

INTERAGENCY AGREEMENT

This Agreement is between the **Office of Administrative Hearings/Employment Department** (hereinafter called OAH), and the **Department of Education**, (hereafter called ODE). Administrators for the Agreement are:

Employment Department/Office of Administrative Hearings			
<i>Administrator:</i>	Thomas E. Ewing	<i>Administrator:</i>	Ed Dennis
<i>Title:</i>	Chief Administrative Law Judge	<i>Title:</i>	Deputy Superintendent
<i>State of Oregon:</i>	Office of Administrative	<i>State of Oregon:</i>	Department of Education
<i>Address:</i>	Hearings 601 Cottage Street, NE	<i>Address:</i>	255 Capitol Street NE Salem, OR 97310
<i>Phone:</i> <input type="checkbox"/> <i>Fax:</i>	Salem, OR 97301 (503) 378-4720 (503) 378-2942	<i>Phone:</i>	(503) 947-5801
		<i>Fax:</i>	(503) 373-7968

1. Effective Date and Duration

This Agreement shall become effective **July 1, 2007**. Unless earlier terminated or extended, this Agreement shall expire when the OAH's completed performance has been accepted by the ODE or **June 30, 2008**, whichever is sooner.

2. Amendments

This Agreement may be amended, but only in writing.

3. Consideration

- a. The ODE agrees to pay the OAH for services rendered under this Agreement at the following rates:
 - (1) \$78.00 per hour for administrative law judge (ALJ) time;
 - (2) \$54.00 per hour for operational support staff time; and,
 - (3) all actual and reasonable expenses incurred to provide such services, including but not limited to travel billed on a reimbursement basis (in accordance with applicable state bargaining Agreement or Exhibit A—Employment Department Administrative Policy and Procedure, B 36-6 (1)).
- b. The OAH will submit monthly invoices to ODE for work performed and for actual and reasonable expenses incurred. The OAH will provide ODE with a descriptive invoice which lists the cases heard and the time required for resolving each case as well as an itemization of expenses reasonably incurred by ALJs assigned to conduct special education hearings. The ODE will remit payment within thirty (30) days of receipt of the invoice..
- c. Consideration for this Agreement is \$125,000. ODE agrees to be responsible for monitoring expenses to ensure, to the degree possible, that expenses do not exceed the maximum consideration. The amount of consideration may be amended in writing any time in accordance with section 2 of this Agreement.
- d. ODE understands that the rates set out at 3 a (1) are subject to change if OAH determines that the rate is inadequate. OAH will give ODE at least 30 days notice before implementing a rate change.

4. Termination

This Agreement may be terminated by mutual consent of both parties, or by either party upon sixty (60) calendar days notice, in writing and delivered by certified mail or in person.

5. Negotiation

The parties to this Agreement will seek to develop program and process improvements to enhance the delivery of services rendered under this Agreement. Both parties agree to negotiate and resolve in good faith any service dispute(s). Any disagreements shall not affect or diminish the procedural safeguards available to the parents of children with under the IDEA 2004, Section 504 of the Rehabilitation Act, and state law.

6. Funds Available and Authorized

The ODE certifies at the time the Agreement is written that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within the ODE's current appropriation and limitation. In the event the Oregon Legislative Assembly fails to approve sufficient appropriations, limitations or other expenditure authority, the ODE may terminate this agreement without penalty or liability to the ODE, effective upon the delivery of written notice to the OAH, with no further liability to the OAH.

7. Service Standards

Under ORS 343.165, the ODE has responsibility to conduct impartial due process hearings on issues arising under the Individuals with Disabilities Education Act (IDEA). To conduct such special education hearings, the ODE must appoint independent ALJs who, consistent with IDEA 2004: (a) possess knowledge of, and the ability to understand, the provisions of IDEA 2004, Federal and State regulations pertaining to IDEA 2004, and legal interpretations of IDEA 2004 by Federal and State courts; (b) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard, legal practice; (c) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice; (d) not be an employee of the State educational agency or the local educational agency involved in the education or care of the child; and (e) not have a personal or professional interest that conflicts with the person's objectivity in the hearing.

