

# **Bias, Noncompliance and Misconduct In Special Education Due Process**

An Accountability Report  
on the California  
Office of Administrative Hearings  
Special Education Division

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## EXECUTIVE SUMMARY

**Purpose:** The purpose of this report is to review the history of California's Department of General Services, Office of Administrative Hearings, Special Education Division (OAH/Special Ed) to highlight the historic inability of OAH/Special Ed to provide "qualified and impartial" mediators and judges to the California Department of Education (CDE) as required by both federal and California laws governing special education. This report also gives voice to the many who have tried to sound the alarm about the continued injustices and unlawful actions of OAH but have had no complaint vehicle in which to do so.

**Methodology:** This report is based upon California legislative reports, OAH/Special Ed Quarterly Reports to CDE, California agency websites, public records, OAH/Special Ed mediation survey comments as well as interviews with those having experience with Special Education division of OAH.

**Authors/Contributors:** This accountability report is provided by the Office for Administrative Hearings Special Education Task Force, a coalition of concerned attorneys, advocates and parents. Many of these contributors conducted research, collected and organized the information, and assisted in the writing of this report.

**Acknowledgements:** First and foremost, we acknowledge all children with disabilities who work diligently to achieve their goals and integrate with their peers in their school communities despite the many obstacles they face. We thank their parents who continue to advocate to ensure that their children's rights are upheld, and who regularly must fight to end discrimination their children experience at the hands of the individuals and the very systems that are supposed to guarantee their educational rights and ensure that they receive justice if those rights are violated. We thank the family members, friends, advocates, attorneys and nonprofit organizations who support children with disabilities in achieving levels of success that were once unimaginable.

### Key Findings:

- **OAH/Special Ed is not an impartial entity as required by law due to systemic and overt bias:** The Office of Administrative Hearings is not independent from the Department of General Services (DGS), as described on the website. As a division of DGS, the "business manager" of the state, OAH/Special Ed is incentivized to focus on cost-cutting measures and efficiency – not on ensuring that mediations and hearings are conducted in a fair and impartial manner as required by the Individuals with Disabilities Education Act (IDEA). The goals of OAH/Special Ed have consistently focused on efficiency and cost-savings, without ensuring that mediations are truly fair and impartial. In addition, the agency's own data shows that students prevail in only a small minority of due process hearings. OAH/Special Ed, as a division of the DGS, is incentivized to write decisions in which students do not prevail, reducing the state's expenditures on special education services.
- **The OAH/Special Ed continues to be out of compliance with state and federal laws, violating the rights of children with disabilities:** OAH/Special Ed has a troubled history of noncompliance with state and federal laws as first identified by the California State Auditor in 2008.<sup>1</sup> The

Auditor found that OAH/Special Ed did not follow requirements in the CDE interagency agreement, and repeatedly ignored direction from the CDE, putting the state in jeopardy of federally-imposed sanctions. Many of the issues identified in the 2008 Auditor's report and subsequent 2009 report<sup>2</sup> have persisted and continue today. OAH/Special Ed continues to violate state and federal laws, disregarding its duties as a contracted agency for the CDE to implement laws and regulations under IDEA. OAH/Special Ed has also violated discrimination laws by not providing accessible facilities for disabled children. The privacy of personally identifiable information of children and their families has also been disregarded, putting this sensitive data at risk of misuse by others.

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Administrative Hearings has not always issued hearing decisions within the legally required time frame, which could potentially lead to sanctions by the federal government. (California State Auditor Report 2009-406)

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- **Misconduct plagues OAH/Special Ed as it acts with impunity in violation of laws and with disregard for transparency.** OAH/Special Ed targeted special education families by seeking an opinion by the California Attorney General to prohibit parents from being represented by nonattorney advocates in hearings, despite this practice being allowed in other venues over which OAH presides. OAH/Special Ed has misrepresented the laws to parents, in conflict with its obligation to assist parents in the process, and in violation of legal ethics. The agency has not acted with transparency and has, in fact, removed information from public view, and obfuscated information in the database of due process hearing decisions. OAH/Special Ed has not acted in accordance with mandates to consider the recommendations of the OAH Advisory Committee. Feedback from interviewees and mediation surveys report that ALJs have acted unprofessionally, and even in an adversarial and confrontational manner, resulting in many fearing retaliation. In addition, a recent whistleblower complaint against OAH includes multiple allegations of serious misconduct on the part of OAH leadership.

#### **Conclusion:**

OAH/Special Ed is biased against parents and their children with disabilities by its governmental structure, and by the actions of its leadership and employees. It therefore does not meet the IDEA's requirements of providing impartial mediators and hearing officers for students with special needs. The agency has a long history of failing to follow state and federal laws, not abiding by the CDE interagency agreement, and not being transparent to the public. OAH/Special Ed has not only ignored federal protections for children with disabilities but has actively engaged in impeding the rights of these children and their parents. The actions described in this report are extremely troubling, as this agency is charged with upholding the rights of children to ensure they are provided with an appropriate education. OAH/Special Ed is comprised of bar-licensed attorneys acting as mediators and administrative law judges, who are obligated to follow all state and federal laws in addition to upholding professional ethics. We find that OAH/Special Ed has failed in this regard, and is therefore, not the

appropriate entity to provide mediators and hearing officers for special education due process cases. A report with similar concerns regarding the General Jurisdiction division of OAH was also recently published.<sup>3</sup>

**Recommendations:**

The findings and conclusions in this report support the termination of the CDE interagency agreement with OAH/Special Ed. The CDE must restore its authority as the responsible State Educational Agency for providing fair and neutral mediations and hearings by contracting with a truly impartial entity which has no financial stake in the outcomes. This would allow the CDE to provide stringent and clear oversight – as mandated by federal law. The internal conflicts of interest detailed in this report would be eliminated by the use of a non-government contractor in providing these services. The CDE must clarify its authority in any future contract and not abdicate its responsibility. A clear complaint policy must be put in place to monitor the actions of the contractor and provide an avenue of feedback for parents, advocates and attorneys. The policy must include the requirement that investigations of complaints must be made by the CDE, and not the contractor itself. The CDE must also ensure transparency to the public in order to restore confidence that the rights of children with disabilities are being upheld per the IDEA.

## INTRODUCTION

### Special Education Laws

Children with disabilities are protected under the Individuals with Disabilities Education Act (IDEA), Section 504 of the 1973 Rehabilitation Act, and the Americans with Disabilities Act (ADA). The laws governing special education are reflected in both state and federal statute. Congress initially enacted the Education for All Handicapped Children Act in 1975. The law has changed names over the years and is now known as the Individuals with Disabilities Education Act (IDEA) and was last reauthorized in 2004. IDEA's purpose is twofold: 1) to ensure that all children receive a "Free Appropriate Public Education" (FAPE) designed to meet their unique needs and prepare them for further education, employment and independent living and 2) ensure the rights of children and their parents are protected.<sup>4</sup>

Each state must designate a State Educational Agency (SEA) to oversee the education of children with special needs.<sup>5</sup> In California, it is the California Department of Education (CDE) which has ultimate responsibility for ensuring that all special education laws are complied with by school districts and local education agencies throughout the state. Children with disabilities must be identified and an Individualized Education Program (IEP) created in cooperation with the parents of the child. An IEP may include among other things services such as speech and language services, reading remediation, or behavior services for those with autism or other disabilities where behavior impedes learning. In California, parents may consent to all or part of the IEP.<sup>6</sup>

According to the IDEA, parents have the right to bring individuals with "knowledge or special expertise regarding the child" to IEP meetings.<sup>7</sup> The U.S. Department of Education's Office of Special Education Programs (OSEP) guidance however, "strongly discourages" attorneys from attending IEP meetings in order to create a less adversarial climate.<sup>8</sup> Non-attorney advocates, therefore, can and do play a very important role in the IEP process as they help parents navigate this complicated system of education interventions, laws and regulations. These advocates also help level the playing field since school district administrators are highly trained in special education laws, while most parents are not.

Schools are also required to follow other disability laws. Some students with disabilities will not require special education services but are ensured access to education and are protected against discrimination under Section 504 of the federal Rehabilitation Act of 1973.<sup>9</sup> Students with qualifying conditions such as diabetes or severe allergies are entitled to an individualized "504 plan" that specifies how schools will accommodate the student's needs. Schools must also ensure that all facilities and events are accessible to students with disabilities per the federal Americans with Disabilities Act (ADA) of 1990.<sup>10</sup> Some of these protections overlap with the IDEA, but others may apply where the IDEA may not. For example, ADA requires access to after-school events that may not be included in students' individualized education programs and would be applicable to those with disabilities who do not qualify for an IEP.

### Funding for Special Education

Special Education services are funded by the federal government as well as by state funds. In 2019 the Legislative Analyst Office (LAO) published a report called, "An Overview of Special Education in California" which provided information on special education funding and outcomes.<sup>11</sup> According to the

report, most state funding is allocated based on overall student attendance, and is supported by state categorical funding, federal categorical funding, and local unrestricted funding.

Unlike other states, California mandates that school districts be a part of a Special Education Local Plan Area (SELPA). Each SELPA is tasked with developing a plan for delivering special education services within that area and requires member districts to pay into the SELPA. Small and mid-sized districts form regional SELPAs to coordinate special education services while large districts may serve as their own SELPA. State law requires all SELPAs to collect and report certain data related to their members' legal compliance, and most SELPAs provide local education agencies within their jurisdiction with basic support such as in-house legal assistance and teacher trainings.

While increasing costs are often historically attributed to the rising costs of services to children, the 2019 LAO Report stated that much of the increasing expenditures are due to administrative costs and attorney fees instead of to direct services for students. The report noted:

- Approximately one-third of recent increases in special education expenditures are due to general increases in staff salaries and pension costs affecting most school districts.
- The increasing number of mediations and hearings from 2006-2007 has led to increased expenditures on administrative costs and attorney fees.

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Today, nearly 800,000 students in California receive special education services at a statewide annual cost of \$13 billion. Despite this spending, state accountability data show that school districts have poor outcomes for their students with disabilities. (LAO Report 2019)

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The 2019 LAO report also found that the vast majority of students with disabilities require less intensive and less costly services, yet, their outcomes continue to be poor. The findings state:

- The majority of students who qualify for special education have speech impairments (such as stuttering) and specific learning disabilities (such as dyslexia). The services provided for these disabilities are significantly less costly than for other disabilities.
- Most students with disabilities are taught alongside students without disabilities in mainstream classrooms; approximately 20 percent of all students with disabilities are taught primarily in special day classrooms with other students with disabilities.
- The incidence of students with relatively severe disabilities ranges from less than 0.5 percent to 5 percent and only 3 percent of students with disabilities are educated in separate schools exclusively serving students with disabilities.
- Even though the vast majority of students with disabilities have cognitive abilities commensurate with those without disabilities, the average test scores of those with disabilities on state reading and math assessments were at the 18th percentile of all test takers in 2017-18, notably below that of low-income students (35th percentile) and English learners (23rd percentile).

In 2021, the California Department of Education Special Education Division funded another report per Senate Bill 74.<sup>12</sup> Published by WestEd, a nonprofit research agency, the report called, “The California Special Education Governance and Accountability Study” sought to determine ways to improve special education in the state.<sup>13</sup> The authors revealed that the multi-layered system of Local Educational Agencies (LEAs) which are primarily school districts, and SELPAs caused increased costs, duplication of efforts, and confusion regarding which entity had ultimate responsibility for providing children with disabilities a Free Appropriate Public Education. Some of the major WestEd study findings include:

- The distribution of funds goes into two separate systems; the Local Control Funding Formula (LCFF) provides funding directly to LEAs, and federal and state special education funding goes to SELPAs. Having two separate funding streams is a potential barrier to strategic coordination of human and fiscal resource allocation across general and special education.
- Multi-LEA SELPAs are responsible for ensuring that their member LEAs comply with IDEA requirements. However, SELPAs receive no specific funding to do so, nor are they given the authority to do so.
- Subgranting and distributing IDEA funds to SELPAs and allowing multi-LEA SELPAs, in turn, to subgrant funds to their member LEAs does not promote transparency and may be inconsistent with federal policy guidance.

To address these issues, the WestEd report makes the following recommendations:

1. Clearly establish that each LEA (i.e., school district, charter school that is an LEA for special education, and, in limited circumstances, County Offices of Education (COEs)) is responsible for its students with an IEP and, give each LEA full authority to make special education funding and program decisions for its students.
2. Provide each LEA with the sole decision-making authority, autonomy, and necessary resources for entering into and exiting from agreements with other LEAs to offer a flexible continuum of services to meet the variable needs of its students with an IEP.
3. Align improvement planning requirements and supports provided through the Statewide System of Support across general and special education.
4. Increase transparency and alignment of the state’s general and special education accountability, monitoring, and technical assistance structures. Amplify the voices of special education stakeholders, including families, in all governance and accountability structures.
5. Increase state communication and guidance to LEAs, communities, and families about the state’s special education priorities and available resources for increasing the provision of special education services in general education settings and improving academic and functional outcomes for students with an IEP.

Some of these recommendations may be controversial as they require major changes in the current governmental structure. The WestEd study, however, reveals many of the problems in the California special education system that hinder outcomes, leading to more disputes and the need for more mediations and due process hearings. It also addresses the additional expense of SELPAs which contribute to the calculations of the cost to provide services to students with special needs. The 2019 LAO Report indicates that these costs are often two to three times higher than the cost of educating students without disabilities, yet these estimates often do not delineate the cost of administration or legal fees paid to private law firms.

