



*California's Protection & Advocacy System
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How to Prepare for a Vocational Rehabilitation Hearing (How to Represent Yourself before the Office of Administrative Hearings (OAH))

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I. Introduction

- A. Effective self-representation at Department of Rehabilitation (DOR) hearings involves a number of steps.
- B. The following are things you must do to represent yourself at an Office of Administrative Hearings (OAH) hearing:
 1. Check written notices denying or changing your services through DOR and figure out deadlines (if any) for requesting a hearing.
 2. If you want, try to resolve the issues with DOR staff or the District Administrator, without the necessity of going to a hearing.
 3. Use Attachment 1: Hearing Checklist Form at the end of this booklet to help you prepare for your hearing.
 4. Gather all facts and documents that will support your case, including your DOR file.
 5. Medical or disability-related research may need to be conducted either to show eligibility for DOR services or to show that a chosen job is appropriate.
 6. Medical or disability-related research may need to be conducted on assistive or other technology that will help you reach your vocational goal.
 7. Research on potential job opportunities in your chosen vocation may also be needed.
 8. Legal research may be needed to identify the law that covers the issues in your case.
 9. Develop a theory of your case that fits with the law and the facts.
 10. Understand how OAH hearings are run.
 11. Determine who your administrative law judge is going to be and how to best prepare for your hearing.

12. Get documentary evidence and introduce it at the hearing.
13. Prepare your witness list.
14. If you can, get DOR's witness list.
15. Prepare and give an opening statement to the judge.
16. Prepare for and examine your witnesses.
17. Prepare for and examine DOR's witnesses.
18. Prepare for and answer any objections made by DOR's representative.
19. Prepare objections to DOR's documents or witness testimony.
20. Prepare and give a closing argument.
21. Prepare a written statement if the judge requests or you need to clarify an issue raised at hearing.

Note: You may do these activities in a different order or many at the same time, but it is important to consider and be prepared for all steps listed above.

- C. OAH puts information on its website about how to prepare for a hearing, how to request continuances (if you need a new date for the hearing because you cannot attend), tips on what to expect at the hearing, what happens after the hearing, how to ask for accommodations and interpreters at the hearing, hearing locations, and contact information for questions and concerns at:
<http://www.documents.dgs.ca.gov/oah/forms/DOROAHHearingProcedures.pdf>.

For more information published by OAH on how to represent yourself at hearing, go to:

<http://www.dgs.ca.gov/oah/GeneralJurisdiction/RepresentingYourself.aspx>.

- D. On the same link above, OAH provides some tips for individuals at hearings as follows:
1. Arrive 30 minutes before the hearing time to give yourself if you can;
 2. Identify the issues you want resolved (See Attachment 1 to this outline for a form you can complete and give to the judge);
 3. Bring your outline of issues and questions;
 4. Bring paper to take notes;
 5. Bring witnesses to support your position;
 6. Bring documents to support your position;
 7. Bring the original (or clean copy if an original is not available) and three copies of all documents;
 8. Testify honestly about all events;
 9. Review relevant laws and regulations before the hearing (use Attachment 1 to set forth those laws in writing);
 10. Be courteous and respectful to everyone at the hearing.
- E. You may waive the right to appear at the hearing and instead have the matter decided on written documents that you give to the judge. If you want to do this, request this from OAH in writing at least 7 (seven) days prior to the hearing date.
- F. If you are not able to get records from an outside agency that you need to prove your case, or if you are not able to get a witness to come to the hearing voluntarily, you may subpoena a person to

testify or to bring certain documents to the hearing. (See Section V below for how to get records from DOR.) Contact OAH as far in advance of the hearing as possible. You will have to pay fees and have the subpoena served on the person or entity before the hearing. For more information about subpoenas, go to: <http://www.dgs.ca.gov/oah/GeneralJurisdiction/SubpoenaInfo.aspx>.

II. Requesting a Hearing

- A. You can request a hearing within 1 (one) year of the DOR action or decision that you disagree with, or 30 (thirty) days after receipt of a written District Administrative Review Decision that you disagree with.
 1. To request a fair hearing, send a completed Request for Mediation and/or Fair Hearing form (DR 107 at: <http://www.rehab.cahwnet.gov/Appeals/FairHearForms.html#DR107>) to the DOR Mediation and Fair Hearing Office by mail, fax, hand delivery or email.
 - a. See DOR information at: <http://www.dor.ca.gov/Appeals/Requesting-A-Fair-Hearing.html>.
 - b. To eliminate any disagreement over when the hearing was requested, it is best to send the hearing request to the agency by “certified mail, return receipt requested,” or save a hard copy of the email or fax receipt. If you hand-deliver the form, ask for a stamped copy of the hearing request that you can take with you as a receipt.
 2. Your hearing request should contain the following:
 - a. It should be dated and signed.
 - b. It should identify the date(s) of any notice(s) of decision that you are appealing from.

- c. It should identify each decision of DOR that you are appealing.
 - i. For example, if DOR denies funding for a laptop computer and for special transportation to a training program, both issues should be identified as part of the appeal.
 - d. If DOR's decision is to stop or reduce services you currently have, your hearing request should seek "aid paid pending" a decision on the hearing request.
 - i. For example, if you have been getting transportation services and DOR now wants to stop the service, the hearing request should ask that the service be continued while the appeal is decided.
 - e. It should indicate that you will be representing yourself at the hearing, unless you have someone else representing you.
3. If you have questions regarding mediation and/or the fair hearing process, please contact DOR's Mediation and Fair Hearing Office at (916) 558-5860 or appealsinfo@dor.ca.gov. You may also contact your local DOR office to find out who the District Administrator is in your area at: <http://www.rehab.cahwnet.gov/DOR-Locations/>.
4. DOR's Mediation and Fair Hearing Office coordinator should respond to your request within two weeks, indicating whether or not your appeal has been accepted.
5. If your request is not accepted, DOR's hearing coordinator may ask for more information from you, or they may explain why it was denied and what your rights and options are.
 - a. If you believe your appeal should have been accepted and you have provided all documentation requested by

DOR, you may call the Client Assistance Program (CAP) for assistance.

