

**DEPARTMENT OF GENERAL SERVICES
OFFICE OF ADMINISTRATIVE HEARINGS**

**UNDERSTANDING
SPECIAL EDUCATION DUE PROCESS HEARINGS
PROVIDED BY THE
OFFICE OF ADMINISTRATIVE HEARINGS**



2009

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2009



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State of California

Department of General Services

Welcome to the first edition of the California Office of Administrative Hearings' User Guide. I hope that you find this Guide to be useful in understanding the process and procedures that the Office of Administrative Hearings uses when handling special education due process matters.

I am very proud of the work my staff did to complete this Guide and want to thank and acknowledge the many talented judges who helped put this together. Specifically, I want to thank Presiding Judges Ann MacMurray and Debra Huston for their help guiding, compiling and editing this User Guide. I also want to acknowledge and thank the Administrative Law Judges who devoted countless hours to ensure that the User Guide was complete and included as much practical information as necessary to make this a truly comprehensive and useful instrument for parties involved in special education due process matters. The judges who worked on this manual are: Richard Breen, Peter Paul Castillo, Robert lafe, Elsa Jones, and Darrell Lepkowsky. Without their commitment and dedication to this area of the law, this Guide would not have been possible. Finally, I want to also acknowledge all of our Special Education Division Administrative Law Judges who work tirelessly. They are dedicated and devoted to ensuring that those involved in the special education community are served equitably and fairly under both state and federal law.

When we set out to publish a User Guide for special education due process matters in California, it was a daunting task and at times we were uncertain what form the final product would take. The final version of the User Guide exceeded all expectations, and it is my sincere desire that this Guide help open the doors of access to the special education due process system in California.

Sincerely,

RON DIEDRICH
DIRECTOR AND CHIEF ADMINISTRATIVE LAW JUDGE

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What does this guide cover?

This guide contains answers to frequently asked questions about the hearing process to help parents better understand California's special education dispute resolution system. You don't need to read it all to start the process, but it may help you to have more background information or a better general understanding of the process before you fill out the forms to file your case. These forms – available through the Office of Administrative Hearings (OAH) -- are self-explanatory, and you may find they have all the instructions you need to get the process started.

Although this guide doesn't offer legal advice, it does outline how to request, prepare for, and participate in special education mediation and a due process hearing. The more you understand about the process, the more effectively you can prepare for and present your case. For some, these processes can sometimes be intimidating, and our hope is that this publication will help answer any questions and create a positive experience for participants.

If your questions are not answered here, please contact our staff in the Sacramento Special Education office at (916) 263-0880. Information is also available on OAH's Web site at <http://www.oah.dgs.ca.gov/Special+Education/Default.htm> and through our [outreach training sessions](#).

The first section – “The Basics” -- will take a case example and carry it through the process so you can see how it flows. The second section is broken up into a detailed question-and-answer format. You can either read through the pages to find the information you're looking for or do a keyword search. And remember, our staff is just a phone call away for additional guidance.

Availability in other languages or formats: This guide is available in English, Spanish, Vietnamese, Cantonese, Tagalog, and Hmong. You may request it in a language other than these languages by sending a written request to OAH. You may prepare your request in your native language. OAH can also make this guide available in other typefaces, in larger type or on tape. If you need to receive the guide another way, please contact OAH.

Definitions of terms used in the guide: The term “**parent**,” as used in this guide, includes parents, legal guardians, or the holder of the educational rights of a student who has a disability or is suspected of having a disability. It also includes a student who has, or is suspected of having, a disability and is 18 or older. The term “**school district**” includes local educational agencies, which includes all educational agencies involved in educational decisions regarding a student with a disability, such as school districts and county offices of education. The term “school district” also may include a county mental health department if it provides services to a student with a disability, a special education local plan area (SELPA) or a charter school. The term “**party**” means a person or entity (a school district, for example) involved in a due process proceeding that is affected by its actions or outcomes.

Your educational rights: The *Individuals with Disabilities Education Act* (IDEA) (20 U.S.C. § 1400 *et seq.*) is a federal law that requires (1) that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs, and to prepare them for further education, employment, and independent living; and (2) that the rights of children with disabilities and parents of such children are protected.

Disclaimer: *This guide is not intended to provide legal advice and should not be interpreted as such. It does not extend or limit the jurisdiction of OAH as established by law and regulation. Nothing in this manual shall limit the discretion of administrative law judges to act in accordance with law and regulation.*

Revisions: *OAH reserves the right to amend, suspend, or revoke the text of this manual at any time in its discretion. For information on how to get the most current version of this guide or provide comments on it, contact the Office of Administrative Hearings at (916) 263-0880.*

Although the Special Education Division has three regional offices located in Sacramento, Van Nuys, and Laguna Hills, it operates as one agency serving the needs of the parties across the state. Sacramento is the central office, and all hearing and mediation requests and documents must be filed in Sacramento, no matter where you live. The contact information for OAH is listed below:

Special Education Division Offices

Mailing address for all special education documents:

2349 Gateway Oaks Drive, Suite 200

Sacramento, CA 95833-4231

Fax Number (for all offices): (916) 376-6319

Statewide after-hours cancellation/settlement line: (916) 274-6035

Sacramento Office (916) 263-0880

Van Nuys Office (818) 904-2383

Laguna Hills Office (949) 598-5850

What is the Office of Administrative Hearings (OAH)?

OAH is an independent state agency that provides resolution services for individuals and government agencies that are in dispute. OAH conducts hearings consistent with our mission statement to provide a neutral forum for fair and independent resolution of matters in a professional, efficient, and innovative way, ensuring due process and respecting the dignity of all.

OAH is divided into two parts: the General Jurisdiction Division and the Special Education Division. The General Jurisdiction Division handles many different types of licensing matters, such as real estate, contractor, and cosmetology licenses, when the state is denying a license or seeking to discipline someone who holds a license. The Special Education Division provides dispute resolution services in California for special education due process proceedings. OAH conducts hearings, mediation, and settlement services throughout the state to parties involved in special education disputes, including parents of students with disabilities, school districts, special education local plan areas (SELPA), county mental health departments and charter schools. OAH provides mediators and judges who work very hard as the neutral party helping parents and school districts work out their differences while following established rules of law. Everyone's goal is to make sure students with disabilities receive educational opportunities within the framework of the laws and regulations that govern special education within the state of California. OAH's main goal is to make sure the law is upheld and both sides receive a fair and impartial hearing process.

TABLE OF CONTENTS

The Basics.....1

Example

Mediation only OR Mediation followed by a due process hearing

Getting your forms

Filing your case

Mediation vs. due process hearing

The “due process hearing”

PART 1: Due process.....5

Am I required to use an attorney or advocate in proceedings before OAH?

How can I find a free or low-cost attorney or advocate?

What if I need an interpreter or other accommodations?

PART 2: Types of proceedings.....6

What is a request for mediation and due process hearing?

What is the difference between a request for “mediation only” and a request for mediation *and* due process hearing?

What is an expedited due process hearing?

Who determines whether a matter will be “expedited”?

Is there a separate form to use for an expedited due process hearing?

Who may file a request for mediation only or a request for mediation and due process hearing?

Where can I get a request for mediation only form or a request for mediation and due process hearing form?

Am I required to use the forms?

What information must be included in the form?

What if I need help filling out a form?

How and where do I file the completed forms?

Can a school district file a request for mediation only or a request for mediation and due process hearing?

Is the school district required to respond to my request for mediation and due process hearing?

PART 3: The scheduling order.....11

What happens after a request for a due process hearing or a request for mediation only is filed?

The timelines and sequence of events in parent-filed requests for mediation and due process hearing

The timelines and sequence of events in district-filed requests for mediation and due process hearing

The timelines and sequence of events in request for “expedited” due process hearings filed by a district or a parent

The timelines and sequence of events in requests for mediation only filed by a district or a parent

PART 4: The resolution session.....13

Can the resolution session be cancelled or waived?

Am I required to participate in the resolution session?

What is the purpose of a resolution session?

Who attends the resolution session?

How do I prepare for the resolution session?

May I bring my attorney or advocate to the resolution session?
 What if I need an interpreter at the resolution session?
 What if the case is settled during the resolution session?
 What if I agree to something at the resolution session, and then change my mind and want to cancel it?
 What if the case does not settle during the resolution session?
 What if the school district does not implement the agreement reached at the resolution session?
 What is the difference between a resolution session and mediation?
 What happens to the due process proceeding when an agreement is reached at a resolution session?

PART 5: Mediation.....19

What are the benefits of mediation?
 What is “mediation only” and when is it held?
 Where is the mediation generally held?
 How can I reschedule the mediation date if I cannot attend on the date scheduled?
 What if one of the parties does not want to participate in mediation?
 Who is the mediator?
 What is the role of the mediator?
 Who generally attends the mediation?
 May I tape record the mediation?
 How do I prepare for the mediation?
 What are the benefits of mediation?
 What happens during the mediation?
 What happens if we settle the disagreement at mediation?
 What happens if no agreement is reached at the mediation?
 What if we do not resolve the case at mediation, but want another mediation to try again?

PART 6: The voluntary settlement conference.....23

How does a voluntary settlement conference differ from mediation?
 How do I request a voluntary settlement conference?
 Where is the settlement conference held?
 What are settlement conference statements?
 What should I bring to the settlement conference?
 Is the settlement conference confidential?
 May I tape record the settlement conference?
 What happens at the end of the settlement conference?

PART 7: The prehearing conference.....25

What if I decide to get an attorney or advocate prior to the prehearing conference?
 How will I know when the prehearing conference is to be held?
 What happens if I don’t have a prehearing conference?
 Do I need to attend the prehearing conference?
 Who will preside over the prehearing conference?
 Will the prehearing conference be recorded?
 May I record the prehearing conference using my own equipment?
 Do I need to prepare for the prehearing conference?
 What is discussed at the prehearing conference?
 What is an order following prehearing conference?
 Can I request mediation at the prehearing conference?

What are my options if I cannot get my prehearing conference statement prepared and served three business days prior to the prehearing conference, or if I cannot attend the prehearing conference?

PART 8: Motions and notices of insufficiency.....29

- What should a motion contain?
- Where do I file a motion?
- How do I respond to a motion filed by the district?
- What are some examples of motions?
- What is a notice of insufficiency (NOI)?
- Examples of insufficient claims

PART 9: Preparing for the due process hearing.....33

- What is a due process hearing?
- What is the burden of proof and who has the burden of proof at the hearing?
- What is the standard of proof at the hearing?
- What are exhibits and how are they prepared?
- May I use an audio recording of an IEP meeting as an exhibit at the due process hearing?
- May I present my child's school records as evidence at the hearing?
- How do I get access to my child's school records?
- What if the school district does not give me the records?
- How do I obtain nonschool related documents?
- What do I need to know about witnesses I want to have testify at the due process hearing?
- How do I get a witness to appear if he or she does not agree to appear?
- Will there be an interpreter for the hearing?
- Can I use witnesses at the hearing and how do I do that?
- What if I want to use an expert witness?
- What if I need to continue (postpone) the initial dates set for the due process hearing?
- What are some examples of "good cause" for a continuance?
- What if I need an additional continuance?
- Are there other important things I should know before the due process hearing?
- Where is the due process hearing held?
- What should I do if I am running late to the hearing?
- When do I provide a copy of my exhibit binder to the judge and a copy for use by witnesses who will testify at the hearing?
- Where should I tell my witnesses to be during the hearing?
- Are cell phones allowed in the hearing room?
- Will the hearing be recorded?
- May I record the hearing using my own equipment?
- What if I decide to get an attorney or advocate prior to the due process hearing?
- What if I decide another mediation might resolve the case prior to the due process hearing?

PART 10: What happens at the due process hearing?.....42

- When does the due process hearing officially begin, and is it recorded?
- What are "party appearances for the record" and the "oath"?
- What else should I know about procedures?
- What are opening statements?
- How does witness testimony work?
- How is my testimony handled?

What do I have to show to have a document from my exhibit binder admitted into evidence at the due process hearing?
 How do I object to documents or testimony?
 What do I do if I disagree with a question being asked by another or with a document referred to by a witness or the other party?
 Can testimony be given by phone at the hearing?
 What should I do at the end of a hearing day?
 How is the hearing concluded?
 When should I expect a decision?
 What if I don't agree with the decision?

PART 11: The administrative law judge (ALJ) assignment and how to challenge it.....50

How do I challenge the administrative law judge assignment?
 What is a peremptory challenge?
 What is a challenge for cause?

PART 12: Finding laws that apply to special education hearings.....52

What are sources of special education law?
 How can I find statutes, regulations and decisions?
 Internet resources
 How do I do legal research?

PART 13: Special education acronyms and glossary of terms.....56

PART 14: Special education forms.....64

- Form 1: Mediation only request
- Form 2: Request for mediation and due process hearing
- Form 3: Proof of service
- Form 4: Scheduling order and notice of due process hearing and mediation
- Form 5: Request for continuance of initial special education due process hearing date
- Form 6: Request for continuance based on good cause
- Form 7: Scheduling order and notice of DUAL due process hearing and mediation
- Form 8: Scheduling order for mediation only
- Form 9: Joint waiver of resolution meeting
- Form 10: Request to advance hearing dates
- Form 11: Notice of settlement conference
- Form 12: Sample prehearing conference statement
- Form 13: Subpoena
- Form 14: Sample order following prehearing conference
- Form 15: Sample request for continuance of prehearing conference
- Form 16: Sample notice of insufficiency (NOI)
- Form 17: Sample motion for stay put

The Basics

Example:

Let's say you have an 8-year-old child who has a disability. A recent assessment recommended he be placed in special education classes for all subjects. However, you feel he should be placed in regular classes with special one-on-one assistance. The school does not agree and will not comply with your request.

When a disagreement arises about a child who has (or is suspected of having) special education needs, you have several options through OAH. You can file a request for:

Mediation followed by a due process hearing

OR

Mediation only

Whatever you decide, your request must be in writing, and OAH has forms available for this purpose.

Mediation followed by a due process hearing

Most people request Mediation followed by a due process hearing. This type of filing is the most popular because it provides the benefits of mediation and, if the case does not settle at mediation, the case will proceed to hearing shortly after the scheduled mediation.

Mediation

Most special education cases are resolved through mediation. The most popular and successful option is mediation. In fact, not only does OAH strongly encourage mediation, but state and federal law do as well. Mediation is a voluntary, confidential, informal meeting at which the parties and an experienced, impartial mediator try to resolve the dispute in a cooperative atmosphere. The mediator guides the talks between you and the school district representatives. The use of mediation has been highly successful in helping parents and districts work out their differences and end up with a result that satisfies everyone.

The goal of the mediator, who is assigned by OAH, is to help resolve the dispute by facilitating discussion and negotiation – allowing both sides to have their say and give opinions. You also have the right to request a different mediator if you don't like the one assigned by OAH. You can also have a translator if English is not your primary language.

The OAH mediator is the impartial go-between, trying to explain to each participant where the other is coming from, searching for some middle ground where everyone can agree, and finding a path forward that works for everyone, and most importantly, your child.

Mediation is easier than it sounds. After all, it's a part of every day life. We mediate to buy a car, we mediate with our kids about how late they can stay up and we mediate with our spouses over

household chores. It's a popular method because there is no waiting for a written decision from a judge, parents have more control over the outcome and results can be put into effect right away.

Mediation is always available to you at anytime during the process, no matter whether you ask for mediation only or file a request for mediation and due process hearing.

The “due process hearing:”

This is the next step if an agreement isn't reached during mediation, or, if you choose to go directly to this stage without mediation. Some key points include:

- Hearings are digitally recorded
- Hearings are usually held at a location that is reasonably convenient to the parent, typically the school site or district office
- Either side may have an attorney or advocate represent, or represent themselves
- Interpreters are provided upon request by OAH
- A final written decision is issued after the case is submitted
- If you disagree with the judge's findings, you may file an appeal within 90 days to state or federal court

A due process hearing is a more formal, trial-like legal proceeding in which all parties are given a chance to present evidence and arguments before an impartial administrative law judge (ALJ). The ALJ then issues a written decision, which is the final administrative decision regarding the issues. With a due process hearing, you give up control of the outcome, leaving it in the hands of an ALJ who will make the decision. Although the ALJ is highly trained to assess the situation and reach a fair conclusion, the decision is nevertheless out of your hands. OAH encourages the parties to work out their disputes through mediation before a hearing because the ALJ does not know your child as well as you do, and you may not be happy with the ALJ's decision. When you work out the dispute yourselves, you have control over the outcome and what happens with your child's educational program.

Mediation only

You can ask for a mediator to come help you discuss and resolve your differences with the school district by filing a request for mediation only. (See Form 1.) In mediation only, you have not filed a case or request for due process hearing against any party, but recognize that you need help discussing your dispute with the district. At a mediation only, there are no lawyers allowed. It's just between you and the district representative. And, there's a totally unbiased individual – the mediator – there to assist in getting all the issues out on the table and discuss solutions. If you just can't work out your disagreements in mediation, you have the option to file for mediation and due process hearing. (See Form 2.) As noted above, most mediations occur as part of the due process hearing procedure.

Getting your [forms](#):

OAH and the California Department of Education (CDE) have developed a form titled “Request for Mediation and Due Process Hearing” (Form 2) for the purpose of requesting a hearing. There’s also a form to request mediation only titled “Mediation Only Request Form” (Form 1.) You can get these forms on OAH’s Web site at <http://www.oah.dgs.ca.gov/Special+Education/default.htm> or by writing or calling the OAH, Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833, (916) 263-0880. Forms may also be obtained by contacting the CDE at (916) 319-0800 or by visiting the CDE Web site at <http://www.cde.ca.gov/sp/se/qa/>.

Filing your case:

After you decide if you want to request mediation only or to file a request for mediation and due process hearing, the next step is to fill out the forms. After you fill out the forms, you file the forms by sending them to OAH by fax or mail to the Sacramento office of OAH, and distribute copies either by mail or fax to all parties (such as school districts) who will be involved. When you file any documents with OAH, you must provide the other party with an identical copy of what you sent to OAH, and proof that you provided that copy, which is typically provided through a “proof of service.” OAH prefers that you file all requests via fax at (916)376-6319. However, you do not need to file both by mail and fax; pick one way of filing and that is all that is necessary. Even though there are special education offices around the state, you must file all documents at the Sacramento OAH office.

If you would like to try to resolve the situation through mediation (a confidential, informal discussion process facilitated by a trained mediator) without lawyers and without the formality of a due process hearing, you can file for “mediation only.” (Form 1.) If the matter isn’t resolved through mediation, you can still file for a request for mediation and due process hearing (Form 2) afterward.