These funding and authority issues directly impact the due process system. Administrative staff from both the LEA and SELPA can be involved with mediations and due process hearings, substantially increasing costs and duplicating administrative duties. In addition, SELPAs often have their own dispute resolutions for special education, but as noted above, do not have authority from the IDEA to do so. Parents are often confused as to who is responsible for helping their child with disabilities, and in some cases, the LEA and SELPA point the finger at one another causing greater confusion and even less resolution.

## Dispute Resolution Process

The IDEA provides for a dispute resolution system for when parents and the school district disagree as to what constitutes “appropriate” educational services. The CDE is responsible for the implementation of a resolution process including mediations and due process hearings. As a condition of receiving federal financial assistance, the CDE must ensure that the mediators and Administrative Law Judges (ALJs) who preside over hearings are impartial and must not be “a person having a personal or professional interest that conflicts with the person’s objectivity in the hearing.”<sup>14 15</sup>

State law requires that the CDE enter into an interagency agreement with another state agency or contract with a nonprofit entity to conduct mediation conferences and due process hearings for special education cases.<sup>16</sup> The CDE Special Education Division has contracted with both a private entity, McGeorge School of Law (McGeorge/SEHO) between 1989 and December 2005, and since that time, with the OAH/Special Ed, a part of the Department of General Services (DGS), a state agency. McGeorge is a school within the private institution, the University of the Pacific in Sacramento. Its website states that McGeorge was founded in 1924 and educates attorneys for legal careers in government agencies and law firms.<sup>17</sup>

The current CDE interagency agreement is overseen by the CDE Director of Special Education, Heather Calomese and signed by the Director of DGS/OAH, Zackery Morazzini. [Figure 1](#) shows the reporting structures for DGS/OAH and CDE. Contract monitors for both CDE and OAH/Special Ed are designated in the interagency agreement, however, neither has the authority to make any commitments or changes to the contract.<sup>18</sup>

When disputes arise between parents and school districts, there are 3 main ways that they can be resolved utilizing mediators or hearing officers: 1) filing for a due process hearing, 2) filing for Mediation Only, or 3) filing a state compliance complaint and opting for mediation. [See Figure 2](#).

Either party can file for a due process hearing – a court-like proceeding conducted by Administrative Law Judges who are California bar-licensed attorneys. Due process hearings include the presentation of evidence, witness testimony and adherence to specific legal procedures. While there is no jury, and it is not conducted in a courtroom (it is usually at a school district building), it is nonetheless an intimidating process for most parents. The IDEA specifically states that parents may be “accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities” in due process hearings.<sup>19</sup>

At the hearing, the ALJ will listen to the evidence which often centers around the student’s qualifying disability, what services the student needs, as well as issues regarding placement (where the child would

receive an appropriate education.) The ALJ then makes a ruling that either is in favor of the student, directing the District to provide services or offer the placement the parent sought, or in favor of the District. While the IDEA focuses on what is “appropriate” for the child’s unique needs regardless of cost, Districts are often incentivized to fit children into existing programs and services for cost savings. This is placement based on a District’s service delivery configuration, rather than student needs and can be considered “predetermination” if the District has already decided to provide an offer based upon the District’s budget and staffing – and not on the needs of the child.

When a due process case is filed, a mediation session can take place prior to hearing if both parties agree. The IDEA does not mention who parents may bring to mediation, and it does not prohibit the attendance of either attorneys or advocates.

California offers another option for mediation not mentioned in the IDEA. In 2006, California added an option of filing for “Mediation Only” through EC 56500.3 which allows parents to seek mediation without filing for due process. Due process can be filed later if the Mediation-Only session is unsuccessful in resolving the issue. Parents can also file a state compliance complaint with the CDE pursuant to the IDEA, requesting an investigation and a written report of the findings within 60 days. Once a state complaint is filed, either party may request mediation.<sup>20</sup> OAH/Special Ed provides mediators for each of these different types of mediations.

Alternative Dispute Resolution is a process where the parent and District are encouraged to work cooperatively to come to a resolution without a mediator or hearing officer involved. However, even in this “informal” setting, the district has access to attorneys – sometimes literally in the next room – while the parent often may attend without any help.

As noted in the 2019 LAO report, increased filings for mediation and due process hearings add to costs of administrators as well as legal fees. [Figure 3](#) illustrates the costs to parents as well as costs to the state for due process hearings. In a due process hearing there may be multiple attorneys for the District, SELPA administrative staff, District Special Education staff, as well as teachers and providers acting as witnesses who need substitutes to provide services while they attend the hearing. The attorneys are often from private law firms and are paid for their time, whether they win or lose, incentivizing them to initiate and prolong litigation against children with disabilities and their families. SELPA and District Special Education staff may be duplicative and add more costs than necessary. All of the SELPA and District staff are paid for by the state and have no incentive to reduce litigation. While most hearings occur over a few days, some have spanned over 24 days<sup>21</sup> – vastly increasing the costs to the parents and the state, while providing substantial income for the attorneys representing the district.

Parents, on the other hand, sometimes represent themselves even without any experience or formal legal training, or have to pay for an attorney to represent them. Most parents have to take time off of work to attend a hearing, foregoing their wages. Many need to pay for childcare if the hearing goes outside of the school day. In addition, parents are only reimbursed attorney fees if they win the case – which as discussed later is only in a small fraction of cases. The IDEA also mandates that parents must pay for any witnesses, such as assessors, who can testify on behalf of the child, even if they win the case. Due process hearings, therefore, are extremely stressful and costly to parents, regardless of the outcome.

The ultimate goal of a resolution process such as mediation or alternative dispute resolution, is to come to an agreement, usually in the form of a written settlement agreement. According to Wrights Law, a website geared to educate parents on special education, "...few agreements are more legally complex than a settlement agreement. While a well-crafted settlement agreement can be very effective in resolving disputes and allowing the parties to move forward, a poorly-crafted agreement can create new problems, and sometimes leads to even more litigation."<sup>22</sup>

Wrights Law provides an article, "Demystifying Settlement Agreements"<sup>23</sup> which cautions parents about signing settlement agreements without a thorough understanding of each provision, especially the

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...OAH should not contribute to enabling the district to settle parents with shut-up money to get the kiddo's services, accommodations and modifications outside of school, especially when inside the schools and districts our tax dollars are paying the payroll of the service providers and not fulfilling the objectives, functions and responsibilities of their positions with our tax dollars. (Parent, mediation survey.)

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release of claims, also called waivers. The article states:

Sometimes, agreements provide for prospective releases, i.e., a release of any potential future claims. For example, a school district that agrees to provide ongoing services may request a release to the effect that the parent will not challenge the sufficiency of the ongoing services to meet the student's educational needs. Such a request is not entirely unreasonable, but the prospective release must be carefully drafted. For example, while a parent might be willing to agree to not challenge the appropriateness of the agreed-upon services, they should preserve their right to pursue a claim for the school district's failure to provide the services. In general, it is best to avoid including a prospective release in a settlement agreement.

Whether a resolution is accomplished during mediation or directly with the school district in Alternative Dispute Resolution, parents who are not represented by attorneys are at great disadvantage when signing a settlement agreement. Most parents are not well-versed in special education laws and do not always understand complicated releases of claims which may result in unknowingly forfeiting their child's rights. School districts, however, have attorneys as well as highly trained special education staff who usually prepare the settlement agreements, and do so to benefit the district.

#### Impact of COVID-19 on Mediation and Due Process

In March 2020, school closures occurred due to the COVID-19 pandemic.<sup>24</sup> These closures resulted in confusion about how to provide services to children with disabilities, and disparities on how their needs were addressed. Some school districts continued to offer students with disabilities in-person services, some provided them virtually, and some did not provide special education services at all. The result was substantial learning loss for children with disabilities, and expectations of increased filings for

mediations and hearings to receiving compensatory educational services. To mitigate this increase in litigation, the state provided unprecedented amounts of funding to school districts.

According to EdSource in July 2021, “Special education in California has been showered with more than \$1 billion in new state and federal money in recent weeks.”<sup>25</sup> The article references \$656 million in new ongoing state funding for special education, including a 4.05% increase to the base funding rate. In addition to that funding, \$550 million was allotted in one-time funds for addressing impacts of the pandemic, with \$100 million of that specifically for dispute resolution and prevention to head off litigation. The dispute resolution funds are prohibited from being used on attorney fees, however, many school districts simply used the funds to hire more administrative staff, rather than use the funds to directly address the educational loss of students. The article states that these funds were in addition to the \$301 million in federal funding from the March 2021 American Rescue Plan that California received (more than any other state) to help students, including those with disabilities, catch up after a year of distance learning.

One unintended consequence of the new legislation was the change from “distance learning” to a priority on in-person instruction.<sup>26</sup> Those who could not attend in-person due to medical issues or other disabilities had to enroll in “Independent Study” for the 2021-2022 school year, where they received little or no direct instruction. Many parents felt that they were forced to choose between their child’s health or their education, and turned to the courts to resolve the issue. A court-order was issued to reinstate distance learning for students with disabilities to ensure that they could receive an appropriate education.<sup>27</sup> Many in the disability community noted that lawsuits like this would not be necessary if parents and advocates had a voice during the creation of legislation. However, students with disabilities and their parents - unlike education agencies and school boards - do not have lobbyists to advocate on their behalf, nor do they have ready access to taxpayer-funded legal counsel.

The format of mediations and hearings were also greatly impacted by the pandemic. OAH/Special Ed shut down all mediations and due process hearings in March of 2020, and then moved to an all-virtual system, which is still in place today.<sup>28</sup> Virtual mediations and hearings can allow parents to attend while at home, possibly reducing the need for childcare expenses, and eliminating travel expenses for mediators and ALJs. However, many find the system cumbersome, putting parents who are not technologically savvy at a further disadvantage. Some have expressed concern about the lack of transparency with virtual hearings since District staff are allowed to gather in one place, and any conversations among the staff or witnesses would not be visible. Parents and their attorneys are often forced to be in separate locations, restricting their ability to communicate with each other.

Parents’ rights to have hearings open to the public were also restricted as OAH/Special Ed did not provide avenues for the public to attend via videoconferencing or teleconferencing. In September 2021, AB 1578 was signed into law which will reinstate parental rights to public hearings, by requiring that hearings be made available via live audio or a video feed (upon parents’ request) starting January 1<sup>st</sup>, 2022.<sup>29</sup>

## BIAS WITHIN OAH Special Education Division

OAH/Special Ed is a biased entity in conflict with the mandated neutrality per the IDEA. This bias stems from the division’s position as a part of the Department of General Services, whose mission is to provide

cost efficiencies for the state. The OAH/Special Ed division has focused only on goals of efficiency, and not on monitoring and measuring its efficacy in providing fair and neutral mediations and hearings. This bias can be seen in the vast majority of decisions in favor of school districts.

### Implicit Bias as a Division of the Department of General Services (DGS)

According to its website, the Department of General Services (DGS) is the “business manager” for the state of California, with more than 3,500 employees and a budget in excess of \$1 billion. The mission of DGS is to, “Deliver results by providing timely, cost-effective services and products that support our customers, while protecting the interests of the state of California.”<sup>30</sup> The emphasis on saving costs is irrefutable. The 2021 DGS strategic plan mentions reducing costs, cost efficiencies, cost-effectiveness and streamlining processes over 60 times throughout the report. The message from Daniel Kim, the former head of DGS, was to be “relentlessly incremental” in the pursuit of accomplishing annual goals centered around creating efficiencies to reduce expenditures. Daniel Kim left office in January 2021 and Ana Lasso was appointed by the Governor as the new Director of DGS in March 2021.

	Department of General Services (DGS) <sup>31</sup>	Individuals with Disabilities Education Act (IDEA) <sup>32</sup>
Entity	State agency acting as “Business Manager” for California.	Federal laws enacted by Congress.
Vision	“Excellence in the business of government.”	Ensure equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.
Goal	Protect the interests of the state of California.	Protect the interests and rights of individual children with disabilities to improve educational results.
Method	Provide “cost-effective services.”	Provide each child with a disability requiring special education a Free Appropriate Public Education (FAPE), the majority of which is paid for with state funds.

The mission and goals of DGS are in direct opposition to the purpose and goal of IDEA as seen in the comparison above. DGS’s goal is to protect the interests of the state of California, while IDEA is meant to protect the rights of children with disabilities and their parents. DGS seeks to provide “cost-effective services,” while the IDEA’s purpose is to ensure that all children receive a “Free Appropriate Public Education” – meaning that the state must pay for the majority of the specialized education and related services, with the federal government funding a portion. Therefore, the very goals of DGS and the IDEA are in conflict, resulting in the inability of any entity under DGS to implement the purpose of IDEA. As

discussed below, OAH/Special Ed is an entity under DGS, and therefore exhibits institutional bias against the provisions meant to protect children with disabilities under IDEA.

While the OAH website states that the Office of Administrative Hearings is “an independent office housed within the Department of General Services for administrative purposes, it does not define this “independence” from the Department of General Services (DGS).”<sup>33</sup> The Government Code describes OAH as being “in” DGS: “There is in the Department of General Services the Office of Administrative Hearings which is under the direction and control of an executive officer who shall be known as the director.”<sup>34</sup> In addition, OAH is listed in the DGS Strategic Plans with all other Divisions and Offices, with the organization chart showing that the Director of OAH reports to the Director of DGS.<sup>35</sup> All OAH employees – mediators, judges, and staff - are employed by DGS. OAH uses the DGS privacy policies rather than having its own, and OAH does not have financial autonomy, as all contracts are approved by DGS personnel. OAH is therefore a unit under the Department of General Services, DGS creating serious conflicts of interest and the inability to provide neutral mediators and hearing officers.