- B. If your request for a hearing and/or mediation is accepted, OAH will schedule a hearing within 60 days from the date of your request unless you agree to a later date. DOR must continue providing services until a hearing decision is issued unless you asked for the services to stop or there is fraud or other criminal conduct alleged against you. See Title 9 California Code of Regulations (CCR) section 7351(e).
- C. Before the hearing, you and DOR will receive a notice of hearing that will identify the time, date, and location of the hearing. The notice of hearing may also define the issues in the case and contain instructions for you and DOR.
 - 1. OAH will assign an administrative law judge (ALJ) to preside over the hearing.
 - 2. You may have representation at the hearing by any person you choose who agrees to represent you. You must fill out an authorized representative form and submit it at least 5 (five) days before the hearing, or bring the form with you to the hearing. The form may be downloaded from:
<http://www.dor.ca.gov/Appeals/FairHearForms.html#DR108>.
 - 3. See more information on DOR's website at:
<http://www.dor.ca.gov/Appeals/Before-The-Hearing.html>.

III. Trying to Resolve Your Dispute without a Hearing

- A. It is always good to try to resolve your dispute before going forward with a hearing. In fact, if you seek representation from the Client Assistance Program (CAP), a condition of their funding is that they attempt to negotiate or mediate disputes on behalf of a client before an appeal goes to hearing.

- B. Even if your attempt to resolve the matter does not result in a complete resolution of the matter, you may be able to:
1. Clarify the issue(s) in dispute, so that you do not waste time at the hearing trying to figure out the issues.
 2. Resolve one or more issues in your favor, decreasing your need to prepare for hearing on those issues.
 3. Review the strengths and weaknesses of DOR's case, including who will be a witness for DOR at hearing.
 4. Find other ways to solve the dispute with DOR.
- C. You should first attempt to resolve your issues with the supervisor of your DOR counselor. You can contact your counselor or the DOR field office to find out the name and contact information for the supervisor.
- D. One method of resolving your case without going to hearing is through an Administrative Review by the District Administrator in your DOR Area. You must file for an Administrative Review within 1 (one) year of the action or decision by DOR that you disagree with. The review and decision from such a review must be issued within 15 days of your request. See Tit. 9 CCR Section 7353. For information about your District Administrator and where to send your request, ask your DOR counselor or call CAP.
- E. Another way to resolve your case without going to hearing is through mediation. Again, a request for mediation must be made within 1 (one) year of the date of the decision by DOR that you disagree with. The mediation, or meeting, that takes place where you discuss the case with an unbiased and qualified mediator, must be held within 25 calendar days of your request. To ask for mediation you can complete the same form used for requesting a fair hearing with OAH at:
<http://www.rehab.cahwnet.gov/Executive/Mediation.html>. See also Tit. 9 CCR Section 7353.6.

IV. Investigating Your Facts

- A. There may be facts that you need to prove in your case that cannot be provided through your own testimony. The following are examples:
1. Whether you meet the academic requirements of a university program that is in question.
 2. Whether you must obtain a specific degree or certification to work in your chosen field.
 3. Whether there is a less costly alternative to meet your needs.
- B. It is always helpful to make a checklist of these facts (or additional questions you need answered), adding to it as new facts are identified.
- C. You should look for other people (witnesses) and documents that help you prove your points, and present that “evidence” at the hearing.

V. Reviewing Your DOR File

- A. Your DOR file is confidential to outside parties or individuals. There are very few exceptions to this confidentiality requirement. This means that only DOR employees, or anyone else who you have given written consent to see your file, may do so.
1. You may view your own file and obtain copies of important documents. See Tit. 9 CCR Section 7141.
 2. DOR must allow you to see or receive your file within 30 days of your request if you have an open case, and 60 days if you have a closed case. See Tit. 9 CCR Section 7141(e).

- a. If your hearing date is less than 30 days away, you should tell DOR this fact and ask them to speed up your request so that you can be prepared at hearing.
 - b. To avoid any problems, you should request to view your DOR file as soon as you know you will be going to hearing.
3. You may need to pay a fee to get your records, but you should not be charged more than 10 cents per page. You should not be charged at all if you request less than 10 pages. DOR may waive the charge at its discretion. See Tit. 9 CCR Section 7141(g).
- B. A review of the documents in your file (including any case notes from DOR staff) may give you some idea of why the particular decision was made. It may also give you an idea of what additional documents or facts would help support your case.
- C. DOR must translate or arrange for translation of documents in your case file when you request it, into a language that you understand. See Tit. 9 CCR Section 7141(b). If DOR asks you to pay for translation costs you should contact CAP.

VI. Medical or Disability-Related Research

- A. This may be needed in some cases, but not in others.
1. For example, you may need medical evidence to show why you need reasonable accommodations for work, school, or training. Or you may need medical evidence to prove that you are a person with a disability who should be eligible for DOR services.
 2. On the other hand, if DOR asserts that your mental health is a barrier to employment, you may want a report from your doctor saying that you are able to work in your chosen area and addressing any mental health concerns.

- B. Books or medical journal articles may be helpful in showing what services would be useful, like in the following situations:
 - 1. Your condition gets worse in extreme heat, requiring that you work in an air-conditioned vehicle or office.
 - 2. The literature may support the employment goal chosen by you despite your particular cognitive disability.
- C. There are many good sources for this type of information on the Internet, e.g., the Job Accommodation Network (JAN) at <http://askjan.org/>. You can also ask your doctor or health care provider for help in finding information that could help you at hearing.

VII. Technology-Based Research

- A. Like medical research above, this may be needed in some cases, but not in others.
- B. In many cases, you may be seeking an assistive technology device or other technological intervention that is new to the decision makers at DOR and new to the judge. It may also be new to you.
- C. The information you find through your research will help you educate yourself on what it is that you need and are asking DOR to provide.
 - 1. If you cannot satisfy yourself that it will help you succeed in work or at a training program, you are unlikely to convince the judge or DOR of this.
- D. If there is an assistive technology assessment and expert already involved in your case, this individual may be a good source for this information.
- E. The documents you get through research can be submitted to DOR and the judge at the hearing.