You can also choose to skip mediation efforts and proceed directly to a hearing by checking the “hearing only” box on the request for mediation and due process hearing form. (Form 2.) However, OAH encourages all parties to attempt to resolve their disputes through mediation and you should carefully consider the benefits of mediation rather than proceeding directly to hearing.

You’ll need to write down details of why you’re requesting a hearing in the “problem/complaint” section. For example, in the hypothetical case mentioned earlier, you might say: “School’s assessment on (date) recommended my child be placed in special education classes for all subjects and district wants to move ahead with this against our wishes.” You also need to include some brief surrounding factual information that describes the problem. For this example, you might state whether your child had been in the regular education classroom prior to the assessment and how your child was doing in school. After listing the problem, you must also include a possible resolution to the matter. For the resolution, you might state that you believe your child is capable of getting his education in regular classes with the assistance of a tutor.

You should also attach a “proof of service” (Form 3) to your form, and complete that proof of service to show that you have served the other party with a copy of your request for mediation or request for mediation and due process hearing. You should complete a proof of service for each

document you prepare to serve on the other party, complete the proof of service, and attach it to the document you serve.

That is the process “in a nutshell.” The rest of this guide contains many frequently asked questions (some may apply to your case and some may not) and explains the timelines and process in more detail. You should read the whole guide to get a better understanding of the process. The OAH Web site is another good source of information, as is the staff in our Sacramento office. Once you have filed a due process request, you should call the OAH calendar clerk first with any general procedural questions.

PART 1: Due process

Due process is the name given to the formal process and proceedings followed by governmental agencies when individual rights are in dispute. Due process requires the government to follow established laws, rules and legal principles. Every person in California is guaranteed “due process” by both the state and federal Constitutions. The main components of due process are:

- Notice that a claim/complaint has been filed against you or your organization
- The details of the allegations
- Notice of the date and time of hearing
- The opportunity to be heard and to defend against the allegations in an orderly proceeding

Due process requires that each person have the protection of his or her day in court and the benefit of the law.

The right to due process applies to special education, too. There are state and federal laws that establish the right to special education services when a student qualifies or is likely to qualify for them. Due process ensures that parents have a way to assert their rights and those of their child regarding special education.

Due process at OAH includes dispute resolution services, including mediation, as well as holding the due process hearing in the event that the dispute is not resolved by the parties prior to the hearing date. After a due process hearing, an administrative law judge (ALJ) will issue a written decision. If one of the parties disagrees with the written decision, due process includes the right of the party to appeal the decision to state or federal court for review.

Am I required to use an attorney or advocate in proceedings before OAH?

No.

How can I find a free or low-cost attorney or advocate?

OAH can give you a list of free or low-cost attorneys and advocates, but it is then up to you to call them and ask them what their fees are. The attorneys and advocates on the list self-certify that they are free or low cost; OAH does not verify that they are free or low-cost. This list is also available on the OAH Web site at www.oah.dgs.ca.gov.

The *Individuals with Disabilities Education Act* (IDEA) and state law contain fee-shifting statutes that may, in certain circumstances, require the school district to pay your attorney fees. Parents who are attorneys and are also the attorney for the case are not entitled to fees, nor are advocates entitled to fees under these fee-shifting provisions.

What if I need an interpreter or other accommodations?

If you need an interpreter or other accommodation, please be sure to include that information in your request that you file with OAH. An interpreter will be provided at no cost to the parent.

PART 2: Types of proceedings

The parent or the school district may file with OAH: (1) a request for “mediation only;” (2) a request for a due process hearing; or (3) a request for a mediation and due process hearing.

What is a “request for mediation and due process hearing”?

This is a request filed by a parent or a school district that contains complaints and suggested resolutions. (See Form 2.) A party has the right to file a request for due process hearing about any matter relating to the identification, evaluation, or educational placement of a child, or the act of providing a free appropriate public education (FAPE) to a child. A party also has a right to present a request for due process hearing regarding matters involving a *proposal or refusal to initiate or change* the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility.

What is the difference between a request for “mediation only” and a request for mediation *and* due process hearing?

A request for mediation only (see Form 1) is a request filed by either a parent or a school district that OAH hold a mediation to resolve a dispute that OAH is allowed to hear under the IDEA and state law.

When a party files a request for mediation only, that’s all they’re offered at that time and there is no due process hearing scheduled. The law specifically excludes attorneys and educational advocates from attending “mediation only.” Parties request “mediation only” when they have a dispute about a special education matter, but are not ready to start the formal due process hearing process.

When a party files a request for mediation *and* due process hearing (see Form 2), OAH will offer mediation and also conduct a due process hearing unless the parties reach a settlement prior to the hearing.

Mediation is a voluntary, confidential, informal meeting at which the parties and an experienced, impartial mediator attempt to resolve the dispute in a cooperative, non-adversarial atmosphere. The mediator does not provide advocacy or legal advice to either side, but instead guides the parties through discussion and negotiations to help them reach a voluntary resolution on terms that all parties agree upon. Mediation increases the likelihood that the parties will reach a satisfactory resolution.

What is an expedited due process hearing?

The *Individuals with Disabilities Education Act* requires, in cases involving certain disciplinary matters, that an expedited – or sped up – due process hearing occur within 20 school days from the date the

request for due process is filed with OAH, and that a decision by OAH be issued within 10 school days after the due process hearing. Saturdays, Sundays, and state and federal holidays do not count as school days for this purpose. Whether a day is a “school day” is determined by the school calendar of the school the student was attending when the incident giving rise to the disciplinary matter occurred. The school calendar may be obtained from the school, and sometimes from the Internet.

Who determines whether a matter will be “expedited”?

OAH determines whether a matter is expedited. Any claims within the request that are not required to be expedited will be scheduled according to the appropriate timelines. It is important to know that a case may involve “dual” or two, timelines. If a case involves “dual” timelines, a scheduling order, described in PART 3, will be issued with the timelines for the expedited claims and for the non-expedited claims.

Here are some examples of claims OAH would expedite:

- A claim by a parent that a student who has a disability is removed from school for more than 10 days because of a violation of a student code of conduct that is determined not to be related to or because of his or her disability.
- A claim that a student with a disability may be suspended for 45 school days because the student’s behavior involved a dangerous weapon, illegal drugs, or serious bodily injury, and the parent disagreed with the determination.
- A claim by the parent of a child with a disability that he or she disagrees with the “manifestation determination” regarding whether the child’s behavior in violating a student code of conduct was a manifestation (because of) of the student’s disability.
- A claim, as described above, involving a student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of student conduct. If the school district had a “basis of knowledge,” as defined in the law, that the student had a disability before the behavior that resulted in the disciplinary action took place.
- A claim by a school district that OAH should order that the school district may change the placement of a student with a disability because the district believes that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

Is there a separate form to use for an expedited due process hearing?

No. You use the request for mediation and due process hearing form (Form 2) in order to request an expedited due process hearing.

Who may file a request for mediation only or a request for mediation and due process hearing?

A parent or legal guardian of a student who has a disability, or is suspected of having a disability, may file with OAH a request for mediation only (Form 1) or a request for mediation and due process hearing (Form 2). A school district or other educational agency, such as the county mental health department, may also file these requests. In some cases, such as when the student is 18 or older and does not have a conservator (someone responsible for his or her care), the student may file a request. If a student is over 18, the party filing with OAH must include information about whether the educational rights have been transferred to someone other than the student.

Where can I get a request for mediation only form or a request for mediation and due process hearing form?

The forms are available on OAH's Web site at www.oah.dgs.ca.gov/Special+Education/default.htm or may be obtained by writing or calling the Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833, (916) 263-0880. Forms may also be obtained by contacting the California Department of Education at (916) 319-0800 or by visiting <http://www.cde.ca.gov/sp/se/qa/>. The forms are also included in this guide as Form 1 and Form 2.

Am I required to use the forms?

No, but by using the forms described above, this will ensure that the required information will be included.

What information must be included in the form?

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

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

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

What if I need help filling out a form?

OAH office staff can answer basic questions, but they can't give legal advice. You *can* request -- in writing -- that OAH provide you with the services of a mediator to assist you in completing the form. In addition, OAH maintains on its Web site a list of attorneys and advocates who self certify that they provide free or reduced-cost services.

How and where do I file the completed forms?

Completed forms should be filed (sent) by fax or mail with the Sacramento office of OAH, Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833-4231. FAX: (916) 376-6319. You may also hand deliver your documents to this address. OAH prefers that all documents be served via fax if possible. Do not mail and fax the same document to OAH. Either fax or mail it, but not both.

Also, provide identical copies of what you fax or mail to OAH to each of the parties you are filing against, such as the school district or the county mental health department. The school district will always be one of the parties. You must indicate somewhere on your letter or the request that you have sent a copy of it to all the other parties, and how you sent it. This is called a "proof of service." (See Form 3.) For example, if your request was made by letter, type or write at the bottom of the page the name and address of the person or organization you sent a copy. You may also use a form developed for this purpose on OAH's Web site.

Consider sending your copies with a return receipt requested or by certified mail so that you have a record showing the other party or parties received it.

Can a school district file a request for mediation only or a request for mediation and due process hearing?

Yes. Most commonly, a school district will request an OAH order that the school district be allowed to assess a student. School districts are also required to file a request for due process hearing if the parent disagrees with a district assessment and requests an independent educational evaluation (IEE) at public expense, but the school district denies that request. Sometimes school districts file a request for due process after a parent rejects an individualized education program (IEP) offer made by the school district to a student. In this situation, the school district is requesting that OAH determine that the offer made in the IEP constitutes a free appropriate public education (FAPE).

If the school district files a request, it must send a copy to you. In addition, OAH will send you a letter giving you information about the dates calendared for mediation or hearing.

If the school district files a request for a due process hearing, you are required to send a written response to the school district within 10 days of receiving your copy of it. In your response, you must specifically address the issues raised. You are not required to file a copy of this response with OAH, but you should keep a copy of your written response to the school district for your records.

Is the school district required to respond to my request for mediation and due process hearing?

Yes, within 10 days, unless the school district provided you “prior written notice” about the subject matter.

When a school district proposes to initiate or change, or *refuses* 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.” The notice must include a description of the action proposed or refused by the school district; an explanation of why the school district proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the school district used as a basis for the proposed or refused action; a statement that the parents of the child have protection under the procedural safeguards of the *IDEA* and, if the notice is not an initial referral for evaluation, the means by which a copy of the description of procedural safeguards can be obtained; sources for parents to contact to obtain assistance in understanding the provisions of the *IDEA*; a description of other options considered by the IEP team and the reason why those options were rejected; and a description of the factors that are relevant to the school district’s proposal or refusal. The proposal to change an educational placement triggers the obligation of the school district to convene an IEP Team meeting, but the school district can hold an IEP meeting *before* sending prior written notice to the child’s parents. Thus, in reality, the notice is not always “prior.”

Not all changes require a school district to provide prior written notice. For example, change of placement occurs for purposes of triggering the school district’s requirement to provide prior written notice if the adjustment in services is likely to affect in some significant way the student’s learning experience. Minor discretionary decisions by a district, such as those relating to a student’s curriculum or assignment of teachers, do not require prior written notice. A school district’s failure to provide prior written notice may, in some instances, constitute a procedural violation of the *IDEA* and may be the basis of a claim in a due process complaint.

PART 3: The scheduling order

What happens after a request for a mediation and due process hearing or a request for mediation only is filed?

When OAH receives a request for mediation and due process hearing, it will issue and mail to the parties a “scheduling order and notice of due process hearing and mediation” (Form 4) generally within 48 hours. This scheduling order will contain important information about the process, including the name of the OAH calendar clerk assigned to your case. The OAH calendar clerk is your first point of contact for all questions related to your case.

Your scheduling order will also give you important information about the dates assigned for mediation, prehearing conference, and due process hearing. State and federal law require speedy resolution of due process matters in special education cases, and OAH is required to adhere to strict timelines to ensure that your case is handled from start to finish in a timely manner. The matter will proceed on the dates in the scheduling order unless OAH grants a “continuance” of the hearing dates upon a showing of good cause. Continuances are discussed later in this guide.

Please read this Scheduling Order very carefully and keep a copy of it handy throughout the duration of your case.

The timelines and sequence of events in parent-filed requests for mediation and due process hearing

Under state and federal law, when a parent files a request for mediation and due process hearing, OAH has 75 days within which to issue its decision. After a parent files a request for mediation and due process hearing, the following procedures are followed:

Resolution Session:

State and federal law require a 30-day resolution period as part of your due process proceeding in parent-filed cases. Therefore, OAH will not schedule a mediation or due process hearing during this 30-day resolution period. During this resolution period, the school district is required to schedule and convene a resolution session with you. The purpose of this resolution session is to give you and the school district the opportunity to resolve the dispute short of a Due Process Hearing. (See Part 4 regarding resolution sessions.) OAH does not have any jurisdiction or authority over the resolution session.

OAH will include with your scheduling order a form for you to report the outcome of your resolution session. Please mail or fax the form to OAH in Sacramento.

Mediation:

OAH will calendar mediation on approximately the thirty-fifth (35) calendar day after the request for mediation and due process hearing is filed. (See Part 5 regarding mediation.) The scheduling order

will include the name of the mediator assigned to your case, and the date, time, and location of your mediation.

Prehearing Conference:

A prehearing conference will be calendared on a Monday or Wednesday approximately one week prior to the date scheduled for the due process hearing. (See Part 7 regarding prehearing conferences.) Your scheduling order will include the date and time of your prehearing conference, as well as information regarding what you are required to file prior to the prehearing conference.

Due Process Hearing:

Your due process hearing will generally be set on the fifty-fifth (55) calendar day after your request for mediation and due process hearing is filed. (See Parts 9 and 10 regarding due process hearings.) Your scheduling order will include the date, time, and location of your due process hearing.

Continuances:

Although OAH is required to adhere to the timelines provided by statute, OAH may reschedule the initial mediation date based on a request of the parties, and may continue the prehearing conference and due process hearing dates if the parties mutually agree to a continuance. Your scheduling order will be accompanied by a form to request to change the due process hearing date initially assigned to your case. (See Form 5.) The form is also available on the OAH website. A continuance may also be granted if one party files a request for a continuance based on good cause even if the other side does not agree to the continuance. (See Form 6.)

The timelines and sequence of events in district-filed requests for mediation and due process hearing

Under state and federal law, when a school district files a request for mediation and due process hearing, OAH has 45 days within which to issue its decision. The timeline is shorter than in parent-filed cases because, in school district-filed cases, no resolution session is required. The Mediation will be set generally on the fifteenth (15) day after the request is filed and the due process hearing will generally be set on the twenty-fifth (25) day after the request is filed. The prehearing conference will be scheduled on a Monday or Wednesday approximately one week before the hearing.

The timelines and sequence of events in requests for “expedited” due process hearings filed by a district or a parent

In cases involving “expedited” due process hearings, the timelines are much stricter than those described above. An expedited hearing usually involves a disciplinary matter. The law requires that an expedited due process hearing occur within twenty (20) school days from the date the request is filed, and that a decision by OAH be issued within ten (10) school days after the hearing. Your scheduling order in any case involving an expedited due process hearing will specify a mediation date, a prehearing conference date, and due process hearing date based on the timelines applicable to expedited due process matters. In cases involving “expedited” due process hearings, the mediation will be set on the tenth (10) day after the filing, a prehearing conference will be set on the fourteenth

(14) day after the filing, and the expedited due process hearing will be set on approximately the twentieth (20) school day after the filing. Expedited matters may not be continued. If the matter is filed as an expedited case, the strict timelines outlined in your scheduling order will be enforced and you should anticipate having the hearing on the dates listed.

If your case involves some claims that are “expedited” and some that are not, your case will be considered a “dual” case, and you will receive a scheduling order for the dual case that includes dates for mediation, prehearing conference, and due process hearing for both the expedited and the non-expedited issues. (See Form 7.)

The timelines and sequence of events in requests for mediation only filed by a district or a parent

When OAH receives a request for mediation only, OAH will send to all parties a “Scheduling order for Mediation Only.” (Form 8.) The scheduling order which will contain the date, time, and place of the mediation and the name of the mediator. The mediation is required to be held within fifteen (15) days of the filing of the request for mediation only. (See Part 5 regarding “mediation only” filings.) Your scheduling order in a mediation only case will be accompanied by a form for you to use to request a continuance of the date assigned by OAH for mediation.

PART 4: The resolution session

When a request for mediation and due process hearing is filed with OAH by a parent, the school district is required to hold a meeting called a "resolution session" within 15 days of receiving notice of the filing. It does not matter if the school is on summer break at the time the request for due process hearing is filed. The school district must hold the resolution within 15 days of receiving notice of the filing. The resolution session is required by federal law, and its purpose is to give the parties the opportunity to resolve the dispute as quickly as possible. A resolution session is not required when a school district files a request for mediation and due process hearing or if either party files a request for mediation only. In a case filed as an expedited hearing, a resolution session is required to be held on the same timelines, but the time for the expedited hearing runs concurrently with the time required to hold the resolution session.

These resolution sessions are between the school district and the parents, and OAH is not involved. OAH does not schedule any mediations or hearings within the first 30 days after a request for due process hearing has been filed by a parent in order. The law requires that the parties have a "cooling off" period for 30 days in an effort to informally resolve the matter and complete the resolution session.

Can the resolution session be cancelled or waived?

The parents and the school district may agree in writing to skip (waive) the resolution session. When the parties waive the resolution session, they must provide OAH with a written agreement to this, signed by both parties, and the matter will proceed directly to mediation and hearing. A waiver of the resolution session must be in writing and signed by all parties agreeing to waive the resolution session. (Form 9.) When you waive a resolution session and notify OAH in writing, most likely the dates for hearing will be advanced so that the hearing will occur sooner.

Am I required to participate in the resolution session?

Yes, unless both you and the district have agreed to skip it (see above). The resolution process is mandatory and the parents and the school district must both attend. If either the district or the parents decline to participate in the resolution process, certain consequences may occur, as described below.

If the parents do not participate in the resolution session, and the parties have not otherwise waived the meeting in writing, a due process hearing may not take place until the parties hold the meeting. If the school district is unable to get the parents to participate in the resolution session after the school district has made reasonable efforts to do the same, and the school district can document those attempts, the school district may request that OAH dismiss the parents' request for due process hearing. Also, OAH can dismiss the request if the parents won't participate in a resolution session. OAH will not dismiss the parents' request without giving them three business days to respond to the school district's motion. Saturdays, Sundays, and state and federal holidays do not count as business days for this purpose. Summer breaks and school vacations count as business days

If the school district does not schedule a resolution session within the required time (15 days) or is unwilling to participate in the meeting, parents may request that OAH set the matter for due process hearing immediately (advance the hearing dates). This request may be made by letter to OAH accompanied by a proof of service (Form 3) that the request has been served on the other party. (Form 10.)

