



*California's protection & advocacy system  
Toll-Free (800) 776-5746*

# Regional Center Respite Hearing Packet

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These materials will help you prepare for your regional center respite fair hearing. They are meant for regional center consumers age 3 and older. The materials address the person whose respite services are being denied, terminated, or reduced or the person representing him or her as “you.”

**Section One – Appealing a Regional Center Respite Decision:** a step-by-step guide to appealing respite service denials, terminations or reductions.

**Section Two – Appendices:** charts and sample documents.

We hope you find this information helpful. If you have questions or need more help, contact the Disability Rights California intake line at (800) 776-5746 or the Office of Clients' Rights Advocacy at (800) 390-7032.

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## **Chapter 1 – Introduction**

Respite is a service that provides someone to care for regional center clients who live in the family home. It gives family members a break from the responsibilities of caring for you or time to do other things. Respite is funded by the regional center. It can be provided in the home or in an alternate approved setting.

Effective January 1, 2018, there are no limits to the amount of respite you can receive, so you may be eligible for more hours than you are receiving now. For more information, see the program directive to regional centers regarding the repeal of the respite restrictions per Welfare and Institutions Code section 4686.5, available in English and Spanish here: <https://www.dds.ca.gov/SupportSvcs/Respite.cfm> . Your need for respite is discussed at your Individual Program Plan (IPP) meeting.

In our experience, regional center clients and their families are often denied the amount and type of respite they need. For example, respite services might need to include behavior or nursing respite. This packet will describe the responsibilities of regional centers to provide respite services and how to appeal a denial, termination, or reduction of respite.

### **THE IPP PROCESS**

As with all regional center services, respite is authorized through the Individual Program Plan (IPP) process.

You must be prepared to document your need for respite at the IPP meeting. One difficulty with showing the need for respite is everyone's needs and reasons for respite are different. The need may be primarily caused by the nature and severity of your disability, behaviors, or medical needs. Or, it may be caused by other family needs. For example, whether it is a single parent family, the health of the parent(s), the number of other children in the family who need care, work, and other demands. Usually a combination of factors will determine the amount of respite needed. Regional centers often use "purchase of service" or POS guidelines to decide the amount of respite you can get. The guidelines are used by regional center service coordinators to see how much respite people

usually get. However, the guidelines cannot be used to decide the actual amount of respite *you* get. The Lanterman Act says services must be tailored to the needs of each individual. POS guidelines must also have exceptions to the general service amounts. The IPP team must take your family's circumstances and needs into account before they decide how many hours of respite you get. You can ask your regional center for a copy of its guidelines including the exceptions or they may be on the regional center's website. You can ask your regional center for an exception.

If your request for respite is unusual, discuss it first with your regional center service coordinator and ask him or her to invite the necessary people to the meeting. The law requires that a "decision maker" attend the IPP meeting - someone from the regional center with the authority to say yes or no to your request. If you cannot agree at the meeting, the law says that the regional center must schedule a second meeting within **15 days, if you request it or it is agreed to by the planning team**. Again, the regional center must have someone at the meeting with the authority to agree to your request. It is helpful when you schedule your meeting to request that a decision maker come to the meeting.

If the IPP team agrees to the respite services, you must sign the IPP document before respite services can start. If you agree on some things but not on others, write in the IPP which services you agree and which you do not. Then sign the IPP so the agreed-upon services can go into effect.

Come to the meeting prepared to explain all the reasons you need the number of respite hours you are requesting. Respite, along with all other regional center services, are an entitlement. That means that the regional center cannot deny you the respite services you need because it is low on money or because it considers other services to be more important. That does not mean you get the respite services you want. You are, however, entitled to get the respite services you can prove you need. Try to prove your need for respite at an IPP meeting by explaining your need clearly. You can use examples of why you need respite and bring letters, documents, and other people who can help establish your need for respite.

You may ask for a fair hearing if you disagree with a denial, termination, or reduction of the respite you think you need from the regional center. A fair hearing is not the same as court, but it is important that you are prepared. Fair hearings are usually held inside a room in or near the regional center. The judge is called an “administrative law judge” or “ALJ.”

## **Chapter 2 – The Fair Hearing Process**

### **Adequate Notice**

If the regional center wants to deny, reduce, or terminate respite services, the regional center should schedule an IPP meeting. You have a right to get a written notice of action (NOA) if the regional center says “no” to what you want. If the regional center refuses to grant you the number of hours you believe you need, you are entitled to receive a written NOA **within 5 days** of the meeting. The NOA explains why the regional center is denying the respite services you want, how to ask for a fair hearing, the hearing steps, and deadlines. Regional centers sometimes do not tell you and your representative about the right to a NOA and the appeal process. You may need to ask for a written NOA if the regional center has not provided one.

For the NOA to be adequate, it must tell you what the regional center plans to do and what laws allow them to do it. This information also helps you decide to appeal and to prepare for the fair hearing. The NOA must say:

- What the regional center will do;
- Why the regional center is doing it;
- When the regional center is doing it;
- The law, rule, or policy that lets them do it;
- How and where to file an appeal;
- The deadlines for filing an appeal;
- Information about what happens in the appeal process;
- How to review your regional center records, and
- Where to get advocacy help.

Once you receive the NOA, you need to decide whether you will file an appeal to try to get the respite services you need.