2. Providing DOR with this additional information showing how the item or service will assist you may cause DOR to change its previous decision and approve funding.
3. If the case must go to a hearing, your documentation can be provided as an exhibit and may give the judge a reason to rule in your favor.

VIII. Legal Research

- A. To present your case, you must apply the facts in your case to the legal standard. If you are not sure what the legal standard is, you will have to do some legal research.
- B. In California, there are state regulations that provide the legal standard in most instances, see Title 9 California Code of Regulations (CCR) §§ 7000-7413 at the following link:
http://www.rehab.cahwnet.gov/Executive/DOR_Regulation_docs/DOR-Regulations.rtf.
- C. We suggest that you make liberal use of the resources available through Disability Rights California's CAP website at:
<http://www.disabilityrightsca.org/about/cap.html>, and Neighborhood Legal Services, Inc.'s National AT Advocacy Project at
<http://www.nls.org/Disability/VocationalRehabilitation>. You can also research the federal and state laws through DOR's website at:
<http://dor.ca.gov/DisabilityAccessInfo/Disability-Laws-n-Regulations.html>.
- D. Legal research will help you determine which arguments are best or need evidence to support. Legal research will also help you develop a theme for your case.
- E. Keep in mind that you, the appellant, have the burden of introducing evidence at the hearing sufficient to prove your case by a preponderance of the evidence. "Preponderance of the evidence" means that it is more likely than not that you are correct.

IX. Gathering Documents to Help Your Case, Including Reports from Experts

- A. The need for documents or evidence will depend on the issues involved and how many issues are in dispute.
- B. If you have worked with an expert or professional evaluator through DOR who supports your position, you will want to get a copy of any written reports prepared by that person.
- C. If the opinions of any professionals, including your treating doctors, therapists or evaluators, support your position, you will want to get a copy of any written reports prepared by them or request that they provide a letter of support.
- D. You may need documents from other agencies to support your case. For example, special education or regional center records to support eligibility or your need for accommodations, or social security documents to establish your disability or inability to work.
 - 1. Sometimes DOR will collect this type of information from other agencies when you initially apply for DOR services, so you should check your DOR record first to see what is in there.
 - 2. If you need to request records from other agencies, you should leave enough time to receive and review the records before the hearing.

X. Developing a Theme for Your Case

- A. Each request you make for DOR services includes several factors, each of which could become issues in your hearing:
 - 1. You must be eligible for DOR services.
 - 2. The service(s) or item(s) sought must be among those covered by DOR. See Tit. 9 CCR Section 7140 for guidance on what is included.

3. If the services or items in question are subject to financial need criteria, you must meet that financial criteria or fit within an exception.
 4. Are the specific services or items you are seeking covered by the “comparable benefits” requirement? DOR will not pay for a service if a similar benefit is available from some other agency or program, e.g., Federal, State, or local public agencies, health insurance, or employee benefits. If the other agency or program fails to provide or pay for a service, DOR may need to provide the service. Call CAP for more information and see CAP’s fact sheet at the following link:
<http://www.disabilityrightsca.org/pubs/F06501.pdf>.
 5. The funding of the services or items in question must be necessary to enable you to achieve the employment outcome identified in your IPE, i.e., by obtaining a job, retaining a job, or advancing in employment.
 6. The services or items sought must be the least costly alternative that will allow you to achieve the employment outcome. (Although this requirement is not spelled out in either Title I of the Rehabilitation Act or the federal regulations, the issue is part of every dispute.)
- B. Any one of these six categories of issues may involve three or more issues that need to be addressed as follows:
1. For example, basic eligibility for DOR services (issue #1) may involve the need to document both your disability and your past inability to work.
 2. The least costly alternative issue may involve the need to explain the less costly alternatives that were considered and why they were rejected.

3. It may also involve your right to maximize employability through DOR-sponsored services. See RSA Policy Directive 97-04 at: <http://www2.ed.gov/policy/speced/guid/rsa/pd-1997.html>.

C. Once you have identified the issues that are involved in your case, you can develop both a theme for your case and a plan to support that theme through witness testimony, documents and legal arguments.

XI. Finding out How Hearings are Run through OAH

A. You should take steps to find out how OAH hearings are run by the judges assigned in your area. Remember, the more you know about how hearings are run the better prepared you will be at the hearing.

B. Will the identity of the judge in your case be known prior to the hearing? You can ask DOR or OAH directly for this information.

1. If so, you can call CAP to help you identify and receive copies of previous hearing decisions from that particular judge or on similar issues.
2. Note: OAH hearing decisions are not precedential in that the facts and evidence in each case are unique. However, previous OAH hearing decisions will help you to understand how other judges have ruled on similar issues in the past, which could help you to prepare for hearing.

C. Evidence presented at the hearing must be relevant to the issues in your case. Evidence does not necessarily need to meet the technical requirements that it would have to meet in state or federal court.

1. You are responsible to ensure that any document you submit to the judge as evidence is authentic. "Authentic" means it is the real or actual document. Most of the time, if you get documents from agencies, there will be a header or mark on the document showing the agency it came from. If not from an agency, you could testify at hearing about how you got the document, who

provided it to you, and why you think it is an authentic document.

2. Hearsay evidence is allowable in these hearings and therefore appropriate in many circumstances. See Welfare & Institutions Code Section 19705(d)(2), which allows individuals who appeal to submit their case on written evidence alone, instead of appearing and testifying in person. However, hearsay evidence must be relevant and it cannot be the only evidence presented to support a factual finding by the judge, unless it meets a formal hearsay exception.
 - a. Definition of hearsay – a statement made by a person not present at the hearing that is offered to establish the truth of the matter asserted.
 - i. An example would be if a DOR counselor who is not at the hearing told you in a private conversation that DOR should pay for a service and why, but then you are denied the service. When you testify to that conversation at the hearing, DOR may object based on hearsay. The judge will decide whether or not to allow that testimony.
 - ii. Some documents that may otherwise be hearsay may be admitted in evidence for limited purposes, as an alternative to a witness's in-person testimony.
 - iii. For example, medical records or a medical report may be admitted into evidence in place of having the doctor testify at the hearing.
 - iv. It is generally better to bring the witnesses who can help present your side of the case and answer any questions raised.

