

## SPECIAL EDUCATION DUE PROCESS TIMELINES



Special education law requires compliance with deadlines that are triggered once a request for due process hearing has been filed with the Office of Administrative Hearings (“OAH”). Summarized below are some of the most relevant deadlines to track and adhere to.

### STATUTORY DEADLINES

*Response to Complaint:* Within ten (10) **calendar** days of receipt of Complaint. (34 C.F.R. § 300.508, subd. (e)-(f).)

*Notice of Insufficiency:* Within fifteen (15) **calendar** days of receipt of Complaint, if the Complaint is insufficiently pled. (34 C.F.R. § 300.508, subd. (d).)

*Resolution Session:* Within fifteen (15) **calendar** days of receipt of Complaint, and prior to the initiation of a due process hearing, the LEA must convene a resolution session with the parents and relevant members of the IEP team who have specific knowledge of the facts of the Complaint (34 C.F.R. § 300.510.)

- > Waiver: May be waived by written agreement of both parties (though LEAs may want to make explicit that it can only be waived on written condition that parties participate in mediation);
- > Attorneys: An attorney for the District may only be present if the parent will have an attorney present; No attorney’s fees for parent’s attorney;
- > Grounds to Dismiss: If parents refuse to meet, the District may move to dismiss;
- > Hearing Timeline: If the resolution session is not resolved within thirty (30) calendar days, then the hearing proceeds as scheduled.

*Statutory/“Ten Day” Offer:* At any time more than ten (10) **calendar** days before any due process action or proceeding begins, the LEA may make a reasonable settlement offer. If the offer is not accepted within ten (10) days, then attorneys’ fees and related costs subsequent to the time of the written offer of settlement may not be awarded and reimbursed if the administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement. (34 C.F.R. § 300.517.)

*Statement of Issues and Notice of Representation:* At least ten (10) **calendar** days before the due process hearing begins, the parties must inform each other as to what those parties believe are the issues to be decided at the hearing and their proposed resolution of those issues. (Ed. Code, § 56505, subd. (e)(6).)

*Notice of Documentary Evidence and Witness List:* At least five (5) **business** days before the due process hearing begins, the parties must provide a copy of all documents, a list of witnesses, the general area of testimony intended to be presented at the hearing, information about all assessments completed by that date, and recommendations based on the assessments that the parties intend to use at the hearing. (Ed. Code, § 56505, subd. (e)(7).)

## OAH DEADLINES\*

*Mediation:* About thirty-five (35) days after the parent filed the Complaint or about five (5) days after the District filed the Complaint, OAH will determine mediation dates.

- Mediation is voluntary (optional) for all parties, and may be rescheduled by request.
- OAH only sets mediations on Tuesday, Wednesday, and Thursday.

*Prehearing Conference (“PHC”) Statement:* At least three (3) **business** days prior to a scheduled PHC, the PHC statement must be provided. The PHC Statement tells the administrative law judge (“ALJ”) and other parties basic information about the parties’ case, with a list of witnesses and evidence.

*Prehearing Conference:* Determined by OAH in the scheduling order and are held on Mondays and Fridays.

*Motions and Amendments to Pleadings:* No later than the PHC, the parties must complete all motions and all amendments to the pleadings. In most instances, it is prudent to make any motions at least as early as the PHC statement to allow time for the other party to respond in advance of OAH’s ruling on the motion (otherwise, the ALJ may not rule on the motion at the PHC – a potential disadvantage if the outcome is unknown and preparation for hearing is well under way).

*Opposition to Motions:* Within three (3) **business** days following the filing of a motion. A reply, if any, is due by the moving party within one (1) **business** day of the Opposition.

*Peremptory Challenge:* Before the PHC, each party may make one request to “challenge” who the assigned ALJ is to the due process hearing. A copy of the request must be sent to all other parties. In no event will a peremptory challenge be granted after a due process hearing has already commenced.

*Due Process Hearing:* Within forty-five (45) days of when the Complaint was filed by the District, or within forty-five (45) days after the resolution session if the Complaint was filed by the parent, a decision in a due process hearing must be reached. This forty-five (45) day period may be extended by a granted continuance or agreement by the parties.

- > Accessibility
  - > OAH requires that any location of a mediation, PHC, or due process hearing comply with the laws on accessibility for individuals with disabilities under the Americans with Disabilities Act, the Rehabilitation Act of 1973, and the Unruh Civil Rights Act.
- > OAH Forms
  - > Many of the forms referenced above, and more, can be found at OAH’s website at:  
<http://www.dgs.ca.gov/oah/SpecialEducation/Forms.aspx>

\*These deadlines are set by OAH, and may be extended depending upon certain circumstances, which may include stipulation by the parties or by motion for good cause.

**DISCLAIMER:** As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this document does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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