing is scheduled to begin, please contact OAH.

## **DOCUMENT ORGANIZATION IN CASE CENTER**

### **NUMBERING OF EXHIBITS**

Each exhibit must be identified by a letter and a number. Student must use the letter S before the number to identify Student’s exhibits. District must use the

letter D before the number to identify its exhibits. For example, S-1 means Student's exhibit 1 and D-1 means District's exhibit 1. A cover sheet with this identifying letter and number should be the first page of each exhibit. The electronic evidence program will automatically number the exhibits and additional page numbering or bates stamping should not be added.

## **SECTIONS**

Parties will upload to their designated "Section" for exhibits, tables of contents and witness lists. Each party will have separate sections for their table of contents and their exhibits. For example, Student's Table of Contents and Student's Exhibits. Each party will upload any witness lists they may have to the Witness Schedules section, which is shared by all parties.

## **CONTENT**

Each exhibit must consist of one document. Separate documents may not be combined into one exhibit. Emails or letters may be consolidated into one exhibit if they are part of a single chain of messages. Exhibits should be in chronological order. Parties should include resumes or curriculum vitae for each witness who is expected to testify as an expert.

District's exhibits must include a copy of the school calendar for each school year in question.

## **TIMELINE FOR UPLOADING EXHIBITS**

Electronic copies of exhibits filed with OAH shall be filed by 5:00 p.m. at least five business days before the first day of hearing. Beginning three business days before the

first day of hearing, Case Center will not allow parties to upload exhibits unless permitted by the ALJ during the hearing at the ALJ's discretion. Any requests to change or add to the case in Case Center will need to be raised during the hearing for determination by the ALJ.

## **UPLOADING DOCUMENTS**

### **CHOOSE A BROWSER**

You will have to use an HTML5 compliant internet browser, such as Google Chrome, Mozilla Firefox, Microsoft Edge, or Safari to access the full functionality of Case Center. Please be sure to check that you have the most recent version of your web browser.

### **LOCATE YOUR SECTION**

After logging on to Case Center, go to the Home Screen. Follow the steps below to upload your exhibits:

- Click on the "View Case List" tab.
- Enter information in the "Case Filter" to find your case. You can enter the hearing date, case number or name of case.
- Click on "Apply Filter," then scroll down to see your case name.
- Click on "Update Case."
- You will see a number of red "tabs" at the top of the page. Click on "Sections."
- Find your "Section," e.g., Student Exhibits, District Exhibits, Charter School Exhibits.

## UPLOAD YOUR EXHIBITS TO YOUR SECTION

Once you have located your Section in the Case Center case, to the right of the "Section" heading you will see the "Upload Document(s)" button. Click on "Upload Documents." Scroll down until you see the "Select files" box.

There are two ways add files to the "Select files" box. You can use "drag and drop" method or directly add the files. Each of these processes are explained below.

### 1. Drag & Drop

- a. Open your computer's file explorer, then click on the document you want and drag the file to the "Select files" box. Drop the file where the box says "Drag files here."
- b. To add several files at a time, hold down the "Control" (Ctrl) key if using Windows or "Command" key if using a Mac to highlight several files, then click and drag them to the "Select files" box as a group.

### 2. Directly Add Files

- a. To add files directly to the "Select files" box without using the drag and drop method, click the "Add Files" button at the bottom left of the "Select files" box. The website will open your computer's file list.
- b. 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.

- c. To add several files at a time, hold down the "Control" (Ctrl) key if using Windows or the "Command" key if using a Mac to highlight several files. Click "open" at the bottom of the file list screen. All of the selected files will populate in the "Select files" box.

Once you've added the files you want to upload to Case Center, click the "Start Upload" button at the bottom of the "Select files" box. The amount of time it takes to upload your documents will vary, depending on the total size of the files. Generally speaking, the more documents you add at a time, the longer the upload time for each group of files. You may add multiple groups of files by repeating this process until you are finished.

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 all your documents have been uploaded, properly number and name your documents as explained in the next section.

## **NUMBERING AND NAMING EXHIBITS AFTER UPLOAD**

Once the files are uploaded, scroll back up the page and click on the "Update All Documents" button. This takes you to a page where you can review what was uploaded.

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## **NUMBERING YOUR EXHIBITS PER THE PREHEARING CONFERENCE ORDER**

OAH numbering and naming conventions must be used for your exhibits. The exhibit number and date must be included in the Exhibit name for document management purposes.

The following format is required:

- For Student exhibits, begin with S1, S2, S3, etc.
- For District exhibits, begin with D1, D2, D3, etc.
- For Charter School, begin with CS1, CS2, CS3, etc.
- For SELPA exhibits, begin with SA1, SA2, SA3, etc.
- For County Office of Education, begin with COE1, COE2, COE3, etc.

## **NAMING EXHIBITS**

The title of your saved Word or PDF file will automatically become the title of your exhibit, once uploaded. This will need to be changed to comply with the naming conventions identified in the Prehearing Conference Order.

Please name files using this required format: Exhibit number (S1/D1) Date: MMDD YYYY Title (Speech and Language Report). FOR EXAMPLE:

- S1 12 01 2019 Psychoeducational Assessment
- D3 04 06 2018 IEP
- CS5 12 14 2016 IEP Amendment



- SA7 01 07 2017 Correspondence from SELPA
- COE3 03 09 2018 Email from Parent

## **MAKING CHANGES TO EXHIBIT NAMES IN CASE CENTER**

- Scroll down and review the uploaded exhibits. Make sure the “Document Number” (for example, 0001) aligns with the “Document Title” (starting with S1, D1 or CS1). Make sure the exhibits are in order and that the date is in the American format (MM DD YYYY).
- Clicking on any of the “Document Number” or “Document Title” fields will create a text box that allows you to change the title, number, and date as needed.
- Changes you make are automatically saved.
- Scroll up the page and click on the blue “Documents” button. This takes you to your exhibit section (e.g., Charter School Exhibits). Here, you can check that the numbers, titles, dates, and order of exhibits are correct. If not, click on the “Update All Documents” button to make changes.
- To upload additional exhibits, follow the instructions below.

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## **ADDING ADDITIONAL EXHIBITS OR REMOVING EXHIBITS**

### **ADDING EXHIBITS**

If you need to add documents after your initial upload, make sure your exhibit numbers continue from where you left off.

If you add new exhibits and they do not appear in order when you review the documents in your section, simply click on the "Update All Documents" button and renumber the exhibits using the "Documents Number" column, so that they are in the order you want them to be in. Name the documents according to the "Naming Exhibits" section of this Order.

### **REMOVING EXHIBITS AFTER THEY HAVE BEEN UPLOADED**

Once you upload a document you will not be able to remove it yourself. If you made a mistake and want to remove exhibits you've uploaded, follow these instructions:

- Go to the "Sections" tab as described above and find your exhibit section. Click on the "Update All Documents" Button to the right of your section. Go to the "Document Number" column for the exhibit you'd like to remove. Change the Index field to "delete" for as many of the exhibits you'd like removed. That way the documents will not interfere with the order of exhibits you intend to keep.
- On the first day of hearing, move to withdraw the exhibits and ask the ALJ to remove them from your exhibit section.

## WITNESS ACCESS TO EXHIBITS

It is the parties' responsibility to ensure that witnesses have access to any exhibits needed for examination and to determine how they will provide this access. Witness access to exhibits can be provided through different methods.

The following are examples of methods to provide access to witnesses:

- Add the Witness as an additional participant to the case. The parties' representative that received the invitation to the case in Case Center has the ability to add additional participants to the case in Case Center and can add witnesses to provide them access to the exhibits. This method provides access to the exhibits until the participant is removed from Case Center.
- Add limited access to download exhibits from Case Center. Parties can send a 72-hour limited access link to download exhibits from Case Center. To do this, click on the Bundles tab in the case in Case Center, then click on the "Download" button. On the following screen, click on the "Secure Sharing" button. On the next screen, parties will be able to input the witness' email address and send a limited link to the witness which will automatically expire after 72 hours.
- Parties can print and mail a copy of the exhibits to witnesses.
- Parties can create and send a flash drive of the exhibits to the witness for them to access on their own devices

## **9. SUBPOENAS**

### **GENERAL INFORMATION ABOUT SUBPOENAS**

Subpoenas are how you can require witnesses (a) to appear at a hearing, (b) to present documents for presentation at a hearing, or (c) to appear at the hearing and explain documents they are required to present. Consider whether you need to have a subpoena issued to require witnesses to appear at the videoconference hearing or to produce documents. A subpoena is an order requiring people to provide documents or testimony. Attorneys are allowed by law to issue subpoenas to compel people to appear at a videoconference hearing or produce documents.

Parents not represented by an attorney can obtain subpoenas from OAH before the due process videoconference hearing by requesting them in writing or by contacting the OAH case manager assigned to the case by telephone. You will need to tell the case manager if the subpoenas are for a person to testify or to produce documents, or for both.

The OAH case manager will prepare the subpoena forms to be sent to parents. Parents must then fill in the subpoena details such as the name of the person being required to join the videoconference hearing or a description of the documents being requested. Once the subpoena has been completed parents will then send it back to the OAH case manager who will submit it to an OAH administrative law judge (ALJ) to sign. The subpoena must be signed by an OAH ALJ or by an attorney representing parents prior to being sent to the witness or person who has needed documents.

The following sub-sections include more specific information for both types of subpoenas. OAH provides optional forms for both the Witness Testimony Subpoena and the Subpoena for Production of Documents and/or Things (also called "Subpoena Duces Tecum.")

Each form provides substantial information for the party issuing the subpoena and the person or entity receiving the subpoena. Reviewing this information is highly recommended. You may also find these forms in Arabic, Chinese Traditional, Chinese Simplified, Spanish, and Vietnamese. Additional formats may be obtained from OAH by emailing a request to OAH at <mailto:DGSOAHFeedback@dgs.ca.gov>.

- To view these forms on OAH's website either copy and paste into your browser the following URL or click on the link.
  - [Link to OAH's subpoena form](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena>

## **SUBPOENAS FOR DOCUMENTS**

Subpoenas for documents must identify the person, business or organization that has the documents and describe the documents to be produced. The subpoena must also say why the documents are necessary for the case.

Documents produced in response to a subpoena are not sent to the party. 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 leave a message. The message should include the case number and state that you are responding to a subpoena for documents. The case number is 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. Detailed instructions on how to upload documents to Case Center are provided on the subpoena form and are also available on OAH's website.

- To access this information on the website either copy and paste into your browser the following URL or click on the link.
  - [Link to information on submitting your evidence and witness lists](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Electronic-Submission-of-Witness-Lists-and-Evidence-Through-CaseCenter>

Subpoenas for documents must comply with strict timelines to obtain the documents and some subpoenas seeking personal documents are required to be sent a longer time in advance of the hearing.