- v. The judge will not speak with the witnesses, except at the hearing itself, where the judge may question the witnesses.
 - vi. As in the example under (i), you may want to subpoena the witness and ask them these questions at hearing, which could help you prove your case.
- 3. You have the burden of proving your case by a preponderance of the evidence, meaning that it is more likely than not that you are correct.
- 4. For the hearing, OAH follows hearing processes that are written into state statute. These processes are set forth in very general terms here.
 - a. All witnesses, including you, who testify at the hearing will be sworn in and given the oath of affirmation, meaning they swear under penalty of perjury to tell the truth.
 - b. You will be allowed to give an opening statement that tells the judge what you intend to prove in the case. See Section XV below for more detailed information about opening statements.
 - i. In the opening statement, give the facts that support your position that DOR was incorrect in their decision or actions. Talk about your witnesses who will testify and what documents support your case.
 - ii. Be sure to discuss only those issues that are in dispute and that you have told the judge are in dispute. A completed Attachment 1 makes a good outline for presenting your case.

- c. You can submit documents or evidence at the hearing. See Section XII below for more detailed information about providing documents at your hearing.
 - i. Bring 3 copies of the documents, in addition to your own, to provide to the judge, DOR, and one for any witnesses to use while they testify.
 - ii. You should make sure that the copies you make are readable and clean.
 - iii. All documents should be put in order, numbered sequentially, and have tabs so that they are easy to find.
 - iv. Preparing 3 sets of binders of your exhibits may be helpful.
 - d. You can have witnesses talk about facts that support your case. You can also cross-examine, or question, any witnesses who testify for DOR. See Sections XVI and XVII below for more detailed information about witnesses.
 - e. After all witnesses and documents have been presented, you should give a closing statement. See Section XIX below for more information about how to prepare and give a closing statement.
 - i. You should tell the judge why he or she should rule in your favor and how the testimony of witnesses and documents support your case.
 - ii. It is important to only talk about evidence that was provided to the judge at the hearing and show why DOR's decision was wrong under the law.
5. OAH makes audio recordings of all hearings. You can request the record of the hearing, including the recording, from DOR.

DOR must provide the record to you within 30 days of your written request. Contact DOR's Mediation and Fair Hearing Office if you have questions at (916) 558-5860 (voice) or (916) 558-5862 (TTY).

XII. Getting Documents and Introducing Them at Hearing

- A. It is very likely that documents will make up the majority of your evidence. You will want to make sure that your judge will allow you to freely submit documents as a substitute for in-person testimony. You should call OAH once you receive notice that your request for hearing was received and ask this question.
- B. There are some advantages to using written reports and documents instead of live testimony as follows:
 - 1. The witness in question may not be able to come to the hearing.
 - 2. You can avoid the cost of paying for your witness's time (if that is required) or reimbursing your witness for travel costs.
 - 3. Preparation time will be less extensive.
 - 4. You have better control over what goes into the record at the hearing.
 - a. You can ask the witness to limit the subject that is discussed in the report. But if the person testifies at hearing, DOR and the judge can ask additional questions.
 - b. You will not face the potential surprises that can come with cross examination, for instance, if a witness gives an answer that is not helpful to your case without you knowing ahead of time what the person was going to say.

C. Deciding what documents you will need.

1. In putting together the “theme of your case,” you will want to create a list of each piece of evidence that will be used to prove each point you need to establish.
2. As you determine what documents you will use (or at least try to get) to establish each point, those will go down on your list.

D. Providing guidance to the experts or professionals who write reports or letters of support for you.

1. Most of the reports you ask for will come from individuals who are asked to state an expert opinion. When you speak or write to this expert, you should provide him or her with some guidelines for writing the report or letter.
2. Every report or letter should:
 - a. Be on letterhead, dated and signed.
 - b. List the expert’s job title or professional title, professional credentials, and any special licenses the person has or attach the resume of the expert.
 - c. Explain the nature of the person’s relationship with you and the length of time working with you.
 - d. Spell out any specific evaluations or tests performed in your case.
 - e. Explain what other less costly alternatives exist if the expert is recommending a specific service or other item to be funded, and why the less costly alternatives were rejected.

- f. Specify if relevant, how the particular service or item recommended will help you overcome the limitations of a disability and allow you to succeed in a job or training program.

E. How to get records from a business or witness.

1. When you go to a hearing, you have the right to subpoena relevant records or other things to be produced at the hearing. You may seek information from individuals, businesses and government agencies. See California Code of Civil Procedure Sections 1985 through 1985.4 for more information.
2. Contact OAH well in advance of the hearing for subpoena forms and information.
3. You must arrange to pay fees and have someone serve the subpoena on the person or entity.
4. Go to the following link for more information and for the forms:
<http://www.dgs.ca.gov/oah/GeneralJurisdiction/SubpoenaInfo.aspx>.

F. Introducing the documents at the hearing.

1. If possible, you will want to submit the original document to the judge and not a photocopy.
 - a. However, if your document(s) comes from a record already maintained by another agency (such as DOR, school or hospital records), you will want to get the best quality copy that you can.
 - b. Encourage the reporter or agency to mail you copies (if time allows) rather than faxing them, as the readability will be much better.