OAH has two separate divisions, the Special Education Division which oversees mediations and hearings between parents and school districts and a General Jurisdiction Division which oversees mediations and hearings for other state agencies. [Table 1](#) shows the differences between these two divisions. The OAH General Jurisdiction Division (OAH/GJ) was created in 1945 to handle disputes primarily between state agencies and licensees, such as between the Medical Board and licensed physicians. OAH/GJ is authorized by state laws, and the funding comes from the state agencies who contract with OAH/GJ to provide mediators and hearing officers. OAH/Special Ed is vastly different, with the legal authority being the federal government pursuant to the IDEA.

The differences in the two divisions can also be seen in caseload statistics and timelines reports required by the California State Budget Act. This required reporting of data for both the General Jurisdiction division as well as the Special Education division of OAH from 2013-2018.<sup>36</sup> [Table 2](#) provides information for the 5 year period for which the reporting was mandated to be provided to the Legislature, the Legislative Analyst’s Office and the Department of Finance. The requirement to report this data ceased in 2018 and is no longer publicly available. Of note is the decrease in average days between the filing for a hearing and when the decision was finalized. The table shows a decrease of 40% when the districts filed for due process, but only a 17% decrease when cases were filed by parents. This may show that OAH/Special Ed prioritized decreasing timelines for district-filed cases over student filings.

The IDEA requires that mediations and due process hearings are conducted by persons who are impartial. However, most disputes center around assessments, services or placement to the child with disabilities – all of which require funding by the Districts, paid for by the state. There are no protections or assurances that OAH/Special Ed mediators (DGS employees) who are incentivized to save the state money may not inappropriately seek to persuade parents to sign settlement agreements that benefit the state instead of the child. Likewise, due process hearing officers may be incentivized by their status as DGS employees to seek “cost effective services” in the form of deciding in favor of school districts, so additional state funds are not utilized.

## OAH Goals Stress Efficiency; Ignore Neutrality and Fairness

The “strategic direction” for OAH overall (including the General Jurisdiction and Special Education divisions), has been stated in each annual DGS Strategic Plans since 2017 as, “To maximize efficiencies to enhance our ability to provide the highest quality services to the parties appearing before us.” Each year, goals are set with this “strategic direction” in mind. There is no explanation of how “maximizing efficiencies” relates to “highest quality services” and this does not seem to correlate with parents appearing before OAH/Special Ed in special education hearings or at mediation. The vast majority of goals stated by Director Morazzini since 2017 have been related to creating efficiencies through analyses of data, workflows and case management, which are in conflict with providing necessary educational services to children with disabilities regardless of cost. [See Table 3.](#)

Each year, the goals are prefaced with, “The Office of Administrative Hearings (OAH) provides a neutral forum for fair and independent resolution of administrative disputes between government entities and members of the public.” However, there have never been goals relating to measuring or improving neutrality, and no goals to measure or evaluate the fairness of the resolutions. There are no studies or consultants hired to determine the perception of OAH/Special Ed by families, advocates and/or attorneys as has been done in order to create more efficient workflows. Additionally, no goals have been set to measure and/or increase compliance with the IDEA or the CDE interagency agreement. This shows an implicit bias towards cost efficiencies, while ignoring its duties to provide impartial mediators and hearing officers for disputes relating to children with special needs.

In pursuit of increased efficiency, DGS/OAH (both divisions) signed a contract with a professor at the Sacramento State University, Center for Business Analytics in 2017 which is addressed in the 2018 goals. According to the contract, the purpose of this study was to “estimate the probability that a scheduled hearing or mediation in a given case (matter) will be taken off calendar (cancelled) before the scheduled date based on a number of factors.” DGS/OAH sought to learn which factors were associated with the cancellation of hearings and mediations from 2007 to 2017 including: the division (General Jurisdiction or Special Education), the OAH office associated with the case, the attorneys associated with the case, and the school district or government agency associated with the case, among others.<sup>37</sup>

The Contractor found that there were multiple problems with missing and inaccurate data in the database, confirming the findings in the 2008 Audit Report that will be discussed in the next section. This contracted study has troubling implications for the Special Education Division. First, there is no indication that the CDE was aware of this study since it was signed only by a representative of DGS/OAH. Second, the agreement references confidential information that may have been provided, which may constitute a breach of privacy for students with disabilities as well as a breach of the interagency agreement. The agreement with the Sacramento contractor states:

Confidentiality: Any information which is confidential by statute, regulation or designation by OAH and made available to the Contractor in performance of this Agreement shall be protected by the Contractor from any use or disclosure except as specifically authorized in writing by the State.

The study is also concerning in that it sought to link the names of specific attorneys and school districts who were associated with cancellations of mediations and hearings, causing administrative “inefficiencies” and increased costs to OAH/Special Ed. There was no mention of investigating the reasons for the cancellations which could occur for very legitimate reasons for parents of children with disabilities and medical conditions. It is not known what OAH/Special Ed would do (or did) with the information that specific attorneys or Districts were associated with more cancellations than others, increasing costs to OAH/Special Ed.

### Students Prevailed in only 14% of Hearings from 2008-2019

OAH/Special Ed is required to collect and provide data in Quarterly Reports to the CDE pursuant to the interagency agreement including the number of cases in which the student or District prevailed at hearing. According to the California Special Education Law website, which has published this data on hearing decisions from 2008 through 2019, the 69 ALJs listed found in favor of school districts 53% of the time, and in favor of students only 14% of the time.<sup>38</sup> Split decisions were made in 32% of cases, but the split is not delineated for individual ALJs. The OAH/Special Ed Quarterly Reports, however, show that overall split decisions favor school districts 2 to 1.<sup>39</sup>

An analysis of the most experienced Judges, defined as 15 or more combined rulings for students and Districts, shows that ALJ's overwhelming rule in favor of Districts by a 5 to 1 margin. The overall rate at which students prevailed by these experienced ALJs was on average, 20%. Only one experienced ALJ ruled in favor of students more than districts, and it was only by one case – 8 to 7, the rest consistently ruled in favor of school districts. [See Table 4](#).

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There is obvious bias towards school districts in the special education process, from judges to mediators to the system in general. The districts have all the power and parents bankrupt themselves trying to get help for their children. Start following the law and stop giving districts the benefit of the doubt. They act in the best interests of their budget, not the children. Once that is understood, it is fairly easy to see why districts make the decisions they do and why parents have to continually try and get help in a system where their children are the underdogs. Evidence...look at the decision statistics for due process. Ridiculous. (Parent, mediation survey.)

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The interagency agreement requires that Quarterly Reports are published on the OAH website. [Table 5](#) shows selected data from these reports. The data showing the number of students who prevailed and other information that was previously reported has been removed from the Quarterly Reports. This information is still required to be sent to the CDE, so the removal of the information has just hidden it from public view. From 2015 to 2018 the Districts repeatedly prevailed by huge margins, and the split decisions were continuously in favor of the Districts. Other information that has been removed from public access is the number of pupils of color accessing the system and the number of non-English speaking parties.

The average ratings on mediation surveys and due process surveys have also been removed. Of note, the due process ratings dropped to 3.92 out of 5 prior to the discontinuation of public reporting of the data. The ratings for mediation are especially important, since mediation sessions are confidential, with no audio-recording or transcript as there are with hearings. For the mediation surveys, respondents answer a series of questions on a 1 to 5 scale and are provided the opportunity to write in comments about their experience with mediation.

A review of several months of mediation ratings shows that parents consistently rated OAH mediators lower than school district personnel. However, the ratings are averaged, diluting the feedback from parents. Since school districts can have 5 or more people in attendance at mediation, their scores can override that of an individual parent. It is unknown what is done with the comments, and if the CDE receives or analyzes that important feedback from parents and other participants of mediations and hearings.

This feedback in the surveys for mediations and hearings is also critical because neither the CDE nor OAH/Special Ed provide any mechanism for complaints. The interagency agreement only states that “if the CDE becomes aware of a complaint” then it will refer the complaint for OAH/Special Ed to investigate itself. In addition, the CDE complaint forms and all information on the website regarding complaints only refer to school districts – not OAH/Special Ed. Many parents do not understand the contractual arrangement, and have no way of knowing that the CDE would take a complaint about OAH/Special Ed. Even if complaints were sent to CDE, the CDE simply allows OAH/Special Ed to investigate itself. This lack of oversight explains how OAH/Special Ed has continued to engage in repeated noncompliance and egregious misconduct detailed in this report.

OAH/Special Ed is a state agency that is a part of the State of California, as are all County Offices of Education, SELPAs and school districts. These agencies all have a mutual interest in preserving the state’s general fund, which is their primary means of operation, including all salaries for employees in each entity. As a result, OAH is predisposed to find in favor of local education agencies and NOT in favor of parents, who bring actions against such agencies for failure to ensure FAPE or otherwise fail to follow the law or uphold student rights, because findings in favor of parents and against such agencies result in the payment of funds from the state’s general fund. If OAH/Special Ed regularly and consistently acted to identify violations of the law by school districts and held them accountable for providing services, not only would it lead to payments from the general fund to the disadvantage of the state and its agencies, but it would threaten the very existence of OAH/Special Ed. This is the very definition of a conflict of interest.

## NONCOMPLIANCE

OAH/Special Ed has a history of not complying with state and federal laws as first noted by the State Auditor in 2008. The division also did not comply with disability laws regarding accessible facilities, or ensuring that privacy policies regarding sensitive information were followed.

### State Auditor Report: Noncompliance with Federal Laws, Interagency Agreement

In 2008, the California State Auditor, Bureau of State Audits (Auditor) analyzed and compared mediations and due process hearings conducted under McGeorge/SEHO from 2002-2005 with those conducted by OAH/Special Ed from 2005-2008.<sup>40</sup> According to the Auditor’s analysis, OAH/Special Ed

was fraught with problems from the beginning, and throughout this 3-year period. Problems included multiple occurrences of OAH/Special Ed not complying with state and federal laws as required in the interagency agreement. This total disregard for CDE's authority as the responsible party, led to the federal government initiating a review and rebuke of the CDE for its noncompliance. Still, the OAH/Special Ed continued to violate the laws.

The Auditor found that when OAH/Special Ed contracted with the CDE, the following occurred:

- **Noncompliance With Legal Timeframes Prompting OSEP Review:** OAH/Special Ed consistently failed to meet legally required timeframes. Compliance with these laws were only 29%, 57% and 72% in reports - far below the 100% compliance required by law, potentially leading to sanctions by the federal government and jeopardizing special education funding for the State. The Auditor found repeated instances where OAH/Special Ed did not comply with the federal timelines despite the CDE's monthly meetings and letters of notice of noncompliance. This prompted a verification review of the CDE by the federal Office of Special Education Programs (OSEP), and notification from OSEP that the state was out of compliance with the laws dictating the timeliness of hearing decisions.
- **Noncompliance With Interagency Agreement:** The Auditor found that OAH/Special Ed did not comply with many of the required elements of the Quarterly Reports as stipulated in the CDE interagency agreement. Even after discussions with the CDE, and assurances from the OAH/Special Ed Presiding Administrative Judge that the database had been corrected to include all items, the Auditor still found missing elements from the Quarterly Reports. It was not until the Auditor notified the Presiding Administrative Judge of the missing data, that OAH/Special Ed corrected the report.
- **Inaccurate Reporting To The State And Federal Government:** The Auditor found many errors in the database which is used to report required information to the state and federal government. The Auditor wrote, "When Administrative Hearings (DGS/OAH) does not ensure that the data its staff enter into these fields are accurate and complete, it cannot ensure that it is accurately reporting all required data to Education (CDE) in accordance with the law and the interagency agreement, and Education cannot ensure that it is reporting accurate information to the federal government."
- **Increased Costs:** Under the contract with OAH/Special Ed from 2005-2008, the costs of providing mediations and hearings immediately jumped 14%. OAH/Special Ed exhausted all federal funding, requiring additional state general funds to be used, while McGeorge/SEHO's costs between 2002-2005 were consistently well below the federal funding caps.
- **Fewer Students Prevailed:** The percentage of decisions in favor of students reached up to 22% for McGeorge/SEHO, while DGS/OAH's decisions favoring students averaged 9-12%. In the last year of the McGeorge/SEHO contract in 2004-2005 the percentage of students prevailing dropped significantly.
- **Failure To Train Administrative Law Judges (ALJs):** OAH/Special Ed reported to CDE that all ALJs had undergone the required training. However, the Auditor could not find evidence of this required training for all ALJs. The Auditor wrote, "Moreover, when Education (CDE), in its oversight role, does not ensure that Administrative Hearings can demonstrate that its

administrative judges have received all required training, it opens itself up to scrutiny from those who might question the qualifications of the administrative judges.”

- **Effectiveness Unknown:** The number of cases appealed to higher courts could not be calculated for McGeorge/SEHO or OAH/Special Ed, as the CDE does not track that information.
- **Lack Of Oversight By CDE:** The Auditor cites multiple instances where the CDE either did not know of the noncompliance occurring, or its efforts to persuade OAH/Special Ed to follow the laws went unheeded. In many instances, it was not until the Auditor pointed out noncompliance of the laws that corrective actions were finally taken.

### Office for Civil Rights; Failure to Provide Accessible Facilities

The OAH/Special Ed division also failed to comply with the Americans with Disabilities Act (ADA) by not providing reasonable accommodations in the form of accessible facilities. In March of 2014 a complaint was made to the Office for Civil Rights (OCR) that OAH did not provide a hearing facility with an accessible restroom, which was needed by a student in a wheelchair.<sup>41</sup> The parent reported that she did not have an attorney and was not prepared for the hearing since the one person she had to help her “got tossed from the courtroom by the ALJ.”