If the hearing dates are advanced based on the school district's failure to schedule or participate in a resolution session, the due process hearing may be held before the 30 days allowed for the resolution session have passed.

What is the purpose of a resolution session?

The resolution session gives you and the school district the opportunity to work together to resolve the dispute stated in your request for hearing before a hearing is held. The resolution session is less formal than a hearing, may result in early resolution of the dispute, and may help repair relationships and open lines of communication between you and the school district.

If you and the school district do reach an agreement, you will have three business days to rescind, or cancel, that agreement by notifying the school district in writing. If it is not cancelled within three business days, it is legally binding and enforceable in state or federal court. You should be aware that this is the only part of the process where you have a right to change your mind. If, for example, you reach a settlement at mediation or prior to hearing, there is no right to change your mind.

Who attends the resolution session?

You and the school district determine which members of the IEP team will attend the resolution session. Participants should include you, a school district representative who can make decisions on behalf of the school, and any IEP team member who has relevant information about the issue or issues that the parties will discuss at the meeting. It may be appropriate to have your child attend the meeting as well. This is a decision that you must make. You may also have an attorney, advocate, or supporting friend attend with you and/or help you prepare for the meeting. School districts may not bring an attorney to the resolution session unless you bring an attorney. A school district may not bring an attorney if you bring an advocate so long as you have determined that the advocate has relevant information relating to the child and that you want that person to be an IEP team member at the resolution session. If the parent is an attorney, the school district is not entitled to bring an attorney to the resolution session unless the parent brings another attorney. For purposes of the resolution meeting the parent is a parent, even if the parent is also an attorney.

How do I prepare for the resolution session?

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

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

May I bring my attorney to the resolution session?

Yes. However, the district may not bring an attorney to the resolution session unless you do.

What if I need an interpreter for the resolution session?

Because OAH does not have jurisdiction over resolution sessions, we don’t have authority to provide interpreters for them. You should contact the school district and ask for an interpreter if one is needed.

What if the case is settled during the resolution session?

Both parties will sign a settlement agreement. The party who filed for hearing should notify OAH that the matter is settled and should be withdrawn. However, both parties should notify OAH in writing that the case has settled. The notification can be sent by fax or mail.

What if I agree to something at the resolution session, and then change my mind and want to cancel it?

Under federal law, either you or the school district can withdraw from any agreement that is reached at the resolution session within three business days after signing it. If the agreement is cancelled, then the matter will proceed to mediation, a prehearing conference, and due process hearing according to the scheduling order issued by OAH.

If you want to cancel the agreement, you should contact the school district. It is best to put your request to cancel in writing. To avoid any confusion, you should also deliver a letter to your school district and any other involved parties at the same time stating your wish to cancel. You should also send a copy of the cancellation to OAH.

If your case has been dismissed by OAH because of the settlement you later canceled, you may refile your request for due process hearing with OAH. Remember that an agreement reached at resolutions session is the only time in the process where you have a right to change your mind.

What if the case does not settle during the resolution session?

The matter will proceed to mediation and a due process hearing on the dates sent to you in the scheduling order. (See Part 3.) You must send a notice of resolution outcome to OAH whether the matter settles or not. Usually, the school district sends this notice to OAH.

What if the school district does not implement the agreement reached at the resolution session?

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

If the school district fails to comply with a due process hearing order or implement the settlement agreement, a complaint may be filed with CDE by downloading the complaint form from the CDE Special Education Division Web site:

<http://www.cde.ca.gov/sp/se/qa/documents/cmplntproc.doc>.

Complete the form, include a copy of the due process hearing order, and fax or mail to:
Procedural Safeguards Referral Service (PSRS)
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814-3704
Fax: (916) 327-3704

For additional information about how to file a complaint, please call PSRS at (800) 926-0648, Monday through Friday, 9:00 a.m. to 4:00 p.m.

What is the difference between a resolution session and mediation?

Mediation is a voluntary process in which both parties voluntarily agree to meet with a trained neutral person (one with no stake in the matter who can be objective and unbiased) to facilitate settlement discussions. A resolution session is required by statute in certain circumstances. Congress added the requirement of a resolution session to the *IDEA* in 2004 as another means of encouraging parents and school districts to directly resolve their differences as early in the process as possible and without the need for a due process hearing. In a resolution session:

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

What happens to the due process proceeding when an agreement is reached at a resolution session?

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

PART 5: Mediation

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

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

What are the benefits of mediation?

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

What is “mediation only,” and when is it held?

Either you or a school district may file a request for “mediation only.” OAH will schedule the session to occur within 15 days of the date of the filing of the request and send a scheduling order to all parties. A request for mediation only will result in just that – a mediation only. Nothing else will be scheduled. If the disputes are not resolved at mediation only, then OAH will close the case, and one of the parties could then file a new request for mediation and due process hearing to have a different ALJ conduct a due process hearing to resolve the dispute.

Where is the mediation generally held?

The mediation is held at a location reasonably convenient for the parents, which is generally the school district office. You will receive notice of the location of the mediation in the scheduling order.

How can I reschedule the mediation date if I cannot attend on the date scheduled?

OAH will reschedule the initial mediation date that is contained in the scheduling order if all parties agree to a new date. All parties should sign the form setting the new agreed-upon mediation date

that is sent in the scheduling order. Because mediation is a voluntary process, either party may decide to cancel the mediation at any time.

What if one of the parties does not want to participate in mediation?

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

If all parties later decide that mediation will be helpful, OAH will reschedule a session. Mediation is available at any time to the parties, even during a due process hearing. If the parties request mediation during hearing, generally the hearing will be “dark” (not in session) for one day while the mediation is held. If the matter does not resolve, the hearing will resume the next day.

Who is the mediator?

The mediator is an administrative law judge (ALJ) employed by OAH. These professionals are also attorneys and have received extensive training both in mediation and special education and have been practicing law for a minimum of five years.

What is the role of the mediator?

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

- Assists as a neutral party, who is unbiased, objective and impartial, and who has no stake in the outcome of the case.
- Facilitates open communication between you and other parties.
- Creates a safe, comfortable environment that facilitates a back-and-forth, positive interaction between the parties.
- Assists the parties in understanding each other’s viewpoint and helps them reach a mutually satisfactory resolution to the dispute.
- Clarifies points of agreement and disagreement between the parties to assist in identifying options that may be available to resolve the case.

Don’t feel pressured to settle at mediation. It is up to you to decide if the agreement is appropriate for you and your child. If you cannot resolve the matter on terms acceptable to all, the matter will move on to a due process hearing.

Who generally attends the mediation?

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

The parties may bring an attorney or advocate to the mediation, unless the request was for “mediation only.” A parent may also bring an advocate or a supporting friend to the mediation.

May I tape record the mediation?

No. They are confidential discussions.

How do I prepare for the mediation?

- Write down an outline of what you believe your child needs, and include ideas for possible solutions.
- Organize your documents. Bring any documentation that supports your position regarding your child’s educational needs, such as testing or assessment reports that you may have had done on your own.
- Consider consulting with an attorney or advocate prior to the mediation. If an attorney or advocate will be representing you, definitely discuss the issues, and possible solutions, with that person before the mediation. You are not required to give the school district notice if you plan to have an attorney or advocate with you at the mediation.
- It may be helpful to identify sections of the law or regulations with which you feel the school district may not be complying.
- Come prepared to discuss, and be open to, a variety of possible solutions.
- Try to anticipate questions the school district or mediator may have or responses they may have to your position or suggestions, and be ready to answer the questions or argue the school district’s position with concrete examples.
- Mediation can be an emotional experience for all parties, but try to focus on future solutions rather than on past problems.
- Really *listen* to solutions that are offered and the reasons why.

What are the benefits of mediation?

Mutual agreements generally result in greater satisfaction for all parties. Mediation may be less costly than going to hearing and can result in resolutions more quickly than traditional legal procedures. Solutions that would not be ordered by a judge in a hearing may be available through mediation. Most importantly, the parties control the outcome if they reach agreement.

What happens during mediation?

The mediator will introduce everyone and seat you all at a table. He or she will explain the purpose of mediation, the mediator’s role, and how the session will proceed. The mediator will ask all the parties present to sign in on an OAH form that shows who participated.

The mediator will ask the party who filed the request to give an overview of the issues in the case, what issues have been resolved, if any, and what issues are still in dispute, and what resolution the filing party would like to see. Then the other party will be given a chance to respond. Afterward, the mediator will assist the parties in discussing each issue and ideas for resolving the dispute.

Either party can ask to speak with the mediator alone. This is called a caucus. If the parent asks to caucus with the mediator, the school district staff will generally go into another room so that the parent may have a private discussion with the mediator. If the mediator caucuses with one party, the mediator will most likely also caucus with the other party. At times the parties may ask to speak privately without the other side and without the mediator present. Each mediation is different. Throughout the session, the parties may caucus alone or with the mediator several times. Settlement offers may be discussed during the caucuses and the parties may ask the mediator to convey offers and counter offers to the other party, similar to how you might negotiate buying a home with a realtor.

Mediations may last an entire day except for mediations involving the Los Angeles Unified School District. Those mediations are set for a half day. If necessary, and at the request of both parties, the mediator will continue the mediation on another day if this will be beneficial.

What happens if we settle the disagreement at mediation?

The parties may resolve some or all of the issues at the mediation, and you will confirm this by putting it in written form on the spot. This is called a written settlement agreement or a mediated settlement agreement.

The parties and their representatives will review the settlement language and make suggestions and changes as necessary. After the parties and their representatives have all agreed on the terms and language of the settlement agreement, you'll all sign the document. Unless school board approval is needed, the case will be concluded. The mediator will have with him or her OAH forms that the parties can sign to close the case. If school board approval is required, the hearing will be postponed, but not dismissed. Once board approval is obtained, the party who filed the request with OAH is required to provide a letter to OAH indicating that the matter resolved at mediation so that OAH can close the case and cancel all dates scheduled for hearing. If the school board does not approve the agreement, the parties should notify OAH, and the matter will proceed to another mediation and then to due process hearing if the matter is not settled.

What happens if no agreement is reached at the mediation?

If the matter was filed as a "mediation only," the case will be dismissed by OAH at the conclusion of the mediation. But remember, you can still refile for a hearing if the issues are not resolved by filing a request for mediation and due process hearing (Form 2).

If a request for a due process hearing was included, the matter will proceed to a prehearing conference (see Part 7) and a due process hearing (see Part 10). At the conclusion of the mediation, the mediator will confirm the hearing dates.

What if we do not resolve the case at mediation, but want another mediation to try again?

Mediation is available at any time during the due process proceedings as long as both parties agree to participate. If the parties believe it will be helpful to have an additional mediation, they should agree to a date for it and make the request to OAH. OAH will generally schedule the mediation on the date selected by the parties.

PART 6: The voluntary settlement conference

The voluntary settlement process is another way to help the parties work out their disagreement before the hearing. If you have filed a request for mediation and due process hearing and have been unable to resolve your dispute through mediation, you may also request a voluntary settlement conference to try to solve it before the hearing. OAH will provide an administrative law judge (ALJ) for the conference. Parties can have their attorneys present.

How does a voluntary settlement conference differ from mediation?

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

How do I request a voluntary settlement conference?

You should contact the other party or parties, and ask them if they are willing to participate in a voluntary settlement conference. All parties have to agree to set a voluntary settlement conference for it to happen. Once you have agreement from the other party or parties that they are willing to participate, you may request a voluntary settlement conference a letter to OAH, signed by all parties, and sent by mail or by fax to (916) 376-6319.

The request should contain pertinent information about the case, such as the case name and number. It should state that the parties want to participate in a voluntary settlement conference to try to settle the case, and should propose dates that you and the other party or parties are available to participate. You should file a proof of service with your request (Form 3) to show OAH you have served a copy of your request on the other parties. You must send a copy of your request to the other party or parties in the due process proceeding (hand delivery, mail, or fax), or to their attorneys if they are represented, at the same time you send it to OAH.

If your request is granted, OAH will set the date and time for the voluntary settlement conference and will provide written notice of the date, time, and place to you and the other parties. (See Form 11.) Generally, the voluntary settlement conference is held a few days before the hearing begins.

Where is the settlement conference held?

A voluntary settlement conference is held at the offices of OAH, unless otherwise ordered. Each party or representative who attends is required to be fully familiar with the facts and issues of the case, and is required to have the authority, or to be able to obtain authority immediately by phone, to negotiate and reach settlement terms.

What are settlement conference statements?

You may be required by OAH to file a “Confidential Settlement Conference Statement” at least three business days prior to the voluntary settlement conference describing the factual and legal issues and the status of any previous settlement discussions in the case.

What should I bring to the settlement conference?

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

Is the settlement conference confidential?

Yes, unless you and the other parties agree otherwise.

May I tape record the settlement conference?

No, because the discussions are confidential.

What happens at the end of the settlement conference?

If you reach a settlement, it will be written into an agreement and the case will be dismissed.

Sometimes school districts must get approval of a settlement from the district superintendent or the school board. After that it will become final. The hearing will generally be postponed while the board approval is pending. If the school board does not approve the agreement, the parties should notify OAH, and the matter will proceed to another mediation or voluntary settlement conference if the parties agree, and then to due process hearing if the matter is not settled.

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

PART 7: The prehearing conference

A prehearing conference is conducted by telephone and involves a conference call between the ALJ, and all the parties for the purpose of discussing and planning for the due process hearing. You will talk about names of witnesses who will testify at the hearing and how long each witness testimony will take, how your exhibits (documentary evidence) are to be marked for the hearing, and how much time might be needed to complete the hearing. The prehearing conference enables all involved to know what to expect during the due process hearing.

What if I decide to get an attorney or advocate prior to the prehearing conference?

Your attorney or advocate is required by law to inform the school district and any other parties that you are represented at least ten (10) days prior to the due process hearing. It is a good idea to send OAH a copy of any document you send to the other party informing them that you have an attorney or advocate.

How will I know when the prehearing conference is to be held?

The date for the prehearing conference is generally set a week before the hearing on a Monday or Wednesday. You will receive the date for the prehearing conference in the scheduling order sent to you by OAH after the request for due process hearing is filed. (See Part 3.)

What happens if I don't have a prehearing conference?

If a prehearing conference is not held for some reason, you are still bound by the laws requiring you to serve (provide copies of) your exhibits and witness list to the other parties. The law requires that at least five business days before the due process hearing, the parties must send to each other copies of all documents (exhibits) you intend to use at the due process hearing, as well as a list of witnesses you intend to speak on your behalf at the due process hearing (see further discussion below, and refer to your scheduling order; see also Form 4).

The prehearing conference gives the parties the opportunity to talk to the ALJ prior to the hearing, and ensures that you have done what you need to do prior to the hearing. Therefore, if your due process hearing is approaching and you do not have a prehearing conference on calendar, you should request one by writing a letter to OAH, stating your request that a prehearing conference be calendared. Be sure to send a copy of the request to all other parties.

Do I need to attend the prehearing conference?

If you are representing yourself at the due process hearing, you are required to attend the prehearing conference. If you have an attorney, he or she may attend on your behalf. All prehearing conferences are held over the phone, unless otherwise ordered.

Who will preside over the prehearing conference?

Typically, the ALJ assigned to your due process hearing will also be assigned to your prehearing conference. The ALJ will initiate the prehearing conference by calling the parties on the date and

time specified in the scheduling order. You must be available for the prehearing conference and you should call OAH 30 minutes before the scheduled prehearing conference and let OAH know the best number to reach you.

You can go to OAH's Web site at

<http://www.oah.dgs.ca.gov/Special+Education/Special+Ed+Web+Calendar.htm> to find out which ALJ is assigned to your case and view the OAH calendar.

Will the prehearing conference be recorded?

Yes. The judge will record it and the recording will become part of the official record.

May I record the prehearing conference using my own equipment?

You must have permission from OAH to do this, and provide notice to the other parties beforehand. If you are planning to record the prehearing conference, you should include your request to record in the prehearing conference statement. You may not record the prehearing conference unless you have specific ALJ approval.

Do I need to prepare for the prehearing conference?

At least three business days prior to the prehearing conference, the parties are required to file with OAH, and send to the other parties, a prehearing conference statement (See Form 12 for sample prehearing conference statement.) Remember that all documents you file, including your prehearing conference statement, should be accompanied by a proof of service (Form 3). The other party is required to file a prehearing conference statement with OAH and send you a copy as well. This prehearing conference statement *must* include the following:

- Your estimate of the number of days necessary to complete the due process hearing. You should include in this estimate the time required for the presentation of your case only, and also an estimate of the time required for the entire hearing.
- A concise statement of the issues to be decided at the due process hearing, and the proposed resolution of each issue, based only on those issues raised in the due process hearing request. You may not raise any new issues in your prehearing conference statement. You may not simply state that the issues are those in your request for due process hearing, but you must list the issues in your prehearing conference statement.
- The name of each witness you may call at the due process hearing and a brief summary of what they'll be talking about and why it relates to your dispute.
- The name of each expert you may call at the due process hearing, a brief summary of the subject of the expected testimony of the expert, and a description of the issue to which the expert's testimony relates.
- A list of the exhibits that you intend to present at the due process hearing, and a description of any physical or demonstrative evidence. Exhibits are typically documentary evidence, such as your child's IEP or copies of assessment reports that you want to rely on during the hearing to prove your case. An example of demonstrative evidence would be a video of the student in the classroom setting, a chart showing the school year, or a map of the school campus.

- The names of any witnesses, if any, you would like to have testify by phone at the due process hearing.
- The need, if any, for an interpreter or special accommodation at the due process hearing.

A description of what is required to be included in the prehearing conference statement is also listed in the scheduling order (see Form 4) sent to you by OAH.

What is discussed at the prehearing conference?

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

Location and time: The due process hearing date, time, and location.

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

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

Exhibits: The ALJ will discuss with you the requirements for exhibit binders (which you will be putting all your evidence in), numbering your exhibits, the number of copies of the exhibit binder you will need to take to the hearing, and when you will need to provide your exhibit binder to the other party. Your exhibit binder must have a table of contents listing all exhibits by number. Unless otherwise ordered by the ALJ, you must provide a copy of your exhibit binder, with exhibits properly numbered and separated by tabs in the binder, to the other party or parties at least five business days before the hearing. If the other party or parties are represented by attorneys, you must provide a binder to the attorney (not directly to the party, unless this has been agreed to by the attorney beforehand). The exhibit binder for the ALJ and a separate exhibit binder for all witnesses to use when testifying should be brought with you to the hearing on the first day. The school district is also required to do all of the above with its exhibits. Failure to do this may result in exhibits being barred from use at the due process hearing.