- c. Be aware that original documents submitted at hearing are not usually returned after the hearing, so be sure to bring the original and several copies.
2. You should keep a copy of each document that you submit at hearing, identified by exhibit number (e.g., "Claimant's Exhibit 3"); DOR uses letters for its documents/exhibits.
3. If OAH does not require a witness to authenticate the writing and the agency will not be a witness at hearing, then do the following:
 - a. Provide the document(s) to the judge as part of your evidence in the case. For example, some judges ask for all documents/exhibits to be provided at the beginning of the hearing, and will listen to any objections to the evidence at that time;
 - b. If you have more than two or three documents to submit, you should provide a list of your exhibits for both the judge's convenience and your own records.
4. If the agency producing the record or document is also a witness at the hearing, then do the following:
 - a. Follow the rules for establishing the witness's credentials as noted below in Section XVI;
 - b. Have the document marked for identification;
 - c. Show the document to the witness and ask him or her to identify it (for instance, "This is my report dated January 23, 2013");
 - d. As relevant, have the witness testify to the following:

- i. Their qualifications, how the person knows you and for how long, including how many visits or meetings you have had;
 - ii. How the document or report was prepared;
 - iii. Any tests, exams, or conversations with you that were performed prior to writing the report;
 - iv. What conclusions or expert opinions were reached as the result of the tests, exams, etc.;
 - v. Whether the report includes those conclusions or expert opinions;
 - vi. A summary of any events occurring since the report was written (e.g., further evaluations, experience with your client) that support or change the earlier conclusions;
 - vii. NOTE: Even if this series of questions, or “foundation” for submission of the document is not required, we suggest it be followed in cases where the reporter is also a witness, as it makes the report more valuable as a supporting document;
- e. Ask that the document be introduced in evidence. If the judge allows, it is better to have the document introduced in evidence before you ask the witness the above questions so the judge can look at the document as you are going through these questions.

XIII. Preparing a Witness List

- A. Although OAH does not require an early exchange of witnesses, the judge may contact you prior to the hearing to discuss your witness list, so you should know ahead of time who will be testifying in support of your case.

1. Even if the judge does not require the exchange, you may try to exchange this information with DOR so that you can prepare for cross examination of DOR's witnesses.
 2. If OAH or the judge does not require this exchange, you may not want to volunteer this information if there is an advantage to maintaining the element of surprise that outweighs getting similar information from DOR.
- B. It is good to make up this list as early as possible as you will need to contact each of these individuals, make sure they are able to testify on the hearing date and time, and then prepare them to testify.

XIV. Getting a Witness List from DOR

- A. Even if OAH or the judge does not require this, see if you can get DOR's witness list anyway.
- B. You might be able to obtain both the names of the witnesses and how DOR plans to use their testimony.

XV. Preparing and Giving an Opening Statement

- A. The opening statement is an oral summary, presented at the beginning of the hearing, which provides the judge with a preview of what your case is all about, what the evidence will show.
- B. This is your chance to do several things:
 1. Explain who you are and what you are trying to do with DOR's supports and services.
 2. Clarify the actions taken by DOR and the issues which remain in dispute for the hearing.
 3. Explain your theme of the case.
 - a. The parties may not totally agree on this.

- b. This is your opportunity to make sure the judge understands your arguments, even if he or she does not yet agree with them, right at the outset of the hearing.
- 4. Explain what is NOT in dispute.
 - a. This can be critical as you want to make sure that you do not have to waste time proving a point that you and DOR agree on.
 - b. For example, if you are seeking voice dictation software for a personal computer:
 - i. DOR may agree that you are capable of using it, and that it will allow you to do assignments more quickly.
 - ii. If DOR's only contention is that the extra expense is not justified because you achieved a C+ average during the school year without it, your issue may be limited to the question of whether DOR has a higher obligation to assist you to perform to your capacity (i.e., to maintain a B or A average) and prepare yourself for use of this technology following graduation.
- 5. Briefly explain the nature of the testimony and documents you will be submitting and how they show that you should be getting what you are asking for from DOR.
- 6. Depending on the case, this time might be used to bring up the facts that are hurtful to your case and explain why they do not work against you as DOR may suggest.
- 7. This is a chance to "engage the judge."
 - a. Get the judge interested in you and interested in the issues.

- b. By presenting the opening statement in conversational tones, rather than as a formal speech, you are more likely to draw the judge into your story.
- C. The opening statement should be no longer than necessary to establish your points above.
 1. This is where your research about what the judge prefers will come in handy.
 2. Some judges may not want to hear any opening statement, or if they allow it, only a very brief one. In those cases, you should keep the statement to three (3) minutes or less.
 3. Even if the judge is an attentive listener, you should still summarize your points as briefly as possible.
 - a. The complexity and expected length of the hearing may help you figure out how long is appropriate.
 - b. For example, a 20-minute opening is not necessary for a two hour hearing with six exhibits and three witnesses.
- D. Should a written statement be used instead of or in addition to the opening statement?
 1. Just as trainers use handouts when they give presentations, this approach can be very effective.
 2. Good written materials may allow you to shorten your oral statement.
 3. The written statement should be just long enough to provide the judge with a written outline of the points of your case and how you intend to prove those points.
- E. Other guidelines for the opening statement.

1. Do not overstate your case. You will do more damage to your case by making false promises.
2. Do not promise a witness or document that you do not have yet and might not be able to get.
3. Do not try to paint DOR or its representatives as the bad guys, instead focus on why they are making the wrong decision in your case.
 - a. Even if there have been many disagreements between you and DOR staff, you need to stay on the “high road” as much as possible.
 - b. Judges are interested only in facts, expert evidence, and relevant law. That is all they need to make their decision. Negative comments or treatment of DOR employees is not appropriate and may only serve to distract the judge from the important facts of your case.
4. If the agency gives its opening statement first:
 - a. If they make a statement or admission that helps your case, restate that point during your opening statement.
 - b. If they make an overstatement (remember, that is a no-no), and you know that your evidence will show it to be an overstatement, it is important to point that out to the judge.

XVI. Preparing for and Conducting Direct Examination of Your Witnesses

- A. There are two types of witnesses you might use: (1) lay witnesses, including yourself, a family member or friend, or other witness who do not qualify as “experts”; and (2) expert witnesses, like doctors, psychologists or other professionals.