Subpoenas for documents may be served by mail. If serving by mail add five days to the service time. Service by fax or email is only allowed if you get written permission from the person being served allowing you to serve the subpoena by fax or email.

## SUBPOENAS FOR WITNESSES

Subpoenas for people to testify must name the person and the time and date of the virtual due process hearing. If the hearing is to be in person, then the subpoena must also name the location of the hearing. If the videoconference hearing is continued and the witness is subpoenaed for the incorrect videoconference hearing date, parents must get a new subpoena with the correct videoconference hearing date or reach an agreement with the witness to appear on the new date. If you have such an agreement, be sure it is in writing.

Subpoenas to have a person testify do not need to be served any particular number of days before the day the person is scheduled to testify. However, it is best to give as much notice as possible to the witness you subpoena. Subpoenas must be properly served. **In general, personal service is required for a subpoena that requires someone to testify.** Personal service means handing the subpoena to the person. This is important because unless the person had actual notice of the hearing, and the person issuing the subpoena can prove they had notice, it is difficult to make the person attend.

The person serving the subpoena should complete a Proof of Service so the party issuing the subpoena has proof it was delivered. Generally, the subpoena should be served (handed to the person you want to testify) by someone other than the party requiring the witness's attendance.

The law requires payment of witness fees to witnesses who are compelled to attend a videoconference due process hearing by subpoena. Parents are responsible for paying the witness fees of any witnesses the parent subpoenas to the videoconference

hearing, unless the witness waives the fees. If it becomes necessary to obtain a subpoena after the videoconference hearing has begun, the ALJ who is conducting the due process videoconference hearing can sign the parents' subpoena form.

A subpoena can be enforced by seeking a contempt order from the Superior Court in the county where the hearing is held. Because obeying a subpoena is required by state law, they cannot be enforced by OAH in the administrative process.

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## **10. SETTING A MEDIATION AND REQUESTING A CONTINUANCE OF PREHEARING CONFERENCE AND DUE PROCESS HEARING DATES**

Once mediation, prehearing conference, or hearing dates are scheduled, parties must file a motion to continue the scheduled dates if they are not able to attend. The information in this section of the handbook contains information specific to these requests. Motions are discussed in the following section of this handbook in the chapter called "Motions." The same information is on OAH's website. This section does not address a request to change a scheduled mediation date in a Mediation Only case.

- To access this information either copy and paste into your browser the following URL or click on the link.
  - [Link to information on Motions](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Motion>

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OAH will schedule a mediation in cases involving expedited issues or if a party files a Request for Mediation Only. In all other cases parties must jointly request OAH to schedule a date for mediation by submitting a motion to OAH. OAH provides a form for this purpose called "Request to Set Mediation and Continue Due Process Hearing."

- To access this form either copy and paste into your browser the following URL or click on the link.
  - [Link to form to set mediation and continue hearing](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Request-to-Set-Mediation-and-for-Continuance-of-Initial-Due-Process-Hearing-if-Required>

To request a mediation date the parties must file a Request to Set Mediation and Continue Due Process Hearing. When a Request to Set Mediation and Continue Due Process hearing is filed, the parties may also request to reschedule the Prehearing Conference date.

The information in this handbook section covers the following topics related to:

- Setting the initial mediation date;
- Cancelling a scheduled mediation date;
- Requesting a continuance of the prehearing conference and hearing dates when requesting a mediation date; and
- Requesting a continuance of a mediation date, the prehearing conference, or hearing date.

## **REQUESTING AN INITIAL MEDIATION DATE IN A MEDIATION AND DUE PROCESS HEARING CASE**

A mediation date is not automatically scheduled when a party files a Request for Due Process Hearing and Mediation. When a party files with OAH a Request for Mediation and Due Process Hearing, OAH will send to the parties a document called, "Scheduling Order Setting Telephonic Prehearing Conference and Due Process Hearing." This document is referred to in this Handbook as "Scheduling Order."

The Scheduling Order will identify the dates OAH has set for the Prehearing Conference and for the Hearing. Also identified in the Scheduling Order is the deadline date by which the parties must ask OAH to schedule a mediation, if they choose to have a mediation. The Scheduling Order does not set a date for mediation.

The Scheduling Order contains a great deal of information parties need to proceed through the OAH proceedings. Read the Scheduling Order carefully. It contains important information, in addition to the prehearing conference and hearing dates.

Because mediation is voluntary, the parties must agree to mediation dates and times. Once the parties have agreed on the date and time for mediation they may submit the joint request for mediation. It is a good idea for the parties to include a second date and time for the mediation as their second choice, in case the first date and time is not available. Both parties, or their attorney, must sign the Request for Mediation.

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OAH provides a form for requesting a mediation date. This form is optional and may be used even if the parties only wish to schedule a mediation without continuing the hearing. Both parties must sign the request.

- To access the form “Request to Set Mediation and Continue Due Process Hearing” either copy and paste into your browser the following URL or click on the link.
  - [Link to the Request to Set Mediation and Continue Hearing](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Request-to-Set-Mediation-and-for-Continuance-of-Initial-Due-Process-Hearing-if-Required>

Requesting a mediation date is a motion and must follow the normal rules for filing motions. For example, the joint motion “Request to Set Mediation and Continue Due Process Hearing” is considered a “joint” motion as both parties must sign it. It must be filed no later than three business days before the prehearing conference. For more information on motions and how to file a motion go to the Motions section of this handbook.

- To access more information on OAH’s website copy and paste into your browser the following URL or by clicking on the link.
  - [Link to information on Request to Set form](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Motions>

When parties ask for a mediation date, the mediation date must be at least 35 days after the date the request for due process hearing was filed. This allows time for the parties to hold a resolution session or decide to waive the resolution session. For more information on what the resolution session is, visit the Procedural Safeguards section of OAH's website.

- To access this information copy and paste into your browser the following URL or click on the link.
  - [Link to information on resolution sessions](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Resources/Page-Content/Special-Education-Resources-List-Folder/Notice-of-Procedural-Safeguards?search=Procedural%20Safeguards>

Mediations may be requested for any day of the week, Monday through Friday, and will be scheduled if OAH's calendar has the date and time available. Requests may be made up to the day before the requested date, but the date will only be approved if OAH's calendar has the date and time available.

Parties are encouraged to agree to a mediation date and to submit a request for mediation date at least 10 business days before the requested mediation date to ensure approval for the date the parties have selected. OAH will let the parties know if the date they requested has been approved. OAH will do this within two business days after the parties submit their request. Once the mediation date has been set, parties are expected to go to this mediation.

When requesting a mediation you will need to choose either a whole day mediation or a half-day mediation. When choosing a half-day mediation you must select either the morning mediation or the afternoon mediation. Whole day mediation begins at 9:00 a.m. and may last until 4:30 p.m. Morning mediations begin at 9:00 a.m. and may last until 12:30 p.m. Afternoon mediations begin at 1:30 p.m. and may last until 5:00 p.m.

If parents or students are not represented by an attorney, OAH staff will contact them within seven days after the Scheduling Order has been sent to help in calendaring a mediation date. A mediation date may also be set during the prehearing conference if no mediation date has been previously set but the ALJ may require the parties to provide a good reason for the delay in requesting a mediation date.

It is a good idea to schedule a mediation date early, before you begin preparing for the prehearing conference. Getting ready for the prehearing conference and hearing takes a lot of time and work. If the parties settle at mediation the parties will avoid all the time and work getting ready for the prehearing conference and hearing. For more information on what is a Prehearing Conference, visit the Prehearing Conference section of OAH's website.

- You may access the Prehearing Conference section of OAH's website by copying and pasting the following URL into your browser or by clicking on the link.
  - [Link to Prehearing Conference information](#)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Prehearing-Conferences>

OAH will send out a written order saying whether it has agreed to assign the mediation date.

## **CANCELLING A MEDIATION DATE**

Once a mediation date is set, the parties are expected to attend the mediation. OAH will not call the parties to ask if the parties will be going to the mediation. Once mediation is scheduled all parties are responsible for letting OAH know as soon as possible if the mediation needs to be cancelled. Parties may let OAH know of a cancelled mediation either by calling the After-Hours Line at (916) 274-6035 if after normal business hours, or by calling (916) 263-0880 during business hours and leave a message. Parties may also send by Secure e-File Transfer (SFT) system a written statement that the mediation will be cancelled.

- To access the SFT system copy and paste into your browser the following URL or click on the link.
  - [Link to the SFT system](#)
  - <https://www.applications.dgs.ca.gov/oah/oahsftweb>

If sent by SFT please be sure to select "Continuance Request" as the document type when uploading the document. OAH will then notify the parties via telephone that the mediation has been cancelled.

If the parties cancel a mediation date and want to request another mediation date, they must have a good reason for cancelling the first mediation, such as illness or another unforeseen, unavoidable reason, or "good cause." If the parties believe they have a good reason, and want to change the date for a mediation that has already been scheduled, the parties should follow the same procedure as for requesting the first

mediation date, but make sure to include the reason they cancelled the first mediation. The parties will need to reach an agreement on a date, and an alternate date, for mediation and submit a request for mediation for those dates to OAH.

## **REQUESTING A CONTINUANCE OF THE HEARING AND PREHEARING CONFERENCE WHEN REQUESTING A MEDIATION DATE**

Requesting a mediation date may result in the need to change the date assigned for hearing. This is called “requesting a continuance” of the hearing. Both the prehearing conference and the hearing dates originally scheduled by OAH may need to be changed due to the scheduling of a mediation date.

- To access OAH’s form “Request to Set Mediation and Continue Due Process Hearing” copy into your browser the following URL or click on the link.
  - [Link to OAH’s form to set mediation and continue hearing](https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Request-to-Set-Mediation-and-for-Continuance-of-Initial-Due-Process-Hearing-if-Required)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Request-to-Set-Mediation-and-for-Continuance-of-Initial-Due-Process-Hearing-if-Required>

When filing the motion to obtain a mediation date and continue the hearing, whether or not you use the form, the parties must agree on a date for hearing that falls within 60 days of the date of their preferred mediation date. The prehearing conference (PHC) should be scheduled six to eight days prior to the first day of hearing and the parties should choose one of the PHC time slots available: 10:00 a.m., 1:00 p.m., or



3:00 p.m. on a Monday or Friday. Prehearing conferences are only held on Mondays and Fridays. Prehearing conferences may not be scheduled for the morning on the first Monday of the month.

The motion requesting mediation and to continue the prehearing conference and hearing dates must be submitted no later than the date the prehearing conference statements are due. The date the prehearing conference statements are due is shown on the Scheduling Order. However, all requests for mediation should be submitted as early in the process as possible for maximum benefit to the parties. All continuance requests must be submitted in writing and are called "motions."