Witnesses: During the prehearing conference, you will be expected to discuss matters relating to the witnesses you intend to call at hearing. You are responsible for getting your witnesses to attend the due process hearing. However, if a witness you intend to call is employed by the school district, you may request that the ALJ order that the school district make the witness available during the due process hearing. Generally, each side is asked and agrees to make their witnesses reasonably available at the hearing without the need for subpoena. (See Form 13, and discussion below regarding subpoenas.)

Testimony by phone: Witnesses may be allowed to testify by phone under certain circumstances. You will be expected to explain the reasons why this witness cannot testify in person. The ALJ will decide whether to allow it or not.

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

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

What is an order following prehearing conference?

After the prehearing conference, the ALJ will issue a written order to all parties with matters you all discussed and any directions that must be followed. (See Form 14 for sample order following prehearing conference.)

If you do not comply with the orders, the ALJ may impose sanctions (penalties) against you. For example, if you do not provide your exhibits to the other parties at least five business days prior to the due process hearing, the ALJ may not allow you to introduce your exhibits during the due process hearing.

Can I request mediation at the prehearing conference?

Yes, you can request mediation at any time. Mediation is voluntary, so the ALJ will ask the other party or parties if they are willing to mediate. If they agree, the ALJ will schedule it for you, and OAH will provide a mediator.

What are my options if I cannot get my prehearing conference statement prepared and served three business days prior to the prehearing conference, or if I cannot attend the prehearing conference?

If you cannot be prepared to proceed with the prehearing conference, you may request an extension of the time to file your prehearing conference statement and/or to continue (postpone) the actual prehearing conference. This request must be in letter form, accompanied by a proof of service (Form 3), and served on all other parties at the time you file the letter with OAH. This document can be hand-delivered, mailed or faxed to OAH at (916) 376-6319. (See Form 15 for sample request for continuance of prehearing conference.) You should always contact the other parties and ask if they agree to your request and include in your request whether the other parties agreed or not.

PART 8: Motions and notices of insufficiency

A “motion” is a specific request asking a judge to do something and is usually made in writing. The motion should include the relevant facts and information and any necessary legal analysis or explanation to convince the judge to grant it. Any party to the proceeding may file a motion with OAH. The ALJ’s decision or “ruling” on a motion filed prior to the due process hearing will be sent to the parties in a document called an “order.” If a party files a motion at the due process hearing, the ALJ will likely rule on the motion during the hearing.

What should a motion contain?

You may write your motion in a letter and simply state what you want and the reasons why. Your motion must also contain a proof of service (Form 3) or a statement that you sent a copy to all involved parties and how you sent it.

Where do I file a motion?

Motions, as with all documents in a special education matter, are filed with the Sacramento OAH office. It may be faxed to (916) 376-6319, hand delivered or mailed to the Office of Administrative Hearings, Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833-4231.

At the time you mail or fax your motion to OAH, you must mail or fax a copy of the motion to the district and any other parties. If an attorney represents the district or another party, you must send the copy to that attorney. The district and other parties, if any, will have three business days after they receive the motion to file a response with OAH and to send a copy to you or your representative.

How do I respond to a motion filed by the district?

If any party files a motion, the party will send a copy to you or your representative. You will then have three business days to file a response with OAH to the district’s motion. You must provide the district and any other parties with a copy of your response. If you cannot file your response within the required timeline, you may write a letter to OAH, with a copy to the school district or the school district’s attorney, and request additional time to respond. Remember to include a proof of service (Form 3) with your letter. Do not ignore a motion; you should respond in writing even if you agree to the motion.

What are some examples of motions?

- “Notice of insufficiency.” This is usually filed when there is a question as to whether the request for due process hearing has sufficient information necessary, as to each claim, to allow one of the parties to respond to the request for due process hearing. (See Form 16 for sample.)
- Motion to continue (postpone) the hearing dates. (See Form 6 for sample.)

- “Stay put” motion to ensure your child remains in his last agreed upon and implemented placement while you resolve the dispute with the district. (See Form 17 for sample.)
- Motion to dismiss some of the issues in the request for due process hearing, or maybe even the entire request for due process hearing. Some of the commonly seen grounds for a motion to dismiss include:
 - Issues alleged by the parent are not within the jurisdiction of OAH,
 - Student is not a resident of the district (residency does not relate to immigration status, but generally means the student does not live in the district), or
 - The parents refused to participate in a resolution session convened by district.
- Motion to amend the request for due process hearing. This is typically a motion to add a claim or claims to the request for due process hearing. To prepare your amendment to the request for mediation and due process hearing, you should simply add the additional claim or claims to a copy of your original request and file the amended document with OAH, along with a letter requesting permission to amend your request. Remember to include a proof of service (Form 3). Any motion to amend your complaint must be filed at least five days prior to the due process hearing and your amended request will not be deemed filed until an ALJ grants your request for permission to amend. An amendment of your request for mediation and due process hearing will reset all timelines in your case, and a new scheduling order will be issued by OAH. (See Part 3 regarding the scheduling order.)
- Motion to add another party. Typically the district or parents request that OAH add as a party another school district or county mental health agency that may be responsible for providing special education services to the student. This request may be filed in the form of a letter accompanied by a proof of service, and the letter, the proof of service, and the request for mediation and due process hearing must be served on the party to be added. When adding a party, it is sometimes necessary to amend the request for mediation and due process hearing.
- Motion to consolidate. The district and parents may have filed separate requests for due process hearing that involve similar issues. Instead of two separate hearings, either the district or parents will file a motion to consolidate both cases into one matter so that there is only one hearing. This request may be filed in the form of a letter accompanied by a proof of service, and the letter and the proof of service must be served on all other parties.

What is a notice of insufficiency (NOI)?

Federal and state law require that a request for mediation and due process hearing include certain information: the child’s name, age, address and the school the child goes to along

with specific allegations (complaints or claims) about the problem and a requested way to fix it. The law allows a party to challenge whether the request for due process hearing filed by the other party contains sufficient facts (enough specific information) to support the claims or complaints it is making. (See Form 16 for sample.)

A party has 15 days after receiving the request for mediation and due process hearing to file a notice of insufficiency with OAH. If this doesn't happen, the due process request will be considered sufficient. In ruling on a notice of insufficiency, OAH looks to the request itself to see if it is sufficient. If OAH determines your request for due process hearing is sufficient (complete with all required information), the mediation and hearing will proceed as scheduled.

If OAH determines that your request for due process hearing is insufficient, OAH will cancel the mediation and hearing dates, and give you 14 days to submit to OAH and the other parties an amended (updated) request for due process hearing that contains sufficient facts.

Finally, OAH may issue an order that finds some claims sufficient and others insufficient. If OAH finds the request partially sufficient, the party who filed it will be given 14 days to file an amended request that includes both the claims that were determined by OAH to be sufficient and additional facts to correct those that weren't. All originally scheduled dates for hearing (prehearing conference and due process hearing) will remain on calendar and the matter will move forward on the claims in the request for due process hearing that were determined to be sufficient. If a party files an amended request for due process hearing, OAH will cancel the mediation and hearing dates and send out a new scheduling order with new dates for the prehearing conference and due process hearing.

Examples of insufficient claims:

- *“The district denied student a free appropriate public education by not providing student with needed services.”*

This claim is insufficient because it doesn't have any specifics--it does not identify the services (such as occupational therapy) that the student requires, why the student requires this service to receive FAPE, what IEP includes the service, and when the district failed to provide the student this service.

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

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

- *“The individualized education program proposed by the district will not allow student to make some educational progress.”*

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

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

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

- *“Student requires an Independent Educational Evaluation.”*

This claim is insufficient because it does not identify the assessment that the district conducted or failed to conduct, why the district's assessment is not adequate or why the district needed to assess the student. It does not state when the parents requested the independent educational evaluation and the district's response to the request.

PART 9: Preparing for the due process hearing

What is a due process hearing?

The due process hearing is held as a result of a party filing a request for it. An administrative law judge from OAH will preside over (conduct) the hearing. During the due process hearing, the party who filed the request – as well as the party it filed against – is given the opportunity to present their cases through relevant evidence and testimony from themselves or others.

The focus of the hearing will be the issues contained in the request for due process hearing, which were later clarified during the prehearing conference. It's important to understand that only “relevant evidence” is admissible, meaning evidence that has a tendency to prove a fact in dispute in the case. Relevant evidence includes evidence that focuses on the issue or issues you listed in hearing and why the information will help the ALJ decide the issue in your favor.

What is the burden of proof and who has the burden of proof at the hearing?

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

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

For example,

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

However, this can change depending on the facts of the case. You should confirm with your assigned judge before the hearing who has the burden of proof. Generally, however, you have the burden of proof on any issue you filed for hearing.

What is the standard of proof at the hearing?

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

What are exhibits and how are they prepared?

Exhibits are the documents you intend to use at the due process hearing to prove your case. Exhibits typically consist of individualized education programs (IEPs), assessment reports, CDE compliance complaints or corrective actions, and other documents. At least five business days before the hearing, you must give the district and any other party a copy of your documents in an exhibit binder. The school district and any other party must also give you a copy of his or her exhibit binder by this time as well. You must also make two extra copies of your exhibit binder and bring both to the hearing -- one will be for the ALJ and the other will be for the witnesses to use.

When you are preparing your exhibit binder, make sure that all of your exhibits are complete and in the correct page order. For example, do not include only one page of an IEP, insert the whole document. You should also write page numbers on each exhibit so that a witness can refer to the exhibit number and page so that all the parties in the hearing can tell which page a witness is looking at. When you receive the district's exhibit book, you should review it to make sure that the district has included all pages of the IEPs and other documents. You will also want to read them. Make notes about the documents that you want to object to at the hearing, or that contain some information that you may want to ask a witness about at the hearing.

May I use an audio recording of an IEP meeting as an exhibit at the due process hearing?

Yes. However, you must provide a copy of the recording and a transcript of all relevant portions of the record to the ALJ and to all parties along with your other exhibits, unless the ALJ orders otherwise.

May I present my child's school records as evidence at the hearing?

Yes, as long as the records are relevant to the issues to be decided at the hearing.

How do I get access to my child's school records?

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

The law says that your request for school records may be made to the school orally or in writing. However, it is always best to make your request in writing, and keep a copy of your letter as proof of your request. Be sure to include a date in the letter. The district must respond to the request without unnecessary delay before the due process hearing, but no later than five business days after you request them. Saturdays, Sundays, and state and federal holidays do not count as business days for this purpose. Summer breaks and school vacations count as business days for this purpose. You also have the right to receive a response to your reasonable requests for explanations and interpretations of the records. The school district may charge you a reasonable fee for making the copies. However, the school district may *not* charge you for searching for and retrieving the records, or for clerical staff time required for making copies. Also, the fee for making the copies may not be so high that it would prevent you from reviewing the records. If you cannot afford to pay for the copies, they must be provided to you free of charge.

What if the school district does not give me the records?

If the school district does not give you the records you have requested, you may file a compliance complaint with CDE by downloading the complaint form from the Special Education Division Web site: <http://www.cde.ca.gov/sp/se/qa/documents/cmplntproc.doc>.

Complete the form, include a copy of the due process hearing order, and fax or mail to:
Procedural Safeguards Referral Service (PSRS)
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814-3704
Fax: (916) 327-3704

For additional information about how to file a complaint, please call PSRS at (800) 926-0648, Monday through Friday, 9:00 a.m. to 4:00 p.m.

In addition, a school district's failure to provide you with copies of your child's records may constitute "good cause" for a continuance of the due process hearing because it prevents you from preparing for the hearing. (See Form 6 for sample of request for continuance.) You should notify OAH in writing if a school district does not comply with your request for records. OAH may postpone the hearing to allow you more time to get the records.

How do I obtain non-school related documents?

There are special requirements to obtain medical records or employment records about someone other than your child. In the unlikely event that you need to obtain medical records of a person other than your child, you need to be aware of the requirements of California Code of Civil Procedure section 1985.3, which requires notice to the person whose records you are seeking. In particular, California Code of Civil Procedure section 1985.3 requires that you serve a copy of the subpoena (demand to appear or produce records in court) on the person whose records you are seeking. (See Form 13 for sample subpoena form.) That person must be served at their last known address at least 10 days prior to the date you want to get the documents and five days prior to the date that you serve the subpoena on the person or company that is holding the documents (for example, a doctor's office). Failure to give the required notice may make the subpoena unenforceable. This is known as a subpoena deuces tecum.

What do I need to know about witnesses I want to have testify at the due process hearing?

You must exchange witness lists with the school district at least five business days prior to the hearing. (Again, Saturdays, Sundays, and state and federal holidays do not count as business days for this purpose.) If you do not do so, the ALJ may exclude (prevent) your witnesses from testifying at the hearing. You must also include a list of your witnesses in the prehearing conference statement you are required to file. (See your scheduling order and Part 7 regarding the prehearing conference.)

In the days before the hearing, think about the facts you want the hearing ALJ to know, and what witnesses you will need to testify about those facts. Think about what you want to ask the witnesses. It is a good idea to write out the questions you want to ask the witness in advance, so that you do not forget anything. You should also consider the order in which you want the witnesses

to testify. However, keep in mind that sometimes witnesses cannot be scheduled to testify in the order you would prefer. Often witnesses testify “out of order.”

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

Let your witnesses know what day and time you want them to be present at the hearing, and let them know where the hearing will take place. It is best to do this by writing them an e-mail or a letter. You may also use a subpoena to obtain the presence of a witness at the hearing. (See form 13 for subpoena and see below for explanation about obtaining a subpoena.) You should be aware that a witness will not be regarded as “unavailable” for purposes of showing good cause for a continuance of the hearing if the witness agreed to show up at the hearing, did not do so, and was not properly subpoenaed. If you are not certain a witness will show up at the hearing voluntarily you should subpoena the witness.

How do I get a witness to appear if he or she does not agree to appear?

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

Subpoenas for Unwilling Witnesses: A subpoena is used to compel people to provide documents or testimony. A subpoena is a legal document that compels production of documents or attendance at a hearing. Although OAH itself cannot hold people in contempt, a subpoena is enforceable by seeking a contempt order from the Superior Court in your county. (See Form 13.)

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

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

Subpoenas for documents must comply with strict timelines to obtain the documents. Subpoenas to have a person testify do not need to be served any particular days before the day the person is to testify. However, it is best to give as much notice as possible to the witness you subpoena.

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

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

School districts generally make witnesses employed by the district available for the hearing. You should inquire whether your district will do this and work with it to establish a schedule for the witnesses to appear. This will save you the cost and effort associated with subpoenaing these witnesses. You should discuss this with the school district or its attorney prior to or during the prehearing conference in your case. Most districts will work with you, but they are not required to.

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

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

Will there be an interpreter for the hearing?

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

The request form has a space to mark that you need an interpreter and the language that the interpreter should speak. If the district filed the request for due process hearing against you and you require interpretation, you should call or write to the OAH Special Education Division to request an interpreter as soon as possible after you receive the request for due process hearing. An interpreter will be provided at the hearing free of charge.

Can I use witnesses at the hearing, and how do I do that?

Yes. 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 (called “lay witnesses” because they are “lay persons” as opposed to “expert witnesses”).

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

For example, you may want to ask questions about the events at an IEP team meeting in order to prove a claim in your request for due process hearing. You would want to prove your claim through the testimony of someone who was present at the IEP meeting, rather than someone who was not present but who heard about the IEP meeting. The following sample questions show how to ask questions when the witness is first called and then show how to establish that the witness was present:

- Q: What is your name?
- Q: Do you know [child’s name]?
- Q: How do you know [child’s name]?
- Q: Have you attended any IEPs for [child’s name]?
- Q: Did you attend the IEP on [date]?

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

For example:

- Q: Who was at the IEP team meeting?
- Q: What did these individuals say to you?
- Q: What did the IEP team discuss about [child’s name] physical therapy needs?
- Q: Were you able to provide your input to the IEP team?

What if I want to use an expert witness?

If you filed the request for due process hearing, you will likely bear the burden of proof at the hearing and it may be essential that you have an expert witness testify regarding certain issues in your case. Expert witnesses usually are professionals, like a psychologist or someone who assessed your child. You should contact that person as early as possible and ask the person if he or she would be willing to come to the due process hearing and testify. If you cannot afford to pay that person for his or her time, you may ask the person if he or she will testify as an expert without cost. In the

prehearing conference statement that you must file, you are required to disclose any experts that you are using at the hearing.

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

Another alternative is to see if you can minimize the disruption to the professional's schedule by taking the testimony by phone. Ask the ALJ at the beginning of the hearing or the ALJ who conducts your prehearing conference if he or she will allow this. Be sure to explain that you are asking because it is difficult to get the professional to appear in person at the due process hearing.

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

To present expert opinion testimony, you may want to ask these questions while they're on the stand:

- Q: What do you do for a living?
- Q: What is your educational background?
- Q: Is this your curriculum vitae (resume)?
- Q: Is everything in this curriculum vitae accurate?
- Q: Have you received any other training in this area?
- Q: Do you know [child's name]?
- Q: How do you know him or her?
- Q: Do you have an opinion about [for example, recommended amounts of services, placing the student in a particular placement, etc....]
- Q: What is your opinion? What is the basis for that opinion?

What if I need to continue (postpone) the initial dates set for due process hearing?

The scheduling order (Form 4) you'll receive from OAH comes with a continuance form (Form 5), which you and the school district and any other parties may fill out and send to OAH to jointly request a continuance of the initial hearing date. All parties must agree upon the dates to use the form. Your postponement request should be based on "good cause," in other words, for a really good reason.

What are some examples of "good cause" for a continuance?

It is difficult to say what is or is not good cause without having specific facts on which to make the determination, so you should always submit a letter saying why you need a continuance and let an

ALJ decide. Good cause might include the unavailability of an essential witness because of illness or difficulty hiring an attorney. It does *not* include failure to prepare for the hearing.

What if I need an additional continuance?

If you have been granted a continuance and need another, contact the other parties and see if they will agree to it. If all other parties agree, you may jointly request a continuance from OAH. Even if the other parties do not agree, you can still send a letter to OAH, accompanied by a proof of service (Form 3), explaining why you need a continuance. (See Form 6 for sample of request for continuance based on good cause.) You must also send the letter to all the other parties. OAH will independently evaluate whether you have established good cause to continue the due process hearing whether the other parties agree or not. The other parties have an opportunity to send a letter saying why they do not agree to the continuance.

Are there other important things I should know before the due process hearing?

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

Where is the due process hearing held?

Due process hearings generally take place at the district’s offices. A party may also request that the hearing be held at an OAH office if an office is located within a reasonable distance to the parties. Parents can also request that the hearing be held at a location other than the district’s offices. The request should be made in writing to OAH, with a copy to all opposing parties or their attorney if they are represented. The requested location must be “reasonably convenient” to the parent. Generally, the school district offices are reasonably convenient to the parent.