She reported that her son tried to use the restroom, but because it wasn’t accessible to wheelchairs, he had difficulty and ended up soiling himself and the wheelchair. She reported that it took the ALJ two hours to decide what to do, and in the meantime, her child was sitting in a soiled chair, in soiled clothing. Eventually, the ALJ allowed her to return home briefly to clean up and change her son. She told OCR that she had to return quickly per the ALJ, and since the chair cushion was still wet, her son had to utilize the chair without a cushion upon their return.

OCR investigated, interviewing the parent and communicating with the CDE Office of Equal Opportunity (OEO) unit. OCR’s preliminary investigation found that neither CDE nor OAH has written policies or procedures: (a) to ensure that special education hearings and mediations are conducted in facilities accessible to individuals with disabilities, (b) specifying how participants in special education hearings and mediations may request disability-related accommodations, or (c) by which individuals may complain to OAH about inaccessible facilities or failure to provide reasonable accommodations.

In September of 2014, the CDE voluntarily entered into the attached agreement to resolve the allegations in the complaint. When the CDE contacted OAH/Special Ed to explain how the policies and procedures would need to be created and implemented by OAH/Special Ed, it was met with resistance. The OAH/Special Ed Staff Counsel emailed the OCR investigator, seemingly not understanding the contractual obligations OAH/Special Ed had with CDE. In the email, she stated to the OCR investigator:

I just wanted to reiterate and make sure that you understand that the Office of Administrative Hearings is an independent agency, entirely separate from the CDE, and as such, CDE has no authority to enter into any agreement on behalf of OAH. While the Office of Administrative Hearing may contract with CDE to provide adjudicatory services, CDE has no authority to interfere with the adjudicatory process or adjudicatory services provided.<sup>42</sup>

In response, the OCR investigator explained CDE's obligations to follow all laws under Section 504 as well as Title II of the Americans with Disabilities Act, and that as a contractor, OAH/Special Ed was obligated to its contractual agreement with CDE. The OCR investigator responded in part:

The Resolution Agreement between CDE and OCR memorializes the actions OCR determined CDE must take to resolve the compliance concerns in this case and is designed to ensure that CDE conducts special education proceedings in accessible facilities with reasonable accommodations, whether those proceedings are conducted through OAH or a different entity. OCR's ability to require this of CDE is a matter of federal law, while CDE's ability to require related actions or changes by OAH is a matter of contract. OCR will enforce the Resolution Agreement against CDE, then presumably, CDE will explore its options related to the Standard Agreement – that is for the CDE to decides. [sic] OCR's concern is that CDE ensure that hearings and mediations are conducted in compliance with federal law – again, whether they are conducted by CDE directly, OAH through a contract, or a successor entity through a contract.<sup>43</sup>

The email from the OAH/Special Ed Staff Counsel illustrated a lack of understanding of the contractual obligations under the interagency agreement, as well as total disregard for the CDE. This corroborates the 2008 Auditor Report which cited many instances of noncompliance with CDE, as if OAH/Special Ed did not understand – or care – about following through with its contractual obligations or complying with federal laws governing the rights of students with disabilities.

A year after the complaint, staff from the CDE Office of Equal Opportunity (OEO) followed up with OCR regarding progress made toward the Resolution Agreement, stating that the agreed-upon changes were no longer on the OAH website, and that the “person charged with the task of bringing the OAH/Special Ed into compliance had not made as much progress as we initially expected.”<sup>44</sup> In September of 2018 – four and a half years after the complaint was filed – OAH/Special Ed and CDE were still finalizing the Reasonable Accommodations Plan and Program Guidelines, respectively.<sup>45</sup>

This OCR complaint highlights many issues of concern with OAH/Special Ed. The parent stated that her only helper was “tossed out” by the ALJ, leaving her alone to care for her physically handicapped son, while attempting to represent herself in a Due Process hearing. Not allowing her to have someone to assist her is in direct violation of the IDEA which allows parents to be accompanied by others. Leaving the parent alone to juggle caring for her disabled child while trying to represent herself in a legal hearing put her in an extremely vulnerable and disadvantageous position, which led to her losing the case to the District. ALJs in the Special Education Division of OAH are supposed to have specialized training in disabilities, but the manner in which this matter was handled, and the lack of policies for reasonable accommodations to begin with not only reflects a failure of the agency's complaint process, but also violates the law as well as all sensitivity and decency with regard to the needs of the disabled. The disdain for CDE shown by the Staff Counsel illustrated a complete lack of understanding of the contractual obligations of OAH/Special Ed Division.

### Privacy Policies Not Followed

Privacy concerns were mentioned previously in relation to the provision of potentially confidential information to Sacramento State University for a contracted study. There are also concerns about

OAH/Special Ed inappropriately requiring personal information for mediation survey feedback in violation of DGS privacy policies.

After a mediation session, all parties are sent an email inviting them to provide information for an “anonymous” survey. The surveys, however, require “registration” including the person’s full name and email address prior to linking to the online survey. In addition, a “unique token identifier” was also associated with each survey respondent which OAH stated would be used “only to determine whether you have completed this survey or if there are irregularities in the survey process.” There is no legitimate reason why OAH would need to track who did or did not complete the voluntary survey. Many of those interviewed expressed concern that the survey feedback was not kept separate from the names of respondents and could therefore be used against them.

Even after OAH reported that it no longer used the unique identifier tokens in the 2018 Quarterly Report, the tokens were still in use long afterwards. OAH/Special Ed does not have its own privacy policy and instead relies upon the privacy policy listed on the DGS website (another indication that it is not “independent” from DGS.) The DGS policy states, “We limit the collection of personal information to what is relevant and necessary to accomplish a lawful purpose of the department.”<sup>46</sup> A parent’s full name and email address are certainly NOT “relevant and necessary” for an “anonymous” survey.

OAH/Special Ed is also responsible for following all privacy laws per the CDE/OAH interagency agreement. The CDE is the responsible party per the IDEA for ensuring that parent information is kept confidential and that parents are clearly notified as to how their information will be used and with whom it is shared. However, the CDE has inappropriately abdicated its responsibility for ensuring the privacy of parents and students with disabilities – even in the case of intentional breaches of confidentiality by OAH. The CDE/OAH interagency agreement states, “The Agency (OAH) shall take the action that it deems appropriate (in its sole discretion on such employees and other contractors under the Agency’s direct control) who intentionally violate any data security requirements or any provisions of this agreement.”

In addition, the interagency agreement specifies that the CDE must get permission from the DGS Information Security Office (ISO) to inspect facilities and records. It states, “From time to time, CDE, with the approval and supervision of the DGS ISO, may inspect the facilities, systems, books and records retained by the Agency in the performance of this agreement, to monitor compliance with this agreement”

Allowing OAH/Special Ed to have complete autonomy and control over intentional breaches of data by their own employees, or by subcontractors is not in accordance with the IDEA, as it is the CDE who is ultimately the responsible party. Intentional breaches of sensitive data relating to children with disabilities could constitute a criminal act, and the consequences and penalties should not be in the sole control of OAH/Special Ed. The highly sensitive nature of this data could harm children for years to come if it was inappropriately released to unauthorized recipients. Disturbingly, this clause also allows OAH/Special Ed the “sole discretion” to act on intentional breaches of “any provisions of this agreement” thereby nullifying any oversight capabilities of the CDE in clear violation of the IDEA.<sup>47</sup>

Requiring that the CDE get permission from the DGS ISO to inspect facilities and records relinquishes all authority to DGS and puts the CDE in a subordinate role. These clauses in the interagency agreement

are counter to the IDEA and has allowed OAH/Special Ed to act with complete impunity with no consequences or penalties even for intentional violations of the interagency agreement as well as state and federal laws.

## MISCONDUCT

In addition to noncompliance with multiple laws as stated above, OAH/Special Ed leaders have actively engaged in denying parental rights under the IDEA. This was demonstrated by OAH/Special Ed targeting only special education parents in an Attorney General decision regarding nonattorney representation, flagrantly misrepresenting laws regarding who parents may bring to mediation, and purposely withholding critical information from parents putting them at a further disadvantage.

### Targeting Special Education to Preclude Help From Advocates

In 2017, DGS/OAH Director Morazzini specifically sought an opinion from the California Attorney General at the time, Xavier Becerra, regarding parents being represented by nonattorney advocates in due process hearings. Director Morazzini oversees both the General Jurisdiction Division as well as the Special Education Division of DGS/OHA, yet his request to the Attorney General was only regarding parents in special education due process hearings. The Attorney General pointed out that the Legislature and several administrative agencies have “chosen to give parties the option of lay representation.” Director Morazzini specifically narrowed his request for an opinion on whether or not the Administrative Procedure Act allowed nonattorney representation which the Attorney General found that there was no specific provision. Director Morazzini also asked if the IDEA or the California Education Code allowed for nonattorney representation. Again, the Attorney General simply stated that neither addressed the issue.<sup>48</sup>

The Attorney General stated:

By no means do we suggest that consultants and other lay advocates are barred from due process hearings. The law clearly states that, in addition to counsel, a party has “a right to be accompanied and advised by . . . individuals with special knowledge or training relating to the problems of individuals with exceptional needs.” We conclude only that parties to special education due process hearings do not have a right to have their legal interests represented by a nonlawyer. In other words, a nonlawyer may not engage in the practice of law in special education due process hearings.

It is important to note that in many other states, parents are allowed to be represented by lay advocates in special education due process hearings. In California, parents can be represented by nonattorney representatives in hearings overseen by the OAH General Jurisdiction division such as those for Regional Center clients. The Welfare and Institutions Code specifies that those with developmental disabilities or their authorized representative have the right to attend a fair hearing “with counsel or other representatives of his or her own choosing.”<sup>49</sup> For parents of children who are Regional Center clients and are also students receiving special education services, this is extremely confusing. These parents can be represented by lay advocates in Regional Center hearings presided over by OAH General

Jurisdiction, but they cannot be represented by nonattorney advocates in special education hearings presided over by OAH Special Education Division.

## Misrepresenting Mediation Laws to Parents

“Mediation Only” is delineated in California Education Code 56500.3 as an informal process of resolution which can occur if either party files for mediation without filing for a hearing.<sup>50</sup> The IDEA does not mention “Mediation Only.” This Ed Code prohibits the District or parent from bringing an attorney to Mediation Only, seemingly in conflict with mediation in IDEA which does not prohibit any attendees. While precluding attorneys, the Ed Code specifies, “This part does not preclude the parent or the public agency from being accompanied and advised by nonattorney representatives in the mediation conferences and consulting with an attorney prior to or following a mediation conference.” It is interesting to note that the Ed Code refers to nonattorney “representatives” – explicitly allowing “representation” by nonattorney advocates in Mediation Only sessions – and allowing them to “advise” parents.

The IDEA also stipulates that parents are to be provided the opportunity to engage in mediation to resolve a CDE state complaint pursuant to 34 CFR 300.506 which does not preclude attorneys from attending. While this type of mediation is also not filed in conjunction with a hearing, it is mandated by the IDEA, and so would not be considered under the state-created “Mediation Only” where attorneys are precluded. Clear guidance delineating “Mediation Only” per the Ed Code is needed so that parents understand that they may bring an attorney, if they wish, to all other types of mediation. In all types of mediation and due process hearings, parents are allowed to bring others for support. In fact, parents should be able to bring whomever they please, including a family member or other support person for what is often a very emotional, contentious process.

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*I need clarification on if an advocate can attend the mediation (only) and/or mediation/hearing with the parent if I don't speak. I called OAH twice and was told that I could attend if I didn't speak. (Advocate; mediation survey)*

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Despite the Ed Code allowing “representatives” in Mediation Only, and the Attorney General only addressing representation at hearings, OAH/Special Ed ALJs began prohibiting advocates from attending mediation sessions and restricting advocates from speaking. Many of those interviewed for this report stated they had been told explicitly that “advocates cannot attend mediation” in phone calls and emails with OAH/Special Ed. This is in direct violation of the Ed Code for Mediation Only, and in violation of the IDEA.

Without any oversight, OAH/Special Ed was emboldened to put this misinformation in its 2018 Special Education Handbook for Parents with instructions requesting Mediation-Only stating, “This means that by requesting a mediation only case you may not have an attorney or advocate present at mediation.” (Underline added.) A copy of the Mediation Only Form taken from the 2018 Handbook is shown in [Figure 4](#). Likewise, the Notice of Mediation Form from this Handbook which contains similar verbiage is shown in [Figure 5](#). This handbook was provided well into 2019 and is still available via links from other

websites. This misrepresentation of the law is particularly egregious because parents seeking Mediation Only are often not represented by attorneys and so they are on their own to interpret the information they are given. Precluding parents from having the assistance and help advocates can provide disproportionately harms low income parents who cannot afford to hire attorneys, and those who may not be able to navigate the complex and complicated special education laws and process on their own.

Education Code 56504.5 requires that OAH/Special Ed is required to provide “contents of a manual to describe the procedures of the mediation and due process hearing” to assist parents in this daunting process.<sup>51</sup> Knowingly providing misinformation in that manual is counter to the purpose of the law and constitutes willful misrepresentation of the law. Parents are extremely vulnerable when negotiating with highly trained special education staff who are themselves, “nonattorney advocates” for the District. Stripping parents of their right to be accompanied by a knowledgeable advocate significantly shifts the power imbalance between parents and school districts even further in favor of school districts, in addition to the fact that it violates the express language of the IDEA.