OAH will send out a written order saying whether or not it has agreed to the new mediation date. If new dates are granted for the prehearing conference and hearing, the order will include the new dates, as well as the new mediation date.

There are detailed instructions on the optional form "Request to Set Mediation and Continue Due Process Hearing." Even if you choose not to use this form it is advisable to read these instructions first.

- To access a copy of this optional form copy and paste into your browser the following URL or click on the link.
  - [Link to form to request setting mediation and continue hearing](https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Request-to-Set-Mediation-and-for-Continuance-of-Initial-Due-Process-Hearing-if-Required)
  - <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Request-to-Set-Mediation-and-for-Continuance-of-Initial-Due-Process-Hearing-if-Required>

## **MOTION TO CONTINUE A MEDIATION, PREHEARING CONFERENCE OR HEARING DATES**

Any party may request to change a mediation, prehearing conference or hearing date by filing a motion. Asking OAH to postpone dates is called a "request for continuance."

If all parties in a case want to postpone dates, the request is called a "Joint Request for a Continuance." All parties must agree on the dates in a joint request. The parties must provide a good reason for requesting a continuance, which is called "good cause." An example of "good cause" might be illness, or that that an essential witness is not available or is out of the country until a certain date. It does not include failing to prepare for the hearing. A joint request for a continuance must be signed by all parties.

OAH has only one form to file a joint request for a continuance of the hearing and prehearing conference on the website. It is called, "Request to Set Mediation and (Continuance of Initial Due Process Hearing, if Required)." This is the same form which may be used to request an initial mediation date when also asking to continue the prehearing conference and the hearing. This form must be signed by all the parties to the case. Parties are not required to use this form to submit a joint request – parties may submit a letter instead, as long as all of the information is included.

If the parties do not agree, then the requesting party may use the form "Request for Continuance of Due Process Hearing Dates." Parties are not required to use this form – a party may submit a letter instead, as long as all of the information is included.

Hearings are only continued on a showing of good cause (i.e., the reason or reasons you are asking for a continuance.) The reason or reasons for the request for the continuance must be stated, and a signature is required under penalty of perjury.

Before filing a motion asking for a continuance of any dates, a party should first ask the other parties to agree to postpone the dates and to try to agree upon new dates. If any of the other parties do not agree, the party may file their own motion for continuance.

A motion for continuance should include:

- A statement that the parents have tried to contact all of the other parties and that the other parties do not agree to a continuance, or that the parties cannot agree on dates;
- The reason for the request; and
- The new date or dates the parents would like.

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## 11. MOTIONS

When a party wants to ask an Administrative Law Judge, referred to here as an "ALJ," to do or change something about their case, it is called a "motion." Examples of motions include requesting that a date for mediation be scheduled or that two cases be consolidated, meaning the issues in both cases are combined into one hearing.

A motion is usually made in writing and submitted to OAH after serving all parties. But a motion is sometimes made verbally during a prehearing conference or due process hearing. When a motion is made, whether it is submitted in writing or made verbally during a prehearing conference or due process hearing, all other parties have the option to respond to what is being asked for in the motion.

When OAH gets a motion, an ALJ will decide what to do in response to what a party is asking. The ALJ will either write an "order" or, if the motion is made verbally during the prehearing conference or hearing, the ALJ may make a verbal ruling on the record during a prehearing conference or during the hearing. The order tells the parties if the ALJ agrees, or does not agree, to do what the party asked for in their motion. If a written order is issued, OAH sends a copy of the order to each party.

Unless otherwise stated, a motion must be filed no later than the third business day before the prehearing conference.

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## **MOTION GUIDES**

### **HOW TO PREPARE A MOTION**

A motion is a kind of letter, which includes at least three things:

- What the party wants the ALJ to do;
- An explanation as to why the ALJ should do it; and
- Any facts the party thinks are important that support the requested action.

For example, if a party wanted to change the date of a mediation that was already scheduled because they found out they needed a medical procedure which could not be delayed, they would need to file a motion asking that the mediation date be continued, called a "motion for a continuance." This motion could be a letter with that heading in which the party explains to the ALJ why they need the date changed and why the situation is "good cause" (as it could not be anticipated in advance). The party would need to include facts about the date and time of the reason, in this example the reason is the medical procedure. They would also need to attach a copy of any documents that support the reason, in this case it could be a document from the doctor scheduling the medical procedure.

The motion must have a statement saying it was signed "under penalty of perjury." This statement should be the last sentence in the motion and should say that the person signing "declares these facts under penalty of perjury" followed by a signature and the date of the signature.

This motion would need to be served on the other side (with a proof of service) and filed with OAH. If the other side disagreed with what is requested in the motion, in this example this would be to change the mediation date, the other side would have the opportunity to file a document opposing the motion.

OAH has optional forms for some kinds of motions. For example, there is a form on the website to request a change in the date for prehearing conference or hearing. Parents may use an OAH form, send a letter to OAH, or use a more formal document. All motions must be served on the other side with a proof of service, and then a complete copy filed with OAH via mail, hand-delivery, overnight delivery, or SFT.

## **HOW TO RESPOND TO A MOTION**

Any other party may respond to the motion if they want to. If a party disagrees with the motion, they should respond in writing. They must respond within three business days. At least three things should be included in a party's opposition to the motion:

- Why the opposing party objects to what the motion asks for;
- What the opposing party thinks the ALJ should do; and
- The facts they think are important.

Anyone that sends a response to OAH must send a copy to all other parties. A "proof of service" must be attached to the response verifying that copies were sent to all the parties.

When someone sends a motion to a self-represented parent, the parent has three days to respond if the parent disagrees with the motion. If the parent cannot send a response within three days, the parent may send a letter to OAH asking for more time.

## **INFORMATION ON COMMON MOTIONS**

### **NOTICE OF INSUFFICIENCY**

When someone requests a due process hearing, which is often called a “complaint,” the complaint must include the following:

- The child's name, age, address, and school; and
- A description of the problem and how it might be fixed.

If the complaint does not include enough information, another party may file a “Notice of Insufficiency.” A “Notice of Insufficiency” states that not enough facts or information” was provided in the complaint.

A Notice of Insufficiency is a kind of motion. A response to a Notice of Insufficiency is not required or expected. The ALJ decides whether the complaint that was filed is sufficient solely by looking at the complaint itself. A Notice of Insufficiency must be filed within 15 days of the complaint being filed or the complaint is automatically deemed “legally sufficient.” That means the other side cannot require that the complaint be rewritten to include more information if a Notice of Insufficiency was not filed within 15 days after the complaint was filed. It does not mean that the other side automatically wins.

An ALJ will decide whether the complaint contains enough information. The ALJ will send an Order to all the parties. The Order will explain whether there are enough facts. If the ALJ decides that there are not enough facts, the ALJ will cancel the mediation and hearing dates. If this happens, the ALJ will usually allow 14 days for the party who filed the complaint to write a new complaint that includes more facts. The ALJ might also say which facts are missing. If the party that filed the complaint does not have a lawyer, the ALJ may explain how to get help from an OAH mediator in describing the facts about their case.

## **MOTION OR REQUEST FOR CONTINUANCE**

Any party may make a motion to postpone mediation, the prehearing conference or the hearing. Asking OAH to postpone the scheduled events is called a "Request for Continuance."

If all parties in a case want to postpone dates, the request is called a joint request for continuance. All parties must agree on the dates in a joint request. The parties must provide a good reason for requesting a continuance, which is called "good cause." An example of "good cause" might be illness, or that an essential witness is not available or out of the country until a certain date. It does not include failing to prepare for the hearing. A joint request for a continuance must be signed by all parties.

OAH has only one form to file a joint request for a continuance of the dates set for hearing and prehearing conference. It is the form "Request to Set Mediation (and Continuance of Initial Due Process Hearing Dates, if Required)." This form must be signed by all the parties to the case. The form "Request for Continuance of Special Education Due Process Hearing Dates" may be signed by all the parties (making it a joint request for continuance) but it may also be used by only one of the parties.



Before filing a motion asking for a continuance of any dates, a party should first ask the other parties to agree to postpone the dates and to try to agree upon new dates. If any of the other parties do not agree, the party may file their own motion for continuance.

A motion for continuance should include:

- A statement that parents have tried to contact the other parties and that the other parties do not agree to a continuance, or that the parties cannot agree on dates;
- The reason for the request; and,
- The new date or dates parents request.

## **MOTION FOR STAY PUT**

After filing a complaint, parents may make a motion to keep their child's educational situation the same until the ALJ determines something needs to change. This is called a motion for "stay put." A motion for stay put must include a copy of the most recent IEP that parents have agreed to. How to attach the IEP to the motion is explained below in "How to Present Evidence to Support or Respond to a Motion."

## **MOTION TO DISMISS**

Any party may make a motion to skip some or all of the due process hearing. This is called a "Motion to Dismiss." For example, if the student does not live in the district, or parents did not attend a resolution session, the district may file a motion to dismiss the case. Anyone who receives a motion to dismiss has the right to file an opposition to the motion explaining why they believe the case or portion of the case should not be dismissed.

## **MOTION TO AMEND THE DUE PROCESS REQUEST**

The party that filed the Request for Due Process (often called a "complaint") may make a motion to add more claims or add more facts to the original complaint. This is called a "Motion to Amend the Complaint." When a party files a motion to amend a complaint they must include a copy of the proposed new complaint that includes the new claims or facts. If the motion to amend a complaint is granted then the case will proceed on the information and issues in the amended complaint.

The motion should be filed as early as possible. If a motion to amend is filed less than five days before the hearing, the ALJ cannot grant the motion unless the other party agrees.

## **MOTION TO ADD A PARTY TO THE CASE**

Any party may make a motion to add another party to the case, such as a different district or county office of education. This kind of motion should be sent to the parties that are already part of the case and to the new party. The "proof of service" should include all the parties and the new party.

When a new party is added, dates and other details about the mediation and due process hearing might change but they might remain the same. **It is important to read all communications from OAH very carefully.**

## **MOTION TO CONSOLIDATE TWO OR MORE CASES**

Any party may make a motion to consolidate two or more cases into one case. "Consolidate" means to combine the cases so that there is only one hearing. Consolidation of cases may happen when there are two or more cases that involve

the same parties and facts. For example, if a parent and a district have each filed a complaint about a similar problem, the cases could be combined so there is only one hearing. Combining cases generally saves time and money for all of the parties.

## **MOTION TO CHALLENGE THE ALJ ASSIGNED TO THE HEARING**

The OAH's Special Education website includes a list of all the ALJs who hear special education matters and the educational background of each. The identity of the ALJ assigned to the hearing is also posted on the OAH website. The parties may also call the OAH staff person on the Scheduling Order to find out which ALJ has been assigned to the hearing. If a party does not want the ALJ that is assigned to the case, there are two ways to get a different ALJ for the hearing. The first way is called a "Peremptory Challenge." The second way is called a "Challenge for Cause."