What should I do if I am running late to the hearing?

If you are going to be late to the hearing, you must call the Sacramento OAH office. If you don’t, your case may be dismissed. If the district filed a request for due process hearing against you, then the ALJ can hear the district’s side of the case even though you are not present. Therefore, it is important to appear in person and on time at the due process hearing. The Sacramento OAH Office will get a message to the ALJ assigned to your case that you are running late.

When do I provide a copy of my exhibit binder to the judge and a copy for use by witnesses who will testify at the hearing?

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

Where should I tell my witnesses to be during the hearing?

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

Are cell phones allowed in the hearing room?

You can bring it in, but you must keep it turned off when the hearing is in session. Even if you leave your cell phone on vibrate mode, it can be disruptive. Please turn off all cell phones during the hearing.

Will the hearing be recorded?

Yes. OAH uses digital equipment connected to the ALJ's laptop computer that records all of the proceedings, including the testimony from the witnesses.

May I record the hearing using my own equipment?

You may record the hearing using your own recorder. However, you must ask the ALJ for permission and let the judge know you would like to do this. Your recording will not be the official record of the proceedings. When the ALJ says "off the record," you must stop your recording and not turn it back on until the ALJ says "on the record."

What if I decide to get an attorney or advocate prior to the due process hearing?

You are required by law to inform the school district and any other parties that you are represented by an attorney or advocate at least 10 days prior to the due process hearing. Your attorney or advocate is required to file a "notice of representation" with OAH and to serve all other parties with this notice. If you retain an attorney or advocate less than 10 days before the due process hearing, your attorney or advocate may request a continuance of the hearing to ensure that the school district and other parties have proper notice.

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

What if I decide another mediation might resolve the case prior to the due process hearing?

Mediation is available at all stages in the proceeding, so long as the parties agree to participate. If you decide you want an additional mediation, you should contact the school district and other parties and ask if they are willing to participate in mediation. If so, you may contact OAH and request mediation before the hearing. OAH encourages the parties to work out their differences and will help them whenever possible. Mediation can also occur on the first day of hearing with proper notice to OAH. You should not hesitate to request mediation if all the parties agree to it.

PART 10: What happens at the due process hearing?

When does the due process hearing officially begin, and is it recorded?

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

What are “party appearances for the record” and the “oath”?

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

The ALJ will administer an oath or “swear in” the witness and parties prior to their testimony. Generally, administering the oath means to have the witness: rise, raise the right hand, and take the witness oath by which you swear (or affirm) to tell the truth. The ALJ may swear in the parties as they sit at the table so anything they say can be considered part of the record, even if the parties are not in the witness chair.

What else should I know about procedures?

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

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

During any of these discussions, and during any part of the proceedings, only one person speaks at a time. Nobody should interrupt anybody else, and nobody should interrupt the ALJ. If you have something to say, you must wait until it is your turn to say it. If you are afraid you will forget what

you want to say, write it down, and wait until it is your turn to speak. Not speaking at the same time and waiting for your turn to talk helps ensure that the hearing recording is accurate.

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

What are opening statements?

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

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

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

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

An example of an opening statement might be:

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

You may then say who the witnesses are and what they will say, or what the documents prove. For example, you could say:

“I intend to call Mary Smith at the hearing. Mary Smith was my daughter Jane’s second-grade teacher. She attended the IEP meeting on January 22, 2007, where the IEP team discussed the speech and language and occupational therapy assessments. I expect her to testify that Jane needs clinic-based speech and language services.”

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

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

How does witness testimony work?

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

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

When the party who called the witness has asked all of the questions he or she wants to, the ALJ will give the other party the opportunity to ask questions. This is called “cross-examination.” The purpose of cross-examination is to test the credibility of the witness, and to further examine the witness on particular points raised on direct examination. In administrative hearings, such as special education due process hearings, cross-examination is not strictly limited to the areas of examination on direct examination. The ALJ, however, has the discretion to control the proceedings and examination of the witnesses.

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

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

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

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

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

Please be aware that the ALJ conducting the hearing has the discretion to establish the manner in which the due process hearing will proceed. Some ALJs allow only two rounds of questioning of a witness per party, and other ALJs allow continued rounds of questioning until all questions are exhausted. Some ALJs require both sides to question a witness both intend to call so that the witness will have to come to the hearing only one time. You may ask the ALJ at the prehearing conference or at the commencement of hearing about the manner in which the hearing will proceed and how he or she expects witness testimony to be taken.

How is my testimony handled?

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

The school district may call you as a witness as well. The attorney for the school district will ask you questions first, and then you will have the opportunity to testify on “cross-examination” to address any matters relating to questions that the school district’s attorney asked you.

What do I have to show to have a document from my exhibit binder admitted into evidence at the due process hearing?

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

To show a document is “authentic” means showing, usually through testimony from a witness, that the document was drawn up at or around the time of the event being documented, that the document is unaltered, and that the document is what the witness says it is. A document can be authenticated by showing it to the person who wrote it or participated in making it and then asking if: (1) he or she recognizes it, (2) if he or she signed it and (3) if appears correct.

Documents can also be shown to be authentic because they were kept by a government agency or firm in the regular course of business. For example, sometimes documents like attendance records are kept by a school office. To have a record like that admitted, ask if the information was recorded by a person with knowledge and in the regular course of business.

You will then ask the ALJ to admit the document into evidence. Before admitting any document into evidence, the ALJ will ask the other side if he or she has any objection to the document coming into evidence. Generally, you need to tell the judge what the document is and why you want it

admitted into evidence. The rules of evidence applicable in superior court trials are not applicable in due process hearings, but serve as a guide to special education hearings. Do not hesitate to offer any document you want into evidence and let the judge decide if there is sufficient evidence or authentication to admit it.

How do I object to documents or testimony?

Even though the technical rules of evidence do not apply at due process hearings, the evidence still needs to be shown to be relevant and reliable. A party may object to evidence or testimony if there is a question about its relevance, reliability, or admissibility.

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

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

If you have any questions about documents or testimony, you should say, “objection,” and briefly tell the ALJ the reason for the objection. He or she will then decide if the information is allowed into the proceeding, whether you know of a legal basis to do so or not.

What do I do if I disagree with a question being asked by another or with a document referred to by a witness or the other party?

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

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

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

If you are asking a question and the other party makes an objection, the ALJ will let you know if he or she wants to hear argument from you about the objection. Many times, parties will start arguing about the objections before the ALJ has asked for argument. This is not the proper way to proceed. Wait until the ALJ asks for argument on an objection before you start arguing.

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

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

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

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

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

Can testimony be given by phone at the hearing?

You can make a motion, preferably in writing, to the ALJ asking to have a witness testify over the telephone as soon as you know he or she cannot be present at the hearing. If you know that you

need a witness to testify by telephone at the time of the prehearing conference, you should let the ALJ know at that time.

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

What should I do at the end of a hearing day?

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

How is the hearing concluded?

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

At the conclusion of the testimony and evidence, the ALJ will ask all parties if they’ve presented all the exhibits they wanted to. The judge will then ask whether the parties wish to make oral closing arguments.

If you want to make an oral closing argument, you should summarize the evidence that has been presented, and tell the ALJ why the evidence shows that he or she should rule in your favor on each issue. If you prefer to submit a written closing argument (or “brief”) you should make this request early in the hearing. It is up to the ALJ as to whether he or she wishes to allow written closing arguments. If permission is given, the ALJ will tell you the date that the brief is due and will announce the due date “on the record.” You must fax the closing brief to the Sacramento Special Education Office (916-376-6319) for filing, and serve it on the other parties, by the due date. Remember that the closing brief should only discuss the evidence that has been presented at the hearing. Do not use the closing brief to attempt to have additional evidence admitted. The ALJ

may close the hearing portion, meaning no further testimony and witnesses are permitted, but leave the record open for closing briefs. The hearing record remains open until the closing briefs have been received. In some cases, ALJs have allowed each party to file a “reply brief” to the opposing party’s closing brief. This is something that should be requested before the hearing concludes.

When all of the above is completed, the hearing is concluded. The ALJ will go “off the record,” and turn off the recording equipment. Before you leave the hearing room, be sure to take all your exhibit binders, including the exhibit binder you prepared for the witness, with you. Before you leave, the ALJ may return to the parties all exhibits that were in their exhibit binders, but that were not marked and/or admitted into evidence.

When should I expect a decision?

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

When a parent files a case, the law requires that the mediation and due process hearing take place, and the written decision be issued, within 45 days after the end of the 30-day resolution period. If the parties agree not to have a resolution session, then the law requires that the mediation, if any, and the due process hearing take place, and the written decision be issued, within 45 days after the request for due process hearing has been received or the date the parties waived the resolution session. When the school district files a case, there is no resolution period. In that situation, the law requires that the mediation and due process hearing take place, and the written decision be issued, within 45 days after the request for due process hearing has been received by the party against whom it has been filed. The parties may agree to extend the 45-day period, or to waive it entirely. Any such agreement should be in writing. The 45-day period is extended whenever the due process hearing is continued for any reason.

After the hearing is over, the ALJ will write a decision that will be faxed or sent to the parties once it is complete, and OAH will also post the decision on its Web site with personal information left out. The decision will state the issues in the case and the facts that the ALJ found to be true. Often the decision will discuss what witnesses the ALJ believed and why. At the end of the decision, the ALJ will state who won -- or prevailed -- on each issue. The decision may also include an “order” which directs one of the parties to do something. Sometimes one party will win all issues in the case. Sometimes, one party will win on some of the issues, and another party will win on other issues.

The order will also state what the remedies or resolutions are, if any. The law gives the ALJ a lot of freedom to determine the remedies to be awarded, if any. If you have won, the decision may not necessarily award you the fix for your problem that you asked for.

What if I don’t agree with the decision?

If you do not agree with the decision and want to challenge it, you may file an appeal in federal or state court within 90 days from the date the decision is issued. The court that reviews it requires a written transcript of the proceeding, so you must request that OAH transcribe the digital recording of the hearing. The parent is entitled to one free copy of the transcript in either written or electronic form. The parent is also entitled to one free copy of the administrative record (OAH’s file), including copies of exhibits.

PART 11: The administrative law judge (ALJ) assignment and how to challenge it

The ALJ assigned to your due process hearing can be determined by calling the OAH staff person assigned to your case or by looking at your case on the OAH Web site. OAH maintains current biographical information about its ALJs online. The Special Education tab at the top of the Web site includes a listing of ALJs who hear special education matters and the educational background of each.

How do I challenge the administrative law judge assignment?

Due process requires that an impartial judge hear administrative hearings. Parties to a due process hearing are permitted to seek disqualification of an ALJ or other presiding officer from hearing an administrative case. If you decide you want to “challenge” the ALJ, you may do so using the “peremptory challenge” or “challenge for cause” procedures described below. Your challenge must be filed as soon as possible before the due process hearing begins, and prior to the time that the ALJ makes any rulings at the prehearing conference.

What is a peremptory challenge?

Each party is entitled to one peremptory challenge (disqualification without cause or proof) of an ALJ assigned to a hearing, provided that the challenge is made in a timely manner. You must do the following: (1) address your letter challenging the ALJ to the presiding administrative law judge, which you can find on the OAH Web site; (2) send your letter, accompanied by a proof of service (Form 3) to OAH and the other parties; (3) make your challenge of the ALJ in writing or orally on the record in substantially the form set forth in the regulation; (4) serve your letter challenging the ALJ on all parties if made in writing; and (5) file your letter challenging the ALJ within the required time limits which are explained below.

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

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

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

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

What is a challenge for cause?

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

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

However, actual proof of bias or prejudice is required. You must submit a letter to OAH describing why you believe the assigned ALJ cannot be fair in your matter. The challenge for cause is different than the peremptory challenge because a judge will rule on whether you have established a basis to challenge the ALJ before a new judge will be assigned.

PART 12: Finding laws that apply to special education hearings

In general, there are two sources of law that apply to special education cases: 1) statutes and regulations; and 2) decisions by courts or administrative agencies (like OAH) that either interpret statutes and regulations, or apply them to a particular set of facts. This section will give an overview of where to find both sources of law that apply to special education disputes. Links to the federal law and regulations can be found on the OAH and CDE Web sites.

What are sources of special education law?

Statutes and Regulations:

Special education law comes from the *Individuals with Disabilities Education Act* (IDEA), a federal law that provides states with special education funding if certain conditions are met. The IDEA begins at title 20 United States Code section 1400. The IDEA sets forth the categories of disability that qualify an individual for special education, the responsibility of school districts and others to provide a free appropriate public education, the rights and responsibilities of parents or guardians, the types of placements and services that may need to be provided for students, and the procedures that apply when there is a dispute about special education eligibility or services. The United States Department of Education, which oversees giving federal money to the states for special education, has also developed regulations that apply to the implementation of the IDEA. The regulations begin at title 34 Code of Federal Regulations, part 300.1.

The state of California has its own set of statutes and regulations about special education. The state laws and regulations are generally consistent with the federal laws. They are found in the California Education Code, beginning at section 56000, and in title 5 of the California Code of Regulations, beginning at section 3000. The special education sections of the California Code of Regulations were developed by CDE to apply to the implementation of the *IDEA*. Links to the California statutes and regulations can be found on the OAH and CDE Web sites.

Interpretations of statutes and regulations:

Statutes and regulations define the rights and responsibilities of students, their parents or guardians, school districts and other agencies responsible for providing special education services. However, sometimes it is helpful to know how a particular statute or regulation has been interpreted or applied in the past. Like statutes and regulations, there are both federal and state sources of court decisions interpreting special education law and regulations. In addition, another source of interpretation may be comments to the Code of Federal Regulations.

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

Another possible source of information about the interpretation of the federal regulations are the “comments” to the regulations. If the meaning of a regulation is not clear, the comments are sometimes looked at for guidance about what the United States Department of Education intended.

Finally, it is important to understand what cases are most persuasive, convincing and supportive of *your* case. As a general rule, the decisions of the Supreme Court of the United States must be followed by everyone, making them the most persuasive. The same is true for the Ninth Circuit Court of Appeals cases since California is part of that circuit, and federal district courts in California. However, decisions of circuits other than the Ninth Circuit of the United States Court of Appeals and federal district courts in California are highly persuasive; cases from the United States District Court are less persuasive than the above, and even less so when they are not published. Finally, the decisions of OAH, or another state administrative agency, would be less persuasive, particularly if they have been overruled by one of the above courts. Don’t be surprised if you cannot find a case exactly like yours. In general, there is less published law on special education topics than other areas of law.

How can I find statutes, regulations and decisions?

There are two main sources for legal research: books and the Internet. Your local county law library may be able to provide statutes and case law in book form. Information about your county law library as well as tips on how to do legal research may be found at <http://www.publiclawlibrary.org/find.html>.

Your local regional center may have a parent resource center that can help (and may also be able to help with advocacy if your child is a regional center client). You may find your local regional center on the internet at <http://www.dds.ca.gov/RC/RCList.cfm> or by contacting the California Department of Developmental Services at 1600 Ninth Street, P. O. Box 944202, Sacramento, CA 94244-2020, Info: (916) 654-1690, TTY: (916) 654-2054.

“A Composite of Laws” is published annually by the California Department of Education. This book contains all of the California statutes and regulations applicable to special education. It is free to parents of students with disabilities. It can be ordered by calling (800) 995-4099 or on the internet at <http://www.cde.ca.gov/re/pn/rc>. However, 2009 is the last year “A Composite of Laws” will be published in book form. It will only be available online beginning in 2009-2010.

Internet resources:

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

<http://www.disabilityrightsca.org> is the Web site of Disability Rights California (formerly Protection and Advocacy, Inc. (PAI)), a nonprofit organization whose mission includes assisting people with disabilities in advocating for their rights. <http://www.pai-ca.org/PUBS/504001SpecEdIndex.htm> provides access to PAI’s book “Special Education Rights and Responsibilities.”

<http://www.cde.ca.gov/sp/se/lr/> contains links to a searchable database of the California Education Code and California Code of Regulations and links to sources of federal special education law.

<http://www.ed.gov/news/fedregister/index.html> provides a link to the Federal Register, which publishes the Code of Federal Regulations.

http://www3.scoe.net/speced/laws_search/searchLaws.cfm offers a searchable database of California statutes and regulations.

<http://findlaw.com> is a Web site that offers free access to federal and state cases and statutes.

<http://www.leginfo.ca.gov/calaw.html> offers access to California statutes such as the Education Code.

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

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

http://www.access.gpo.gov/nara/cfr/waisidx_02/34cfrv2_02.html provides the text of the Code of Federal Regulations sections relating to special education.

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

<http://www.wrightslaw.com> is a Web site geared toward helping parents understand the law and to advocate for their children. It contains useful references and information, including federal statutes and regulations and some case law.

How do I do legal research?

When doing legal research, don't "reinvent the wheel." There are many sources of information available that have already been organized by someone else, which makes it easier on you. In general, it is always best to start with a source like a book or Web site on special education law. The author will generally have organized the information by topic and will have included the relevant law. Use these sources to help guide you to the statutes that will apply to your case so that you do not have to try to sift through all of the statutes on your own.

Identify the key words that describe the dispute. Whether you are using a book or Web resource, you will need to use key words to find information. For example, the first thing you should do when looking at a book about special education law or a book containing statutes is to consult the index or table of contents. Similarly, to access decisions like those on the OAH Web site, you will need to plug in key words about your dispute.

To develop key words (also known as "search terms"), think about what the issue is in your dispute with the school district. For example, does your dispute involve how your child was assessed by the

school district? If so then a key word would be “assessments.” If your dispute involved where your child is going to school, then you might want to use a key word like “placement” or “school.” If your dispute involved events that happened at an IEP, then you might want to use a keyword like “IEP” or “IEP meeting.” Another useful keyword is your child’s particular disability such as “autism” or “emotional disturbance.”

Once you have your keywords, use them to look through the index of books about special education law or books containing special education statutes. Usually this will point you to the law that applies to your problem. For online research, like finding prior decisions by OAH, use your keywords in the Web site search box. When looking for cases like prior OAH decisions, it is better to use more than one of your keywords. For example, putting in “IEP” in the search box will likely point you to all of the OAH special decisions. However, putting in “IEP,” with the additional terms “autism” and “applied behavioral analysis” would return a much smaller list of cases that are likely to be more relevant to your particular dispute.