### **Filing for Fair Hearing**

You have only **30 days** to request a fair hearing, starting from the date you receive the written NOA of the decision or action with which you disagree. If you are currently receiving respite but the regional center wants to reduce or terminate your hours, you must file the appeal **within 10 days** of the date you receive your NOA. By doing so, your respite hours will continue during the appeal process.

If you miss the 30 day time limit because you did not receive an adequate NOA, or received no NOA at all, you should request a fair hearing immediately. If the regional center denies, reduces, or terminates your respite without giving you notice, you can still appeal - you do not need a NOA in order to appeal.

To request a fair hearing, fill out the Fair Hearing Request Form that the regional center sent with your NOA, which can also be found at: <http://www.dds.ca.gov/Forms/FairHearing/DS1805.pdf>. If you cannot access the form online, please contact us. Turn in your fair hearing request to the regional center and keep a copy for yourself. The regional center will give your request to The Office of Administrative Hearings (OAH), which is the state agency that handles regional center hearings. OAH does not accept documents by fax. You can mail documents to OAH or contact OAH for further information on how to send documents electronically. There is more information on how to send documents electronically at the OAH website: <http://www.dgs.ca.gov/oah/GeneralJurisdiction/EFiling.aspx>.

### **Keeping Your Respite Services While You Appeal (“Aid Paid Pending”)**

If the regional center tries to change the respite services you already get, you have the right to keep your respite services the same while you appeal. You must appeal **within 10 days** of the date you received your NOA to keep your respite services from changing. This is called “aid paid pending.”

### **Informal Meeting**

When you file the Fair Hearing Request Form, you can ask for an informal meeting and/or a mediation before the hearing. The informal meeting is the first step in the hearing process. It is a meeting between you (and your representative, if you have one) and a regional center administrator. The purpose is to resolve the issue. This is your chance to meet with the regional center and persuade them to give you the respite service you need. You do not have to have an informal meeting. If you ask for an informal meeting, the regional center must provide one within 10 days of

receiving your fair hearing request, unless you agree to another date. A Respite Fair Hearing Flow Chart is included in Appendix A.

**Within 5 working days after** an informal meeting, the regional center must send you a written decision. The written decision must list the issues discussed at the meeting. The decision must state the regional center's decision on each issue, the facts supporting each decision, and the laws, regulations and policies that the regional center used to decide.

If you agree with the regional center's decision after your informal meeting, you can withdraw your fair hearing request. Do this by filling out the "Notification of Resolution" form that the regional center provides, which is also found at: <http://www.dds.ca.gov/Forms/FairHearing/DS1804.pdf>. The decision will go into effect 10 days after the regional center receives the "Notification of Resolution" form. If you cannot access the form online, please contact us.

If you disagree with the regional center's decision after your informal meeting, you can continue with the scheduled mediation or a fair hearing. You do not have to accept the regional center's decision.

### **Mediation**

If you disagree with the regional center's informal decision, the next step is mediation, if both parties agree. Mediation is voluntary, which means you or the regional center may skip mediation and go straight to fair hearing. Upon receiving the written request for mediation, the regional center has **5 working days** to accept or decline mediation. If the regional center declines mediation, they must immediately tell you. Many regional centers do not agree to mediate. If you ask for a mediation and the regional center says no, the next step is a fair hearing.

Mediation is a meeting where an independent, trained mediator from the Office of Administrative Hearings (OAH) meets with you and a regional center representative. It takes place **within 30 days** of the regional center's receipt of your request for fair hearing. If you want more time, it must be approved by OAH. The mediator tries to find common ground and new solutions. Sometimes the mediator may meet with each party separately to resolve the issue. The mediator has no power to force an agreement. If you reach an agreement, you sign an agreement document and the appeal process stops. If you do not reach agreement, you go to fair hearing.

Mediation is an important step and we encourage families to attend mediation before going to hearing. It is often a good idea because it gives you and the regional center another chance to reach agreement. However, it takes some time. Be prepared to compromise and think creatively about how you may resolve the situation. For instance, if you need more respite in some months than others, the regional center can provide you with a block of respite hours for 6 months that you can use as needed.

If you do not reach an agreement at mediation, any offers of compromise will remain confidential and cannot be used by you or the regional center against the other party later at fair hearing.

Even if mediation does not work, you will have more information about the regional center's case. That information can help you prepare for your fair hearing. If you think there is no hope for an agreement, you can decide NOT to mediate. This is called "waiving mediation." But, many people who think there is no hope for an agreement reach an agreement in mediation. If you or the regional center waive mediation, make sure you are ready for your fair hearing. Your hearing may be scheduled sooner if you do not go to mediation first.

### **Motions**

A motion is a request for a judge at the Office of Administrative Hearings to decide something before the fair hearing. Examples of motions include motions for aid paid pending, because the regional center may have failed to continue to provide services, a motion to postpone the hearing date, or motions about subpoenas. You can file motions. The regional center can also file motions.

Some regional centers have filed motions to dismiss a case. A motion to dismiss asks the ALJ not to allow the hearing because you do not have a right to a fair hearing. This kind of motion is rare. It is also contrary to the law, which guarantees your right to a fair hearing. The exception is when there is no factual issue, for example, if the law said that no one is ever eligible for a certain service anymore, regardless of their needs.