B. Preparation involves a number of elements as follows:

1. Determining what the witness knows or can say;
2. Of the information the witness has, determining what is relevant or important and helps your case;
3. Preparing an outline of questions to ask the witness; and
4. Practicing with your witness.
 - a. You can go through a pretend or mock direct examination with your witnesses, meaning you can go over sample questions and answers, or simply discuss the areas of testimony with the witness before the hearing.
 - b. There is nothing wrong or unethical about preparation or even practicing with a witness. It is even appropriate to suggest different ways of saying the same thing, so long as the witness believes this remains truthful. On the other hand, you cannot simply tell the witness what to say.

C. Avoid the use of leading questions on direct examination.

1. A leading question is one in which the question itself sets out the fact you want to prove, with the witness merely answering “Yes” or “No.”
 - a. For example, the following question is leading: “Is it true that you have difficulty writing because of spasticity in your hands and you must take notes on a laptop computer.” Obviously, the witness is left to simply say “yes.”
 - b. A better way to approach this might be to ask: “The report from Dr. X (already in evidence) indicates some fine motor problems with your hands.” “Explain how you take notes during a lecture.” “Describe what problems, if any,

you experience when writing.” “How do you compensate for this limitation in the classroom?” These are called “open-ended” questions.

2. A way to avoid leading questions is by using questions that ask: Who? What? When? Where? How? Please describe?
3. When is it appropriate to ask leading questions?
 - a. They are appropriate when establishing background information that is not central to a fact you need to prove. For example, “Is it true that you have worked for DOR for 10 years?”
 - b. They are appropriate where the witness’s young age or mental disability would make it difficult to respond to non-leading questions.
 - c. They are the norm on cross examination and are preferred as you don’t want DOR witnesses explaining any more than necessary.
4. Remember that a person’s testimony is much stronger if it comes in response to open-ended questions.

D. Your testimony at hearing.

1. In some cases, the testimony you provide may be your only witness testimony, as other witnesses or experts may be able to submit reports and other documents in lieu of testimony.
2. You can only testify based on your personal knowledge and not as an expert.
3. You are usually in the best position to provide first hand, concrete and relevant testimony about: your disability and how it limits you; your personal work goals; your interests, abilities, and skills; any necessary reasonable accommodations; why

you are seeking the particular services that are the subject of the appeal; if there are less costly alternatives that have been suggested; and any personal experience with those alternatives and why they would not work.

4. Since you will not be asking yourself questions, it is usually appropriate to read from your own prepared statement that covers all of the issues in your case. Also be prepared for DOR to cross examine you, and the judge to ask you additional questions.

E. Testimony of lay witnesses at hearing.

1. This could be a family member, friend or acquaintance.
2. A lay witness should only testify based on personal knowledge and should not try to state expert opinions unless they are an expert.
3. A lay witness can testify to any number of things about you that are best described by a family member, friend or neighbor. For example, observations about your disability and what you are able and not able to do; confirmation of your inability to find employment; how your mental state is affected by DOR's action/inaction; how reasonable accommodations have been provided to you in the past and how helpful those have been.
4. If the lay witness is not available, consider obtaining a written statement from them to submit at the hearing.

F. Testimony of expert witnesses at hearing.

1. A good short-hand definition for an expert is any "trained observer."
 - a. For example, even a classroom aide can testify as an expert if the individual has been trained to identify

problems associated with your disability, such as the need to adjust seating in a wheelchair.

- b. The aide can then testify to the nature and frequency of those observations.
2. The following are some of the experts that could serve as witnesses in a DOR hearing: a doctor or psychiatrist, a mental health counselor, a speech pathologist, an orientation and mobility instructor for the blind, a rehabilitation engineer, and a high school or college guidance/career counselor or teacher.
 3. After identifying the expert's field of expertise, it is critical that you tell them to limit their testimony and opinions to those matters that are within their expertise.
 - a. For example, a speech pathologist cannot testify as an expert on psychological testing or state an expert opinion about the individual's cognitive ability.
 - b. However, the speech pathologist can explain that part of his or her evaluation process is to review the psychological testing results to determine what level of communication the individual can be expected to achieve using an augmentative communication device. This witness could then explain what appeared in the psychological report and how that affected his or her recommendations regarding communication.

G. Elements of expert witness testimony to show at hearing.

1. Establish the expert credentials of the witness.
 - a. Generally, this means identifying education background, professional certifications or licenses, publications, and years of experience in the field.

- b. A good approach is to obtain a resume to submit as evidence. The witness can then identify it and can highlight the most important features of the expert's credentials.
2. Establish the nature of the relationship between the expert and yourself.
 - a. This will include the length of the relationship and frequency of visits or meetings.
 - b. Focus on the activities (evaluations, observations, etc.) that become the basis for the expert opinion.
3. Establish the specifics of the evaluations performed, documents or outside reports reviewed, consultants contacted, etc.
4. Identify any underlying facts or conclusions that make up the basis for the expert's ultimate opinion(s).
5. Have the expert explain the ultimate opinion he/she reached.
6. It is best to have the expert explain any specialized terms and give as many concrete examples as possible.
7. If the expert is recommending a particular service, intervention, or piece of assistive technology, have the witness identify if there are other less costly alternatives, the extent to which they were considered, and why they were rejected.

H. Prepare your witnesses for cross examination by DOR.

1. Try to identify the potential weaknesses in your case and in your witness's testimony.
2. You can ask your expert what he or she thinks are the potential weaknesses in his or her testimony and ask about ways to counter them.

3. Let the witness know they are subject to cross examination, as well as questioning by the judge.
4. If you can think of questions that DOR representatives may ask your witnesses, provide the witness with a sample of the kinds of questions that may come up, instructing them to answer truthfully.
5. Let them know they should only answer the questions asked and not volunteer additional information, e.g., a yes/no question gets answered yes or no.
6. Let the witness know it is OK to say: "I don't know"; "I don't remember"; "Please repeat the question"; "I don't understand the question." However, they should only answer that way when it's true. Witnesses who testify as to specific facts that help your case, but then cannot remember other facts related to what they have said, called "selective memory," may not carry a lot of weight with the judge.
7. It is okay for the expert witness to say that a particular question asks for an opinion outside their area of experience.

