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## CDE Issues New Regulations Governing Special Education Mediation and Due Process Proceedings

The California Department of Education (“CDE”) recently issued new regulations governing the role and duties of the agency conducting special education mediation and due process hearings in California. Currently, that agency is the Office of Administrative Hearings (“OAH”). The new regulations, which became effective on June 6, 2009, require the agency to:

- Maintain a manual that describes the procedures of mediation and due process hearings (Cal. Code Regs., tit. 5, § 3091);
- File quarterly reports with CDE that include data on all the mediation and due process activities statewide (*Id.*, § 3092);
- Permit CDE to audit, review, and inspect the agency's records (*Id.*, § 3093);
- Establish an advisory committee composed of attorneys, advocates, parents, and representatives of local education agencies (*Id.*, § 3094);
- Provide forms for mediation and due process hearings in the five most commonly spoken languages in California and make translators available for all mediations and due process hearings (*Id.*, § 3095);
- Appoint a person or persons, with at least eight years of experience in the mediation of disputes in judicial or administrative proceedings and with experience in special education matters, to supervise agency mediators and determine when a mediator meets minimum qualifications to mediate special education disputes (*Id.*, §§ 3096, 3096.1);
- Appoint a person or persons, with at least eight years of experience in the practice of law in civil or criminal courts or administrative proceedings and with sufficient experience in special education matters, to supervise agency hearing officers, determine when a hearing officer meets minimum qualifications to conduct due process hearings, and to supervise and review the work of all hearing officers (*Id.*, §§ 3096, 3096.2);
- Ensure mediators and hearing officers are knowledgeable in and understand state and federal special education law and regulations and the legal interpretation of law by state and federal courts (*Id.*, § 3097);

- Ensure that mediators complete initial training of 20 hours in mediation theory and 20 hours in special education disputes, and at least 20 hours a year of continuing education (Cal. Code Regs., tit. 5, §§ 3098, 3098.1);
- Ensure that hearing officers complete initial training of 80 hours in adjudication of administrative matters, including 20 hours in adjudication of special education disputes, and complete at least 20 hours a year of continuing education (*Id.*, §§ 3098, 3098.2);
- Require mediators and hearing officers to disclose all actual or potential conflicts of interest and to decline to mediate or adjudicate the dispute unless all parties consent to retain the mediator or hearing officer. (*Id.*, § 3099.)

The regulations outline OAH's responsibilities in conducting and administering mediations and due process hearings. OAH is currently in compliance with the majority of the new regulations. As a result, we do not expect the regulations to have a substantial impact on the manner in which OAH conducts mediation or due process hearings.

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