As of this writing, many SELPAs and school districts are still providing misinformation regarding parents bringing advocates to a Mediation Only session including:

- Los Angeles Unified School District<sup>52</sup>
- San Francisco Unified School District<sup>53</sup>
- Riverside County SELPA<sup>54</sup>
- San Joaquin SELPA<sup>55</sup>
- Jurupa Unified School District<sup>56</sup>
- Contra Costa Unified School District<sup>57</sup>
- Ventura SELPA<sup>58</sup>
- Colton Joint Unified/East Valley SELPA<sup>59</sup>
- Riverside Unified School District<sup>60</sup>

The fact that Director Morazzini specifically targeted special education parents by seeking the Attorney General opinion and then allowed misrepresentations of the law to be promulgated for years, shows a complete disregard for parental rights. According to the information provided in [Table 2](#), the spreading of this misinformation coincided with a 22% drop in filings for Mediation Only, perhaps due to parents being reluctant to file without the help of an advocate.

These actions are counter to the obligations of OAH/Special Ed as the contracted agency to provide neutral and impartial mediators and hearing offices and is in conflict with its duty to educate and assist parents with this complicated legal process. Misrepresentation of laws by attorneys and administrative judges is egregious misconduct which has resulted in the violation of the rights of children with disabilities.

### Lack of Transparency, Unprofessional Conduct

The OAH/Special Ed division has not been transparent. Important data has been removed from the Quarterly Reports, making it difficult for the public to see important statistics such as the prevailing parties, feedback on surveys, and how many people of color have been able to access the system. The Quarterly Reports are not posted in full; the exhibits, signature pages and budgets are not included on the versions posted on the website.

OAH/Special Ed has also become less transparent in regard to its database of hearing decisions that is difficult to search and does not provide all decisions and orders.<sup>61</sup> The prior system allowed for effective and comprehensive searches, but an “upgrade” to the system has resulted in less transparency. Problems with the current database have been discussed at the OAH Advisory Committee for the last several years, with no improvements to the system. This hinders effective advocacy for students, as parents and attorneys are unable to find similar cases to determine how an ALJ may rule and what arguments are more persuasive. The interagency agreement stipulates that, “The Agency agrees to conduct monthly audits to ensure that all special education due process decisions have been uploaded to its website.”

In addition, OAH/Special Ed does not provide determinations on recommendations by the Advisory Committee until the next meeting, in some cases that is eight months later. Even the transcripts of the Advisory Committee meetings take many months to be posted, and OAH/Special Ed refuses to agree to a particular timeline in which to post it. As of December 2021, the transcripts for the meetings held in October 2020, June 2021 and October 2021 still have not been posted, and no summary for the October 2021 meeting was posted on the website.<sup>62</sup> The agency has also refused requests by Advisory Committee members to explain how recommendations are reviewed by the agency and by whom. However, the interagency agreement states that OAH/Special Ed can post the names and status (parent, attorney) of the Advisory Committee members who are members of the public.

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*Finish updating the OAH website so that we can search OAH orders and decisions. It is very frustrating that the website is still not finished updating. I believe it has been over a year that we have not been able to access this search function like we could.*  
(Legal counsel for school district; 2020 mediation survey.)

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The behavior of many OAH/Special Ed mediators and judges goes well beyond simply showing bias and non-neutrality. Throughout the feedback we received from interviews as well as through a review of mediation survey comments, one theme that kept emerging was the extremely unprofessional behavior on the part of mediators and hearing officers. Many commenters stated that they were talked down to, belittled or in other ways mistreated by the ALJ’s acting as mediators or hearing officers. Some used the following words to describe the behavior of ALJ’s: hostile, blaming, berating, argumentative, confrontational, and combative. Some expressed concerns about the mediator’s temperament, and many cited fears of retaliation from the ALJs. (See [Selected Feedback](#)).

#### Allegation: Misallocation of Federal Funds

This report would be remiss if it did not include information that has been revealed in a recent lawsuit filed in November 2021 by the former Division Chief, of OAH/Special Education Division, which is a public record. The lawsuit against OAH and its leadership alleges harassment, retaliation and wrongful termination for filing whistleblower complaints alleging misallocation of special education funds and

intentional violations of the California Public Records Act.<sup>63</sup> Allegations as stated in the complaint include:

The OAH intentionally inflated costs for services pursuant to the CDE/OAH interagency agreement; received more than \$8.4 million in excess federal and state education funds earmarked for students with disabilities pursuant to the Federal individuals with disabilities education act ("IDEA"); hid this information from the CDE; failed to ensure that the use of federal fund's was audited as required; and improperly used these education funds to cover losses in the general Jurisdiction division at OAH and to benefit defendants in at least fiscal years 2015-2016, 2016-2017; and 2017-2018.

Numbers provided...were significantly in error and incorrectly reflected that the OAH's SE Division had spent millions more than actually occurred. The calculations showed.that [sic] defendants were attempting to redistribute costs from the OAH's GJ Division to the SE Division in order to overcharge the CDE and undercharge the DGS and other State and local agencies. These numbers were clearly improperly calculated and were to be the foundation proposed by the OAH to develop proposed costs for the upcoming fy 2021-2022 CDE/OAH SE interagency agreement.

While these are untried allegations in an employment dispute that have not been adjudicated, they illustrate an extremely troubling picture of OAH that conforms to the findings and experiences that led to this report. Some of the information in the complaint is also consistent with, and confirmation of, our findings of lack of transparency, difficulty obtaining public records, the brazen disregard of the CDE and the interagency agreement, unprofessional behavior and misconduct in violating multiple state and federal laws – all to the detriment of children with special needs.

The contention that OAH/GJ was incurring financial losses is supported by the 2014 Legislative Analyst Office Staff Augmentation which requested \$1.8 million dollars of additional funding.<sup>64</sup> The OAH/GJ division was supposed to be self-funded by the fees charged to the state agencies for mediations and hearings but requiring higher fees of the client state agencies would be in conflict with the DGS goal of reducing expenses for the state. With the continual pressure to reduce costs for the state as evidenced in the DGS strategic plans, it is not inconceivable that a motivation to pursue federal funds to offset losses of state funds could exist within OAH. If the allegations are proven to be true, it will be an indication that the relentless pursuit of cost savings for the state came at the expense of the children with disabilities, and from the very entity that was charged with ensuring justice for this vulnerable population.

## CONCLUSION

It is unchallenged that for numerous years the CDE has been incapable and derelict in its duty of ensuring that OAH/Special Ed complies with the various state and federal laws since the agency took over mediations and hearings in 2005. This is in large part due to the organizational structure; the parent organization of OAH/Special Ed is the Department of General Services (DGS) whose primary goals are to provide cost-effective services and protect the state of California. This is in direct conflict with the IDEA whose purpose is to ensure that children with disabilities receive a free appropriate public

education (at the expense of the state.) This institutional bias precludes the agency from providing fair and impartial mediators and hearing officers. The interagency agreement also inappropriately abdicates responsibility to OAH/Special Ed without any consequences or ramifications for disobeying state and federal laws regarding the rights of children with disabilities.

Without any repercussions, OAH/Special Ed leadership, mediators, hearing officers and others have consistently not complied with federal and state laws and have engaged in egregious acts of misconduct that have harmed countless children with disabilities. The current lawsuit against OAH is a symptom of internal turmoil and strife which is a distraction from the agency's obligations to this vulnerable population. The noncompliance with state and federal laws as well as the continual misconduct over many years has caused the OAH/Special Ed division to lose credibility with parents, advocates, and attorneys. Most importantly, these unlawful actions have violated the rights of thousands of children, causing irreparable harm to many, and proving that OAH/Special Ed is unsuitable to continue as the provider of special education mediators and hearing officers. It is time for the CDE to restore its authority in ensuring that the rights of children with disabilities are upheld throughout the dispute resolution process.

## RECOMMENDATIONS

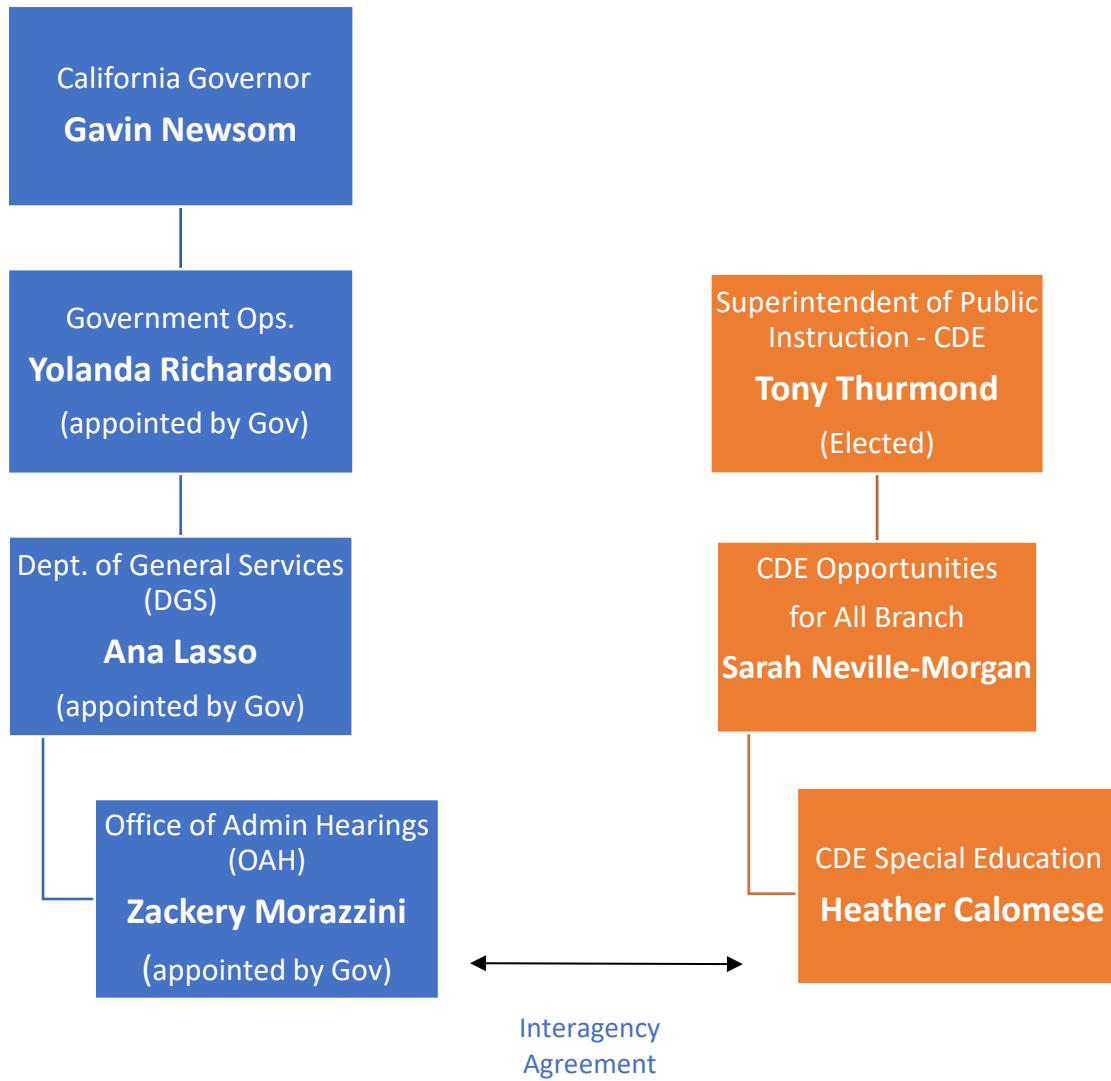
1. **Terminate the contract with OAH/Special Ed.** Enough harm has been done to children with disabilities and it is time for the CDE to contract with a truly neutral party to conduct mediations and due process hearings per the IDEA. The current interagency agreement allows for termination of the contract with OAH/Special Ed with 30 days' written notice. The contract should be terminated and a new entity in place no later than June 2022, the end date of the current interagency agreement. This is an important and vital step in restoring and maintaining the rights of children with special needs and their parents throughout California.
2. **Contract with a non-governmental agency such as McGeorge/SEHO.** Contracting with an outside entity frees the CDE from political ties and puts the CDE in complete control as is required under IDEA. An outside contractor would be incentivized to follow the interagency agreement and all provisions, or risk losing the contract. If the contractor does not perform to expectations, the contract can be terminated without political ramifications or complications to the CDE. This streamlined reporting structure is shown in [Figure 6](#).
3. **Maintain clear oversight, with penalties for noncompliance.** The CDE needs to exercise its authority with the new entity to fulfill its obligations to the federal government, as well as to children with special needs. The agreement needs to be stripped of language giving the contracted entity autonomy in violation of the IDEA.
4. **Require enhanced training of mediators and hearing officers.** To ensure that mediations and hearings are conducted by knowledgeable officers, the CDE needs to require training on disabilities by outside nonprofit organizations who understand the specific educational implications for those with disabilities. This will promote better understanding and increased sensitivity on the part of mediators and hearing officers on the struggles children with

disabilities face, and how an appropriate education can be provided to all children with special needs per the IDEA.

5. **Ensure transparency and parent involvement.** The CDE needs to ensure transparency of all data to the public including easy access to all information collected and reported to the CDE. A useable and comprehensive database of hearing decisions and orders must be made readily available to help all parties in preparing for mediations and hearings. The CDE must ensure that the new entity take the Advisory Committee's recommendations seriously and that it responds in a timely and transparent manner to the committee members and public.
6. **Create a clear complaint process and monitor feedback.** A clear and simple complaint process for issues with mediators and hearing officers must be instituted. Investigations of all complaints must be conducted by the CDE, not the contractor itself, and must be implemented within a specified timeline. All complaints and the resolutions should be made publicly available. This will ensure that parents, advocates and attorneys have an avenue for feedback to the CDE, and the contractor will have clear oversight in its duties to uphold the state and federal laws regarding special education. In addition, the CDE must continually review all feedback provided in mediation and hearing surveys to address issues as they arise.