### **PEREMPTORY CHALLENGE**

A peremptory challenge allows a party to disqualify an ALJ from hearing the case without stating a reason. Each party may make one peremptory challenge per case. When any party makes a timely peremptory challenge, a new ALJ is assigned to the case.

Strict time limits apply to peremptory challenges. If the ALJ assigned to the prehearing conference is the same ALJ assigned to the videoconference hearing, then the peremptory challenge must be made either before the prehearing conference or, at the very latest, at the beginning of the prehearing conference. If the prehearing conference ALJ is different than the ALJ assigned for the videoconference hearing then the peremptory challenge must be made no later than two business days before the videoconference hearing.

## **CHALLENGE FOR CAUSE**

If a party believes the assigned ALJ cannot be fair in their case, the party may file a "challenge for cause." A challenge for cause is a motion. If an ALJ is disqualified, a new ALJ will be assigned. A challenge for cause must prove that the assigned ALJ should be disqualified. Actual proof of bias or prejudice is required.

To file a challenge for cause, follow the instructions above under the heading "How to Prepare a Motion" and include evidence of why the party believes the assigned ALJ cannot be fair. To submit evidence of bias or prejudice, follow the instructions in the next section, "How to Present Evidence to Support or Respond to a Motion."

## **HOW TO PRESENT EVIDENCE TO SUPPORT OR RESPOND TO A MOTION**

Some motions need to have evidence so that the ALJ can decide important facts. For example, a motion for stay put must include a copy of the student's most recent IEP that parents have agreed upon so that the ALJ knows what the parents want.

There are two ways to submit evidence when a party is filing a motion or responding to a motion filed by another party. The first way is by written testimony. This is called a "Declaration Stating Facts." The second way is by sending OAH copies of relevant documents.

## **DECLARATION STATING FACTS**

A declaration is a written statement of facts that the person would say if the person was testifying as a witness. A declaration is written testimony. The written testimony is made under penalty of perjury. This means the written testimony is true

and the person could be penalized if the written testimony is not true. A declaration may be made by letter or in a more formal document. Sometimes a declaration may be used to identify a document and declare that the document is an original and has been unaltered.

The declaration must include at least three things:

1. The declaration must identify, at the beginning, the person making the declaration. For example, the declaration should start with the name of the person and who they are in the case, e.g. "My name is Jane Smith. I am student's mother."
2. Then the declaration must state the important facts. For example, if the parents request a continuance, one fact that the parent might say is: "I cannot attend the hearing on May 22, 2015, because I will be out of town on vacation and district will not agree to postpone the hearing."
3. The declaration must end with the "under penalty of perjury" statement and the signature of the person making the declaration.

Below is an example of the penalty of perjury statement:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at \_\_\_\_\_(write the name of the city in the blank), California, on \_\_\_\_\_(write the date in the blank).

\_\_\_\_\_(Sign name here)

\_\_\_\_\_(Print name here)

## **12. INFORMATION FROM THE DEPARTMENT OF EDUCATION**

### **NOTICE OF PROCEDURAL SAFEGUARDS**

Special Education Rights of Parents and Children Under the Individuals with Disabilities Education Act, Part B, and the California Education Code.

**Revised June 2022**

Note: The term school district is used throughout this document to describe any public education agency responsible for providing your child's special education program. The term assessment is used to mean evaluation or testing. Federal and state laws are cited throughout this notice using English abbreviations, which are explained in a glossary at the end of this notification.

### **WHAT IS THE NOTICE OF PROCEDURAL SAFEGUARDS?**

The Notice of Procedural Safeguards provides you as parents, legal guardians, and surrogate parents of children with disabilities from 3 years of age through age 21 and students who have reached age 18, the age of majority, with an overview of your educational rights, or procedural safeguards.

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The Notice of Procedural Safeguards is required under the Individuals with Disabilities Education Act (IDEA) and must be provided to you:

- When you ask for a copy
- The first time your child is referred for a special education assessment
- Each time you are given an assessment plan to evaluate your child
- Upon receipt of the first State or due process complaint in a school year, and
- When the decision is made to make a removal that constitutes a change of placement

(20 *United States Code* [USC] Section 1415[d]; 34 *Code of Federal Regulations* [CFR] Section 300.504; California *Education Code* [EC] Section 56301[d] [2] and *EC* Section 56321,)

## **WHAT IS THE IDEA?**

IDEA is a federal law that requires school districts to provide a “free appropriate public education” (FAPE) to eligible children with disabilities. A free appropriate public education means that special education and related services are to be provided as described in an individualized education program (IEP) and under public supervision to your child at no cost to you.

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## **MAY I PARTICIPATE IN DECISIONS ABOUT MY CHILD'S EDUCATION?**

You must be given the opportunity to participate in any decision-making meeting regarding your child's special education program. You have the right to participate in IEP team meetings about the identification (eligibility), assessment, or educational placement of your child and other matters relating to your child's FAPE. (20 USC Section 1414[d] [1]B–[d][1][D]; 34 CFR Section 300.321; EC Section 56341[b], and EC Section 56343[c])

The parent or guardian and the local educational agency (LEA) have the right to participate in the development of the IEP and to initiate their intent to electronically audiotape the proceedings of the IEP team meetings. At least 24 hours prior to the meeting, the parent or guardian shall notify the members of the IEP team of their intent to record a meeting. If the parent or guardian does not consent to the LEA audiotape recording an IEP meeting, the meeting shall not be recorded on an audiotape recorder.

Your rights include information about the availability of FAPE, including all program options, and all available alternative programs, both public and nonpublic. (20 USC sections 1401[3], and 1412[a][3]; 34 CFR Section 300.111; EC sections 56301, 56341.1[g][1], and 56506)

## **WHERE CAN I GET MORE HELP?**

When you have a concern about your child's education, it is important that you contact your child's teacher or administrator to talk about your child and any problems you see. Staff in your school district or special education local plan area (SELPA) may



answer questions about your child's education, your rights, and procedural safeguards. Also, when you have a concern, this informal conversation often solves the problem and helps to maintain open communication.

You may also want to contact one of the California parent organizations such as the Family Empowerment Centers on Disability (FECs) or the Parent Training and Information Centers (PTICs) located across the state. These organizations were established to increase collaboration between parents and educators to improve the educational system and provide information, training, and additional resources for families of students and young adults with disabilities. Contact information for these organizations is found on the California Department of Education (CDE) Special Education California Parent Organizations web page at: <https://www.cde.ca.gov/sp/se/qa/caprntorg.asp>.

Additional resources are listed at the end of this document to help you understand the procedural safeguards.

## **WHAT IF MY CHILD IS DEAF, HARD OF HEARING, BLIND, VISUALLY IMPAIRED, OR DEAF-BLIND?**

The State Special Schools provide services to students who are deaf, hard of hearing, blind, visually impaired, or deaf-blind at each of its three facilities: the California Schools for the Deaf in Fremont and Riverside and at the California School for the Blind in Fremont. Residential and day school programs are offered to students from infancy to age 21 at both State Schools for the Deaf. Such programs are offered to students aged 5 through 21 at the California School for the Blind. The State Special Schools also offer assessment services and

technical assistance. For more information about the State Special Schools, please visit the CDE, State Special Schools web page at: <https://www.cde.ca.gov/sp/ss/index.asp>, or ask for more information from the members of your child's IEP team.

## **NOTICE, CONSENT, ASSESSMENT, SURROGATE PARENT APPOINTMENT, AND ACCESS TO RECORDS**

### **PRIOR WRITTEN NOTICE WHEN IS A NOTICE NEEDED?**

This notice must be given when the school district proposes or refuses to initiate a change in the identification, assessment, or educational placement of your child with special needs or the provision of a FAPE. (20 USC sections 1415[b][3] and (4), 1415[c][1], and 1414[b][1]; 34 CFR Section 300.503; EC sections 56329 and 56506[a])

The school district must inform you about proposed evaluations of your child in a written notice or an assessment plan within 15 days of your written request for evaluation. The notice must be understandable and in your native language or other mode of communication, unless it is clearly not feasible to do so. (34 CFR Section 300.304; EC Section 56321)

### **WHAT WILL THE NOTICE TELL ME?**

The prior written notice must include the following:

1. A description of the actions proposed or refused by the school district;
2. An explanation of why the action was proposed or refused;

3. A description of each assessment procedure, record, or report the agency used as a basis for the action proposed or refused;
4. A statement that parents of a child with a disability have protection under the procedural safeguards;
5. Sources for parents to contact to obtain assistance in understanding the provisions of this part;
6. A description of other options that the IEP team considered and the reasons those options were rejected;
7. A description of other options that the IEP team considered and the reasons those options were rejected; and
8. A description of any other factors relevant to the action proposed or refused. (20 USC sections 1415[b][3] and [4], 1415[c][1], and 1414[b][1]; 34 CFR Section 300.503)

## **PARENTAL CONSENT**

### **WHEN IS MY APPROVAL REQUIRED FOR ASSESSMENT?**

You have the right to refer your child for special education services. You must give informed, written consent before your child's first special education assessment can proceed. The parent has at least 15 days from the receipt of the proposed assessment plan to arrive at a decision. The assessment may begin immediately upon receipt of the consent and must be completed and an IEP developed within 60 days of your consent.

## **WHEN IS MY APPROVAL REQUIRED FOR SERVICES?**

You must give informed, written consent before your school district can provide your child with special education and related services.

## **WHAT ARE THE PROCEDURES WHEN A PARENT DOES NOT PROVIDE CONSENT?**

If you do not provide consent for an initial assessment or fail to respond to a request to provide the consent, the school district may pursue the initial assessment by utilizing due process procedures.

If you refuse to consent to the initiation of services, the school district must not provide special education and related services and shall not seek to provide services through due process procedures.

If you consent in writing to the special education and related services for your child but do not consent to all of the components of the IEP, those components of the program to which you have consented must be implemented without delay.

If the school district determines that the proposed special education program component to which you do not consent is necessary to provide a FAPE to your child, a due process hearing must be initiated. If a due process hearing is held, the hearing decision shall be final and binding.

In the case of reevaluations, the school district must document reasonable measures to obtain your consent. If you fail to respond, the school district may proceed with the reevaluation without your consent. (20 USC sections 1414[a][1][D] and 1414[c]; 34 CFR Section 300.300; EC sections 56506[e], 56321[c] and [d], and 56346).

## WHEN MAY I REVOKE CONSENT?

If at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency:

1. May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 34 *CFR* Section 300.503 before ceasing such services
2. May not use the procedures in subpart E of Part 300 34 *CFR* (including the mediation procedures under 34 *CFR* Section 300.506 or the due process procedures under 34 *CFR* Sections 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child
3. Will not be considered to be in violation of the requirement to make a FAPE available to the child because of the failure to provide the child with further special education and related services
4. Is not required to convene an IEP team meeting or develop an IEP under 34 *CFR* sections 300.320 and 300.324 for the child for further provision of special education and related services.