### **Fair Hearing**

The last step in the appeal process is the fair hearing. It takes place **within 50 days** of your fair hearing request unless you or the regional center ask for a continuance (postponement) for good cause. You and the regional center must send each other your evidence and a list of witnesses **5**

**calendar days before** your fair hearing. The fair hearing is held before an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH). At the fair hearing, the regional center has to present its case first. The ALJ will issue a written decision about 10 days after the fair hearing.

### **Continuance (Postponement)**

Either you or the regional center may ask OAH for a continuance of the mediation or fair hearing date. You must have “good cause” for OAH to grant your request. “Good cause” means a good reason. A “good cause” might be that an important witness is not available on the fair hearing date, an illness, emergency, or the death of a close relative.

To postpone the fair hearing date, you file a “Motion for Continuance of Hearing and Waiver of Time.” Here is the link to the motion form: [http://www.documents.dgs.ca.gov/oah/forms/DDS\\_RFC\\_Form.pdf](http://www.documents.dgs.ca.gov/oah/forms/DDS_RFC_Form.pdf). If you cannot access the form online, please contact us.

The form has a space where you need to explain the reason you need to continue the fair hearing. You may also attach any documents that support your need for a continuance.

The form tells you to call the regional center representative and ask if he or she will agree to continue the fair hearing. In the space provided on the form, write the name and phone number of the regional center person to whom you spoke. Indicate on the form whether the person has agreed to or opposed the continuance.

You or your representative should sign the section entitled, “Waiver of the Time Set by Law for Lanterman Act Fair Hearing and Decision.” To be granted a continuance, you must agree to “waive” the hearing deadlines. This means you are agreeing the fair hearing will happen later than 50 days after your fair hearing request was received by the regional center.

Send the completed continuance form to OAH. OAH does not accept documents by fax. You can mail documents to OAH or contact OAH for further information on how to send documents electronically. You can also find information on how to send documents electronically at the OAH website: <http://www.dgs.ca.gov/oah/GeneralJurisdiction/EFiling.aspx>.

If you do not have enough time to send a written motion for continuance, you may try calling OAH and asking for a continuance over the phone. After you move to continue the fair hearing, you may check the

OAH website to see whether the motion has been granted. You will need to enter your OAH case number to perform the search at the website listed below: <http://www.dgs.ca.gov/oah/GeneralJurisdiction/Continuances.aspx>

### **Withdrawal without Prejudice**

If your request to continue/postpone your hearing date is denied, or you are not prepared to go to fair hearing, you may request to withdraw from the fair hearing “without prejudice.” This means that if you withdraw from the fair hearing, it will not affect your right to appeal this issue later. It is better to withdraw without prejudice than go to the hearing unprepared. OAH requires you to fill out the Notification of Resolution form. Here is the link to the form: <http://www.dds.ca.gov/Forms/FairHearing/DS1804.pdf>. If you cannot access the form online, please contact us. See appendix E for sample letter to withdraw without prejudice.

### **Consolidation**

Consolidation is when two or more of your respite cases are heard at the same time by the same ALJ. You can ask for consolidation. OAH can also consolidate your respite cases. If you disagree, you can say “no.” The ALJ will decide whether to consolidate your respite cases based on the law and the circumstances of the cases.

### **Interpreters**

If you or a witness needs an interpreter, contact OAH right away. You can also say you need an interpreter on your fair hearing request form. OAH will provide a certified interpreter at no cost.

### **Accessibility of the Hearing Location**

Most fair hearings are held at the regional center. Hearing locations must be accessible to persons with disabilities. Check with OAH in advance to be sure the location is accessible. If a person with a disability needs a reasonable accommodation to attend the fair hearing, contact OAH soon so they can make arrangements.

### **Getting a Different Judge**

Learn about your judge (ALJ) before the fair hearing. You may be able to get a different ALJ if the one assigned to you has a history of bias or prejudice. You do this by filing a motion to recuse (remove) the ALJ. A sample motion to make this request is included in Appendix B.

To find information about the ALJ assigned to your case, see the OAH website at: <http://www.dgs.ca.gov/oah/GeneralJurisdiction/Calendar.aspx> (general jurisdiction calendar) and enter your case number. The ALJ will be assigned close to the fair hearing date. Then, go to: <http://www.dgs.ca.gov/oah/DDSHearings/DDSDecisions.aspx> and enter the ALJ's name. You will see a list of the cases the ALJ has decided. Read some cases to see if you want this ALJ to decide your case. If not, file a motion to recuse the ALJ and send it to OAH with your contact information. If you do not hear from OAH, call them before the fair hearing to find out whether your request was granted. Normally, the request will be granted.

### **Chapter 3 – Preparing for Fair Hearing**

#### **Determining Your Legal Argument**

Your legal argument is the law and the facts you are relying on to show you qualify for the number of respite service hours you are requesting. To prepare your legal argument:

- Review the law that supports your position. Some of the law can be found in Appendix D: Sample Claimant's Hearing Brief, on page 36 under heading IV. APPLICABLE LAW.
- Search for and read previous Fair Hearing decisions at the following link: <http://www.dgs.ca.gov/oah/DDSHearings/DDSDecisions.aspx>. Search for the keyword “respite” to look at only cases on that issue.