Under OAR 581-15-2390 and 2395, ODE has adopted similar contested case procedures for hearing arising under Section 504 of the Rehabilitation Act of 1973 (Section 504).

The OAH conducts contested case hearings for various state agencies and employs administrative law judges (ALJs) on its staff. These ALJs are qualified by training and experience to conduct contested case hearings and are not employed by the ODE or educational agencies involved in the provision of education of children.

8. Responsibilities

a. Administrative Law Judges

- (1) **Appointment.** The ODE is vested with the authority to appoint special education ALJs. The OAH, acting through its Chief ALJ or designee, will

refer to the ODE those ALJs in its employ who are qualified for appointment as special education ALJs. The ODE will designate no less than five ALJs to serve as special education ALJs.

- (2) **Availability.** The OAH will provide ODE with 30 days notice if a current special education ALJ will no longer be available to conduct special education hearings. The OAH will not subcontract with other individuals to conduct special education hearings without written agreement from ODE.
- (3) **Assignment.** Persons employed by OAH and designated by ODE as special education ALJs will be assigned to special education cases by OAH, acting through its Chief ALJ or designee. The OAH will notify ODE and all parties in writing of this assignment.
- (4) **Qualifications.** No ALJ employed by the OAH will be referred to ODE for appointment as a special education administrative law judge unless the administrative law judge meets the qualifications under IDEA 2004.
- (5) **Delegations of authority.**
 - (a) Although the ODE may initially name the parties to the hearing, the ODE delegates the authority for ultimate determination of parties to the ALJs.
 - (b) The ODE delegates to the ALJs the authority to determine the timeliness and adequacy of the hearing request and any other filings.
 - (c) The ODE delegates to the ALJs all discovery decisions and the decision whether to rule on legal issues in advance of a hearing.
 - (d) The ODE delegates to the ALJs the authority to issue a final administrative decision that is binding on the parties on behalf of ODE. (OAR 137-003-0501) This delegation applies to hearings conducted under the IDEA, Section 504, or both.
 - (e) In the event of a default, ODE delegates to the ALJs the determination whether testimony or evidence is necessary to establish a prima facie case and whether to conduct a hearing.

b. Pre-Hearing Procedures

- (1) **Referrals.** Within two working days after receiving a written request for a special education hearing, the ODE will refer the request to OAH. Along with the hearing request, ODE will provide the OAH with a copy of any materials submitted with the hearing request.
- (2) **Prehearing Conference.**
 - (a) The OAH will send written confirmation to the parties along a notice of applicable timelines, a prescheduled prehearing conference and, beginning September 1, 2007, prescheduled hearing and final order dates.
 - (b) The ALJ will conduct a prehearing conference in person or by telephone. The purpose of the prehearing conference is to:
 1. Identify the issues to be resolved at hearing;
 2. Determine the status of any resolution session, mediation, or settlement process;
 3. Determine any requests for extensions to the 45 day hearing timeline, and if granted, the new final order date;
 4. Establish the dates and expected length of hearing;
 5. Determine a briefing schedule,

6. Determine whether the verbatim record of the hearing will be written and/or electronic and, if written, make appropriate arrangements with the educational agency to provide a court reporter;
7. Determine whether the final order will be written and/or an electronic recording; and
8. Review the parties' hearing rights and procedures for the hearing under OAR 581-015-2360 and evidentiary requirements under OAH hearing rules.