Please note, in accordance with 34 *CFR* Section 300.9 (c)(3), that if the parents revoke consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

## **SURROGATE PARENT APPOINTMENT**

### **WHAT IF A PARENT CANNOT BE IDENTIFIED OR LOCATED?**

School districts must ensure that an individual is assigned to act as a surrogate parent for the parents of a child with a disability when a parent cannot be identified and the school district cannot discover the whereabouts of a parent.

A surrogate parent may also be appointed if the child is an unaccompanied homeless youth, an adjudicated dependent or ward of the court under the state Welfare and Institution Code, and is referred to special education or already has an IEP. (20 USC Section 1415[b][2]; 34 CFR Section 300.519; EC Section 56050; Government Code Section 7579.5 and 7579.6)

## **NONDISCRIMINATORY ASSESSMENT**

### **HOW IS MY CHILD ASSESSED FOR SPECIAL EDUCATION SERVICES?**

You have the right to have your child assessed in all areas of suspected disability. Materials and procedures used for assessment and placement must not be racially, culturally, or sexually discriminatory.

Assessment materials must be provided and the test administered in your child's native language or mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer.

No single procedure can be the sole criterion for determining eligibility and developing FAPE for your child. (20 USC sections 1414[b][1]–[3], 1412[a][6][B]; 34 CFR Section 300.304; EC sections 56001[j] and 56320)

## **INDEPENDENT EDUCATIONAL ASSESSMENTS**

### **MAY MY CHILD BE TESTED INDEPENDENTLY AT THE DISTRICT'S EXPENSE?**

If you disagree with the results of the assessment conducted by the school district, you have the right to ask for and obtain an independent educational assessment for your child from a person qualified to conduct the assessment at public expense.

The parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

The school district must respond to your request for an independent educational assessment and provide you information about where to obtain an independent educational assessment.

If the school district believes that the district's assessment is appropriate and disagrees that an independent assessment is necessary, the school district must request a due process hearing to prove that its assessment was appropriate. If the district prevails, you still have the right to an independent assessment but not at public expense. The IEP team must consider independent assessments.

District assessment procedures allow in-class observation of students. If the school district observes your child in their classroom during an assessment, or if the school district would have been allowed to observe your child, an individual conducting an independent educational assessment must also be allowed to observe your child in the classroom.

If the school district proposes a new school setting for your child and an independent educational assessment is being conducted, the independent assessor must be allowed to first observe the proposed new setting. (20 USC sections 1415[b][1] and [d][2][A]; 34 CFR Section 300.502; EC Section 56329[b] and [c])

## **ACCESS TO EDUCATIONAL RECORDS**

### **MAY I EXAMINE MY CHILD'S EDUCATIONAL RECORDS?**

You have a right to inspect and review all of your child's education records without unnecessary delay, including prior to a meeting about your child's IEP or before a due process hearing. The school district must provide you access to records and copies, if requested, within five business days after the request has been made orally or in writing. (EC sections 49060, 56043[n], 56501[b][3], and 56504)

## **HOW DISPUTES ARE RESOLVED**

### **DUE PROCESS HEARING**

#### **WHEN IS A DUE PROCESS HEARING AVAILABLE?**

You have the right to request an impartial due process hearing regarding the identification, assessment, and educational placement of your child or the provision of



FAPE. The request for a due process hearing must be filed within two years from the date you knew or should have known about the alleged action that forms the basis of the due process complaint. (20 USC Section 1415[b][6]; 34 CFR Section 300.507; EC sections 56501 and 56505[l])

## **MEDIATION AND ALTERNATIVE DISPUTE RESOLUTION**

### **MAY I REQUEST MEDIATION OR AN ALTERNATIVE WAY TO RESOLVE THE DISPUTE?**

A request for mediation may be made either before or after a request for a due process hearing is made.

You may ask the school district to resolve disputes through mediation or alternative dispute resolution (ADR), which is less adversarial than a due process hearing. The ADR and mediation are voluntary methods of resolving a dispute and may not be used to delay your right to a due process hearing.

### **WHAT IS A PRE-HEARING MEDIATION CONFERENCE?**

You may seek resolution through mediation prior to filing a request for a due process hearing. The conference is an informal proceeding conducted in a non-adversarial manner to resolve issues relating to the identification, assessment, or educational placement of a child or to a FAPE.

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At the prehearing mediation conference, the parent or the school district may be accompanied and advised by non-attorney representatives and may consult with an attorney prior to or following the conference. However, requesting or participating in a prehearing mediation conference is not a prerequisite to requesting a due process hearing.

All requests for a prehearing mediation conference shall be filed with the Superintendent of the Office of Administrative Hearings (OAH). The party initiating a prehearing mediation conference by filing a written request with the Superintendent of the OAH shall provide the other party to the mediation with a copy of the request at the same time the request is filed.

The prehearing mediation conference shall be scheduled within 15 days of receipt by the Superintendent of the OAH of the request for mediation and shall be completed within 30 days after receipt of the request for mediation unless both parties agree to extend the time. If a resolution is reached, the parties shall execute a legally binding written agreement that sets forth the resolution. All discussions during the mediation process shall be confidential. All prehearing mediation conferences shall be scheduled in a timely manner and held at a time and place reasonably convenient to the parties.

If the issues fail to be resolved to the satisfaction of all parties, the party who requested the mediation conference has the option of filing for a due process hearing. (EC sections 56500.3 and 56503)

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## **DUE PROCESS RIGHTS**

### **WHAT ARE MY DUE PROCESS RIGHTS?**

You have a right to:

1. Have a fair and impartial administrative hearing at the state level before a person who is knowledgeable of the laws governing special education and administrative hearings. (20 *USC* sections 1415[f][1][A], and 1415[f][3][A]-[D]; 34 *CFR* Section 300.511; *EC* Section 56501[b][4])
2. Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities. (*EC* Section 56505 [e][1])
3. Present evidence, written arguments, and oral arguments. (*EC* Section 56505[e][2])
4. Confront, cross-examine, and require witnesses to be present. (*EC* Section 56505[e][3])
5. Receive a written or, at the option of the parent, an electronic verbatim record of the hearing, including findings of fact and decisions. (*EC* Section 56505[e][4])
6. Have your child present at the hearing. (*EC* Section 56501[c][1])
7. Have the hearing be open or closed to the public. (*EC* Section 56501[c][2])

8. Receive a copy of all documents, including assessments completed by that date and recommendations, and a list of witnesses and their general area of testimony
9. Within five (5) business days before a hearing. (*EC* sections 56505[e][7] and 56043[v])
10. Be informed by the other parties of the issues and their proposed resolution of the issues at least ten (10) calendar days prior to the hearing. (*EC* Section 56505[e][6])
11. Have an interpreter provided. (*California Code of Regulations*, Title 5 (5 *CCR*) Section 3082[d])
12. Request an extension of the hearing timeline. (*EC* Section 56505[f][3])
13. Have a mediation conference at any point during the due process hearing. (*EC* Section 56501[b][2]), and
14. Receive notice from the other party at least ten days prior to the hearing that the other party intends to be represented by an attorney (*EC* Section 56507[a]). (20 *USC* Section 1415[e]; 34 *CFR* sections 300.506, 300.508, 300.512 and 300.515)

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## **FILING A WRITTEN DUE PROCESS COMPLAINT HOW DO I REQUEST A DUE PROCESS HEARING?**

You need to file a written request for a due process hearing. You or your representative needs to submit the following information in your request:

1. Name of the child
2. Address of the residence of the child
3. Name of the school the child is attending
4. In the case of a homeless child, available contact information for the child and the name of the school the child is attending, and
5. A description of the nature of the problem, including facts relating to the problem(s) and a proposed resolution of the problem(s)

Federal and state laws require that either party filing for a due process hearing must provide a copy of the written request to the other party. (20 *USC* sections 1415[b][7], and 1415[c][2]; 34 *CFR* Section 300.508; *EC* Section 56502[c][1])

Prior to filing for a due process hearing, the school district shall be provided the opportunity to resolve the matter by convening a resolution session, which is a meeting between the parents and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process hearing request. (20 *USC* Section 1415[f][1][B]; 34 *CFR* Section 300.510)

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## **WHAT DOES A RESOLUTION SESSION INCLUDE?**

Resolution sessions shall be convened within 15 days of receiving notice of the parents' due process hearing request. The sessions shall include a representative of the school district who has decision-making authority and not include an attorney of the school district unless an attorney accompanies the parent. The parent of the child may discuss the due process hearing issue and the facts that form the basis of the due process hearing request.

The resolution session is not required if the parent and the school district agree in writing to waive the meeting. If the school district has not resolved the due process hearing issue within 30 days, the due process hearing may occur. If a resolution is reached, the parties shall execute a legally binding agreement. (20 USC Section 1415[f][1][B]; 34 CFR Section 300.510)

## **DOES MY CHILD'S PLACEMENT CHANGE DURING THE PROCEEDINGS?**

The child involved in any administrative or judicial proceeding must remain in the current educational placement unless you and the school district agree on another arrangement. If you are applying for initial admission of your child to a public school, your child will be placed in a public school program with your consent until all proceedings are completed. (20 USC Section 1415[j]; 34 CFR Section 300.518; EC Section 56505[d])

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## **MAY THE DECISION BE APPEALED?**

The hearing decision is final and binding on both parties. Either party may appeal the hearing decision by filing a civil action in state or federal court within 90 days of the final decision. (20 USC sections 1415[i][2] and [3][A], and 1415[l]; 34 CFR Section 300.516; EC Section 56505[h] and [k], EC Section 56043[w])

## **WHO PAYS FOR MY ATTORNEYS' FEES?**

In any action or proceeding regarding the due process hearing, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you as parent of a child with a disability if you are the prevailing party in the hearing. Reasonable attorneys' fees may also be made following the conclusion of the administrative hearing, with the agreement of the parties. (20 USC Section 1415[i][3][B]–[G]; 34 CFR Section 300.517; EC Section 56507[b])

Fees may be reduced if any of the following conditions prevail:

1. The court finds that you unreasonably delayed the final resolution of the controversy
2. The attorneys' hourly fees exceed the prevailing rate in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience
3. The time spent and legal services provided were excessive, or
4. Your attorney did not provide to the school district the appropriate information in the due process request notice.