The regional center may say you can't get respite services because you have nursing or In-Home Supportive Services (IHSS) hours. However, that is not necessarily true. These service hours can only be considered respite if they meet all of your respite needs. The respite you get may not be reduced because you have nursing or IHSS hours. Nursing and IHSS are different services and they accomplish different things.

#### **Preparing Your Evidence**

Evidence is the facts that support your claim about your respite services. Evidence can include documents and testimony by witnesses. Only use evidence that is relevant. Evidence is relevant if it helps to prove that you are eligible for the respite that the regional center denied, reduced, or took away.

#### **Collecting Written Evidence (Documents)**

Gather any written evidence that supports your legal argument. Some examples of evidence include:

- A description of the respite service;
- Your IPP that describes the goals of the respite service;
- Reports or assessments that support the need for respite;
- Progress reports from the respite service provider;
- Declarations from staff or other people about the respite service;
- Past requests for respite; and
- Any other documents that support your need for respite.

You can ask for records from schools, health providers, and government agencies that might have helpful information. Do not wait to request records. Gathering these documents often takes longer than you think.

You can ask people who know about you to write letters or declarations. An ALJ may give more weight to information from a person who is at the fair hearing as a witness than a person who writes a letter or declaration.

You have a right to see any records in your regional center file, including records the regional center got from outside agencies or individuals. The regional center must give you access to your records **within 3 working days** after you ask to see them. The regional center must also help you understand your records. If the regional center file contains documents that help to prove your case, include them in your evidence. Do not assume that the ALJ will have them because the regional center has them. The ALJ only sees the documents that you and the regional center submit as evidence.

Look at the regional center Purchase of Service (POS) policies, guidelines, and exceptions for respite. These may be posted on your regional center's website or you can call the regional center and ask for a copy. If the guidelines are helpful to your case, include them in your evidence.

Subpoena an agency to produce records for your fair hearing. A "subpoena duces tecum" forces an agency to bring the records they have and to verify to the ALJ that the documents or records have not been altered. You can ask for the agency to do this either by written declaration or by oral testimony. A subpoena form for regional center fair hearings can be found here:

<https://www.documents.dgs.ca.gov/oah/forms/oah1-subpoena.pdf>. If you cannot access the form online, please contact us.

### **Preparing Witnesses**

The testimony of a witness is also a type of evidence. Witnesses need to be subpoenaed if they will not agree to testify and their testimony is helpful to your case. A subpoena is a legal order forcing them to attend the fair hearing to testify. Subpoena witnesses and ask witnesses to testify as soon as you get a fair hearing date so people will be available. A subpoena form can be found here:

<https://www.documents.dgs.ca.gov/oah/forms/oah1-subpoena.pdf>. If you cannot access the form online, please contact us.

Think about what you want the ALJ to learn from your witnesses' testimony. Write questions for your witnesses in advance. Go over these questions with the witnesses to make sure they understand what you are asking. Sometimes it is necessary to rephrase the question so the witness understands. If you learn that their answer doesn't help you, then do not ask the question in the fair hearing.

Also prepare to testify yourself, since you are the best witness for yourself or your child. Be prepared to talk about why you need the respite services. Say why other services have been unsuccessful or are not available. Give helpful examples of why you need the respite service.

#### *Lay Witnesses*

Lay witnesses (non-experts) can enhance the case you present. Lay witnesses can testify about facts they know about you, so think about who knows you the best. Family members are usually a good choice, as are current or former care providers, neighbors, and service providers. Choose lay witnesses who will appear objective and unbiased to the ALJ. Lay witnesses can have the practical, down-to-earth information and stories that only those who know you well can provide.

#### **Exchange of Witness List and Evidence**

At least **5 calendar days before** the fair hearing, you and the regional center must exchange lists of possible witnesses and copies of the documents you each plan to use as evidence at the hearing. That means you and the regional center must receive each other's documents and list of witnesses **5 calendar days before** the fair hearing. The list of witnesses must include a short statement telling what each witness will testify about. A Sample Witness and Evidence List is included in Appendix C. The ALJ can prevent you or the regional center from introducing documents and witnesses not given to each other 5 calendar days before the fair hearing.

On the day of the fair hearing, bring three copies of these documents: one for you; one for the ALJ; and one for witnesses to look at when they testify.

## **Chapter 4 – During and After the Fair Hearing**

Arrive at the fair hearing with plenty of time to spare. The fair hearing can be a long process, so bring water and snacks. Bring a pen and paper to take notes during the fair hearing.

### **Opening Statement**

Give an opening statement. An opening statement is not required, but it helps explain to the ALJ what the hearing is about. Your opening statement should describe the respite service you are asking for and why. It should include the law that supports your request. Describe yourself or your child so the ALJ understands what you or your child needs. Your opening statement should be a short summary of your case. The regional center will give its opening statement first. Then you will give yours.

### **Questioning Witnesses**

#### *Regional Center Witnesses*

The regional center will present its witnesses first. You can ask the regional center witness questions after the regional center is done asking questions. This is called “cross-examination.” Your questions should help to show that the witness does not understand something, forgot facts, or is wrong. You may also ask questions that show that a witness is taking sides, changing what he or she said earlier, or might not be telling the truth. You may ask questions that will show that the regional center witness does not know your child well or does not know your family’s circumstances. You may also ask questions to show that the regional center witness made inaccurate assumptions or is not making an individualized judgment but is relying on an arbitrary rule or policy to determine your respite.