XVII. Preparing for and conducting a Cross Examination of DOR's Witnesses

- A. You have a right to cross examine any witness who testifies for DOR.
- B. The challenge of cross examination in a hearing is that you do not know ahead of time what DOR's witnesses will say.
 1. However, if you have prepared for the hearing, you will have some idea of what the witness will say based on reports they have authored, or what they have stated in negotiation meetings or in other meetings with you.

2. If there is material in their written reports that can help your case, be prepared to have them confirm those statements on cross examination.
- C. What is the goal of your cross examination? Before you begin a cross examination, you should have your objectives clearly in mind. The goal to be reached will be one or more of the following:
1. To try to force the witness to admit certain facts;
 2. To supplement testimony that the witness has already given;
 - a. He or she may not have been asked on direct examination to explain things that will help your case.
 3. To weaken the person's testimony by showing a limited ability to observe what he or she is testifying to;
 4. To show that an expert witness or even a lay witness who testified to an opinion is not competent or qualified because he or she lacks the necessary training or experience;
 - a. Be careful with this, however, as this goal may backfire.
 - b. If the witness appears to be qualified, you might choose the opposite strategy of agreeing to their qualifications.
 5. To "impeach" a witness or bring out an inconsistent statement or fact by showing that he or she has given a contrary statement at another time;
 - a. Here again, your preparation is crucial. You should be familiar with the content of any reports the witness has written so that you can draw attention to inconsistent statements.
 6. To establish that the witness is not telling the truth on one or more material points, or is prejudiced.

- a. Hopefully, both of these factors will rarely come up in DOR hearings.
- b. These types of arguments do not sit well with judges; they do not want to believe that people are untruthful. If at all possible, try to label the witness's testimony as mistaken or misinformed.

D. Preparing for cross examination before the hearing.

1. You should make a list of the points you want to make. For example:
 - a. To show that an expert's opinion is based on only one meeting with you, or upon a review of paperwork only; or
 - b. To get the expert to admit that two other experts with similar credentials reached a different conclusion; or
 - c. To get an expert to admit that authors of recognized books or articles disagree with their opinion.
2. It is best to write out the questions ahead of time because asking leading questions is not easy when you are on the spot.
3. If you anticipate use of documents prepared by the witness, you should have those available as exhibits.

E. Preparing for cross examination while testimony is being given.

1. Still keeping your goals in mind, you will need to keep some method of notes of the testimony with some highlighting of areas for cross examination.
 - a. One way to do this is by drawing a line two to three inches from the right hand margin, keeping the notes of testimony to the left of that line, and making notes for cross examination to the right of the line.

- b. Another method is to use a different colored ink to highlight the need for cross examination.
 - c. Still another method is to keep one pad for testimony notes and a separate pad for notes to be used for cross examination.
2. If you have a family member or friend at the hearing that can help you, you may want to have this person keep notes while you do the cross examination, which will help you remember the testimony later on.

F. Some other guidelines for cross examination.

1. If you get an unexpected and damaging answer, you must keep your cool and not let on how bad it might be.
2. When you have established your point, stop and go on to the next point.
3. Use a series of short, preferably “yes-no” leading questions. You are only interested in establishing your point; you do not want the witness to explain away the answer.
4. Disagree without being disagreeable. Using the words “I respectfully disagree with your statement,” rather than “you are a liar,” will get you further with the judge.
5. Don’t just go over their testimony with an accusative sounding voice, expecting they will back down. All that will happen is that they will reaffirm their prior testimony.
6. Keep the length of cross examination to a minimum.
 - a. Stick with your preparation based on your stated goals. Add to that anything that you noted during actual testimony. Then stop.

- b. Remember your list of what you have to prove and who will prove it. On cross, you will be only covering a tiny portion of the evidence you will need.
- 7. Usually some cross examination is desirable. If possible, you want to avoid the impression that unfavorable testimony is easily accepted.
 - a. It may be enough to establish that the witness is an employee of DOR and is here today as an employee of that agency (i.e., not on their own time). Without challenging their integrity, you are at least reminding the judge that this is not a completely unbiased witness.

G. There are times when no cross examination is wise.

- 1. There is no rule that says you have to cross examine every witness.
- 2. What if the witness has given confusing testimony? You may not want to ask questions that may clarify points to help the other side's case.
- 3. If the witness has testified contrary to your case, you may not wish to give them an extra chance to say damaging things about your case.

XVIII. Preparing For and Answering Any Objections to DOR's Evidence

- A. In preparing for the hearing, find out who will be representing DOR. That person will likely testify on behalf of DOR about the facts of your case. If you know the person, then you will have more information to know how they will argue and present the case.
- B. If the DOR representative tries to use a document or assessment about you that you have not seen before, you should immediately

object that that information was not in your DOR file when you reviewed your file. You should ask for a 5 minute break so that you can review the document and decide whether the document hurts or helps your case.

1. If the document helps your case, you should not object to the judge considering it.
 2. If the document will hurt your case, you should object to it being considered by the judge and ask where and how DOR got the document and why it was not in your DOR file.
 3. If the judge decides to consider the document and you think there is other evidence to call this document into question, then you should ask that the record be left open so that you can provide evidence to address the facts raised in the document.
 4. For instance, if DOR tries to use a report or assessment from another agency and you did not sign a consent for release of information for that agency to give or share that report with DOR, you can object that the report was obtained illegally and should not be considered by the judge in the hearing. You may also want to get a letter of support after the hearing to address the facts raised in the DOR document.
 5. The judge should only consider evidence that is “relevant” to your case, meaning that it tends to prove or disprove the matter at issue or under discussion. “Not relevant” is an objection that you can make to evidence that is outdated, obtained in a different context for different reasons, or has nothing to do with the issues in your DOR case.
- C. DOR’s representative may make objections to your evidence and testimony, so you should be prepared to respond. For example:
1. “This is an administrative hearing and hearsay, in the form of written statements, is fully admissible.”

2. "Since the formal rules of evidence do not apply, photocopies and faxes are routinely admitted instead of originals."