Attorneys' fees will not be reduced, however, if the court finds that the State or the school district unreasonably delayed the final resolution of the action or proceeding or that there was a violation of this section of law. (20 USC Section 1415[i][3][B]-[G]; 34 CFR Section 300.517)

Attorneys' fees relating to any meeting of the IEP team may not be awarded unless an IEP team meeting is convened as a result of a due process hearing proceeding or judicial action. Attorneys' fees may also be denied if you reject a reasonable settlement offer made by the district/public agency 10 days before the hearing begins and the hearing decision is not more favorable than the offer of settlement. (20 USC Section 1415[i][3][B]-[G]; 34 CFR Section 300.517)

## **TO OBTAIN MORE INFORMATION OR TO FILE FOR MEDIATION OR A DUE PROCESS HEARING, CONTACT:**

Office of Administrative Hearings  
Attention: Special Education Division  
2349 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833-4231  
Phone: 916-263-0880  
Fax: 916-263-0890]

The OAH can also be contacted by email using the Secure e-File Transmission (SFT) system. The SFT may be found on OAH's website at:

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

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## **SCHOOL DISCIPLINE AND ALTERNATIVE INTERIM EDUCATIONAL SETTINGS**

### **MAY MY CHILD BE SUSPENDED OR EXPELLED?**

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct from their setting to:

- An appropriate interim alternative education setting, another setting, or suspension for not more than 10 consecutive school days
- Additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct

### **WHAT OCCURS AFTER A REMOVAL OF MORE THAN 10 DAYS?**

After a child with a disability has been removed from their current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to enable the child to continue to participate in the general education curriculum and progress toward meeting the goals set out in the child's IEP. Also, a child will receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not recur.

If a child exceeds 10 days in such a placement, an IEP team meeting must be held to determine whether the child's misconduct is caused by the disability. This IEP team meeting must take place immediately, if possible, or within 10 days of the school district's decision to take this type of disciplinary action.

As a parent you will be invited to participate as a member of the IEP team. The school district may be required to develop an assessment plan to address the misconduct or, if your child has a behavior intervention plan, review and modify the plan as necessary.

### **WHAT HAPPENS IF THE IEP TEAM DETERMINES THAT THE MISCONDUCT IS NOT CAUSED BY THE DISABILITY?**

If the IEP team concludes that the misconduct was not a manifestation of the child's disability, the school district may take disciplinary action, such as expulsion, in the same manner as it would for a child without a disability. (20 USC Section 1415[k][1] and [7]; 34 CFR Section 300.530)

If you disagree with the IEP team's decision, you may request an expedited due process hearing, which must occur within 20 school days of the date on which you requested the hearing. (20 USC Section 1415[k][2]; 34 CFR Section 300.531[c])

Regardless of the setting, the school district must continue to provide FAPE for your child. Alternative educational settings must allow the child to continue to participate in the general curriculum and ensure continuation of services and modifications detailed in the IEP. (34 CFR Section 300.530; EC Section 48915.5[b])

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## **CHILDREN ATTENDING PRIVATE SCHOOL**

### **MAY STUDENTS WHO ARE PARENTALLY PLACED IN PRIVATE SCHOOLS PARTICIPATE IN PUBLICLY FUNDED SPECIAL EDUCATION PROGRAMS?**

Children who are enrolled by their parents in private schools may participate in publicly funded special education programs. The school district must consult with private schools and with parents to determine the services that will be offered to private school students. Although school districts have a clear responsibility to offer FAPE to students with disabilities, those children, when placed by their parent in private schools, do not have the right to receive some or all of the special education and related services necessary to provide FAPE. (20 USC Section 1415[a][10][A]; 34 CFR sections 300.137 and 300.138; EC Section 56173)

If a parent of an individual with exceptional needs who previously received special education and related services under the authority of the school district enrolls the child in a private elementary school or secondary school without the consent of or referral by the local educational agency, the school district is not required to provide special education if the district has made FAPE available. A court or a due process hearing officer may require the school district to reimburse the parent or guardian for the cost of special education and the private school only if the court or due process hearing officer finds that the school district had not made FAPE available to the child in a timely manner prior to that enrollment in the private elementary school or secondary school and that the private placement is appropriate. (20 USC Section 1412[a][10][C]; 34 CFR Section 300.148; EC Section 56175)

## **WHEN MAY REIMBURSEMENT BE REDUCED OR DENIED?**

The court or hearing officer may reduce or deny reimbursement if you did not make your child available for an assessment upon notice from the school district before removing your child from public school. You may also be denied reimbursement if you did not inform the school district that you were rejecting the special education placement proposed by the school district, including stating your concerns and intent to enroll your child in a private school at public expense.

Your notice to the school district must be given either:

- At the most recent IEP team meeting you attended before removing your child from the public school, or
- In writing to the school district at least 10 business days (including holidays) before removing your child from the public school. (20 *USC* Section 1412[a][10][C]; 34 *CFR* Section 300.148; *EC* Section 56176)

## **WHEN MAY REIMBURSEMENT NOT BE REDUCED OR DENIED?**

A court or hearing officer must not reduce or deny reimbursement to you if you failed to provide written notice to the school district for any of the following reasons:

- The school prevented you from providing notice
- You had not received a copy of this Notice of Procedural Safeguards or otherwise been informed of the requirement to notify the district
- Providing notice would likely have resulted in physical harm to your child

- Illiteracy and inability to write in English prevented you from providing notice, or
- Providing notice would likely have resulted in serious emotional harm to your child. (20 *USC* Section 1412[a] [10] [C]; 34 *CFR* Section 300.148; *EC* Section 56177)

## **SENATE BILL 511, FAMILY EMPOWERMENT CENTERS**

The Family Empowerment Centers (FECs) were established in 2001 by enactment of Chapter 690 of the Statutes of 2001 (Senate Bill 511, Alpert), enacted as *Education Code* (*EC*) 56400-56415. The FECs provide services to families with children with disabilities ages three to twenty-two. The intent of the legislation is to ensure that parents, guardians, and families of children and young adults with disabilities have access to accurate information, specialized training, and peer-to-peer support.

For more information on FECs, including a list of FECs, please click on [Family Empowerment Centers - FEC Contact List](#) or copy and paste the following URL into your browser:

<https://californiafamilyempowermentcenters.org/overview.html>

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## COMMON ABBREVIATIONS AND ACRONYMS

ACRONYMS	TERM	DEFINITION
	Accommodations	Changes in how a student accesses curriculum or demonstrates learning without altering the instructional content or expectations.
	Adapted Curriculum	An alternative in the general education curriculum that includes the same content and to some extent the same sequence as regular education.
	Adaptation	Any modification to the classroom, instruction or materials that strengthens the student performance or allows participation.
	Adaptive Behavior	Usually measured by scales that identify how well a person manages within his or her own environment, such as self-care tasks like dressing oneself or feeding oneself.
<b>ADL</b>	Activities of Daily Living	Activities that make a student independent in his or her environment such as dressing, eating, and toileting.
<b>APE</b>	Adapted Physical Education	A service provided by school districts consisting of physical education to students whose disabilities interfere with their participation in mainstream physical education.
	Administrator/Designee	A representative designated by administration, other than a pupil's teacher.
	Affective	A term that refers to emotions and attitudes.
<b>ADR</b>	Alternative Dispute Resolution	An interest-based approach to resolving disagreements between parties. ADR includes mediation.
	Annual Goals	A required component of an IEP. Goals are written for the individual student and can be for a maximum of one year.

ACRONYMS	TERM	DEFINITION
<b>ABA</b>	Applied Behavioral Analysis	Behavior-analytic approach frequently used to teach student with autism. Discrete Trial Training (DTT methods rely on ABA approach.)
	Asperger's	Asperger's Disorder is a former term to diagnose relatively high-functioning persons in some areas, but having difficulties with socialization and communication. The 2013 revisions to the American Psychiatric Association's Diagnostic and Statistical Manual V (DSM V) no longer uses this diagnosis as now part of Autism Spectrum Disorder.
	Assistive Technology Device	Refers to any item, piece of equipment, or product system—whether acquired commercially off the shelf, modified, or customized that is used to increase, maintain, or improve the functional capabilities of a student with a disability. (See Ed. Code, § 56020.5)
<b>ADHD</b>	Attention Deficit Hyperactivity Disorder	A condition identified as a medical diagnosis by the DSM V. Related to condition of Attention Deficit Disorder (ADD). Although it is not an eligibility category under the IDEA, children with this condition may be eligible for special education under other categories or under Section 504. (See Ed. Code, § 56339)
<b>ASD</b>	Autism Spectrum Disorder	Autism Spectrum Disorder is a neurological and developmental disorder that affects how people interact with others, communicate, learn, and behave. People with ASD often have difficulty with communication and interaction with other people, restricted interests and repetitive behaviors, and symptoms that affect their ability to function in school, work, and other areas of life. Autism is known as a “spectrum” disorder because there is wide variation in the type and severity of symptoms people experience.

ACRONYMS	TERM	DEFINITION
	Assessment	Observation and testing of children to identify the strengths and weakness of the child and to determine progress in order to develop an appropriate education plan. Sometimes called an evaluation. (See Ed. Code, § 56320, et seq.)
	Behavior Interventions	The systematic implementation of procedures that results in lasting positive changes in the individual's behavior. (Ed. Code, §§ 56520 through 56525.)
<b>BICM</b>	Behavioral Intervention Case Manager	A designated certificated school district SELPA staff member or other qualified personnel contracted by the school district that has been trained in behavioral analysis and positive behavioral interventions. (See Ed. Code, § 56025.)
<b>BIP</b>	Behavioral Intervention Plan	A written document, which is developed when an individual exhibits a serious behavior problem that significantly interferes with the implementation of the goals of the individual's IEP. The behavioral intervention plan becomes part of the IEP. LEAs are required to develop a BIP in some circumstances for students with behavioral problems. (See Ed. Code, § 56523.)
<b>CARD</b>	Center for Autism & Related Disorders	One of many NPAs providing Lovaas type programs.
	Categorical Placement	Special Education programs in which students are grouped on the basis of their IDEA eligibility category. Alternative models include "non-categorical" placement and "cross-categorical" placement.
	Chapter 26.5	The section of the California Government Code that governs interagency responsibilities under the IDEA and related California laws for the delivery of occupational therapy and physical therapy services to eligible students receiving medically necessary occupational therapy and physical therapy services.



ACRONYMS	TERM	DEFINITION
	Child Find	Also known as “search and serve.” School districts are required to actively seek out and identify students within their boundaries who may be eligible for special education, and have a system in place to do so. (20U.S.C § 1412(a)(3); Cal. Ed. Code, §§ 56300 through 56302.)
	Cognitive	A term that refers to reasoning or intellectual capacity.
<b>CALP</b>	Cognitive Academic Language Proficiency	A level of competence required in oral and written language related to literacy and academic achievement.
<b>CAC</b>	Community Advisory Committee	A group of parents, community members, and district staff appointed by, and responsible to, the SELPA. It advises the SELPA in the development and implementation of the local plan for special education. It also assists in parent education and public involvement in the development of the local plan and supporting activities on behalf of students with disabilities.
	Community Based	When skills are taught at varied locations in the community rather than in the classroom. This is done in order to facilitate generalization and application.
	Comp Ed.	Compensatory education and/or related services provided to remedy a denial of FAPE.
	Continuum of Services	The range of services that must be available to the students of a school district so that they may be served in the least restrictive environment (LRE).