Pay close attention while the regional center’s witnesses testify. You might notice a weakness to bring up later during your cross-examination. Otherwise, stick to asking the cross-examination questions you wrote before the hearing. It is not a good idea to ask a question if you do not already know the answer, unless you think that the likely answer will help your argument greatly.

#### *Your Own Witnesses*

Next, you will ask your own witnesses questions. This is called “direct-examination.” Witnesses should only talk about things they have done or seen or heard themselves. Ask short, simple, clear questions.

Besides presenting your main argument, you can ask your witnesses questions to disprove things that the regional center witnesses said. Otherwise, stick to asking the questions you prepared before the hearing. You can ask follow-up questions if your witness’ answer is not clear.

The regional center will have the chance to cross-examine your witnesses. The ALJ can also ask witnesses questions. After the regional center has cross-examined your witness, you will have a chance to ask your witness more questions. This is called “re-direct examination.” You can have your witness clarify or rephrase anything negative that might have come up during cross-examination.

### **Closing Statement/Hearing Brief**

During the fair hearing, you may realize that the ALJ does not have all the information to make a good decision. If so, you can ask the ALJ to “keep the record open.” The ALJ can say “yes” or “no” to this. If the ALJ agrees to keep the record open, it will allow both sides to give the ALJ more documents and information after the hearing.

The ALJ will usually ask for a closing statement at the end of the fair hearing to sum up the evidence. Recap what you presented at the fair hearing and restate your position that you are entitled to the respite service. Sometimes both sides agree to do a written closing brief instead of an oral closing statement. This option allows you to think about all the testimony before you sum up your argument. A written hearing brief should provide the information and facts you have presented and set out the law that supports your respite case. If the ALJ kept the record open after the hearing and allowed more evidence, you can include it in your hearing brief. A Sample Hearing Brief is included in Appendix D.

### **After the Fair Hearing**

After your fair hearing, the ALJ has **10 working days** to write a decision. The decision must be made no more than **80 days** after you requested your appeal. The ALJ’s decision must:

- Be written in simple, everyday language;
- Include a summary of the facts;
- Include a statement about the evidence the ALJ used to decide;

- Include a decision on every issue or question in the hearing request and presented during the hearing; and
- State the laws, regulations, and policies that support the ALJ's decision.

If you disagree with the fair hearing decision, you may appeal to the superior court of your county. You must appeal **within 90 days** of receiving the fair hearing decision. This is a complicated process, and you will probably need a lawyer. For more information about this process, see Rights Under the Lanterman Act, Chapter 12:

<http://www.disabilityrightsca.org/pubs/506301Ch12.pdf>

## **SECTION 2: Appendices**

### **Appendix A: Respite Fair Hearing Flow Chart**

**Request a Fair Hearing if:** (1) the regional center decides, without your agreement, to cut, reduce, or change respite services in your IPP; (2) you request respite services and the regional center denies your request.

**Question 1: Are you currently receiving respite services that the regional center wants to cut, reduce, or change?**

**YES >** File your request for hearing **within 10 days** of the date you received the regional center Notice of Action. Respite services will continue until there is a final administrative decision. GO TO Question 3

**NO >** You must file your request for hearing **within 30 days** of the date you received the regional center Notice of Action. GO TO Question 3

**Question 2: Were you denied respite services or an increase in respite services?**

**YES >** File your request for hearing **within 30 days** of the date you received the regional center Notice of Action. GO TO Question 3

**Question 3: Do you want to have an optional informal meeting?**

**YES >** An informal meeting must be held **within 10 days** of regional center's receipt of your request for a hearing, unless you agree to another date.

You must receive a written decision from the regional center **within 5 working days** of the informal meeting. GO TO Question 4

**NO >** GO TO Question 5 regarding optional mediation.

**Question 4: Are you satisfied with the regional center's decision?**

**YES >** Tell the regional center that you withdraw your request for Fair Hearing. Respite services agreed to in your informal meeting decision will begin **within 10 days** of receiving your withdrawal. GO NO FURTHER.

**NO >** GO TO Question 5 regarding optional mediation.

**Question 5: Do you want to have the optional mediation?**

**YES >** Does the regional center accept mediation? They must accept mediation **within 5 working days**.

If regional center accepts, mediation will be held **within 30 days** of the regional center's receipt of your request for a hearing, unless more time is approved by OAH. GO TO Question 6

If regional center does NOT accept mediation **within 5 working days**, your case proceeds to Fair Hearing. GO TO Question 7

**NO >** You may proceed to a Fair Hearing. GO TO Question 7

**Question 6: Did you reach an agreement in mediation?**

**YES >** Tell the regional center that you withdraw your request for Fair Hearing. Respite services agreed to in your written resolution will begin **within 10 days** of receiving your withdrawal. **GO NO FURTHER**

**NO >** You may proceed to a Fair Hearing. **GO TO** Question 7

**Question 7: Do you want to proceed with a Fair Hearing?**

**YES >** A Fair Hearing will be held **within 50 days** of the regional center's receipt of your request for a hearing, unless a judge grants longer time for good cause.