PART 13: Special education acronyms and glossary of terms

The Individuals with Disabilities Education Act (IDEA)

The *Individuals with Disabilities Education Act* (20 U.S.C. § 1400 et seq.) is a federal law which requires (1) that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs, and to prepare them for further education, employment, and independent living; (2) that the rights of children with disabilities and parents of such children are protected.

| Acronym | Term | Definition |
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| | 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. |
| ADL | Activities of Daily Living | Activities that make a student independent in his or her environment such as dressing, eating, and toileting. |
| APE | 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. |
| ADR | 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. |
| ABA | 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 category on the PDD spectrum. Typically, a student with Asperger's may be relatively high-functioning in some areas, but have difficulties with socialization and communication. A student with Asperger's Disorder may be eligible for special education. |
| | 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) |
| ADHD | Attention Deficit Hyperactive Disorder | A condition identified as a medical diagnosis by the American Psychiatric Association's Diagnostic and Statistical Manual IV-Revised (DSM IV-R). Related to condition of Attention Deficit Disorder (ADD). Although it is not an eligibility category under the IDEA, children with this condition may be eligible for special education under other categories or under Section 504. (See Ed. Code, § 56339) |
| ASD | Autism Spectrum Disorder | A group of disorders that includes autism and non-autistic pervasive development disorders (PDD) not otherwise specified (NOS), Fragile X Syndrome, Rett's Syndrome and Childhood Disintegrative Disorder. |
| | Assessment | Observation and testing of children to identify the strengths and weakness of the child and to determine progress in order to develop an appropriate education plan. Sometimes called an evaluation. (See Ed. Code, § 56320, <i>et seq.</i>) |
| | Behavior Interventions | The systematic implementation of procedures that results in lasting positive changes in the individual's behavior. (Ed. Code, §§ 56520 through 56525.) |

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| BICM | 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.) |
| BIP | 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.) |
| CARD | Center for Autism & Related Disorders | One of many NPAs providing Lovaas type programs. |
| | Categorical Placement | Special Education programs in which students are grouped on the basis of their IDEA eligibility category. Alternative models include "non-categorical" placement and "cross-categorical" placement. |
| | Chapter 26.5 | The section of the California Government Code that governs interagency responsibilities for the delivery of mental health services to eligible students under the IDEA and related California laws. The services are frequently referred to by the Assembly bills that created the laws, AB 3632 and AB 2726. (See Gov. Code, §§ 7570; 7572, subds. (a) & (c), 7576, subd. (a) [community mental health services provide the mental health services required in order to provide a FAPE].) |
| | 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. (20 U.S.C § 1412(a)(3); Cal. Ed. Code, §§ 56300 through 56302.) |
| | Cognitive | A term that refers to reasoning or intellectual capacity. |
| CALP | Cognitive Academic Language Proficiency | A level of competence required in oral and written language related to literacy and academic achievement. |
| CAC | 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). |
| | 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 20 U.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 § 300.8(c)(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 § 300.8(c)(3).) |
| | Delay | Generally refers to intellectual or skills development not occurring within expected time ranges. |
| DIS | 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 |

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| | | to benefit from his or her special education program. (20 U.S.C. § 1402(26); 34 C.F.R. § 300.24; and Ed. Code, § 56363.) |
| DTT | Discrete Trial Training | Type of instruction for children with autism. Based upon ABA principles. |
| | Due Process | All procedural safeguards of public law and related laws and regulations. (20 U.S.C. 1415; 34 C.F.R. §104.36.) |
| EC | California Education Code | The body of statutes that governs education, including special education, in the State of California. |
| EHA | 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). |
| ED | 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); 34 C.F.R. § 300.8(c)(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), 34 C.F.R. § 300.532.) |
| ESD | 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. |
| ESY | 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.) |
| | 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." |
| FERPA | Family Education Rights and Privacy Act | A federal law that regulates the management of student records and disclosure of information from those records. FERPA mandates confidentiality of special education matters, including confidentiality of names of special education students. FERPA has its own administrative enforcement mechanism (not covered by due process hearings). |
| | Fine Motor | Functions which require tiny muscle movements. For example, writing or typing would require fine motor movement. Services typically associated with deficits in this area include occupational therapy. |
| FAPE | 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.) |
| FAA | Functional Analysis Assessment | Under California law, school districts must conduct an FAA when a student demonstrates a "serious behavior problem," which is defined in title 5, Cal. Code of Regs., § 3001 and 3052. An FAA is also referred to as a "Hughes Bill" assessment. |
| FBA | 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. |
| IEE | 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).) |

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| IEP | 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); 34 C.F.R. § 300.22; referring to 20 U.S.C. §§ 1400 to 1482, and Ed. Code, §§ 56032, 56345 & 56345.1.) |
| | IEP Meeting | A gathering required at least annually under IDEA in which an IEP is developed for a student receiving special education. The IEP meeting usually includes the student's parents and classroom and resource teachers. |
| IEP Team | 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. |
| IFSP | 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.) |
| IDELR | Individuals with Disabilities Education Law Reporter | Specialized full text reporting service publishes policy letter and administrative level actions as well as case law. |
| IWENS | 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.) |
| IAES | 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. |
| LD | 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.) |
| LRE | 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).) |
| LEP | 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.) |
| 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 controversial research conducted by Dr. Ivar Lovaas at UCLA. |
| | Mainstreaming | This term refers to IDEA's preference for the education of every child in the least restrictive environment (LRE) for each student. This term has been most widely used to refer to placement of disabled children in a regular classroom for a portion of each school day. |

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| | Manifestation Determination | IDEA 20 U.S.C. § 1415(k)(1)(E). 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 an Individualized Educational Program (IEP) 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. § 1415(e) 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. |
| MR | Mental Retardation | 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. § 300.8(c)(6).) |
| MDC | 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. |
| NCLB | No Child Left Behind | A federal school reform law that seeks to improve the quality of public schools around the United States. |
| NPA | 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.) |
| NPS | 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, |
| OT | 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.) |
| OAH | 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 |
| OCR | 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. |
| OSEP | US Office of Special Education Programs | A federal office charged with assuring that the various states comply with IDEA. |
| OHI | 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. § 300.8(c)(9).) |
| OH | 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. § 300.8(c)(8).) This is a category of eligibility for special education services. |
| PT | Physical Therapy | Means services provided by a qualified physical therapist. (34 C.F.R. § 300.34(c)(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. |
| PDD | Pervasive | Also known as autistic spectrum disorders. Autism is one type of Pervasive |

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| | Developmental Disorders | Developmental Disorder. If a child displays some characteristics of autism but does not meet all the criteria, another possible diagnosis is PDD-NOS (not otherwise specified). A child with PDD may be eligible for special education. |
| PECS | 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 |
| 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.” (20 U.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. |
| | 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.” |
| RSP | 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.) |
| | 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 |

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| | | 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”. |
| SDL | Severe Disorder of Language | Students who have a severe impairment in the ability to use or understand language. |
| SLD | 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); 34 CFR § 300.8(c)(10); Ed. Code, §§ 56337 & 56338.) SLD is an eligibility category for special education. |
| SELPA | 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.) |
| SDC | 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.) |
| SEA | 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.) |
| SLP | 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. |
| SST | 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. |
| | 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).) |
| TEACCH | 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 |

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| | | program. Depending on the theoretical orientation of the school, these services may include psychotherapy, behavior management, positive peer culture, or other types of intervention. |
| | Total Communication | An instructional strategy in which teachers instruct children with severe hearing loss both by speaking to them and by using sign language. |
| | Transition Planning | At a minimum, this is planning for adolescents' post-school lives and must begin by age 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>) |
| TBI | 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. § 300.8(c)(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. |
| VI | Visually Impaired | An impairment in vision that, even with correction, adversely affects a student's educational performance. (20 U.S.C. § 1401(3) & (30); 34 C.F.R. § 300.8(c)(13).) |

PART 14: Special education forms

Form 1: Mediation only request

Form 2: Request for mediation and due process hearing

Form 3: Proof of service

Form 4: Scheduling order and notice of due process hearing and mediation

Form 5: Request for continuance of initial special education due process hearing date

Form 6: Request for continuance based on good cause

Form 7: Scheduling order and notice of DUAL due process hearing and mediation

Form 8: Scheduling order for mediation only

Form 9: Joint waiver of resolution meeting

Form 10: Request to advance hearing dates

Form 11: Notice of settlement conference

Form 12: Sample prehearing conference statement

Form 13: Subpoena

Form 14: Sample order following prehearing conference

Form 15: Sample request for continuance of prehearing conference

Form 16: Sample notice of insufficiency (NOI)

Form 17: Sample motion for stay put

FORM 1: MEDIATION ONLY REQUEST

Mediation Only Request Form

Important Information you need to know before requesting a Mediation Only:

- Participation in a prehearing request for mediation is voluntary. If one of the parties declines the opportunity to participate, the mediation cannot occur. However, either party still has the option of requesting a state level hearing.
- The law provides that attorneys and other independent contractors who provide legal advocacy services shall not attend or otherwise participate in a “prehearing request mediation.” However, they may participate during all stages of the hearing process. This means that by requesting a mediation only, you may not have an attorney or advocate present at mediation.
- The Special Education Hearing Office will assign your request to a specific mediator. All mediators are under contract with the Special Education Hearing Office and are experienced in the area of Special Education Mediation.

If you wish to file a request for Mediation only, complete and print a copy of this Mediation Only Request Form (NOTE: The required information must be provided for request to be processed.) and mail or fax to:

Office of Administrative Hearings, Special Education Unit
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833
Phone: (916) 263-0880 – Fax: (916) 376-6319

As soon as the completed request has been processed you will be notified by mail.

STUDENT INFORMATION:

NAME, First and Last (Required) _____

ADDRESS (Required) _____

DATE OF BIRTH _____

GRADE LEVEL _____

SCHOOL OF ATTENDANCE
(Required) _____

DISTRICT OF RESIDENCE
(Required) _____

Mediation Only Request Form

PARENT INFORMATION:

NAME, First and Last (Required) _____

ADDRESS (Required) _____

HOME PHONE () _____

WORK PHONE () _____

FAX () _____

LANGUAGE _____

PARTIES TO BE NAMED:DISTRICT OF RESIDENCE
(Required) _____ADDITIONAL PARTIES

(Any other school district, including school of attendance, or public agency that is responsible for providing services that should be a party in the mediation and hearing.)

REQUESTING PARTY (Circle) (Required)PARENT
SCHOOL DISTRICT
OTHER AGENCYPARENT REPRESENTATIVE
SCHOOL DISTRICT REPRESENTATIVE

If the requesting party is not the parent, please complete the following:

NAME _____

ADDRESS _____

ORGANIZATION _____

PHONE () _____

FAX _____

Mediation Only Request Form

BRIEF SUMMARY OF REASON FOR REQUEST (Describe the nature of the problem including all relating facts.)

PROPOSED RESOLUTION OF PROBLEM STATED ABOVE

FORM 2: REQUEST FOR MEDIATION AND DUE PROCESS HEARING

MEDIATION AND DUE PROCESS HEARINGS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004(IDEA)

IDEA provides for mediation and due process hearings to resolve disputes relating to the education of children with disabilities to ensure that each child receives a Free and Appropriate Public Education (FAPE) tailored to his/her unique needs. The process is initiated by serving a completed Request for Due Process Hearing and Mediation (generally called a Complaint) on the persons or entities you name as parties to the proceeding.

Attached is a form that you may use to request a due process hearing and mediation on behalf of a particular child. You should be aware that the IDEA has very specific requirements regarding the information to be included on the request. If the information requested is incorrect, incomplete or not provided, your request for a due process hearing may be delayed until the request meets legal requirements.

Your request must be sent to all of the parties you have identified and a copy provided to the Office of Administrative Hearings.

If you need assistance in completing this form or have questions about the due process hearing and mediation process, assistance is available by contacting the Office of Administrative Hearings at the numbers identified below.

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

Tel. (916)263-0880
Fax (916)376-6319

BEFORE FILLING OUT THIS REQUEST PLEASE TAKE THE TIME TO READ THE FOLLOWING EXCERPTS FROM APPLICABLE FEDERAL STATUTES:

The Request for Due Process Hearing and Mediation (Complaint) shall include:

“the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending...” (20 U.S.C. § 1415 (b)(7)(A)(ii)(I));

“a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem....”(20 U.S.C. § 1415 (b)(7)(A)(ii)(III)) and

“a proposed resolution of the problem to the extent known and available to the party at the time.” (20 U.S.C. § 1415 (b)(7)(A)(ii)(IV))

Either party now has the right to challenge the sufficiency of any Complaint. (20 U.S.C. § 1415 (c)(2)(A))

The party filing the Complaint is not entitled to a due process hearing if the Complaint does not comply with 20 U.S.C. § 1415 (b)(7)(A). (20 U.S.C. § 1415 (b)(7)(B))

The determination of whether a Complaint is sufficient and in compliance with the requirements of 20 U.S.C. § 1415 (b)(7)(A), shall be made by an administrative law judge solely on the content of the Complaint. (20 U.S.C. § 1415 (c)(2)(D))

A party may amend its Complaint only if: (I) the other party consents in writing and a Resolution Session is held; or (II) if permitted by the Administrative Law Judge. (20 U.S.C. § 1415 (c)(2)(E)(i))

All timelines, including those for a Resolution Session, start over upon the filing of an amended Complaint. (20 U.S.C. § 1415 (c)(2)(E)(ii))

REQUEST FOR MEDIATION AND DUE PROCESS HEARING

IMPORTANT: This form is designed to assist parties in requesting mediation services and a due process hearing. Provide all information requested. Failure to provide all information may result in delay or dismissal of your hearing request. OAH will send you a notice that identifies your mediation and Hearing Dates. OAH will also send you a list of attorneys and advocates who provide free and reduced cost services.

This is a request for Hearing and Mediation Hearing Only

This Request is being initiated by the Parent School District (or other LEA)
STUDENT INFORMATION **PARENT INFORMATION**

First and Last Name (Required)

First and Last Name

Street Address (Required)

Street Address

City, Zip Code (Required)

City, Zip Code

Date of Birth

Home Phone

Grade Level

Work Phone

Student's Primary Language (Required)

Cell Phone

School of Attendance (Required)

Fax

District of Residence (Required)

Is the Student a person of color? Please check the appropriate box. (California Department of Education requirement)

Yes No Decline to State

PARTIES TO BE NAMED

INSTRUCTIONS:, please list the Parties to be named in the Due Process Hearing Request. This includes any school district, county office of education or other public agencies responsible for providing services you feel should be a party in the hearing. (Use additional sheets if necessary)

Party and Address

Party and Address

Party and Address

STATEMENT OF REASON(S) FOR REQUEST: Federal and state law require you describe with specificity the nature of the problem(s)/complaint(s). Simply describing a problem as "Student denied FAPE for school year 2005-2006" is insufficient. Include facts, dates, references to specific IEP provisions, etc. Lack of specificity in identifying problem(s)/complaint(s) may result in the dismissal of this Due Process Hearing Request.

PROPOSED RESOLUTION FOR EACH PROBLEM/COMPLAINT: Federal law requires that you provide a proposed resolution to each identified problem/complaint to the extent known. Again, please be as specific as possible. A proposed resolution that the District "provide a Free Appropriate Public Education (FAPE)" is insufficient.

In the space below please identify specific problem(s)/complaint(s) and a proposed resolution for each to the extent known. All that is required and recommended is a simple, clear, concise statement of the problem/complaint. If you run out of space, use additional sheets with the same format. Lengthy narratives often create more confusion than clarity and are not a substitute for a clear statement of the dispute. If a narrative is included, attach it to your Request.

Problem/Complaint #1: _____

Proposed Resolution #1: _____

Problem/Complaint #2: _____

Proposed Resolution #2: _____

Problem/Complaint #3: _____

Proposed Resolution #3: _____

Problem/Complaint #4: _____

Proposed Resolution #4: _____

Problem/Complaint #5: _____

Proposed Resolution #5: _____

NECESSITY OF INTERPRETER

Person(s) needing interpreter services:

Language:

SIGNATURE OF PARTY REQUESTING DUE PROCESS HEARING

Please Print Name in this block

Date

Please Sign Name in this block

STATEMENT OF SERVICE

INSTRUCTIONS: Federal and state law require you to send or deliver a copy of this Request to each of the named parties. Additionally, you must send or deliver a copy to the Office of Administrative Hearings. Retain a copy for yourself. Please indicate your compliance with this requirement by checking the appropriate box below.

I have provided a copy of this Request for Due Process Hearing and Mediation to all the named parties and to the Office of Administrative Hearings by:

- First Class Mail**
- Facsimile Transmission**
- Messenger Service (UPS, FedEx, Other courier service) Please attach proof of service**
- Personal Delivery (If other than requestor please name person who made service)**

Signature of person completing this Statement of Service

FORM 3: SAMPLE PROOF OF SERVICE

PROOF OF SERVICE

On [DATE] I served a copy of the following documents[s] to each person[s] named below at the addresses listed:

[TITLE OF DOCUMENT: i.e., REQUEST FOR MEDIATION AND DUE PROCESS HEARING]

[NAME OF PERSON]
XXXXXX Unified School District
1234 North Street
Any City, CA 91234
Fax No: (XXX) XXX-XXXX

[If the school district is represented by an attorney, list that attorney’s name and address (and fax numbers if sent by fax) and send a copy of the document and the proof of service to that attorney also.]

[[If any other parties are involved, list those parties names and addresses (and fax numbers if sent by fax) and send a copy of the document and the proof of service to those parties as well.]

I served this document by the following method:

___ Hand delivered

___ U.S. Mail

___ Fax transmission [keep a copy of the transmission report to show that the fax was received.]

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 [Name of city], California, on [DATE].

Printed Name and Signature

FORM 4: SCHEDULING ORDER AND NOTICE OF DUE PROCESS HEARING AND MEDIATION

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

, Parent(s) on behalf of , Student,

v.

.

OAH CASE NO. xxxxxxxxxxxx

SCHEDULING ORDER AND NOTICE
OF DUE PROCESS HEARING AND
MEDIATION

Please read this document carefully. It describes various steps in the process that will be followed in this matter, and includes your rights and responsibilities at each stage. For questions related to this case you may contact at (916) 263-0880.

I. RESERVED DATES

MEDIATION

DATE:
TIME:
PLACE:
MEDIATOR:

TELEPHONIC PREHEARING CONFERENCE

DATE:
TIME:

DUE PROCESS HEARING

DATE:
TIME:
PLACE:

II. MEDIATION

Mediation is a voluntary, confidential process conducted by a neutral mediator in a non-adversarial, informal atmosphere. Mediation in special education cases has produced mutually satisfactory resolutions in the vast majority of cases. If mediation is unsuccessful, the matter will proceed to the Prehearing Conference and Due Process Hearing.

Should this mediation be scheduled at a time that you are not available, you must contact the opposing party(s) to get an agreeable date and complete the REQUEST FOR CONTINUANCE OF INITIAL SPECIAL EDUCATION DUE PROCESS HEARING DATE AND INITIAL MEDIATION DATE portion of the form included with this Notice.