ACRONYMS	TERM	DEFINITION
	Core Academics	The required subjects in middle and high school, usually English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. (20 U.S.C. §1401(4), incorporating by reference 20U.S.C. § 7801(11); 34 CFR §300.10.)
	Cued Speech	Method of communication used by some persons with hearing impairments. It is used to reduce the ambiguities involved in lip reading. This method is caught in the controversy between teaching deaf children to rely on oral methods of communication or to use sign language.
	Deaf/Blind	Student with both hearing and vision disability. (20 U.S.C. § 1401(3) & (30); 34 CFR § 300.81(2).)
	Deaf/Hard of Hearing	Student who has a measurable hearing loss, conductive or sensor neural, in either one or both ears. This limits the normal acquisition of speech and language through the ear. (20 U.S.C. § 1401(3)& (30); 34 CFR §300.81(3).)
	Delay	Generally refers to intellectual or skills development not occurring within expected time ranges.
<b>DIS</b>	Designated Instruction and Services	Transportation and such development corrective and other supportive services as may be required to assist a student with a disability to benefit from special education. Also known in IDEA as related services. School districts are required to provide whatever DIS (other than medical care which is not for diagnostic purposes) a child needs in order to benefit from his or her special education program. (20 U.S.C. § 1402(26); 34C.F.R. § 300.24; and Ed. Code, § 56363.)
<b>DTT</b>	Discrete Trial Training	Type of instruction for children with autism. Based upon ABA principles.

ACRONYMS	TERM	DEFINITION
	Due Process	All procedural safeguards of public law and related laws and regulations. (20U.S.C. 1415; 34 C.F.R. §104.36.)
<b>EC</b>	California Education Code	The body of statutes that governs education, including special education, in the State of California.
<b>EHA</b>	Education for all Handicap Children Act	A federal law more commonly identified as P.L. 94-142. It became effective in 1975 and has been significantly modified by the Individuals with Disabilities Education Act (1977).
<b>ED</b>	Emotionally Disturbed	An emotional problem that has existed for a period of time, to a marked degree, that adversely affects a child's educational performance. This is a category of eligibility for special education. (20 U.S.C. § 1401(3)& (30); 34C.F.R. § 300.81(4)(i); Cal. Code Regs., tit. 5, § 3030, subd. (i).)
	Expedited Hearing	A provision of the IDEA that streamlines a due process hearing when the student has violated a code of student conduct. (20 U.S.C. § 1415(k), 34C.F.R. § 300.532.)
<b>ESD</b>	Extended School Day	A provision for a special education student to receive instruction for a period longer than the standard school day. This sometimes includes "double" kindergarten, later afternoons, or earlier starting times.
<b>ESY</b>	Extended School Year	The special education program provided between school sessions when the IEP team determines they are needed to prevent regression of skills. ESY services are required to be included in the IEP and provided to the pupil if the pupil's IEP team determines, on an individual basis, that the services are necessary for the provision of a FAPE to the pupil. (Ed. Code, § 56345(b)(3), citing 34 CFR § 300.309.)

ACRONYMS	TERM	DEFINITION
	Fair Hearing	A formal hearing that is requested by parents or school district personnel. Issues that may be considered under the fair hearing procedures are limited to eligibility, assessment, the individualized education program, and placement of individuals with exceptional needs. Also known as “due process hearing.”
<b>FERPA</b>	Family Education Rights and Privacy Act	A federal law that regulates the management of student records and disclosure of information from those records. FERPA mandates confidentiality of special education matters, including confidentiality of names of special education students. FERPA has its own administrative enforcement mechanism (not covered by due process hearings).
	Family Empowerment Center	Family Empowerment Center are community-based organizations that provides support, resources, and training to families of children and young adults with disabilities
	Fine Motor	Functions which require tiny muscle movements. For example, writing or typing would require fine motor movement. Services typically associated with deficits in this area include occupational therapy.
<b>FAPE</b>	Free Appropriate Public Education	Every school age child with a disability is entitled to an education that meets his/her individual needs, which is at no cost to parents. Specifically, FAPE refers to special education and related services that (1) are provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the state educational agency, including the requirements of the federal regulations for the education of children with disabilities; (3) include an appropriate preschool, elementary, or secondary school education in the state involved; and (4) are provided in conformity with a qualifying individualized education program. (20 U.S.C. § 1401(9); 34 CFR §300.17; Ed Code § 56040.)

ACRONYMS	TERM	DEFINITION
<b>FAA</b>	Functional Analysis Assessment	Under California law, school districts must conduct an FAA when a student demonstrates a “serious behavior problem,” which is defined in Cal. Code of Regs., title 5, § 3001 and 3052. An FAA is also referred to as a “Hughes Bill” assessment.
<b>FBA</b>	Functional Behavioral Assessment	Under federal law, school districts must conduct an FBA when the student’s behavior impedes his or her own learning or that of others. (34 C.F.R. § 300.346.) FBAs may also be required in relation to some disciplinary actions.
	Functional Curriculum	A curriculum focused on practical life skills and usually taught in community-based settings with concrete materials that are a regular part of everyday life. The purpose of this type of instruction is to maximize the student’s generalization to real life use of his/her skills.
<b>IEE</b>	Independent Educational Evaluation	A private evaluation typically obtained by parents when they do not agree with the results of an evaluation performed by the LEA. If parents disagree with an LEA’s evaluation, the parents may seek an IEE at public expense. (Cal. Ed. Code, § 56329(b).)
<b>IEP</b>	Individualized Education Program	A written statement, mandated by law, that defines a child’s disability, states current levels or educational needs, and specifies annual goals, and evaluation and progress reporting schedule. (20 U.S.C. § 1414(d); 34C.F.R. § 300.22; referring to 20 U.S.C. §§ 1400 to 1482, and Ed. Code, §§ 56032, 56345 & 56345.1.)
	IEP Team Meeting	A gathering required at least annually under IDEA in which an IEP is developed for a student receiving special education. The IEP Team meeting usually includes the student’s parents and classroom and resource teachers.

ACRONYMS	TERM	DEFINITION
<b>IEP Team</b>	Individualized Education Program Team	The team is composed of an administrator or his/her designee, the student's special education and general education teacher, and the parent. Other members may include the student, those who have assessed the student, and others as appropriate. The IEP Team is responsible for developing, reviewing, or revising an IEP for a child with a disability. (20 USC § 1414(d)(1)(B); 34 CFR §300.23; and Ed. Code, § 56341.)
	Inclusion	A placement for a student with a disability that in a classroom with typically developing peers (nondisabled students). The term is related to mainstreaming and LRE.
<b>IFSP</b>	Individualized Family Service Plan	Similar to an IEP, but an IFSP is for eligible children from birth to age three. IFSP is a document that outlines the services to be delivered to families of infants and toddlers receiving early intervention services pursuant to Part C of the IDEA. (20 U.S.C. § 1436; 34 C.F.R. § 300.24, incorporating by reference 20 U.S.C. § 1436.)
<b>IDELR</b>	Individuals with Disabilities Education Law Reporter	Specialized full text reporting service publishes policy letter and administrative level actions as well as case law.
<b>IWENS</b>	Individuals With Exceptional Needs	Individuals from infancy through 21 identified by an individualized education program team as having a disability or condition that requires specialized instruction and/or services. (Ed. Code, § 56026.)
	Intellectual Disability	Student with significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. (20 U.S.C. § 1401(3) & (30); 34 C.F.R. §300.81(6).)

ACRONYMS	TERM	DEFINITION
<b>IAES</b>	Interim Alternative Education Setting	(IDEA 20 U.S.C. § 1415(k).) If a special education student violates a code of student conduct, school personnel may consider changing the educational placement of the student to an IAES. Most typically, a school will place a student in an IAES for up to 45 days\ in special circumstances” discipline cases (weapons, drugs, serious bodily injury) pursuant to 20 U.S.C. § 1415(k)(1)(F).
	In-home Interventions	Special education services delivered in a child’s own home.
<b>LD</b>	Learning Disability	An eligibility category under IDEA and California Education Code. Technically known as “specific learning disability,” as listed below. Includes dyslexia. (45 C.F.R. § 1308.14.)
<b>LRE</b>	Least Restrictive Environment	A learning environment for a student with exceptional needs that meets his/her learning needs while providing maximum interaction with the general school population in a manner appropriate to the needs of the student and his/her peers. IDEA requires that, to the maximum extent appropriate, children with disabilities shall be educated with children who are not disabled. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114 (2006); Ed Code, §§ 56031, 56342, subd. (b), & 56364, subd. (a).)
<b>LEP</b>	Limited English Proficiency	Also known as English language learner (ELL). Students whose primary language is other than English, who lack competence in the English language, and for whom linguistically appropriate goals, are developed. (20 U.S.C. § 1401(18); 34 C.F.R. § 300.27.)

ACRONYMS	TERM	DEFINITION
LEA	Local Education Agency	A public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a state, or for such combination of school districts or counties as are recognized in a state as an administrative agency for its public elementary or secondary schools. (E.g., a school district.) (20 U.S.C. § 1401(19)(A), (19)(B), (19)(C); 34 C.F.R. § 300.28(a), (b), (c); Cal. Ed. Code § 56026.3.)
	Lovaas	Type of program for students with autism. Program typically involved in providing intensive, one-to-one DTT services to autistic preschoolers for forty hours per week. Based upon research conducted by Dr. Ivar Lovaas at UCLA.
	Mainstreaming	This term refers to IDEA's preference for the education of every child in the least restrictive environment (LRE) for each student. This term has been most widely used to refer to placement of disabled children in a regular classroom for a portion of each school day.
	Manifestation Determination	IDEA 20 U.S.C. § 1415(k)(1)I. Within 10 school days of a decision by a school district to change the placement of a child with a disability based upon a violation of a code of conduct, the district must convene a manifestation determination meeting with the purpose of determining whether the conduct was a manifestation of the student's disability. (34 C.F.R. § 300.530, 300.532(2006).)
	Mediation	A voluntary dispute resolution process that is offered by OAH to all parties involved in special education disputes before OAH. (20 U.S.C. § 1415I and Ed. Code, §§ 56500.3 & 56503.)
	Mediation Only	A type of special education case in which the petitioner has requested mediation but not a due process hearing.