A Fair Hearing decision must be issued **within 10 working days** of the last day of the hearing and **within 80 days** after your initial request for hearing unless you waived the deadline by asking for a continuance

(postponement)

**GO TO** Question 8

**NO >** You may withdraw from the Fair Hearing by contacting OAH.

**Question 8: Are you satisfied with the Fair Hearing decision?**

**YES >** Respite services will be provided as decided in the Fair Hearing decision.

**NO >** You have **90 days** to file a Writ of Administrative Mandamus in superior court. You can contact Disability Rights California, Office of Clients' Rights Advocacy, or a private attorney for help.

**NOTE:** The regional center can proceed with a cut or a reduction in respite services **within 10 days** unless your attorney gets a court order to continue the services while the court decides on your appeal.

**Appendix B: Sample Request to Change the Judge**

September 23, 2018

Presiding Administrative Law Judge  
Office of Administrative Hearings  
320 W. Fourth Street, Suite 630  
Los Angeles, CA 90013

Re: Peremptory Challenge

John Doe v Regional Center  
OAH No. 201811100000  
Hearing Date: September 28, 2018

Dear Presiding Administrative Law Judge:

I am writing on behalf of John Doe to request that a different Judge be assigned to hear his case on September 28, 2018. The assigned Judge is Sarah Smith. We ask this change be made under Title 1 of the California Code of Regulations, Section 1034 and Government Code section 11425.40. Enclosed is the prescribed declaration required under that section.

Thank you for your consideration. Please contact me at (213) 555-5555 if necessary.

Sincerely,

Jane Doe

Enclosure

cc: Regional Center

Declaration of Jane Doe

Mother of John Doe

I, Jane Doe, declare that:

- 1) I am the parent for a party to the pending matter.
- 2) The Judge assigned to the Hearing is prejudiced against the interest of the party so that the declarant believes that her son cannot have a fair and impartial Hearing before the Judge, Sarah Smith.

This Declaration is under penalty of perjury under the laws of the State of California and is signed \_\_\_\_\_, at \_\_\_\_\_, California.

DATE

CITY

Sincerely,

\_\_\_\_\_  
Jane Doe

**Appendix C: Sample Claimant's Witnesses and Evidence List**

Your Name  
Your Street Address  
Your City, State, and Zip Code  
Your Telephone Number

Authorized Representative for [Name of Regional Center Client]

OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF CALIFORNIA

In the Matter of:

Claimants Name,

Claimant,

and

REGIONAL CENTER,

Service Agency

Case No.:

Hearing Date:

Hearing Time:

Hearing Place:

Administrative Law Judge:

## CLAIMANT'S WITNESS AND EVIDENCE LIST

### WITNESS LIST

- 1) Witness First and Last Name will testify as to [describe what they will testify about, for example claimant's needs.]
- 2) Witness First and Last Name will testify as to [describe what they will testify about, for example family member's needs.]

### EVIDENCE LIST

- 1) Denial Letter and Notice of Action (NOA) dated [Insert Date]
- 2) Fair Hearing Request Form dated [Insert Date]
- 3) Psychological Evaluation or other evaluation that shows the level of functioning and needs.
- 4) IPP dated [Insert Date]
- 5) Declaration of [Insert First and Last Name] dated [Insert Date]

Other Relevant Documents:  
Sections of the Lanterman Act

**Appendix D: Sample Claimant’s Hearing Brief**

Name  
Address  
City, CA Zip Code  
Telephone Number  
Email Address

Claimant's Authorized Representative

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**

**STATE OF CALIFORNIA**

<u>John Smith,</u>	)	Case No. _____
Claimant,	)	
	)	CLAIMANT'S HEARING BRIEF
v.	)	
	)	
_____	)	
REGIONAL CENTER,	)	Date: _____
Respondent.	)	Time: _____

**I. INTRODUCTION**

Claimant, John Smith (“John”), through his authorized representative, appeals the service agency’s denial of his request for 40 hours of respite services per month. John will demonstrate his need for these services under Welf. & Inst. Code section 4690.2(a)(1)-(4).

**II. STATEMENT OF FACTS**

John is 11 years old. He lives with his mother, father, younger brother, and sister. We want John to continue to live with us. His father works full time. John has autism and mild intellectual disability. John’s disability limits his functioning in the areas of teeth brushing, face washing,

hair brushing, bathing, changing his clothes, and preparing simple snacks. Compared to other boys the same age without a disability, John cannot independently do self-care tasks. He is functioning at a lower level than his same-age peers. He needs constant verbal and physical reminders and prompts. He is unable to finish many of his self-care tasks. John requires assistance with brushing his teeth. When he takes a bath, I must turn on the water and adjust the temperature, because he does not understand how to control the water temperature. During bath time, he just plays, so he requires many verbal and physical directions to wash himself. He needs his hair and body washed because he cannot do it independently.

Because of his disability and functioning deficits, a typical weekday for John is as follows. On school days, John gets up at around 6 a.m. He requires many reminders to wake up for school. I have to tell him to go to the bathroom and wash his face. I have to adjust the water temperature because he will make it too hot or too cold. I prompt him to brush his teeth. He will grab his toothbrush but squeeze on too much toothpaste and will get toothpaste all over the bathroom that must be cleaned up. Sometimes he will not put toothpaste on the brush, so after many prompts I must do it for him. He will only brush his four front teeth for a few seconds. Almost daily, even after repeated instructions, I must physically brush his teeth.