## FIGURES

Figure 1: Relationship between CDE Special Ed Unit and OAH



**Figure 2: Types of Complaints**

Filing for Due Process Hearing (per IDEA 34 CFR 300.510)
<ol style="list-style-type: none"><li>1) Parent or School District files for Due Process</li><li>2) Mandatory Resolution Session with parents and school district staff within 15 days of parent filing. School District cannot bring an attorney unless parent is accompanied by an attorney.</li><li>3) If no resolution, then Due Process Hearing is scheduled within 45 days. OAH/Special Ed provides an Administrative Law Judge (ALJ) to preside over the hearing.</li></ol> <p>Mediation can occur at any time if both parties agree. OAH/Special Ed provides a mediator to help the parties come to resolution per IDEA 34 CFR 300.506.</p>
Filing for Mediation Only (Per CA Ed Code 56500.3)
<ol style="list-style-type: none"><li>1) Parent or School District files for "Mediation Only" (filing for mediation without filing for a Due Process Hearing.)</li><li>2) If both parties agree to Mediation Only, then OAH/Special Ed schedules a mediation session and provides a mediator.</li></ol>
Filing a State Compliance Complaint (per IDEA 34 CFR 300.152 )
<ol style="list-style-type: none"><li>1) Parent files a compliance complaint with the California Department of Education.</li><li>2) Parent must be provided an opportunity to engage in mediation consistent with 34 CFR 300.506.</li><li>3) If both parties agree to mediation, then OAH/Special Ed schedules a mediation session and provides a mediator.</li><li>4) If neither party agrees to mediation, then the CDE has 60 days in which to investigate the complaint and issue a written decision that addresses each allegation.</li></ol>

Figure 3: Costs of Due Process Hearings

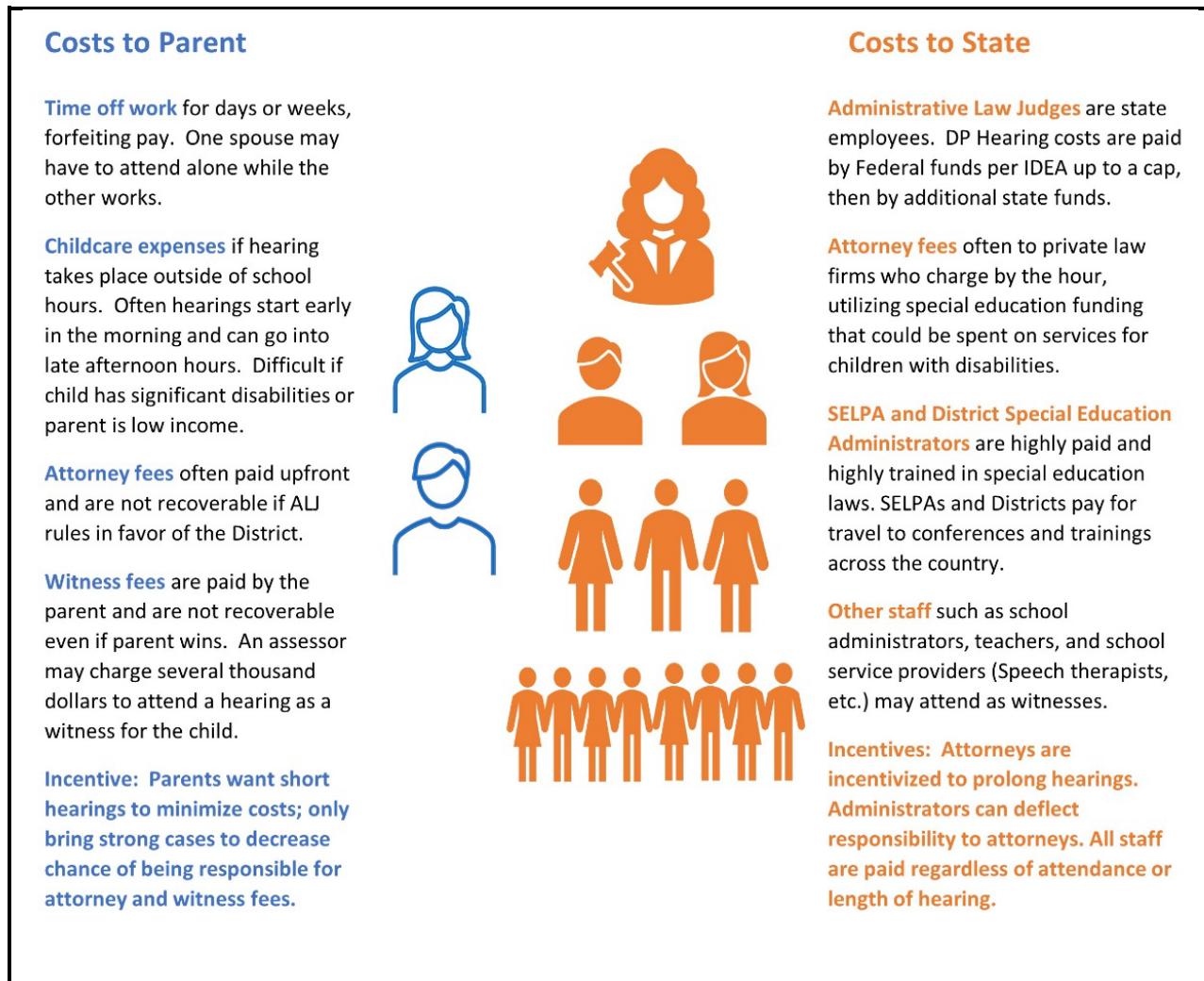


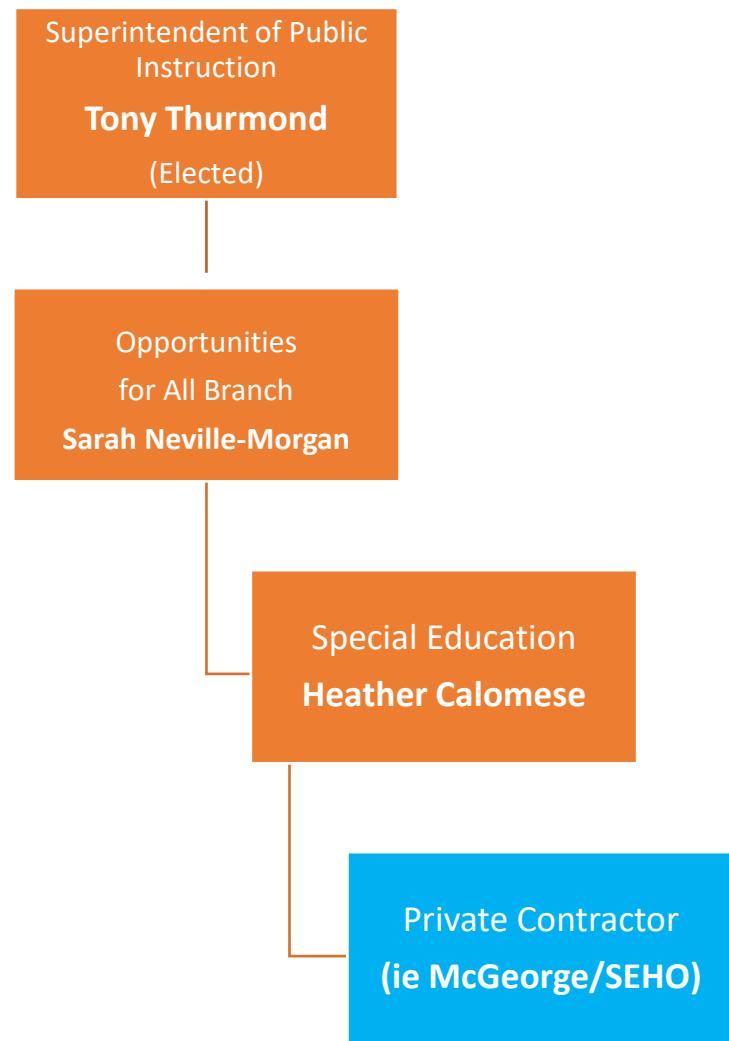
Figure 4: Mediation Only Request Form (From 2018 OAH Parent Handbook)

	<p><b>OFFICE OF ADMINISTRATIVE HEARINGS</b> STATE OF CALIFORNIA SPECIAL EDUCATION DIVISION</p>
<p><b>Information Sheet for Request for Mediation Only</b></p>	
<p><b>Important information to know before requesting a Mediation Only case:</b></p>	
<p>Participation in mediation is voluntary. If one of the parties declines the opportunity to participate, the mediation cannot occur. However, if the mediation does not occur, either party may still file a request for due process hearing.</p>	
<p>For a mediation only case, 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 conference." However, they may otherwise participate during all stages of the hearing process if a party later files for due process hearing. This means that by requesting a mediation only case you may not have an attorney or advocate present at mediation.</p>	
<p>The Office of Administrative Hearings (OAH) will assign your request to a mediator who is knowledgeable about non-adversarial dispute resolution. All mediators are also experienced in the area of special education law and mediation.</p>	
<p>Attached is a form that you may use to request Mediation Only on behalf of a particular student. If the information requested is incorrect, incomplete or not provided, your request for mediation only may be delayed until that information is provided to OAH or returned to you. All required information must be provided for the request to be processed. As soon as the completed request has been processed you will be notified by mail.</p>	
<p><i>Your request must be sent to all of the parties you have named in the complaint and a copy provided to the Office of Administrative Hearings.</i></p>	
<p>If you need assistance in completing this form or have questions about mediation, assistance is available by contacting OAH at the numbers below.</p>	
<p>Office of Administrative Hearings, Special Education Division 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833 Website: <a href="http://www.dgs.ca.gov/oah/SpecialEducation.aspx">www.dgs.ca.gov/oah/SpecialEducation.aspx</a> Email (SFT): <a href="https://www.dgs.ca.gov/OAH/OAHSFTWeb">https://www.dgs.ca.gov/OAH/OAHSFTWeb</a></p>	
<p>Tel. (916)263-0880</p>	

Figure 5: Notice of Mediation Only (From 2018 OAH Parent Handbook)

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS STATE OF CALIFORNIA	
NOTICE OF MEDIATION	
STUDENT: NAME OF STUDENT SCHOOL DISTRICT: NAME OF SCHOOL DISTRICT CASE NUMBER: XXXXXXXXXX	
REQUESTING PARTY: EITHER THE STUDENT OR THE SCHOOL DISTRICT	
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:	DATE
TIME:	9:30AM to 4:30PM
PLACE	NAME AND ADDRESS OF SCHOOL DISTRICT
MEDIATOR: TO BE DETERMINED	
If you cannot attend the mediation on the date and time scheduled, you must call the Office of Administrative Hearings, Special Education Division, at (916) 263-0880, 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 NAME OF CASE MANAGER (OAH, Special Education Division) at (916) 263-0880 or via written	

Figure 6: Improved Reporting Structure with Autonomous Contractor



## TABLES

Table 1: Overview of OAH General Jurisdiction and Special Education Divisions

	<b>Department of General Services, Office of Administrative Hearings</b>	
Director	Zackery Morazzini	
Deputy Director	Bob Varma	
	<b>General Jurisdiction Division</b>	<b>Special Education Division</b>
Division Chief	Susan Formaker	Marian Tully
Date established	1945	2005
Agencies	1500 state and local agencies	CDE Special Education Division only
Types of Disputes	<ul style="list-style-type: none"> <li>Disputes between an agency and a licensee such as the Medical Board of CA involving physician discipline;</li> <li>Dept. of Social Services involving abuse or neglect at licensed facilities.</li> <li>Disputes between an agency and an employee such as cities or counties regarding employee discipline.</li> </ul>	<ul style="list-style-type: none"> <li>Disputes between school districts and parents regarding the child's right to a Free Appropriate Public Education as required by the Individuals with Disabilities Act.</li> <li>Disputes between the NonPublic Schools (NPS) or NonPublic Agencies (NPA) and the CDE regarding certifications. (2021)</li> </ul>
Funding	State/local agencies	Federal funding to a cap, then state resources for overflow.
Legal authority	State Laws	Federal Government; Individuals with Disabilities Education Act (IDEA)
Contractual arrangement	Contracts with individual agencies	Interagency Agreement with CDE
Services	Hearings and Alternative Dispute Resolution (Mediation and Arbitration)	Hearings and Mediations per the IDEA; "Mediation Only" per CA Ed Code
% of Cases Resolved Without Hearing	50%	96%
Reporting of Data	<ul style="list-style-type: none"> <li>General Jurisdiction and Special Ed Divisions: Caseload Statistics and Hearing Timeframe Report per CA State Budget Act 2014-2018 only. Reporting discontinued.</li> <li>General Jurisdiction Only: Annual Report to the Governor, the Legislature and the Department of Consumer Affairs Legislature as required by Business and Professions Code Section 312.1, as of January 1, 2016.</li> </ul>	Quarterly Report to CDE. Pursuant to 5 CCR 3092(e), the Agency shall make all data collected in the quarterly reports described by Task 4.3 of this agreement available on the Agency website, and make the data available for placement on the CDE's website.
Cases (2019-2020)	3,377	4,645

Table 2: Caseload Statistics and Hearing Timeframe Report to the Legislature

Year-to-Year Comparisons

Special Education Division	2013-14	2014-15	2015-16	2016-17	2017-18	% change from prev. year
i. Due process cases filed	3,657	3,894	4,364	4,694	4,854	3.3%
a. Due process only	21	32	19	24	165	85.5%
b. Mediation only	271	224	239	227	186	-22.0%
c. Hearing and mediation	3,365	3,638	4,106	4,443	4,503	1.3%
ii. Cases closed without decision	3,397	3,826	4,164	4,300	4,655	7.6%
iii. Decisions issued	121	83	118	135	114	-18.4%
iv. Average days per hearing	4	3	4	4	4	0.0%
v. Average days between filing and decision - district filed	112	125	136.7	135	96	-40.6%
vi. Average days between filing and decision - student filed	134	159	177.9	163	139	-17.3%
vii. Filled ALJ positions	26	26	32	28	33	15.2%
viii. Pro tem hours billed	5,100.5	4,219.5	5,911.5	6,656.3	7,813	14.8%