ACRONYMS	TERM	DEFINITION
	Modifications	Alterations to the curriculum or expectations, changing what the student is taught or is expected to learn, typically for students with more significant disabilities.
<b>MDC</b>	Multidisciplinary Conference	A requested gathering under IDEA and is the only body that can make certain determinations – specifically about a child’s eligibility for special education.
	Multidisciplinary Team	Using a combination of the skills of several persons with specialized areas of training for a common purpose, i.e. assessment of student to determine eligibility for services.
<b>NCLB</b>	No Child Left Behind	A federal school reform law that seeks to improve the quality of public schools around the United States.
<b>NPA</b>	Nonpublic Agency	Private agency providing related services. Means a private, nonsectarian establishment or individual that provides related services necessary for an individual with exceptional needs to benefit educationally from the pupil’s educational program pursuant to an IEP. NPAs are certified by CDE. (Ed. Code, § 56035.)
<b>NPS</b>	Nonpublic Schools	A private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an IEP. NPS’s are certified by CDE. (Ed. Code, § 56034)
<b>OT</b>	Occupational Therapy	A special education related service which addresses areas including fine motor skills, gross motor skills, self help skills, and activities of daily living, sensory integration and sensory processing. (34 C.F.R. § 300.34.)
<b>OAH</b>	Office of Administrative Hearings	OAH is an independent state agency designated by CDE to provide mediation and hearing services in special education cases. OAH conducts hearings and provides a neutral forum for fair and independent resolution of matters.

ACRONYMS	TERM	DEFINITION
<b>OCR</b>	US Office of Civil Rights	An agency of the federal government's executive branch within the Department of Education. It is charged with enforcing a number of civil rights statutes including Section 504.
<b>OSEP</b>	US Office of Special Education Programs	A federal office charged with assuring that the various states comply with IDEA.
<b>OHI</b>	Other Health Impaired	This is a category of eligibility for special education services. It means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that: (1) is due to chronic or acute health problems such as asthma, ADD or ADHD, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and (2) adversely affects a child's educational performance. (20 U.S.C. § 1401(3) & (30); 34 C.F.R. § 300.81(9).)
<b>OH</b>	Orthopedically Handicapped	A severe orthopedic impairment that adversely affects a child's educational performance, including impairments caused by congenital anomaly (for example, clubfoot, absence of some member, and the like), disease (for example, poliomyelitis, bone tuberculosis, and the like), and other causes (for example, cerebral palsy, amputations, and fractures or burns that cause contractures). (20 U.S.C. § 1401(3) & (30); 34 C.F.R. §300.81(8).) This is a category of eligibility for special education services.
<b>PTIC</b>	Parent Training and Information Center	A Parent Training and Information Center is a resource center that provides training, information, and support to parents of children with disabilities, as well as professionals and other individuals who work with them.

ACRONYMS	TERM	DEFINITION
<b>PT</b>	Physical Therapy	Means services provided by a qualified physical therapist. (34 C.F.R. §300.341(9).) PT consists of treatment of physical disabilities given by a trained physical therapist that includes the use of massage, exercise, etc., to help the person improve the use of bones, muscles, joints and nerves Physical therapy may be a related service, or DIS, under Ed. Code, §56363.
<b>PDD</b>	Pervasive Developmental Disorders	Pervasive Developmental Disorder is now part Autism Spectrum Disorder in the DSM-V.
<b>PECS</b>	Picture Exchange Communication System	Program wherein children with limited communication ability use pictures of items to communicate their wants and needs. Teachers may also set up a picture schedule so the child will understand what his/her daily schedule is.
	Placement	California Code of Regulations, title 5, section 3042, defines “educational placement” as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (See also 34 C.F.R. § 104.35.)
	Policy	Refers to a procedure, philosophy or standard that has been formally adopted and is intended to assist in the governance and provision of programs in the school district.
	Present levels of Educational Performance	A required IEP component

ACRONYMS	TERM	DEFINITION
PWN	Prior written notice	When a school district proposes to initiate or change, or <i>refuses</i> to initiate or change, the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education (FAPE) to the child, the school district must first provide notice to the student's parents in writing, commonly referred to as "prior written notice." (20U.S.C. § 1415(b)(3)(A); 34 C.F.R. § 300.503(a)(1)(2006); Ed. Code, § 56500.4, subd. (a).)
	Referral	The request to identify and assess a child's possible special education needs: a referral may be made by a parent, teacher, medical personnel, or anyone with specific knowledge of the child. Notice to a school district that a child may be in need of special education. A referral triggers the running of certain timelines for assessment and holding an IEP meeting. (Ed. Code, § 56029.)
RC	Regional Centers	Community agencies throughout California which are mandated to provide services to individuals with qualifying disabilities. Regional Centers provide early intervention services to infants and toddlers with disabilities pursuant to part C of the IDEA, but do not provide special education services under Part B of the IDEA, the part of the IDEA which our due process hearings cover. Regional Centers cannot be parties in special education hearings; a separate hearing process exists.
	Regression/Recoupment	The amount of loss of skills a child experiences over an instructional break (primarily summer vacation) and the amount of time it takes him/her to recover the lost skills. Standards for when regression and recoupment concerns require summer school are developed in case law and in state and federal policy letters.

ACRONYMS	TERM	DEFINITION
	Resolution Session	Referring to IDEA 20 U.S.C. § 1415 (f)(1)(B). This is a required meeting of parents and “relevant” IEP team members. After a request for mediation and due process hearing is filed, school districts must arrange this session and attempt to cure any problems within 30 days. If the school district does not cure the issue within 30 days, a hearing is scheduled and the 45 day hearing timeline begins.
	Resource Placement	(See RSP below). A special education placement for less than half a child’s school day. Such a classroom is usually called a “resource room.”
<b>RSP</b>	Resource Specialist Program	Provides students with special education instruction for less than 50 percent of their day. A placement/service wherein a child receives individual or small-group instruction from a “resource specialist,” who is credentialed special education teacher.
	Respite Care	A service provided to the families of children who require extraordinary forms of care so that the family can take vacations, handle business affairs, and have some relief from the duties of caring for the child. (It is often provided by the Regional Centers. However, it is not an educational service, so it should not arise under IDEA.)
	Section 504	Section 504 of the Rehabilitation Act of 1973 is a federal law that prohibits recipients of federal funds from discrimination against persons with disabilities. (Section 504 complaints must be filed with OCR. Due process hearings under the IDEA do not involve Section 504 claims, and OAH does not have jurisdiction to hear Section 504 claims.)

ACRONYMS	TERM	DEFINITION
	Severe Discrepancy	Part of the criteria used to determine whether a child is eligible for special education due to a specific learning disability (SLD). California Code of Regulations, title 5, section 3030(j) uses the phrase “severe discrepancy between intellectual ability and achievement in one or more of the academic areas specified in Section 56337(a) of the Education Code”.
<b>SDL</b>	Severe Disorder of Language	Students who have a severe impairment in the ability to use or understand language.
<b>SLD</b>	Specific Learning Disabilities	A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. (20 U.S.C. § 1401(30); 34CFR § 300.81(10); Ed. Code, §§ 56337 & 56338.) SLD is an eligibility category for special education.
<b>SELPA</b>	Special Education Local Plan Area	A service entity identified by the CDE and funded to provide special education services for the school districts that belong to the SELPA. (Ed. Code, § 56440.) SELPAs operate as described in the comprehension plan for special education, which is submitted by the agency to the California Department of Education. A SELPA is a government entity that provides special education services for the school districts that belong to the SELPA. (Ed. Code, § 56440.)
<b>SDC</b>	Special Day Class	Special classes that serve pupils with similar and more intensive educational needs. SDCs may enroll pupils only when the nature or severity of the disability of the pupil is such that education in the regular classes with the use of supplemental aids and services cannot be achieved. (Ed. Code, § 56364.2.)

ACRONYMS	TERM	DEFINITION
<b>SEA</b>	State Education Agency	i.e., California Department of Education. Means the state board of education or other agency or officer primarily responsible for the state supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the governor or by state law. (20 U.S.C. § 1401(32); 34 C.F.R. § 300.41.)
<b>SLP</b>	Speech and Language Pathologist	A person credentialed by the state to provide speech and language therapy services, which may be a related service, or DIS, under Ed. Code, § 56363.
<b>SST</b>	Student Success Team or Student Study Team	A team of educators, convened at the request of a classroom teacher, parent, or counselor which designs in-class interventions techniques to meet the needs of a particular student, prior to developing an IEP.
	Standardized Tests	Tests that have norms reflecting a larger population. Usually these are age or grade based norms reflecting the performance of children throughout the country on the same tests.
	Stay Put	Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising.

ACRONYMS	TERM	DEFINITION
	Supplementary Aids & Services	Accommodations which could permit a student to profit from instruction in the least restrictive environment. They are required under IDEA. Specifically defined as aids, services, and other supports that are provided in regular education classes or other education related settings to enable individuals with exceptional needs to be educated with nondisabled children to the maximum extent appropriate in accordance with paragraph (5) of subsection (a) of Section 1412 of Title 20 of the United States Code. (20 U.S.C. § 1401(33); Ed. Code, § 56033.5.)
	Surrogate Parent	An individual appointed to exercise special education rights on behalf of children with disabilities who do not have a parent able to represent them, generally because the child is a ward of the court. (Cal. Gov. Code § 7579.5; 20 U.S.C. § 1415(b)(2).)
<b>TEACCH</b>	Treatment and Education of Autistic and Related Communication Handicapped Children	A method of instruction used for children with autism.
	Therapeutic Day Program	An instructional placement for students with emotional with emotional disturbance (ED) in which aspects of treatment for the emotional difficulty are incorporated into the school program. Depending on the theoretical orientation of the school, these services may include psychotherapy, behavior management, positive peer culture, or other types of intervention.
	Total Communication	An instructional strategy in which teachers instruct children with severe hearing loss both by speaking to them and by using sign language.



ACRONYMS	TERM	DEFINITION
	Transition Planning	At a minimum, this is planning for adolescents' post-school lives and must begin by age 16. This involves preparation of a document called an Individual Transition Program (ITP). Good practice may involve planning for earlier transitions as well as incorporating such plans into the child's IEP. (Ed. Code, § 56045, <i>et seq.</i> )
<b>TBI</b>	Traumatic Brain Injury	TBI is an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. (20 U.S.C. § 1401(3)& (30); 34 C.F.R. § 300.81(12))
	Typically Developing Peers	Preferred terminology used to identify age-level peers who do not have disabilities. Also sometimes referred to as general education peers or non-disabled peers.
	Unilateral Placement	Placement by parents acting unilaterally, without approval of the school. A unilateral placement does not constitute the student's stay put placement. Parents generally cannot receive reimbursement for unilateral placements unless they provided the LEA with ten days advance notice of the placement.
<b>VI</b>	Visually Impaired	An impairment in vision that, even with correction. Adversely affects a student's educational performance. (20 U.S.C. § 1401(3) & (30); 34C.F.R. § 300.8(c)(13).)