He requires help with dressing. He cannot choose clothes appropriate for the weather. He will not put on socks unless he is told to. He cannot tie his shoes, even though we have taught him. He cannot fasten buttons or zippers and requires help. While he is dressing, he needs constant prompts or he will just sit on his bed and not dress.

He is unable to prepare simple snacks or reheat any food. Due to his disabilities, he does not eat the same food as the rest of the family. I must always prepare something different for him. I have tried to teach him to reheat food in the microwave, but he will not press the buttons or enter the time correctly. He has burned food in the microwave.

Without this help, John cannot wake up, get ready for school and have breakfast. The time spent in providing the assistance and services described amounts to approximately 7.5 hours per week on school days.

I drive John and his brother and sister to and from school. John returns home around 2:30 p.m. He is very hungry when he gets home from school. I prepare a snack for him and his brother and sister. After snack, John requires help to organize and start his homework. John receives ABA therapy for 1 hour every day after school, Monday through Friday. During this time, I must be present and participate. After ABA therapy, I start cooking dinner for John and the family. During this time, I am also helping John's younger brother and sister.

John eats dinner around 7 p.m. Each day his dinner is different because he will not eat the same food as the rest of the family. His food must also be cut for him because he cannot use a knife and fork. After dinner, I clean up and wash dishes. All of this takes 3.0 hours a week.

In the evening, John likes to watch TV or play video games but he is limited to only one hour. During this time, he usually has problems getting along with his siblings. He is constantly changing channels on the TV or switching video games or will want to watch the same show over and over. He insists on routines and gets very upset when his siblings change whatever he is watching. After an hour of TV, he will wander around the house touching and grabbing things and making a mess. He does not return the items he grabs. After watching TV, it is time to get ready for bed.

I ask John to get ready for bed at 8:00 p.m. Getting ready for bed is a long process, requiring lots of my help. John does not like to take baths and it is a challenge every night. He will not get his pajamas and go into the bathroom even after many prompts. He bathes every night. I must be next to him and help him with every step. The water temperature must be adjusted for him. When bathing, he is given step-by-step instruction from washing his hair to washing his body. John cannot wash his hair because he does not like the shampoo on his hands and will try to rinse it off. When he does try to wash his hair, he only washes the top of his head. John

needs complete physical assistance at the end of every bath to make sure he has washed properly. He needs constant verbal direction to dry his body and put on his pajamas.

Around 9 p.m., John may lie in his bed, but will frequently get up and try to play a video game or go into the living room to watch TV. This will go on until I sit with him in his room until he falls asleep, usually at 10 p.m.

John receives 80 hours per month of In-Home Supportive Services hours (IHSS). This is almost 3 hours per day. The total time I spend in providing necessary care and supervision is about 8.5 hours. After deducting the IHSS hours, he requires 5.5 hours of my help per school day.

During the weekend, John continues to need help to waking up, getting ready, and eating. John's brother and sister have different activities on the weekend. His brother plays sports and his sister has dance class. John resists going to any of their activities. Often while at their events, he will try to wander away or asks over and over when we are leaving. It makes it hard to participate and watch my other children's activities. John's father works a lot and cannot take the other children to their events.

It is hard to take John to the mall or store. He does not like crowded places and will tantrum and cry. He also wanders away and gets easily distracted. We cannot eat at a restaurant as a family because he does not like the loud noises in the restaurant. He will cry, tantrum, and hide under

the table. We have not been able to visit family because John does not want to visit. He will not play with his cousins. He will whine, cry, and insist on going home. He will not eat the food cooked by other family members and will make faces or inappropriate comments. The weekends are even more difficult since he is not in school and home all day and does not like to leave the house. Each weekend, John needs 12 hours each day for his care and supervision. After deducting the 3 hours of IHSS, he requires 9 hours per weekend day.

Due to his disability, I provide 51.5 hours in a typical week to meet John's needs. This time is in addition to all the other necessary activities that John's father and I must do to maintain our family. John's father works 5 to 6 days per week and gets home from work very late. John's father is the only source of income and must rest when he is not working. I must care for John and his siblings. I must clean the house, do laundry, grocery shopping, cook for the family, and take my other children to activities.

John requires 40 hours each month of someone providing respite care to meet the needs of our family. There are 168 hours in a week. Each weekday I provide 5.5 hours of John's care and supervision. Each weekend, I provide 9 hours of care and supervision. This totals 51.5 hours per week, but I am only requesting 10 hours per week of respite care.

### **III. FACTUAL CONCLUSION**

As John's parents, we must provide for John's care and supervision. We must meet the needs and maintain our entire family.

#### **IV. APPLICABLE LAW**

The Lanterman Act is intended to empower individuals with developmental disabilities and, if appropriate, their parents to make choices in all life areas. Welfare and Institutions Code Section (WIC Sec.) 4501. Choices include opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in the community. *Id.* In the provision of services, consumers and their families, if appropriate, should participate in decisions affecting their own lives, including where and with whom they live. *Id.* The contributions made by parents to support their children with developmental disabilities are important and those relationships should be respected and fostered, to the maximum extent feasible, so consumers and their families can build circles of support within the community. *Id.*

One of the most important rights of individuals with developmental disabilities in California is the right to make choices in their own lives, including, where and with whom they live. WIC Sec. 4502(b)(10)

The right of individuals with developmental disabilities to make choices in their own lives requires regional centers to respect the choices made by the individual or if appropriate, their parents. WIC Sec. 4502.1

The Individual Program Plan (IPP) process determines the services an individual needs and the regional center will authorize. WIC Sec. 4646. The IPP must be centered on the individual and his/her family and consider their needs and preferences. WIC Sec. 4646(a). IPP teams must give the highest preference to services and supports that allow individuals with developmental disabilities to live as independently as possible in the community. WIC Sec. 4648(a)(1).