General Jurisdiction Division	2013-14	2014-15	2015-16	2016-17	2017-18	% change from prev. year
i. Cases filed	9,576	9,298	9,732	9,987	9,561	-4.5%
ii. Closed without decision	4,796	4,959	5,131	4,920	4,434	-11.0%
iii. Went to hearing	5,491	6,024	5,679	5,857	5,792	-1.1%
iv. Average days per hearing	1.38	1.36	1.28	1.17	1.13	-3.5%
v. Decisions issued	4,180	4,520	4,771	5,082	5,179	1.9%
vi. Filled ALJ positions	44	52	50.8	51.8	57.80	10.4%
vii. Pro tem hours billed	11,341.5	11,372.0	6,770.25	5,381	5,491	2.0%

**Table 3: Annual OAH Goals per DGS Strategic Plans**

<b>OAH Strategic Direction 2017-2021</b>	<b>To maximize efficiencies to enhance our ability to provide the highest quality services to the parties appearing before us.</b>
2017 OAH Goals	<ul style="list-style-type: none"> <li>• Establish and implement a process for measures of success with the assistance of the Government Operations Agency.</li> <li>• Develop a protocol for destruction of digital recordings and electronic case files pursuant to OAH's records retention policy.</li> <li>• Implement new case management system: Phase 1— Discovery.</li> <li>• Develop and implement a secure electronic document filing system and a secure electronic document service system compatible with OAH's existing case management system.</li> </ul>
2018 OAH Goals	<ul style="list-style-type: none"> <li>• Improve calendaring efficiencies and measure success. OAH will conclude its data analysis project with California State University, Sacramento for measuring success and predicting future workloads in calendaring and case management.</li> <li>• Implement a new digital hearing recording process to improve efficiency and minimize errors, which will allow OAH to comply with its mandate to properly record hearings and maintain the administrative record.</li> <li>• Implement a new case management system fully mapping the case workflow and identifying necessary system features.</li> </ul>
2019 OAH Goals	<ul style="list-style-type: none"> <li>• Enter next phase of case management system procurement to map workflow and develop functional requirements.</li> <li>• Create a data-informed workload projection.</li> </ul>
2020 OAH Goals	<ul style="list-style-type: none"> <li>• With the consultant's help, in 2020 we will map all our relevant workflows and document functional requirements including all data points for analytics. Implementation of the case management system will increase efficiencies in case processing and management, improve access to workload data for data-informed decision-making, and increase e-Filing capabilities.</li> <li>• Implement plain language standards. Establish a plain language committee with representatives from each OAH division to develop plain language standards for written communications, arrange for training, and help ensure all of OAH's communications (including decisions and orders) are written in accessible, plain language.</li> </ul>
2021 OAH Goals	<ul style="list-style-type: none"> <li>• Procure and implement a system to conduct hearings virtually.</li> </ul>

Table 4: Percentage of Students Prevailing

Percentage of Students Prevailing at Due Process Hearings by Most Experienced ALJs 2008-2019					
Administrative Law Judge	District Prevailed	Student Prevailed	Total	% of Students Prevailing	Percentage Bands
Peter Paul Castillo	15	1	16	6%	
Carla L. Garrett	15	1	16	6%	
Alexa J. Hohensee	22	2	24	8%	Under 10%
June R. Lehman	15	2	17	12%	
Sabrina Kong	13	2	15	13%	
Adrienne L. Krikorian	19	3	22	14%	
Elsa H. Jones	24	4	28	14%	
Stella L. Owens-Murrell	18	3	21	14%	
Marian H. Tully*	<b>15</b>	<b>3</b>	<b>18</b>	<b>17%</b>	
Adeniyi A. Ayoade	15	3	18	17%	Under 20%
Charles Marson	34	9	43	21%	
Eileen M. Cohn	13	4	17	24%	
Judith Pasewark	29	9	38	24%	
Robert Helfand	18	6	24	25%	
Darrell Lepkowsky	20	7	27	26%	
Susan Ruff	17	6	23	26%	
Clifford H. Woosley	18	7	25	28%	
Rebecca Freie	20	8	28	29%	
Paul H. Kamoroff	12	5	17	29%	Under 30%
Robert G. Martin	7	8	15	53%	More than 50%
<b>Totals</b>	<b>359</b>	<b>93</b>	<b>452</b>	<b>20%</b>	

\*Marian Tully is now Division Chief Administrative Law Judge, Special Education. Bob Varma, Deputy Director of OAH had only 4 cases and is not listed; 3 were in favor of the District, and 1 for the student.

Table 5: Selected Data from Quarterly Reports

Fiscal Year	20-21	19-20	18-19	17-18	16-17	15-16
<b>Total filings</b>	3907	4645	5046	4854	4694	4364
<b>Decisions within timeline</b>	2	91	33	27	31	30
<b>Decisions with extension</b>	87	0	78	86	102	86
<b>Decisions after timeline</b>	0	0	0	1	0	0
<b>Mediations Requested</b>	3887	4622	5014	5193	4668	4341
<b>Mediations Held</b>	1681	2568	2742	2463	2302	2286
<b>Settled at Mediation</b>	410	1366	1783	1546	1288	1365
<b>Settled at Resolution</b>	66	139	178	205	205	280
<b>Settled outside Resolution or Mediation</b>	2784	2430	1942	1991	2002	1602
<b>District prevailed</b>	Removed*	Removed	Removed	61 (53%)	51 (38%)	47 (40%)
<b>Student Prevailed</b>	Removed	Removed	Removed	14 (12%)	26 (19%)	29 (14%)
<b>Split Decision</b>	Removed	Removed	Removed	25 (35%)	58 (43%)	41 (46%)
<b>Split: District prevailed on number of issues</b>	Removed	Removed	Removed	348	318	358
<b>Split: Student prevailed on number of issues</b>	Removed	Removed	Removed	155	235	157
	Removed	Removed	Removed			
<b>Pupils of Color accessing system</b>	Removed	Removed	Removed	89	37	32
<b>Non-English speaking parties</b>	Removed	Removed	Removed	1494	1959	1022
	Removed	Removed	Removed			
<b>Average Mediation rating</b>	Removed	Removed	Removed	4.36	4.31	4.43
<b>Average Hearing rating</b>	Removed	Removed	Removed	3.92	4.16	4.08

\*Variables indicated as “Removed” are no longer reported within the Quarterly Reports which are mandated to be published on the OAH/Special Ed website. OAH/Special Ed is still required per the interagency agreement to provide this information to CDE, it is just no longer publicly accessible. The reason for the removal of information is not provided.

## SELECTED FEEDBACK

### Interviews with parents, advocates and attorneys

OAH hearing outcomes show that OAH judges favor school districts from 2008-2019 alone at 53% of the time vs families at 14% of the time. A 'fair' hearing ought to be just that...fair. How could OAH judges possibly be fair when they are paid by the state? The bias is obvious - and inequitable upon analysis. (Advocate; interview)

The ALJ "mediator" refused to allow me to attend mediation with just my advocate in attendance, even though we had prearranged this with the District. He had already met with the district before we arrived and he was hostile to us before we even sat down. He said that my advocate was not allowed to speak, and threatened to shut down the mediation if my attorney did not attend the mediation. I didn't want to walk out of the mediation, because I was really hoping to resolve the issues, and I was worried it would be used against me if we had to go to hearing. So, I was forced to pay for several hours of attorney fees while the District staff and attorneys were all paid for by tax-payers. I tried to file a complaint against the ALJ afterwards, but I couldn't find any complaint process to do that. These OAH ALJ's are completely out of control. (Parent; interview.)

I've been an advocate for a long time and remember McGeorge. They treated parents and advocates very professionally and courteously. They really helped parents understand the system. I remember when OAH took over – I was shocked that they treated parents and advocates so badly. One ALJ literally yelled at me at hearing. The difference was night and day between McGeorge and OAH. (Advocate; interview)

The OAH process has serious ethical flaws that are evident across various cases I have been part of. Two of the most glaring to me: 1. It appears ALJs have a tendency to mix up cases, or simply do not put in the time and effort to ensure they are making their rulings based on relevant and accurate information. I have read ALJ's reports that contain information that appears to be from another case all together. I have read ALJ's reports where they accuse witnesses of saying things that never were never said. 2. Witnesses from school districts are deterred from testifying out of fear of retaliation. These witnesses are pressured by attorneys and school districts to say what is in the best interest of the school which is a blatant conflict of interest. (Profession/Expert witness; interview.)

OAH advisory committee appears to be just a formality. It seems as though many recommendations are never adopted except those that relate to logistics (e.g. recordings, statistics, etc). The OAH advisory committee's efforts and the comments made by parents during the meetings are essentially useless. OAH is very fast to exert their power and jurisdiction when it favors them but will not even attempt to hold anyone accountable. Attorneys are able to represent themselves or the district however they may please because OAH will go along with the charade and claim there is nothing they can do about the individuals participating in the process OAH has created. This is irresponsible and unethical to put families through a process with no checks and balances, and a process where OAH only stands by some aspects of the process but not others. (Parent; interview.)

As a parent, I prevailed against a well-funded school district in a due process proceeding before McGeorge's Special Education Hearing Office without the assistance of counsel, at the same time the

school district employed legal counsel. This was, in part, because the hearing officer, while not perfect, appeared to consider the implications of the substantive facts of our complaint within the context and purpose of the IDEA, as well as California education law. It is my impression OAH looks askance at self-represented parents and is nowhere near as “parent friendly” in due process as the law intended the process to be, and as I believe it was under SEHO. The SEHO hearing officer also looked beyond the pleadings and legal standards to recognize there was something rotten in the district’s technical defense that it had provided FAPE, at the same time it had failed to provide reading and language instruction to a 5th grade student with language issues, whom it had placed in an SDC in Kindergarten specifically for such instruction. Even more important was that she was open to how devious LEA counsel could be when it came to his manipulations regarding mediation, settlement and scheduling. (Parent; interview)

As an attorney who represents parents, I and others. have been sanctioned by OAH ALJ’s, at times for following OAH's own rules and at times when the ALJ had no legal authority to issue any sanction. This is yet another way that OAH discriminates against parents – by making it difficult for their attorneys to represent them. (Parent attorney; interview)

### **Mediation Survey Comments**

This mediation was a complete Sham. This mediator was completely unprofessional and should not be doing this work. She was hostile, blaming, berating, and lecturing us at the end. The OAH should not use this judge for any mediations or hearings. (Parent; mediation survey)

The Mediator not interested, was lackadaisical and wanted the process to end as soon as possible. She was more interested in her snacks and lunch than facilitating the mediation. She was not prepared and spent very little time with us. (Parent; mediation survey)

Please don't allow judge (NAME REDACTED) to mediate. Judge (NAME REDACTED) mediated one of two mediations. He was unhelpful and disinterested throughout the process. He allowed District's representative to say disparaging and offensive things about the student and the parent that completely derailed the mediation process, requiring a second meeting. We had a different judge mediate the second mediation and she was extremely helpful in comparison. (Nonattorney Advocate, mediation survey)

The mediator seemed combative with the parent at times, and did not seem to take the cues that his mediation style was not effectively moving the discussion forward. My client became very agitated with the mediator and wanted to leave, despite our being close to a resolution. The mediator was critical of our offers and discouraged my client from seeking the remedy he wanted. Also, he gave some legal advice re: civil claims that I felt was inappropriate. (Parent attorney; mediation survey)

The mediator was argumentative, confrontational, and raised her voice...(Parent; mediation survey)

The mediator we had was NOT neutral at all. You could tell that she had her opinions, and was very rude when it was clear we didn't want to go with what she suggested. I feel like she had more the districts interest in mind and tried to pin me against my own lawyer. (Parent; mediation survey)

Mediator did not come across as neutral and made the case more difficult to settle. Statement was made in front of my client about how more money would be available for the student if my firm did not

ask for so much in fees. Other statements were made about the firm I work with that were inappropriate. (Parent attorney; mediation survey)

When a party doesn't have a lawyer, the mediator should assume the parent doesn't know any legal terminology. Our mediator got upset because we wanted to get a lawyer because the district had a lawyer. I thought it was to mediate but it turns out it's just like a hearing. I needed to have all my "needs" written down and have a legal argument ready. So no, I'm not happy at all. It wasn't a waste of time for me, I learned that I just need to get a lawyer. I feel horrible for the parents that are ambushed in this way. The district has the upper hand. (Parent; mediation survey)

I will be filing a written complaint. The mediator told the parent to let me talk, which was disrespectful. When the parent said, "Let's wait and see... about an issue," this mediator said, "Don't give me instructions on how to do my job." He wanted to end the mediation less than an hour after we started, and appeared to be unable to look at the parent, a nice mother of three lovely girls. It was a waste of our time and a denial of a valid mediation. (Parent attorney; mediation survey)

Some of the mediators are very good; others are horrible. It would be nice if mediators (and hearing judges for that matter) were better able to put their personal biases aside and provide a true neutrality to the situation. Too many times the mediator overtly supports one side over the other and it compromises the purpose of mediation... (Parent attorney; mediation survey)

Mediator had very limited knowledge of special education law. Mediator did not demonstrate cultural competency. (Parent attorney, mediation survey)

Mediator appears to be very pro-school district and on several occasions recommended that I accept an offer that was not in the student's best interest. Mediator suggested that I not request changes to the waiver language because it would be a deal breaker for district, it wasn't. More than once I had to ask Mediator to stop giving legal advice to my client, especially when it ran contrary to my advice. (Nonattorney Advocate, mediation survey)

This was my first time with this mediator. In my experience she was heavily pressuring towards settlement. She was not as knowledgeable about the law as I would have liked as at one point she questioned the student's eligibility for OT and seemed to have forgotten that it wasn't an eligibility category. (School District Rep, mediation survey)

Several weeks ago, I represented (NAME REDACTED) Unified in a mediation where ALJ (NAME REDACTED) was assigned. Frankly I did not respond previously (to the survey) for a variety of reasons. I've had ALJ (NAME REDACTED) assigned multiple times and while I have found her helpful some of the times, I find her mediation style over controlling and frankly offensive. I'm reluctant to comment on these forms as many of the attorneys in our firm believe that ALJ (NAME REDACTED) is retaliatory. Having participated in mediations for over 25 years, I object to being told that I can't communicate with opposing counsel and shocked at being reprimanded for doing so.... ALJ (NAME REDACTED) refused to let the parties have a joint session saying that the parents didn't want that to take place, a position that the parents and counsel told me was not accurate. I am highly concerned about the temperament that ALJ exhibited during the mediation and frankly am concerned, as stated above, about retaliation. If this was a single occurrence I wouldn't be writing this. Rather, it's an ongoing complaint expressed by attorneys in our office and counsel representing both students and districts. (School District Attorney, mediation survey).