Mediation has proven successful in a vast majority of cases; however, should you choose not to participate in the scheduled mediation, please check the box “Please cancel the mediation without resetting” on the bottom portion of the REQUEST FOR CONTINUANCE OF INITIAL SPECIAL EDUCATION DUE PROCESS HEARING DATE AND INITIAL MEDIATION DATE form included with this Notice.

III. PREHEARING CONFERENCE

A prehearing conference is a telephonic conference held between the Administrative Law Judge and the parties to discuss and clarify the due process hearing issues, witnesses, and other prehearing matters. The telephonic prehearing conference will be initiated by an ALJ at OAH.

Each party is required to submit a PREHEARING CONFERENCE STATEMENT which shall be filed at least **three business days prior to the PREHEARING CONFERENCE** with the Office of Administrative Hearings, Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833. The prehearing conference statement may be filed and served by facsimile transmission at (916) 376-6319. The parties need not mail a hard copy of any document sent by facsimile transmission. The parties shall not send by mail or facsimile transmission copies of documentary evidence intended for the due process hearing to OAH. The Prehearing Conference Statement shall include the following:

- a. Each party’s estimate of the time necessary to complete the Due Process Hearing;
- b. A concise statement of the issues that remain to be decided at the Due Process Hearing and the proposed resolution of such issues, based upon those issues raised in the due process hearing request;
- c. The name of each witness the party may call at the Due Process Hearing, a brief summary of the subject of the expected testimony of the witness, and a description of the issue to which the testimony of the witness relates;
- d. The name and address of each expert witness the party intends to call at the Due Process Hearing, a brief summary of the opinion that the expert is expected to give, and a description of the issue to which the testimony of the expert relates;
- e. A list of documentary evidence that the party intends to present, and a description of any physical or demonstrative evidence; and
- f. The need for an interpreter or special accommodation at the due process hearing

IV. DUE PROCESS HEARING

An impartial Administrative Law Judge of the Office of Administrative Hearings will conduct the hearing. You have the right to represent yourself or be represented by an attorney or other appropriate person.

- a. Issues: The hearing shall be limited to the issues raised in the due process complaint notice. You will not be permitted to raise other issues unless the other party (or parties) agrees.
- b. Attorney Representation: You must also inform the other party (or parties) **at least ten (10) calendar days in advance**, if you plan to be represented by an attorney at the hearing.
- c. Evidence: At least **five (5) business days** before the hearing, you must give to the other parties a copy of all documents and a list of witnesses that you plan to present at the hearing. Failure to do so may result in the exclusion of your documents and witnesses at the hearing. Exhibits shall be pre-marked prior to the hearing, and shall be placed in binders and tabbed. Each tabbed exhibit binder shall contain a detailed index of its contents, including page numbers. Any documentary exhibit more than four pages in length shall be Bates-stamped or internally paginated. In the event of duplicate exhibits, the most legible version will be used. Each side shall prepare and have available at the hearing an additional exhibit binder for use by witnesses, and another additional exhibit binder for use by the ALJ.

V. CONTINUANCE

If you wish to continue the due process hearing or prehearing conference, you must file your request with the Office of Administrative Hearings, Special Education Division at the Sacramento location, via U.S. mail or facsimile transmission at (916) 376-6319 and serve the request upon the opposing party. The parties are encouraged to meet and confer as to available dates for the Due Process Hearing. **If the parties can mutually agree on dates for the Due Process Hearing and Prehearing Conference, the parties should complete the REQUEST FOR CONTINUANCE OF INITIAL SPECIAL EDUCATION DUE PROCESS HEARING DATE AND INITIAL MEDIATION DATE form included with this Notice.**

VI. PREHEARING MOTIONS

All prehearing motions shall be served upon the opposing party and filed with the Office of Administrative Hearings, Special Education Division at the Sacramento location, via facsimile transmission at (916) 376-6319. 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. **If a party wishes to oppose a motion, such opposition must be received by OAH at the Sacramento location no later than 3 business days after service of the motion.**

VII. PEREMPTORY CHALLENGES

California Code of Regulations, title 1, Section 1034, subdivisions (a) and (b) provide in pertinent part that, pursuant to Government Code section 11425.40, subdivision (d), a party is entitled to one peremptory challenge (disqualification without cause) of an ALJ assigned to an OAH hearing. However, in no event will a peremptory challenge be allowed if it is made after the hearing has commenced.

A peremptory challenge must be directed to the Presiding Judge, served on all parties if made in writing, and filed in compliance with the time requirements in section 1034. It is important to note that, if at the time of a scheduled prehearing conference, an ALJ has been assigned to the Hearing, any challenge of the assigned ALJ shall be made no later than commencement of that prehearing conference.

Parties may determine the identity of the Administrative Law Judge who will hear their matter by contacting **(OAH, Special Education Division) at (916) 263-0880, or by viewing the on-line calendar at www.oah.dgs.ca.gov (follow the Special Education link to the calendar option).**

VIII. SETTLEMENT

If the parties reach settlement in the matter, OAH shall be notified as soon as possible. Notification shall be in writing, but need not include the entire contents of the settlement agreement. It shall be sufficient to provide a page that identifies the nature of the document and participants and the signature page with each participant's signature. A request for dismissal based on settlement of all issues that is submitted by the party who requested the hearing shall also suffice. The matter shall remain on calendar and shall not be dismissed until OAH receives the proper notification.

If the parties reach settlement and finalize an agreement after hours (Monday through Friday between 5:00 p.m. and 8:00 a.m. or on Saturday or Sunday) they may contact OAH at (916) 274-6035 and leave a message that settlement has been reached and that an ALJ will not need to attend the hearing. Proof of settlement via a copy of the signed signature page, stipulation of the parties, or notice of withdrawal from the Petitioner should be simultaneously faxed to OAH at (916) 376-6319.

IX. REPRESENTATION

California Education Code Section 56502, subdivision (h), provides as follows: "The Superintendent or his or her designee shall provide both parties with a list of persons and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing. This list shall include a brief description of the requirement to qualify for the services. **This list is available on the OAH website (<http://www.oah.dgs.ca.gov>) or by request by contacting OAH Sacramento Special Education Division at (916) 263-0880.**

X. SERVICE OF ALL DOCUMENTS INVOLVED IN YOUR CASE

Rather than being served with copies of all documents relevant to your case by United States mail, you have the option of having these documents served by way of facsimile to a number you have chosen.

In order to select service of documents by way of facsimile, please complete the attached form and submit it to:

Office of Administrative Hearings
2349 Gateway Oaks Drive, Suite 200
Sacramento, California 95833
Facsimile: (916) 376-6319

Dated:

/s/

RICHARD CLARK
Presiding Administrative Law Judge
Office of Administrative Hearings

REQUEST FOR SERVICE OF DOCUMENTS

_____ **BY WAY OF FACSIMILE TRANSMISSION**

Name of Case:

Case Number:

Party Requesting Receipt of Documents:

Facsimile Number for Service of Documents:

By signing this form, I am agreeing to accept service of documents in this matter by way of facsimile to the facsimile number noted above that I maintain.

Signature

Dated: July 22, 2009

/s/
RICHARD M. CLARK
Division Presiding Administrative Law Judge
Office of Administrative Hearings

**FORM 5: REQUEST FOR CONTINUANCE OF INITIAL SPECIAL EDUCATION
DUE PROCESS HEARING DATE**

OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

INSTRUCTIONS - PLEASE READ CAREFULLY

REQUEST FOR CONTINUANCE OF INITIAL SPECIAL EDUCATION DUE PROCESS HEARING DATE

Upon receipt of a request for due process hearing and/or mediation, the Office of Administrative Hearings issues a scheduling order which identifies a mediation date, the name of the assigned mediator, one hearing date, and the decision due date. These dates are set to insure compliance with the federally mandated timelines.

Federal law does provide for an exception to the federally mandated timelines. OAH has created a form which is intended to assist parties who wish to agree to continue the timelines for hearing and issuance of a decision. This form may only be used if you are agreeing to continue the initial dates that were identified in the scheduling order.

If you are not in agreement to continuance of the dates identified in the scheduling order or are making a second request for continuance you must submit a motion or letter requesting a continuance and identify your reason for requesting the continuance. OAH will allow the parties three business days to respond to your request for continuance before issuing a ruling. OAH will review the letter or motion to determine whether good cause for the requested continuance has been demonstrated.

Continuance of Hearing Date

The parties may agree to continue the hearing date to dates that are no more than 60 days after the initial due process hearing date. You should also agree upon how many days for hearing will be needed and identify the total number of hearing days needed. An example of a request would be

Requested Hearing Dates: June 1-3, 2008 (3 days total)

Selecting a Prehearing Conference Date

In addition to selecting dates for due process hearing, the parties must also agree on a date for a prehearing conference . The date selected for a prehearing conference must be either a Monday or a Friday and no more than 14 days prior to the first day of hearing. The time selected must be either 10 am or 1:30 pm.

Upon review and approval of this request, you will receive a copy of the document signed by an Administrative Law Judge .

OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

REQUEST FOR CONTINUANCE OF INITIAL SPECIAL EDUCATION DUE PROCESS HEARING DATE

Case Number: _____
Student Name: _____
Initial Hearing Date: _____
Requested Hearing Dates: _____
Prehearing Conference Date/Time: _____

Both parties understand and agree that by changing the due process hearing dates they are agreeing to extend the timeline for issuance of a decision.

(Signature of Parent/Representative) Date

(Signature of District/Agency Representative) Date

(Signature of Other Party/Representative) Date

FOR OAH USE ONLY

REVIEWED AND APPROVED

The request of the parties has been reviewed and good cause being demonstrated the matter is continued to the dates requested by the parties.

The Administrative Law Judge assigned to hear this matter will be _____.

The decision due date in this matter is extended to: _____.

It is so ordered this the ____ day of _____, 2008.

Administrative Law Judge

FORM 6: SAMPLE REQUEST FOR CONTINUANCE BASED ON GOOD CAUSE

[DATE]

Office of Administrative hearings
2349 Gateway Oaks Drive
Suite 200
Sacramento, CA 95833

Re: John and Joanne Doe, Parents on behalf of Jane Doe, Student v. XXXX Unified School District, OAH Case Number 2009XXXXXX

Dear Presiding Judge:

The due process hearing in this matter is scheduled for Monday, [date], through Friday [date]. We are asking that the hearing be continued for the following reasons:

[STATE REASONS]

[STATE WHETHER YOU HAVE CONTACTED THE DISTRICT OR ATTORNEY FOR THE DISTRICT AND TRIED TO WORK OUT NEW DATES FOR THE PREHEARING CONFERENCE AND HEARING, AND STATE THOSE DATES.]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed in [City, California] on [date].

Printed Name and Signature

cc: School district

[Any other parties]

[complete and attach proof of service (Form 3), and attach it to your request for continuance.]

FORM 7: SCHEDULING ORDER AND NOTICE OF DUAL DUE PROCESS HEARING AND MEDIATION

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

, ,

v.

.

OAH CASE NO.

SCHEDULING ORDER NOTICE OF
DUAL HEARING DATES INCLUDING
EXPEDITED HEARING,
PREHEARING AND MEDIATION

Please read this document carefully. It describes various steps in the process that will be followed in this matter, and includes your rights and responsibilities at each stage.

Because of the issues raised in the request, the matter has been set for TWO HEARING DATES. The first hearing date will only address the issues which are the subject matter for an “expedited” hearing and the second hearing date will address all other issues raised in the complaint.

An expedited hearing must be completed within twenty (20) school days from the date of the request and a decision issued within ten (10) school days of completion of the hearing. Therefore, the parties **MAY NOT** mutually agree to different hearing dates and continuances will not be granted except in exceptional circumstances. Questions regarding this case should be directed to at (916) 263-0880.

I. RESERVED DATES

EXPEDITED MEDIATION

DATE:
TIME:
PLACE:

NON-EXPEDITED MEDIATION

DATE:
TIME:
PLACE:

EXPEDITED PREHEARING CONFERENCE

DATE:
TIME:
PLACE: **Telephonic – OAH will initiate the call**

NON-EXPEDITED PREHEARING CONFERENCE

DATE:
TIME:
PLACE: **Telephonic – OAH will initiate the call**

EXPEDITED DUE PROCESS HEARING

DATE:
TIME:
PLACE:

NON-EXPEDITED DUE PROCESS HEARING

DATE:
TIME:
PLACE:

II. MEDIATION

Mediation is a voluntary, confidential process conducted by a neutral mediator in a non-adversarial, informal atmosphere. Mediation in special education cases has produced mutually satisfactory resolutions in the vast majority of cases.

III. PREHEARING CONFERENCE

A prehearing conference is a telephonic conference held between the Administrative Law Judge and the parties to discuss and clarify the due process hearing issues, witnesses, and other prehearing matters.

Each party is required to submit a PREHEARING CONFERENCE STATEMENT which shall be filed at least **three business days prior to the PREHEARING CONFERENCE** with the Office of Administrative Hearings, Special Education Division, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833. The Prehearing Conference Statement may be filed and served by facsimile transmission at (916) 376-6319. The parties need not mail a hard copy of any document sent by facsimile transmission. The parties shall not send by mail or facsimile

transmission copies of documentary evidence intended for the due process hearing to OAH. The Prehearing Conference Statement shall include the following:

- a. Each party's estimate of the time necessary to complete the Due Process Hearing;
- b. A concise statement of the issues that remain to be decided at the Due Process Hearing and the proposed resolution of such issues, based upon those issues raised in the due process hearing request;
- c. The name of each witness the party may call at the Due Process Hearing, a brief summary of the subject of the expected testimony of the witness, and a description of the issue to which the testimony of the witness relates;
- d. The name of each expert the party may call at the Due Process Hearing, a brief summary of the expert's subject of expected testimony, and a description of the issue to which the expert's testimony relates;
- e. A list of documentary evidence that the party intends to present, and a description of any physical or demonstrative evidence; and
- f. The need for an interpreter or special accommodation at the due process hearing.

IV. DUE PROCESS HEARING

An impartial Administrative Law Judge of the Office of Administrative Hearings will conduct the hearing. You have the right to represent yourself or be represented by an attorney or other appropriate person.

- d. Issues: The hearing shall be limited to the issues raised in the due process complaint notice. You will not be permitted to raise other issues unless the other party (or parties) agrees.
- e. Attorney Representation: You must also inform the other party (or parties) **at least ten (10) calendar days in advance**, if you plan to be represented by an attorney at the hearing.
- f. Evidence: At least **five (5) business days** before the hearing, you must give to the other parties a copy of all documents and a list of witnesses that you plan to present at the hearing. Failure to do so may result in the exclusion of your documents and witnesses at the hearing by the Administrative Law Judge. Exhibits shall be pre-marked prior to the hearing, and shall be placed in binders and tabbed. Each tabbed exhibit binder shall contain a detailed index of its contents, including page numbers. Any documentary exhibit more than four pages in length shall be

Bates-stamped or internally paginated. In the event of duplicate exhibits, the most legible version will be used. Each side shall prepare and have available at the hearing an additional exhibit binder for use by witnesses, and another additional exhibit binder for use by the ALJ.

If you wish to continue the due process hearing to effectively participate in mediation or for other good cause, you must file your request with the Office of Administrative Hearings and serve the request upon the opposing party. The parties are encouraged to meet and confer as to available dates for the Due Process Hearing. If the parties can mutually agree on dates for the Due Process Hearing and Prehearing Conference, the parties should include these dates in the motion to continue.

V. PREHEARING MOTIONS

All PREHEARING MOTIONS shall be served upon the opposing party and filed with the Office of Administrative Hearings, Special Education Division at the Sacramento location. 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. **If a party wishes to oppose a motion, such opposition must be received by OAH at the Sacramento location no later than 3 business days after service of the motion.**

VI. PEREMPTORY CHALLENGES

California Code of Regulations Section 1034, subdivisions (a) and (b) provide in pertinent part that, pursuant to Government Code section 11425.40, subdivision (d), a party is entitled to one preemptory challenge (disqualification without cause) of an ALJ assigned to an OAH hearing.

A preemptory challenge must be directed to the Presiding Judge, served on all parties if made in writing, and filed in compliance with the time requirements in section 1034. It is important to note that if at the time of a scheduled prehearing conference, an ALJ has been assigned to the Hearing, any challenge of the assigned ALJ shall be made no later than commencement of that prehearing conference. However, in no event will a preemptory challenge be allowed if it is made after the hearing has commenced.

Parties may determine the identity of the Administrative Law Judge who will hear their matter by contacting **(OAH, Special Education Division) at (916) 263-0880, or by viewing the on-line calendar at www.oah.dgs.ca.gov (follow the Special Education link to the calendar option).**

VII. REPRESENTATION:

Section 56502, subdivision (h), provides as follows: “The Superintendent or his or her designee shall provide both parties with a list of persons and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing. This list shall include a brief description of the

requirement to qualify for the services. The Superintendent or his or her designee shall have complete discretion in determining which individuals or groups shall be included on the list.” Under the foregoing provision, “Superintendent” refers to the State Superintendent of Public Instruction, and “designee” currently refers to the Office of Administrative Hearings (OAH) which, under Interagency Agreement No. 4227, administers the mandated special education dispute resolution program. **This list is available on request by contacting at (916) 263-0880.**

Dated:

/s/

RICHARD CLARK
Division Presiding Administrative Law Judge
Office of Administrative Hearings

FORM 8: SCHEDULING ORDER FOR MEDIATION ONLY

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

NOTICE OF MEDIATION

STUDENT:
SCHOOL DISTRICT:
CASE NUMBER:

REQUESTING PARTY:

A mediation request from the above-named party was received by the Office of Administrative Hearings, Special Education Division. California Education Code section 56500.3 requires that we set a mediation date within fifteen (15) days from receipt of the request. The mediation must be completed within 30 days from the date received, unless the parties agree to extend the time for the mediation.

Participation in mediation is voluntary, although we strongly encourage participation, as the process results in a resolution of the underlying dispute in a majority of these matters. Mediation takes place in a non-adversarial atmosphere by a neutral mediator. To foster this environment, attorneys and other independent contractor legal advisors are not permitted to attend or otherwise participate. You may consult with an attorney or legal advisor before or after the mediation. You may also be accompanied in the mediation by someone who is assisting you who is not an attorney or independent contractor legal advisor or advocate.

DATE:
TIME:
PLACE
MEDIATOR:

If you cannot attend the mediation on the date and time scheduled, you must call the Office of Administrative Hearings, Special Education Division, at (818) 904-2383, as soon as possible. We will reschedule the mediation to a date and time which is acceptable to all parties.