c. Hearing Scheduling

- (1) The ALJ will set the time, date and place of hearing. Each hearing must be conducted at a time and place that is reasonably convenient to the parents and the child involved, consistent with OAR 581-015-2370.
- (2) The ALJ must schedule the hearing so that a final decision can be entered and mailed to the parties not later than 45 days after the end of the resolution period unless an extension is granted subject to the requirements below.
- (3) The ALJ may grant an extension beyond the 45 day timeline at the request of either party. If such an extension request is granted, the ALJ must provide written notice to the parties and ODE and include the following information:
 - (a) The party or parties requesting the extension;
 - (b) The reason for granting the extension;
 - (c) The length of the extension; and
 - (d) The expected date by which the written decision is to be mailed to the parties, assuming the court reporter makes the transcript available within a reasonable and customary time following the hearing, which is no more than 30 days after the close of the record.

d. Notice of Hearing and Hearing Rights

- (1) The ALJ must provide the parties with a notice of hearing and hearing rights as required by OAR 581-015-2360 and OAR 137-003-0505. This notice will be sent by registered or certified mail to the parties, with a copy to ODE.
- (2) The hearing notice will include:
 - (a) A caption with the name of the agency and the parties to the hearing;
 - (b) A statement of the time and place of hearing;
 - (c) A statement of the jurisdiction under which the hearing is to be held;
 - (d) A reference to the relevant statutes and regulations involved;
 - (e) A short and plain statement of the matters asserted or charged;
 - (f) A statement that mediation is available from ODE at no cost to the parties; and
 - (g) A statement of hearing rights.

- e. Expedited Hearings.** If the parents or school district is entitled to an expedited hearing, the ALJ will schedule the hearing within 20 school days and issue an order within 10 school days after the close of the hearing record.
- f. Conduct of Hearings.** The ALJ will conduct an evidentiary hearing that satisfies the requirements of IDEA 2004, ODE OARs, and the OAH procedural rules that are not inconsistent with the IDEA.
- g. Hearing Decisions.**

- (1) The ALJ will render a written decision in the name of ODE. This decision is binding on ODE and the parties.
- (2) Before the decision is final, the ALJ will submit a copy of the decision to the OAH's chief ALJ or designee for review.
- (3) The decision of the ALJ must comply with ORS 343.167 and will be based on the record of the hearing. The decision will summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and pertinent laws and regulations. The decisions will include a statement describing the method of appealing the decision.
- (4) If an extension is granted that exceeds the 45 day timeline, the ALJ will document the following information in the written decision:
 - (a) The party requesting the extension;
 - (b) The reason for granting the extension;
 - (c) The length of the extension; and
 - (d) If the order is not issued within the extension, any circumstances justifying a delay (for example, if documents necessary to close the hearing record were not received on schedule).
- (5) The OAH will distribute a copy of the hearing decision to the parties.
- (6) The OAH will provide an written and electronic copy of the hearing decision, and a redacted hearing decision, to ODE.
- (7) ODE will distribute a copy of the redacted decision to the State Advisory Council for Special Education's Dispute Resolution Committee.
- (8) The OAH will not use the services of the Attorney General's office in rendering a written decision.

h. Record of Hearing.

- (1) ODE will forward any request for a record of hearing to the OAH.
- (2) The OAH will prepare a record of the hearing, as defined by Oregon and federal law and ODE guidelines, within 30 days of receiving a request from ODE.
- (3) The record of hearing will include:
 - (a) A tape, electronic recording or transcription of the prehearing conference;
 - (b) All hearing notices, rulings on motions, and other documents issued by the ALJ;
 - (c) A written or electronic verbatim record of testimony;
 - (d) The exhibits and any other documents filed in the proceeding; and
 - (e) The decision of the ALJ.

i. Ownership and Maintenance of Record.

- (1) **Ownership.** The record of the hearing and all files will be considered the property of ODE.
- (2) **Maintenance.** After rendering a decision and issuing a final order, the ALJ will deliver the record of hearing to OAH. The OAH will retain the record at its office for 189 days or until the time for appeal has run. After the time for appeal has run, the OAH will transfer the record of hearing to ODE.
- (3) **Requests by parties.** The ODE will respond to and process requests by the parties for copies of the hearing record (or portions of the record) under IDEA

2004, the Family Education Rights and Privacy Act (FERPA), or Oregon Public Records law.