## ENDNOTES

<sup>1</sup> State Auditor Report; California Department of Education: Although It Generally Provides Appropriate Oversight of the Special Education Hearings and Mediations Process, a Few Areas Could Be Improved; Dec 2008; <https://www.auditor.ca.gov/pdfs/reports/2008-109.pdf>

<sup>2</sup> California State Auditor Report; 2009-406;  
<https://www.bsa.ca.gov/pdfs/reports/2009-406.pdf>

<sup>3</sup> “Unfair Hearings” Report – Disability Voices United;  
<https://disabilityvoicesunited.org/unfair-hearings/>

<sup>4</sup> Individuals with Disabilities Act (IDEA);  
<https://sites.ed.gov/idea/statute-chapter-33/subchapter-i/1400>

<sup>5</sup> State Educational Agency (SEA) Responsibility:  
<https://sites.ed.gov/idea/regs/b/b/300.149>

<sup>6</sup> Individual Education Programs (IEPs) CA Education Code 56346:  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=EDC&sectionNum=56346](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=56346)

<sup>7</sup> IEP Meetings:  
<https://sites.ed.gov/idea/statute-chapter-33/subchapter-ii/1414/d/1/B/vi>

<sup>8</sup> OSEP Letter to Clinton, 2001:  
<https://sites.ed.gov/idea/idea-files/policy-letter-july-23-2001-to-u-s-senator-hillary-rodham-clinton/>

<sup>9</sup> Section 504 of the Rehabilitation Act:  
<https://www2.ed.gov/about/offices/list/ocr/504faq.html>

<sup>10</sup> Americans with Disabilities Act 1990:  
<https://www2.ed.gov/about/offices/list/ocr/docs/hq9805.html>

<sup>11</sup> Overview of Special Education in California, Legislative Analyst Office (LAO) 11-6-2019  
<http://selpa.fcoe.org/sites/selpa.fcoe.org/files/2019-11/LAO%20-%20Overview%20of%20Special%20Education%20in%20California%2C%20November%206%2C%202019.pdf>

<sup>12</sup> Senate Bill 74: [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB74](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB74)

<sup>13</sup> California Special Education Governance and Accountability Study; Report to the chairs of the relevant policy committees and budget subcommittees of the Legislature and the Department of Finance; WestEd Research Report, November 15, 2021.  
<https://www.cde.ca.gov/sp/se/ac/documents/segalegreport.pdf>

<sup>14</sup> IDEA: Impartial mediator:  
<https://sites.ed.gov/idea/regs/b/e/300.506/b/1>

<sup>15</sup> IDEA: Impartial hearing officer:  
<https://sites.ed.gov/idea/regs/b/e/300.511/c/1>

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<sup>16</sup> Interagency Agreement, EC 56504.5:

<https://codes.findlaw.com/ca/education-code/edc-sect-56504-5.html>

<sup>17</sup> McGeorge School of Law;

<https://law.pacific.edu/law>

<sup>18</sup> CDE/OAH Interagency Agreement, page 3:

<https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Resources/Page-Content/Special-Education-Resources-List-Folder/Interagency-Contract>

<sup>19</sup> Due Process hearings;

<https://sites.ed.gov/idea/regs/b/e/300.512/a>

<sup>20</sup> Mediation for state complaints;

<https://sites.ed.gov/idea/regs/b/b/300.152>

<sup>21</sup> OAH Case #2019090129, October 2020

<sup>22</sup> Wrights Law:

<https://www.wrightslaw.com/law/art/settlement.agreement.htm>

<sup>23</sup> Wyner and Tiffany, Demystifying Settlement Agreements, 2010;

<https://www.wrightslaw.com/law/art/wyner.tiffany.agreement.pdf>

<sup>24</sup> CA Governor Newsom's Executive Order, March 13 2020;

<https://www.gov.ca.gov/2020/03/13/governor-newsom-signs-executive-order-ensuring-state-funding-for-schools-even-in-event-of-physical-closure/>

<sup>25</sup> EdSource, Special education sees 'historic' boost in new funding, July 2, 2021

<https://edsource.org/2021/special-education-sees-historic-boost-in-new-funding/657311>

<sup>26</sup> Edsource, What is independent study in California? Quick Guide. August 26, 2021

<https://edsource.org/2021/quick-guide-what-is-independent-study-in-california/659197>

<sup>27</sup> Court order reinstates distance learning for group of disabled students, LA Times, Nov 5, 2021

<https://www.latimes.com/california/story/2021-11-05/court-order-reinstates-distance-learning-for-disabled-students>

<sup>28</sup> Virtual due process hearings:

<https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Virtual-Prehearing-Conferences-and-Hearings>

<sup>29</sup> AB 1578 – Virtual public hearings

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB1578](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1578)

<sup>30</sup> About DGS: <https://www.dgs.ca.gov/About>

<sup>31</sup> DGS Strategic Plan 2021: <https://www.dgs.ca.gov/About/Strategic-Plan>

<sup>32</sup> IDEA purpose: <https://sites.ed.gov/idea/about-idea/#IDEA-Purpose>  
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<sup>33</sup> About OAH: <https://www.dgs.ca.gov/OAH/About>

<sup>34</sup> Government Code defining OAH: <https://codes.findlaw.com/ca/government-code/gov-sect-11370-2.html>

<sup>35</sup> DGS Strategic Plans: <https://www.dgs.ca.gov/About/Strategic-Plan>

<sup>36</sup> Report to the Department of Finance and the Joint Legislative Budget Committee, 2014-2018 per item Number 7760-001-0666 of the California State Budget Act.  
<https://www.dgs.ca.gov/Resources/Legislative-Reports>

<sup>37</sup> Sacramento State University Proposal for DGS/OAH, Agreement, and Slides - 2017

<sup>38</sup> California Special Education Law website with hearing decisions;  
<https://www.californiaspecialedlaw.com/wiki/hearing-decision-statistics/hearing-decisions-by-administrative-law-judge/>

<sup>39</sup> Quarterly Reports, OAH 2015-2021, current year posted: <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Resources/Page-Content/Special-Education-Resources-List-Folder/Quarterly-Reports-and-Dashboards>

<sup>40</sup> State Auditor Report; California Department of Education: Although It Generally Provides Appropriate Oversight of the Special Education Hearings and Mediations Process, a Few Areas Could Be Improved; Dec 2008; <https://www.auditor.ca.gov/pdfs/reports/2008-109.pdf>

<sup>41</sup> Office for Civil Rights (OCR) Case 09-14-1236

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09141236-a.pdf>

<sup>42</sup> Excerpt from email sent to OCR by OAH Staff Counsel 9-12-14.

<sup>43</sup> Excerpt from email sent from OCR investigator to OAH Staff Counsel 9-12-14.

<sup>44</sup> Excerpt from email sent to OCR from CDE EOE staff October 2015.

<sup>45</sup> Excerpt from email to OCR from CDE OEO 9-10-2018.

<sup>46</sup> DGS Privacy Policy:

<https://www.dgs.ca.gov/Privacy>

<sup>47</sup> CDE/OAH Interagency Agreement, page 31:

<https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Resources/Page-Content/Special-Education-Resources-List-Folder/Interagency-Contract>

<sup>48</sup> Office of Attorney General Decision No. 14-101, September 28, 2017;

[https://oag.ca.gov/system/files/opinions/pdfs/14-101\\_2.pdf](https://oag.ca.gov/system/files/opinions/pdfs/14-101_2.pdf)

<sup>49</sup> Welfare and Institutions Code 4701 (f)(3);

<https://codes.findlaw.com/ca/welfare-and-institutions-code/wic-sect-4701.html>

<sup>50</sup> Mediation Only - CA Ed Code 56500.3:

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=EDC&sectionNum=56500.3](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=56500.3)

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<sup>51</sup> Contents of a Manual;  
<https://codes.findlaw.com/ca/education-code/edc-sect-56504-5.html>

<sup>52</sup> LA Unified School District. Misrepresentation: “Lawyers or advocates, for the student/ parent or for the District, are not permitted to participate in Mediation Only.”  
<https://achieve.lausd.net/Page/11280>

<sup>53</sup> San Francisco Unified School District, Special Education Dispute Resolution Options (website). Misrepresentation: “Lawyers or advocates, for the student/parent or for the District, are not permitted to participate in Mediation Only.”  
<https://www.sfusd.edu/sped/dispute-resolution>

<sup>54</sup> Riverside County SELPA Procedural Safeguards (July 2021) and IEP Manual 20-21. Misrepresentation: “This means that by requesting “Mediation Only” you may not have an attorney or advocate present at mediation.”  
<https://www.rcselpa.org/uploads/files/files/Procedural%20Safeguards%20E%2007-21.pdf>  
and <https://www.rcselpa.org/uploads/files/files/IEP%20Manual%2007-20R08-20.pdf>

<sup>55</sup> San Joaquin County SELPA Procedural Safeguards June 2021. Misrepresentation/Conflicting statements: “...attorneys and advocates cannot attend a mediation only based on California Education Code Section 56500.3(a)....Parties may also bring nonattorney representatives to such conferences.”  
<https://www.sjcoe.org/selpaproceduralmanual/pdf/admin/Section%206%20-%20Procedural%20Safeguards%202021.pdf>

<sup>56</sup> Jurupa Unified School District 20-21 Parent Guide. Misrepresentation: “This means that by requesting “Mediation Only” you may not have an attorney or advocate present at mediation.”  
<https://jurupausd.org/schools/PacificAvenueAcademyofMusic/Documents/2020-2021%20Parent%20Guide%20English.pdf>

<sup>57</sup> Contra Costa CAC Parent Handbook 2019. Misrepresentation: “Is the process different when “mediation only” is requested? The process is basically the same, except that attorneys and advocates cannot attend mediation only.”  
<https://www.wccusd.net/cms/lib/CA01001466/Centricity/Domain/75/Parent%20Handbook%20English%202018.2019.pdf>

<sup>58</sup> Ventura County SELPA, links to Parent Rights Sept 2018. Misrepresentation: “Parents may choose to participate in Mediation Only by filing the “Mediation Only Request Form....it is not considered to be part of the Due Process Hearing process, and attorneys and legal advocates cannot be present.”  
<https://www.vcselpa.org/Portals/0/Special%20Education/Rights/Parent%20Rights.pdf?ver=2018-09-18-162948-403>

<sup>59</sup> Colton Joint Unified School District website links to the 2016 East Valley SELPA Procedural Safeguards. Misrepresentation: “This means that by requesting “Mediation Only” you may not have an attorney or advocate present at mediation.”  
<https://www.cjusd.net/cms/lib/CA02218339/Centricity/ModuleInstance/3171/Notice%20of%20Procedural%20Safeguards%20new.pdf>

<sup>60</sup> Riverside Unified School District - links to Parent Options for Dispute Resolution 2012.  
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Misrepresentation: “Under State rules, attorneys and paid advocates may not participate in the State Mediation Only process, but Parents may have an attorney or advocate review any resulting settlement agreement.”

[https://p12cdn4static.sharschool.com/UserFiles/Servers/Server\\_580721/File/Departments/Special%20Education/Parent%20Rights/IDR%20Parent%20Options%206-2012%20ENG%20.pdf](https://p12cdn4static.sharschool.com/UserFiles/Servers/Server_580721/File/Departments/Special%20Education/Parent%20Rights/IDR%20Parent%20Options%206-2012%20ENG%20.pdf)

<sup>61</sup> OAH/Special Ed Database;

<https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Decisions>

<sup>62</sup> OAH/Special Ed Advisory Committee website:

<https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Page-Content/Special-Education-Services-List-Folder/Advisory-Committee>

<sup>63</sup> Margaret Gibson v. California Department of General Services, a public entity, California Office of Administrative Hearings, a public entity, Bob Narendra Varma, an individual, Zackery Morazzini, an individual, and Does 1 through 30. Case No. 34-2021-00297444 (Proposed) First Amended Complaint.

<sup>64</sup> Legislative Analyst Office (LAO) Office of Administrative Hearings staffing augmentation, 3-14-2014

<https://lao.ca.gov/Recommendations/Details/799>

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