The Lanterman Act is firm about supporting the families of minor children living at home. Regional centers must give a high priority to developing and expanding services and supports designed to assist families caring for their children at home, when that is the preferred objective in the IPP, and this assistance may include respite for parents. WIC Sec. 4648(a)(1). The IPP must include a family plan that describes the supports and services to successfully maintain the child at home. WIC Sec. 4648(a)(2). The IPP team must give the highest preference to those services and supports which would allow children with developmental disabilities to live with their families. WIC Sec. 4648(a)(1). Regional centers must consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child. WIC Sec. 4685(c)(2).

Respite may be included in an IPP based on a determination of the consumer's needs and preferences, or if appropriate, the consumer's family. WIC Sec. 4512(b).

Respite services are designed to:

1. assist family members in maintaining the consumer at home;
2. provide appropriate care and supervision to ensure the consumer's safety in the absence of family members;
3. relieve family members from the constantly demanding responsibility of caring for the consumer; and
4. attend to the consumer's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines ordinarily performed by family members. WIC Sec. 4690.2(a)

## **V. ARGUMENT**

The regional center's denial of 40 hours of respite per month ignores John and his family's needs and violates the Lanterman Act.

The regional center's denial ignores John's needs and the amount of respite care he requires. The regional center's offer is inadequate because John's father and I struggle to meet our own basic personal, economic, and physical needs and the needs of other family members.

The regional center's denial violates the Lanterman Act because it does not honor John's and his family's choice that he live at home. The regional center's denial does not empower John and his family. Without

the appropriate number of respite hours, John's relationships with and ability to continue to reside with his family in his home community is at risk.

The regional center's offer does not give a high priority to services and supports designed to assist our family in caring for John at home. They have not considered every possible way to assist our family in maintaining John at home consistent with WIC Sec. 4685(c). Because of John's significant, constant care and supervision needs and what little time remains for our own needs and other responsibilities, the regional center must be ordered to provide the requested respite care services.

## **VI. CONCLUSION**

For all these reasons, John requests that the regional center be ordered to provide 40 hours of respite care services per month consistent with his and his family's needs and the requirements of the Lanterman Act.

Dated: \_\_\_\_\_

Respectfully Submitted,

\_\_\_\_\_  
Authorized Representative

## **Appendix E: Sample Form to Withdraw Hearing (Notification of Resolution Form DS1804)**

<https://www.dds.ca.gov/Forms/FairHearing/DS1804.pdf>

State of California—Health and Human Services Agency

Department of Developmental Services

### **NOTIFICATION OF RESOLUTION DS 1804 (Rev. 1/2007)**

Name of Person for Whom Hearing was Requested ( <i>Claimant</i> ):	OAH Case Number:
Address:	Daytime Telephone Number:
Name of Authorized Representative:	Relationship to Claimant:
Address:	Daytime Telephone Number:
Name of Regional Center or State Developmental Center:	

The above referenced matter has been satisfactorily resolved through the following process: *(Please check the appropriate box):*

- Informal meeting with the regional center or state developmental center director or his/her designee.
- Mediation
- Other *(Please explain below):*

Signature of Claimant or Authorized Representative \_\_\_\_\_ Date \_\_\_\_\_

Signature of Regional Center or Developmental Center Representative \_\_\_\_\_ Date \_\_\_\_\_

#### **TO BE COMPLETED BY REGIONAL CENTER OR DEVELOPMENTAL CENTER STAFF WHEN UNABLE TO OBTAIN THE SIGNATURE OF THE CLAIMANT OR AUTHORIZED REPRESENTATIVE.**

I certify under penalty of perjury that I personally spoke with claimant or claimant's authorized representative and that person indicated to me that the issues identified for hearing have been resolved and the hearing is no longer necessary. A copy of this form will simultaneously be distributed to claimant and OAH.

Printed Name of Regional Center or Developmental Center Representative \_\_\_\_\_ Date \_\_\_\_\_

Signature of Regional Center or Developmental Center Representative \_\_\_\_\_ Date \_\_\_\_\_

Distribution: Office of Administrative Hearings    Regional Center/State Developmental Center    Department of Developmental Services  
Claimant

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**INSTRUCTIONS**

1. You, or your authorized representative, may decide at any time during the fair hearing process that you no longer wish to have a fair hearing.
2. If the issue, or issues, identified in your request for a fair hearing are satisfactorily resolved, through an informal meeting or by other means, you must complete and submit this form to the regional center or state developmental center to cancel the fair hearing. If the issue or issues are resolved through mediation, you must complete and submit this form to the mediator.
3. The decision of the regional center or state developmental center, or the final resolution agreed to during mediation, as appropriate, will go into effect 10 days after receipt by the regional center, state developmental center, or mediator of this Notification of Resolution.

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Distribution: Office of Administrative Hearing      Regional Center/State Developmental Center      Department of Developmental Services  
Claimant

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*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>.*