- (4) **Requests by the public.** The ODE will respond to and process requests made under the public records law to inspect or copy records of hearing, including requests made while those records are in the custody of the ALJ or the OAH. If the OAH receives a public records request while a record is in the custody of an ALJ or OAH, this request will be forwarded to ODE. The requested record will not be released by the ALJ. If the OAH receives approval from ODE, the OAH will return the record to ODE for release to the requesting party.

j. Administrative Support

(1) Support by ODE.

(a) Reference materials. ODE will provide OAH with:

1. Copies of the IDEA and IDEA regulations;
2. Copies of Section 504 and 504 regulations;
3. Copies of ORS Chapter 343 and all regulations related to special education including, as issued, any new or amended statutes or rules, and any repealed statutes or rules;
4. A subscription to the Individuals with 'Disabilities Education Law Reporter (IDELR) or electronic web-based special education legal reference.

(b) Training. ODE will provide and pay tuition and costs for training to the designated special education ALJs. Training topics may include: state and federal education laws and regulations; administrative interpretations; relevant case law; special and general education issues; specific disabilities; evaluation and assessment procedures; development of IEPs and IFSPs; promising practices in special education; techniques for conducting effective and impartial hearings; and drafting clear and substantiated orders.

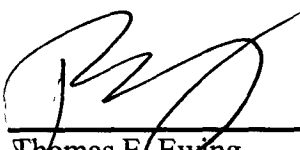
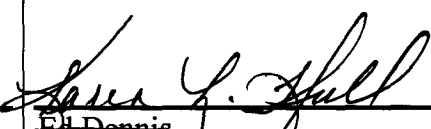
(c) Facilities and equipment. ODE will ensure the availability of an appropriate place to conduct a special education hearing upon the request from the OAH or the ALJ.

(2) Support by OAH.

- (a) The OAH will provide the ALJs with clerical support in scheduling hearings and in preparing the record of hearing.
- (b) The OAH will obtain, or ensure that the educational agency obtains, the services of a court reporter or, if the parent has opted for an electronic recording of the hearing, arrange for a digital recording of the hearing. The cost of these services, if not borne directly by the educational agency, will be considered costs of conducting the hearing and will be billed in the same manner as for other ODE
- (c) The OAH will prepare the administrative record upon request in accordance with any applicable court rules and ODE procedures.
- (d) The OAH will obtain a qualified interpreter for the hearing, where necessary, in accordance with OAR 137-003-0590. The cost of

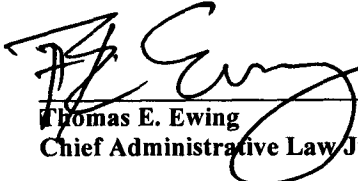
these services will be considered costs of conducting the hearing and will be billed in the same manner as for other ODE.

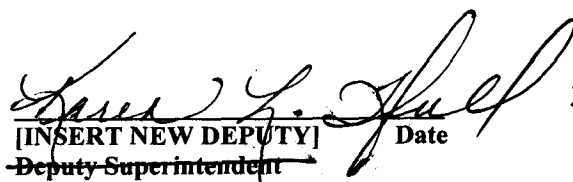
- (e) The OAH will evaluate the performance of ALJs in accordance with OAH procedures.
- (f) The OAH will implement procedures for surveying hearing participants, collating responses, and providing feedback to ODE at least annually.

OFFICE OF ADMINISTRATIVE HEARINGS	DEPARTMENT OF EDUCATION
	 7-10-07
Thomas E. Ewing Chief Administrative Law Judge	Ed Dennis Deputy Superintendent

OFFICE OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF EDUCATION

 7/16/07
 Thomas E. Ewing
 Chief Administrative Law Judge

 7-10-07
 [INSERT NEW DEPUTY] Date
~~Deputy Superintendent~~

Karen L. Hull
 Contracting Office