

## SPECIAL EDUCATION DUE PROCESS TIMELINES



Special education law requires compliance with deadlines triggered by the filing of a request for due process hearing (Complaint) with the Office of Administrative Hearings (“OAH”). Summarized below are some of the most relevant deadlines to track for compliance.\*

### STATUTORY DEADLINES

*Response to Complaint:* Must be filed and served within ten (10) **calendar** days of receipt of Complaint. (34 C.F.R. § 300.508, subd. (e)-(f).)

*Notice of Insufficiency:* While not required, if this is deemed appropriate, must be filed and served within fifteen (15) **calendar** days of receipt of an insufficiently pled Complaint. (34 C.F.R. § 300.508, subd. (d).)

*Resolution Session:* LEA must convene within fifteen (15) **calendar** days of receipt of Complaint, and prior to the initiation of a due process hearing. Parents and relevant IEP team members who have specific knowledge of the facts of the Complaint, including a LEA representative who has decision-making authority on the LEA’s behalf, are to attend. (34 C.F.R. § 300.510.)

- > Waiver: May be waived by written agreement of both parties (though LEAs may want to make waiver explicitly conditioned on the parties’ written agreement to participate in mediation);
- > Attorneys: An attorney for the LEA may be present only if an attorney for the parents is present; parents have no legal entitlement to recovery of related attorney’s fees;
- > Grounds to Dismiss: If parents refuse to meet, the District may move to dismiss the Complaint;
- > Hearing Timeline: If not resolved within thirty (30) **calendar** days of the LEA’s receipt of the Complaint, the 45-day timeline for hearing and final decision begins.

*Statutory/“Ten Day” Offer:* Up to ten (10) **calendar** days before the hearing start date the LEA may serve parents a reasonable settlement offer. If not accepted within ten (10) **calendar** days, attorney’s fees and costs incurred by parents after the offer is made shall not be awarded or reimbursed if the administrative law judge (ALJ) finds that the relief finally obtained is not more favorable to the parents than the settlement offer made. (34 C.F.R. § 300.517, subd. (c)(2)(i).)

*Statement of Issues and Notice of Representation:* Filed and served at least ten (10) **calendar** days before the due process hearing to identify what each party believes are the alleged issues and proposed resolutions for hearing. (Ed. Code, §§ 56505, subd. (e)(6) & 56507, subd. (a).)

*Notice of Documentary Evidence and Witness List:* Must be served at least five (5) **business** days before the hearing start date. Includes a copy of all documents to be used at hearing, a list of the witnesses to be called with a description of the general area of testimony expected for each, and information about all assessments completed by that date, including related recommendations, which are intended to be used at hearing. (Ed. Code, § 56505, subd. (e)(7)).

\* Mediation only and expedited due process hearing requests follow different timelines and procedures than the above.

## OAH DEADLINES\*

*Mediation:* Upon the parties' request, OAH will set a date for mediation on a Tuesday, Wednesday, or Thursday at least thirty-five (35) days after the date parents filed the Complaint or about five (5) days after the District filed the Complaint.

> Mediation is voluntary (optional) for all parties.

*Prehearing Conference ("PHC") Statement:* Must be filed and served at least three (3) **business** days before the scheduled PHC so as to provide the ALJ and other parties with basic information pertaining to the hearing, such as expected witnesses, evidence, and any special accommodations needed.

*Prehearing Conference:* Held by OAH on the date stated in the Scheduling Order, generally a Monday or Friday.

*Motions and Amendments to Pleadings:* No later than the PHC, the parties should file and serve all motions, including requests for amendment. In most instances, it is prudent to file motions at least by when the PHC statement is filed to allow time for any opposition and then OAH's ruling. (Otherwise, the ALJ may not rule on the motion at the PHC – a potential disadvantage if the outcome is pending and hearing preparation must continue with consideration for a potential ruling in either party's favor).

*Opposition to Motions:* Must be filed and served within three (3) **business** days of the motion. A reply, if any, is due by the moving party within one (1) **business** day of the Opposition.

*Peremptory Challenge:* May be filed and served once, in most cases before the PHC, to "challenge" who the assigned ALJ is for the due process hearing. OAH will not grant a peremptory challenge after the due process hearing has begun.

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

*Accessibility:* LEA must file within five (5) **calendar** days of the date the Scheduling Order is issued, certification that the facilities to be used for the scheduled mediation and/or 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.

> Failure to do so may result in OAH scheduling the matter to occur at a different location and reporting the failure to the Department of Education.

*OAH Forms:* Many of the filings referenced above, as well as additional forms, can be found on OAH's website at: <http://www.dgs.ca.gov/oah/SpecialEducation/Forms.aspx>

\*These deadlines are set by OAH and may be extended under certain circumstances, such as 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.

Copyright © 2017-2019 Lozano Smith - All rights reserved. No portion of this work may be copied, or sold or used for any commercial advantage or private gain, nor any derivative work prepared there from, without the express prior written permission of Lozano Smith through its Managing Partner. The Managing Partner of Lozano Smith hereby grants permission to any client of Lozano Smith to whom Lozano Smith provides a copy to use such copy intact and solely for the internal purposes of such client. - Rev. January 25, 2019