

State of Oregon
Department of Education
Office of Learning – Student Services

Advisory Opinion: Questions and Answers

1. What is an advisory opinion?

The advisory opinion process is an optional dispute resolution process available to parents and school districts before or after a due process hearing has been requested.

2. What types of disputes would be most appropriate for the advisory opinion process?

While any special education dispute could be addressed through the advisory opinion process, the advisory opinion process will be more effective for cases with fewer issues and not involving large financial costs on either side.

3. How and when can an advisory opinion be requested?

The parties may jointly request an advisory opinion by submitting a written request to the Office of Learning - Student Services. The advisory opinion process is not available after a hearing begins. The request must include a statement of the issues in dispute and a proposed resolution of those issues.

4. Can one party request an advisory opinion?

One party may make a written request for an advisory opinion by simultaneously providing a copy of the request to the other party. If the non-requesting party agrees to participate in the advisory opinion process, that party shall so notify the Office of Learning – Student Services and the requesting party within 10 business days.

5. How does the advisory opinion process affect the due process hearing?

As may be necessary, the parties to the advisory opinion process may request a postponement of a prehearing conference or of any scheduled hearing date. The administrative law judge (ALJ) assigned to the full hearing will reschedule such hearing date and other dates, as appropriate, with the cooperation of the parties.

6. How is an advisory opinion ALJ assigned?

The Office of Administrative Hearings will assign an advisory opinion ALJ who will not be the ALJ assigned to the full hearing.

7. How is the advisory opinion process scheduled?

The advisory opinion ALJ will schedule a date consistent with the parties' identified available dates as indicated in the request for the advisory opinion process, or another date acceptable to the parties. The advisory opinion ALJ will send a notice to the parties confirming the date, time, and location of the advisory opinion proceeding as well as a copy of the advisory opinion procedure.

8. What are the advisory opinion procedures?

Each party must exchange copies of documents intended to be submitted to the advisory opinion ALJ and the names of any witnesses no later than five calendar days before the advisory opinion proceeding. Each party must simultaneously exchange documents with each other and the ALJ.

The advisory opinion ALJ will accept only essential and reliable exhibits, which may include the most recent IEP, revisions to the IEP, educational evaluations, progress reports, transcripts, independent evaluations and teacher narratives.

The parties must agree in writing, before the beginning of the advisory opinion proceeding, to abide by the following procedures in the advisory opinion proceeding:

- (1) The proceedings will not be recorded or transcribed;
- (2) The process will not be open to the public;
- (3) Witness presentations, whether in question and answer format or not, will not be under oath but all witnesses are expected to tell the truth;
- (4) Unless the advisory opinion ALJ determines otherwise, once the advisory opinion proceeding has begun, there will be no adjournments;
- (5) The parties' presentations will be conducted as follows:
 - (a) The party requesting the hearing will be allocated 90 minutes to present that party's case. No cross-examination or objections will be permitted during this time.
 - (b) The responding party will then be allocated 90 minutes to present that party's case. No cross-examination or objections will be permitted during this time.
 - (c) The requesting party will then have 15 minutes to ask questions of any witness or elaborate on any part of that party's case.
 - (d) The responding party will then have 15 minutes to ask questions of any witness or elaborate on any part of that party's case.
- (6) The advisory opinion ALJ may ask questions of any witness at any time. Time consumed in responding to the ALJ's questions will not extend a party's allocated periods.
- (7) The advisory opinion ALJ will render an oral advisory opinion within an hour of the close of presentations. The advisory opinion ALJ need not respond to questions concerning such advisory opinions.

- (8) After rendering an advisory opinion, an advisory opinion ALJ may facilitate settlement discussions.
- (9) The rendering of any advisory opinion will have no effect on a party's right to proceed to a due process hearing, or on the outcome of any due process hearing, and the advisory opinion will be confidential and will not be admissible in any due process hearing.
- (10) An advisory opinion ALJ shall not be a witness in any subsequent due process hearing involving the issue(s) raised in the advisory opinion process and shall be precluded from serving as a ALJ in any later hearing involving issue(s) raised in the advisory opinion process.

9. Are there any recommended strategies for using the advisory opinion process?

- Parties should not spend time on uncontested issues or on qualifications of witness(es) or any other aspects of the case that could be provided in writing to the ALJ.
- Parties should focus the testimony on the specific factual or legal disagreement and provide specific evidence supporting their position.
- Parties should come prepared to discuss settlement options at the end of the advisory opinion process.

10. Is the advisory opinion the only alternative dispute resolution option available for parents and districts when a hearing is pending?

No. The Office of Learning – Student Services offers two other options: mediation and the ALJ settlement conference.

11. How is the advisory opinion different from mediation?

In the advisory opinion process, the ALJ gives an informal, verbal, non-binding opinion about the merits of the case.

In mediation, the mediator uses various strategies to assist the parties in resolving the disagreement. If the parties reach an agreement, the mediator puts the agreement in writing and the parties sign the agreement.

12. How is the advisory opinion different from an ALJ settlement conference?

The ALJ settlement conference is similar to mediation, but is facilitated by an ALJ with mediation training rather than a mediator from the Office of Learning - Student Services mediation panel.