If the mediation is scheduled at a time that you are not available, you must contact the opposing party(s) to get an agreeable date and telephone

Representation. California Education Code Section 56502, subdivision (h), provides as follows: “The Superintendent or his or her designee shall provide both parties with a list of persons and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing. This list shall include a brief description of the requirement to qualify for the services. The Superintendent or his or her designee shall have complete discretion in determining which individuals or groups shall be included on the list.” Under the foregoing provision, “Superintendent” refers to the State Superintendent of Public Instruction, and “designee” currently refers to the Office of Administrative Hearings (OAH) which, under Interagency Agreement No. CN088015, administers the mandated special education dispute resolution program. **This list is available on request.**

Dated:

OFFICE OF ADMINISTRATIVE HEARINGS
2349 GATEWAY OAKS DRIVE, SUITE 200
SACRAMENTO, CA 95833-4231
TEL (916) 263-0880
FAX (916) 376-6319

FORM 9: SAMPLE JOINT WAIVER OF RESOLUTION SESSION

JOINT WAIVER OF RESOLUTION SESSION

Office of Administrative hearings
2349 Gateway Oaks Drive
Suite 200
Sacramento, CA 95833

Re: John and Joanne Doe, Parents on behalf of Jane Doe, Student v. XXXX Unified School District, OAH Case Number 2009XXXXXX

Dear Presiding Judge

The XXXXXX School District and Parents, John and Joanne Doe, on behalf of Jane Doe, Student, hereby jointly waive the resolution session in this matter.

Printed Name and Signature of Parent

Printed Name and Signature of District Rep.

cc: School district

[Any other parties]

[complete and attach proof of service (Form 3), and attach it to your joint waiver of resolution session.]

FORM 10: SAMPLE REQUEST TO ADVANCE HEARING DATES

Office of Administrative hearings
2349 Gateway Oaks Drive
Suite 200
Sacramento, CA 95833

Re: John and Joanne Doe, Parents on behalf of Jane Doe, Student v. XXXX Unified School District, OAH Case Number 2009XXXXXX
REQUEST TO ADVANCE HEARING DATES

Dear Presiding Judge

I filed a request for due process hearing (complaint) on behalf of my child on XXX XX, 2009. I served a copy of that complaint on the District on XXX XX, 2009. The District has failed to schedule a resolution session within 15 days of receiving my complaint.

A local educational agency (LEA) is required to convene a resolution meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within 15 days of receiving notice of the Student’s complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I);¹ 34 C.F.R. § 300.510(a)(1) (2006).)

The 45-day timeline for the due process hearing starts the day after a resolution meeting, unless the parties agree in writing to waive the resolution meeting. (34 C.F.R. § 300.513(b) & (c) (2006).) If the LEA fails to hold the resolution meeting within 15 days of receiving notice of the due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. (34 C.F.R. § 300.510(b)(5) (2006).)

Therefore, I request that the hearing dates in this matter be advanced, and that the due process hearing be held as soon as possible [or specify preferred dates.]

Printed Name and Signature of Parent

cc: School district
[Any other parties]
[complete and attach proof of service (Form 3), and attach it to your motion to advance hearing dates.]

¹ All statutory citations are to Title 20 United States Code unless otherwise indicated.

FORM 11: NOTICE OF SETTLEMENT CONFERENCE

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

,

v.

, Parent(s) on behalf of, Student.

OAH CASE NO.

ORDER SETTING VOLUNTARY
SETTLEMENT CONFERENCE

Based on discussions with the parties, the following order is issued:

1. **VOLUNTARY SETTLEMENT CONFERENCE.** A Voluntary Settlement Conference will be held before an Administrative Law Judge of the Office of Administrative Hearings. Settlement conference briefs are not required, but may be filed in accordance with California Code of Regulations, title 1, section 1028, subdivision (f).

DATE:

TIME:

LOCATION:

2. All persons necessary to a resolution of this case shall appear in person at all settlement conferences, unless excused by an Administrative Law Judge of the Office of Administrative Hearings.

3. The parties must continue to confer and cooperate with each other (1) to facilitate exchange of evidence, (2) to reach stipulations of facts, law and the admissibility of evidence in order to promote the efficient conduct of the hearing, and (3) to promote productive settlement discussions.

4. This office will not take any scheduled dates off calendar based on settlement of the case, unless the parties file a copy of a fully executed settlement agreement resolving all issues in the case before the scheduled date. In the alternative, the petitioner may file and serve a letter asking this office to issue a dismissal order based on a final settlement of all issues in the case.

5. All further filings in this case shall be directed to the Office of Administrative Hearings, Special Education Division, Gateway Oaks Drive, Suite 200, Sacramento, CA 95833 or by facsimile transmission at (916) 376-6319. (No copy of any document filed by facsimile transmission shall be mailed to OAH.)

Dated:

/s/

RICHARD CLARK
Division Presiding Administrative Law Judge
Office of Administrative Hearings

FORM 12: SAMPLE PREHEARING CONFERENCE STATEMENT

PREHEARING CONFERENCE STATEMENT OAH CASE #2008XXXXXX
XXXXX and XXXXX XXXXX, Parents on behalf of XXXX XXXXX, Student
v.
XXXX XXXX School District

A. At this time I estimate two days to complete the Due Process Hearing. I estimate one day for me to complete my portion of the hearing, and one day for District to complete its portion of the hearing.

B. Issues that remain to be decided at the Due Process Hearing are listed below:

1. **Student's Issue 1:** Is Student is entitled to independent educational assessments (IEE) in the areas of speech and language and occupational therapy because Student's parent disagreed with District's assessments in these areas, requested IEEs, and District's assessments in these areas were not appropriate.

Proposed Resolution: OAH order that District fund IEEs in the areas of speech and language and occupational therapy.

2. **Student's Issue 2:** Does Student require individual speech therapy session and individual occupational therapy sessions in order to receive a free appropriate public education?

Proposed Resolution: Individual speech and language therapy to be provided thirty minutes weekly, and individual OT to be provided thirty minutes weekly. Also, compensatory education in the areas of speech and language therapy and OT.

3. **District's Issue 1:** Are Districts assessments of Student in the areas of speech and language and occupational therapy appropriate under California law?

Proposed Resolution: OAH order that District's assessments in the areas of speech and language and occupational therapy are not appropriate under California law. OAH order that District fund an IEE in the area of speech and language and in the area of occupational therapy.

4. **District's Issue 2:** Do group speech and language and occupational therapy sessions, as offered by District, meet Student's needs in these areas and constitute a free appropriate public education for Student.

Proposed Resolution: OAH order that group speech and language and occupational therapy sessions offered by District to not meet Student's needs in these areas, and do not constitute a FAPE for Student. OAH order for individual services in each of those areas, and compensatory education in each of those areas.

C. I intend to call the following witnesses to testify at the Due Process Hearing:

1. XXXX XXXX, teacher of SDC 3,4,5 grades at XXXXXXXXX Elementary School. I expect her to testify that the District's assessments of Student were not

appropriate, that Student requires individual speech and language therapy and individual occupational therapy, and that group therapy does not meet Student's needs or provide Student with a free appropriate public education.

2. XXXX XXXX, the occupational therapist employed by District who completed Student's occupational therapy assessment. I expect her to testify regarding her assessment of Student.
3. XXXXX XXXXX, the speech therapist employed by District who completed Student's speech and language assessment. I expect her to testify regarding her assessment of Student.
4. Both parents will also testify regarding all issues in this case.

D. I will call the following expert witnesses:

1. XXXXX XXXX, who is an occupational therapist. I expect her to give her expert opinion that Student needs individual occupational therapy session in order to benefit from his/her education, and that the occupational therapy report conducted by District was inappropriate.
2. XXXX XXX, who is a speech and language therapist. I expect her to give his expert opinion that Student needs individual speech and language therapy sessions in order to benefit from his/her education, and that the speech and language report conducted by District was inappropriate.

E. Documentary, physical or demonstrative evidence this party intends to present listed below:

1. Transcript from tape recorded IEP meeting of XX/XX/XX.
2. Triennial IEP dated XX/XX/XX, including Psycho-Educational Evaluation, Individualized Education Plan, Speech and Language Report, and Occupational Therapy Report.
3. Individualized Education Plan dated XX/XX/XX.

F. No interpreter or special accommodations are needed.

cc: School district

[Any other parties]

[complete and attach proof of service (Form 3), and attach it to your prehearing conference statement.]

FORM 13: SUBPOENA

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS



In the Matter of:

Agency / Agency Case No.

OAH No.

- SUBPOENA: *Requesting Testimony* SUBPOENA DUCES TECUM: *Requesting the Production of Records or Things*

| | |
|--|--|
| THE PEOPLE OF THE STATE OF CALIFORNIA SEND GREETINGS TO: | (name and address of person being subpoenaed) |
| 1. At the request of <input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent (party name) _____ | (name, address and telephone number of contact person) |

2. You are hereby commanded, business and excuses being set aside, to appear as a witness on:

(date) _____, at (time) _____, and then and there to testify at: (location)

OAH, 2349 Gateway Oaks Drive, Suite 200, Sacramento CA 95833 OAH, 320 West Fourth Street, Room 630, Los Angeles CA 90013

OAH, 1515 Clay Street, Suite 206, Oakland CA 94612 OAH, 1350 Front Street, Room 6022, San Diego CA 92101

Other: _____, California.

3. You are not required to appear in person if you produce the records described in the accompanying affidavit and a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose your original declaration with the records. Seal them. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number, your name and date, time, and place from item 2 (the box above). (3) Place this first envelope in an outer envelope, seal it, and mail it to the Office of Administrative Hearings at the address checked in item 2. (4) Mail a copy of your declaration to the attorney or party shown in item 1.

4. You are not required to appear in person if you produce the records described in the accompanying affidavit and a completed declaration of custodian of records in compliance with Evidence Code section 1561.
By _____ (date), send the records to:

NOTE: This manner of production may not satisfy the requirements of Evidence Code section 1561 for admission at hearing.

5. You are ordered to appear in person and to produce the records described in the accompanying affidavit. The personal appearance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562 of the Evidence Code will not be deemed sufficient compliance by this subpoena.

6. **Disobedience to this subpoena will be punished as contempt of court in the manner prescribed by law.**
7. **Witness Fees:** Upon service of this subpoena, you are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you so request. You may request them before your scheduled appearance from the person named in item 1. See Government Code sections 11450.05, 11450.50, 68092.5-68093, and 68096.1-68097.10.
8. **IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE YOU ARE TO APPEAR, OR TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED ON THE DATE AND TIME SPECIFIED ABOVE, CONTACT THE PERSON REQUESTING THIS SUBPOENA, LISTED IN ITEM 1 ABOVE, BEFORE THE DATE LISTED IN ITEM 2 ABOVE.**

(Date Issued) _____ (Signature of Authorizing Official) _____

(Printed Name) _____ (Title) _____

FORM 14: SAMPLE ORDER FOLLOWING PREHEARING CONFERENCE

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

XXXXXXXXXXXXXXXXXX,

Petitioner,

v.

XXXXXXXXXXXXXXXXXX,

Respondent.

OAH CASE NO. 20XXXXXXXXXX

ORDER FOLLOWING PREHEARING
CONFERENCE

On [XXXXXX XX, 20XX,] a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) [XXXXXXXX XXXXXXXX,] Office of Administrative Hearings, Special Education Division (OAH). [XXXX XXXX,] Attorney at Law, appeared on behalf of [XXXXXXX (Student/District).] [XXXXXXX XXXX,] Attorney at Law, appeared on behalf of [XXXXXX (Student/District)]. The PHC [was/was not] recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing [is continued on motion of XXXX/joint motion of the parties and] shall take place on [XXXXXXXX XX, XX and XX, 20XX.] The hearing shall begin each day at [XX:XX a.m./p.m.] and end at [XX:XX a.m./p.m.] [with the exception of the first day of hearing, on which day the hearing shall begin at XX:XX a.m./p.m.], unless otherwise ordered, at the offices of [XXXXXXXXXXXXXXXXXX,] located at [XXXXXXXXXXXXXXXXXX].²

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing “good cause” to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

² A conference room with a single conference table is not suitable. At a minimum, the room should have (1) one table for Student’s attorney and parent(s); (2) one table for the District’s attorney and the District representative; (3) one table for the ALJ; and (4) one witness table. [The room shall also have a speakerphone.] A boardroom can usually accommodate a due process hearing.

2. Issues and Proposed Resolutions. The issues at the due process hearing are those alleged in the due process complaint, as clarified by the parties and the ALJ at the PHC:

- a)
- b)
- c)

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. [Student/District] shall use numbers and [District/Student] shall use letters to identify exhibits. Each exhibit shall be internally paginated, by exhibit, or all of a party's exhibits shall be Bates stamped. Each exhibit binder shall contain a detailed table of contents. Each party shall serve an exhibit binder containing its respective exhibits on the other party by 5:00 p.m. on XXXXXXXX XX, 20XX. At the hearing, the parties are to supply an exhibit binder containing their respective exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible.

4. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Neither party shall be permitted to call any witnesses not disclosed in the party's prehearing conference statement except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

[The parties are ordered to meet and confer by XXXX XX, 20XX, as to the schedule of witnesses/The parties have agreed to coordinate the availability and order of testimony of witnesses/to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled.]

[The following witnesses will be called to testify by XXXXXX:]

[The following witnesses will be called to testify by XXXXXX:]

[The witness schedule will be finalized at the commencement of the due process hearing.]

[XXXXXX has identified XX witnesses to be called at the hearing, and XXXXXX has identified XX witnesses. Some of the witnesses are listed by both parties. In light of the fact that XXX days have been scheduled for the hearing in this matter, it would be difficult to complete the hearing as scheduled. Therefore, by XX:XX p.m. on XXXXXXXX XX, 20XX, each party shall serve on the other party and on OAH a tentative witness list, including a time estimate of the length of each witness's direct examination testimony, and notations as to the witnesses the party intends to call, as opposed

to witnesses the party may call, depending on the flow of the hearing and the evidence. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.]

5. Telephonic Testimony. [A party seeking to call a witness to testify by telephone shall move in advance for leave to do so.] [XXXXXX's motion to allow XXXXXX to testify telephonically is granted/denied.] [XXXXXX shall provide XXXXXX with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing, and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.]

6. Timely Disclosure of Witnesses/Exhibits. [The request of XXXX to delay disclosure of witnesses/exhibits until XXXXXXXXXXXX days prior to the hearing is denied/granted, and witnesses/exhibits shall be exchanged by XXXXXX at XX:XX a.m./p.m.] [Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing.] [The OAH order of XXXXX XX, 20XX, specifically ordered the production of lists of all witnesses/documents by an earlier date, to wit: at least three business days prior to this PHC.]

7. Order of Presentation of Evidence. [This matter is consolidated, and involves XXX parties. The order of presentation of evidence shall be as follows: XXXXX] [If a witness is to be called by more than one party, XXXXXX.]

8. Motions. [Rulings on motions made at PHC.] [No pretrial motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference of XXXXX XX, 20XX.]

9. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

10. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witness shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

11. Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief.

12. Special Needs and Accommodations. A [XXXXXXX] language interpreter [or other accommodation] is required.

13. Hearing Open/Closed To the Public. [At the request of the parent, the hearing will be open to the public.]

14. Settlement. The parties are encouraged to continue their attempts to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If a settlement is reached five days or fewer than five days before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF [EACH PARTY/COUNSEL FOR EACH PARTY.] The ALJ will check for messages the evening prior to the hearing and the morning of the hearing.

13. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Dated: XXXXXX XX, 20XX.

XXXXXXXXXX XXXXXXXXXXXX
Administrative Law Judge
Office of Administrative Hearings

**FORM 15: SAMPLE REQUEST FOR CONTINUANCE OF PREHEARING
CONFERENCE BASED ON GOOD CAUSE**

[DATE]

Office of Administrative hearings
2349 Gateway Oaks Drive
Suite 200
Sacramento, CA 95833

Re: John and Joanne Doe, Parents on behalf of Jane Doe, Student v. XXXX Unified School District, OAH Case Number 2009XXXXXX

Dear Presiding Judge:

The prehearing conference in this matter is scheduled for Monday, [date], through Friday [date]. We are asking that the prehearing conference be continued for the following reasons:

[STATE REASONS]

[STATE WHETHER YOU HAVE CONTACTED THE DISTRICT OR ATTORNEY FOR THE DISTRICT AND TRIED TO WORK OUT NEW DATES FOR THE PREHEARING CONFERENCE AND HEARING, AND STATE THOSE DATES.]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed in [City, California] on [date].

Printed Name and Signature

cc: School district

[Any other parties]

[complete and attach proof of service (Form 3), and attach it to your request for continuance.]

FORM 16: SAMPLE NOTICE OF INSUFFICIENCY (NOI)

To: Presiding Judge
Office of Administrative Hearings

Re: Case No. XXXXXXXXX
Student Name v. District
NOTICE OF INSUFFICIENCY

The school district filed a request for due process hearing naming my child. I do not believe this complaint is sufficient, and I request that OAH deem it to be insufficient.

A party against whom a due process complaint has been filed has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c); Ed. Code § 56502, subd. (d)(1).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A) and Education Code section 56502, subdivision (c)(1). Section 1415(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time. (§ 1415(b)(7)(A)(ii)(III) & (IV).) The purpose of these requirements is to promote fairness by providing respondents with a specific understanding of the allegations and to provide a school district with sufficient information to make a specific response to the complaint as required by section 1415(c)(2)(B), and to participate in a resolution session and mediation under section 1415, subsections (e) and (f). The party against whom the complaint has been filed is entitled to know the nature of the specific allegations being made against him or her, such that he or she may be able to prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

I cannot determine what the school district is claiming. [More specific details, if you wish.] Therefore, I request that OAH deem the complaint to be insufficient.

Sincerely,

XXXXXXXXXXXX

cc: School district
[Any other parties]
[complete and attach proof of service (Form 3), and attach it to this motion.]

FORM 17: SAMPLE MOTION FOR STAY PUT

To: Presiding Judge
Office of Administrative Hearings

Re: Case No. XXXXXXXXX
Student Name v. District
MOTION FOR STAY PUT

I request that my child's placement, defined by his/her most recently implemented IEP, be deemed his/her stay put placement for the duration of the due process proceedings.

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. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) 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. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

Attached is my child's most recently implemented IEP which shows his/her placement and services to include:

[List them]

The District is refusing to provide XXXXX placement or XXXX services to my child.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed in [City, California] on [date].

Therefore, I request that OAH issue an order of stay put.

Sincerely,

XXXXXXXXXXXX

cc: School district

[Any other parties]

[complete and attach proof of service (Form 3), and attach it to this motion. Also attach copy of most recently implemented IEP.]