D. There are several objections that you can make in response to DOR's evidence as follows:

1. Relevance—does the evidence DOR is using tend to prove or disprove the issues in the case? If not, you can object that the evidence is not relevant.
2. Leading—if the DOR representative is feeding the answers to the witness or asking questions that only require yes or no; you can object that they are leading.
3. Hearsay—if the person who made a statement will be a witness at the hearing, then the witness should testify and not the DOR representative for the witness.
4. Compound/confusing questions—you want a clear and understandable record, so object on this basis if the representative is not asking clear questions or you do not understand what they are asking.
5. Argumentative/harassing the witness--if a DOR representative is giving you or your witnesses a hard time, you can object on this basis.
6. Asked and answered--sometimes a DOR witness may give an answer that helps you. If the DOR representative asks the same question again, hoping to get the answer they want, you can object as the question was "asked and answered."
7. If DOR asks a non-expert for an opinion, for example a DOR counselor is not a medical expert and should not testify as to medical diagnosis or treatment, you can object as only expert witnesses may provide these opinions.

8. Beyond the scope--if DOR cross-examines your witnesses by asking about subjects they did not discuss on direct examination, you can object that the questioning is “beyond the scope” of your direct examination.

XIX. Preparing and Giving a Closing Argument

- A. If your hearing went as planned, your closing argument can be largely a restatement of what you said in your opening statement.
- B. All of the guidelines for the opening statement (see Section XV, above) should be followed here.
- C. Preparation of your closing statement.
 1. Before you begin the hearing it is best to prepare notes of what you want to say in your closing statement.
 2. Since there will likely be surprises at the hearing, you should change your notes based on what actually happened.

XX. Preparing a Closing Brief or Written Argument

- A. If requested by the judge or you feel you need to further explain a point that came out during the hearing, or you need to submit more medical or legal research, you should request that the record remain open for a period of time long enough to prepare and submit a written statement.
 1. The decision to submit written arguments will be made on a case by case basis. In other words, the judge may deny your request and close the record.
 2. In some DOR hearings, it makes sense to write out and explain any medical, technical or legal issues.

B. What are the goals of your post-hearing written argument?

1. You can summarize the evidence in a logical, easy-to-understand way.
2. You can lay out the relevant law, regulation, and policy in a way that makes it easy for the judge to understand your arguments. You are providing the judge with the legal “hooks” for granting a favorable decision.
3. You can discuss the evidence on both sides of an issue and explain why your position should prevail.
4. You can summarize the strengths of your case and explain any weak points in your case.

C. What should your written argument look like?

1. You should ask the judge what type of written argument he or she prefers. It could be a written letter or on a form that the judge could provide.
2. You should also ask the judge if there is a page limit to what you submit. Generally, brief and to the point is best.

D. Typically, a minimum of two (2) weeks should be requested for turning in written arguments.

XXI. Preparing Evidence after the Hearing

A. If you think you will need some extra time to get important documents after the hearing, let the judge know at the beginning of the hearing, if possible.

1. According to Title 9 CCR section 7357(c), the judge may close the hearing but hold the record open for up to 30 days to allow submission of additional written evidence.

2. The judge may be more agreeable to your request if you assure him or her that you requested the information well before the hearing and the delay is with the person or entity you are getting the evidence from.
 3. You should be prepared to tell the judge why this evidence is important to your case.
 4. The judge may point out that he or she is under some time constraints to issue a decision. You should agree to extend those time limits if you think the judge needs to see the evidence.
- B. Sometimes you will need to get more evidence because a new issue came up at the hearing. In this case, you should have a strong argument for the extra time, as long as the issue is relevant to your initial hearing requests.

Attachment 1: Hearing Checklist Form

Instructions: Please complete all sections and provide to the Administrative Law Judge or Office of Administrative Hearings at the time of or before your hearing.

Name:

DOR office location:

DOR staff involved in issue:

I. My issue involves (check all that apply):

- Eligibility for DOR services
- Failure to process my application in a timely manner
- Failure to agree to an IPE in a timely manner
- Failure to provide services in accordance with my IPE
- Failure to agree to amendment of my IPE
- Failure to provide or amend my DOR records
- Failure to reimburse me for items listed in my IPE
- Failure to reimburse me for items not listed in my IPE
- Failure to provide medical, dental or other one-time services
- Failure to agree to necessary schooling or training
- Inappropriate case closure
- Failure to re-open my DOR case
- Failure to provide me with post-employment services
- Failure to provide informed choice in the creation of my IPE
- Failure to provide informed choice with assessments (e.g. vocational evaluations, Trial Work Experience evaluations, and/or psychological or medical evaluations)
- Unnecessary referral for psychiatric or psychological evaluation
- Failure to assist with self-employment, including failure to approve my business plan or needed items, failure to provide necessary

services in connection with self-employment, or failure to agree to self-employment as my IPE goal

- DOR violation of my privacy rights
- DOR staff discrimination against me

II. Provide the legal basis for each issue set forth above:

(Continue on a separate sheet if more space is needed.)

(Look to Title 9 California Code of Regulations §§ 7000-7413 for state regulations at:

http://www.rehab.cahwnet.gov/Executive/DOR_Regulation_docs/DOR-Regulations.rtf. Also, see the CAP website with publications related to DOR issues at:

<http://www.disabilityrightsca.org/pubs/PublicationsClientAssistanceProgram.htm>.)

1.

2.

3.

III. Describe the relevant facts in two sentences or less per issue:

(Continue on a separate sheet if more than three issues.)

1.

2.

3.

IV. I tried to resolve one or more of these issues:

Through a District Administrative (DA) Review yes no

If yes, date of DA Review:

Was a written decision provided? Yes (if yes, please attach) No

Through mediation yes no

If yes, date of mediation:

Was a written decision provided? Yes (if yes, please attach) No

V. Do you have witnesses that will testify at the hearing for you?

yes no

If yes, list the name and contact information for each witness:

1.

2.

3.

VI. Do you intend to bring any documents/evidence to the hearing?

yes no

If yes, list each document/piece of evidence and why it is relevant to the issue(s):

1.

2.

3.

4.

5.

VII. Is there any other information you would like to tell the Judge?

yes no

If yes, please describe:

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.