**[Senate Bill 188 (2021-22)](https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=202120220SB188&showamends=false): Developmental Services Fair Hearing Reform**

|  |  |  |
| --- | --- | --- |
| **Fair Hearing Procedures – Attorney Representation** | | |
| **Current Law** | **New Law** | **Effective Date** |
| **All Parties Have the Right to Attorney Representation During Any Part of the Hearing Process**  *Welfare & Institutions Code Section 4712(h)* | * Unless the claimant is themselves an attorney licensed to practice law in California, or unless the claimant will have an attorney licensed to practice law in California in attendance, a regional center attorney or department attorney shall not attend an informal meeting, mediation, or fair hearing described in this chapter. * The claimant shall notify the regional center and the hearing office at least 5 days prior to mediation, and 15 days prior to a fair hearing, that the claimant will have an attorney in attendance. * However, the hearing officer may notify the parties in advance of a hearing that the hearing officer is allowing the attendance of an attorney in the interest of justice.   *SB 188, SEC. 33* | October 1, 2022 |
| **Notice of Action and Timelines for Appeal** | | |
| **Current Law** | **New Law** | **Effective Date** |
| **Right to Aid Paid Pending If Appealed Within 10 Days**  *Welfare & Institutions Code Section 4715* | Right to Aid Paid Pending If Appealed Within **30 Days**  *SB 188, SEC. 36, 69* | March 1, 2023 |
| **Appeal Within 30 Days**  *Welfare & Institutions Code Section 4710.5(a)* | Appeal Within **60 Days** After Notification of Service Agency Action  *SB 188, SEC. 36, 41* | March 1, 2023 |
| **Informal Meeting & Mediations** | | |
| **Current Law** | **New Law** | **Effective Date** |
| **Person Can Request Informal Meeting and/or Mediation with Hearing Request**  *Welfare & Institutions Code Section 4710.5* | Person Can Request Informal Meeting and/or Mediation without Having to Request a Hearing  *SB 188, SEC. 30, 41* | March 1, 2023 |
| **Informal Meetings are Required When Requested by the Claimant; Regional Center Can Accept or Decline Mediation**  *Welfare & Institutions Code Sections 4710.6, 4711.5(a)* | Both Informal Meetings and Mediation is Mandatory for the Regional Center When Requested by the Claimant  *SB 188, SEC. 43, 53* | March 1, 2023 |
| **Fair Hearing** | | |
| **Current Law** | **New Law** | **Effective Date** |
| **Witness List and Evidence Packet Exchanged At Least 5 Days Before Hearing**  *Welfare & Institutions Code Section 4712(d)* | (1) *Service Agency:* Sends claimant position statement in their preferred language 2 business days before the hearing. The position statement summarizes the facts of the case and justification for the service agency’s actions. It also includes witness list, the general subject of the testimony of each witness, and copies of documentary evidence.  (2) *Represented Claimant*: Similar standard as service agency. Sends position statement 2 business days before the hearing with a witnesses list and documentary evidence.  (2) *Unrepresented Claimant*: No position statement required. 2 business days before the hearing, must send a list of intended witnesses with a brief description of their relationship to the claimant and copies of any professional assessments or reports related to eligibility or services that the claimant intends to use at hearing. The claimant can provide all other intended documentary evidence at or before the hearing.  *SB 188, SEC. 57* | March 1, 2023 |
| **Conduct of Hearing Officer:** The fair hearing need not be conducted according to the technical rules of evidence and those related to witnesses. Any relevant evidence shall be admitted.  *Welfare & Institutions Code Section 4712(i)* | Existing law PLUS:   * The fair hearing shall be conducted in an impartial and informal manner in order to encourage the presentation of information and the free and open discussion by participants. * The hearing officer will engage the parties to bring out the facts and “shall make their best effort to fully and fairly develop the record and create an environment in which all relevant facts, both favorable and unfavorable, are brought out.”   *SB 188, SEC. 57* |  |
| **After the Hearing** | | |
| **Current Law** | **New Law** | **Effective Date** |
| **Hearing Office Decision is Final; Only Way to Challenge is by Superior Court Appeal**  *Welfare & Institutions Code Section 4712.5(a)* | * DDS Director has the authority to adopt or alternate a hearing officer’s decision * Either party can request reconsideration within 15 days of receiving the final hearing decision based on a mistake of fact or law. A different hearing officer will review the matter on reconsideration.   *SB 188, SEC. 61, 64* | March 1, 2023 |
| **90 Days to Appeal Hearing Decision**  *Welfare & Institutions Code Section 4712.5(a)* | Appeal Hearing Decision Within 180 Days  *SB 188, SEC. 61* | March 1, 2023 |
| **No Clear Authority for Ensuring the Service Agency Complies with Hearing Decision** | Service agency must implement the hearing decision as soon as practical but no later than 30 days after the date of the final decision. Service agency must notify DDS and claimant if it cannot meet this timeline.  The claimant can contact DDS if they are not satisfied with the service agency’s compliance and DDS is authorized to take appropriate actions to obtain compliance.  *SB 188, SEC. 65* | July 1, 2022 |