

Special Education Advisory Committee
October 2008

Question: Are there structure changes to the committee that should be considered?

Issue: A formatted advisory committee is a new feature within the Special Education division. The committee is currently composed of 9 southern California and 9 northern California members.

Proposed Recommendation:

Final recommendation:

Question: How to ensure continuity when new members of the committee are selected.

Issue: A formatted advisory committee is a new feature within the Special Education division. The committee is currently composed of 9 southern California and 9 northern California members

Proposed Recommendation:

Final recommendation:

Question: How is the new calendaring system working? Any recommendations for changes to the calendaring system.

Issue: In April 2008, the advisory committee discussed ways to make the calendaring of cases more amenable to the scheduling difficulties of parties. The changes were again discussed with the committee in July 2008. Beginning July 2008, OAH offered a form for continuance of the initial hearing and mediation dates upon agreement of the parties. OAH also began scheduling a single initial hearing date rather than five days for the initial hearing dates.

Proposed Recommendation:

Final recommendation:

Question: Should hearings be recorded by Court reporters?

Issue: The issue raised addresses both obtaining an accurate transcript of the due process hearing and the ability of the parties to have witness testimony read back to them if there is a question regarding a witness' prior testimony.

Proposed Recommendation: OAH should make court reporters available at the hearings or insure some way of having an accurate recording of the witness testimony during and after the hearing if required by either party.

Final recommendation:

Question: Should hearings be set at a neutral location rather than the school district?

Issue: This issue was raised by a public member who is asking that the committee consider whether having the hearing set by default at the school site should be changed.

Proposed Recommendation:

Final recommendation:

Question: Should all PHCs be recorded?

Issue: The question was raised by a parent in order to obtain more information in order to prepare for the due process hearing.

Proposed Recommendation:

OAH should tape record the PHCs which would then become part of the Administrative Record. A recording of the PHC could be made available to the parties to ensure that all parties are clear about the issues discussed in the PHC. This also assists in keeping a clear record on appeal.

Final recommendation:

Question: How can OAH help unrepresented parents access witnesses?

Issue: This issue was raised by an unrepresented parent to address the disparity between her ability to secure the testimony of LEA employed witnesses. The parent was required to subpoena any LEA employed witness and was unable to subpoena all witnesses as they actively avoided being served. OAH did not step in to demand the presence of an LEA employed witness without a subpoena.

Proposed recommendation:

OAH should require LEAs to make any LEA employed witness available given reasonable notice that the opposing party wants and LEA employee to testify. This would only apply to the LEA when they are the named party in the hearing.

Final recommendation:

Question: Should there be an etiquette/decorum policy for participants?

Issue:

Proposed Recommendation:

Final recommendation:

Question: What exhibit tab designations should be the standardized model?

Issue:

Proposed Recommendation:

Final recommendation:

Question: Recommendations related to introduction of evidence at hearing

Issue: The question was raised concerning how evidence is introduced. It is believed that each ALJ determines their process for introducing evidence. This can be confusing and extend the length of a due process hearing needlessly. A substantial amount of time is spent by the parties determining which evidence has or has not been introduced and accepted into evidence.

Proposed recommendation:

OAH should have a standard process for introducing evidence. It was suggested that OAH accept into evidence all evidence that is presented by the parties without the formality of having to lay a foundation for each document and then requesting that it be introduced.

Final recommendation:

Question: What should be the process for Subpoena Duces Tecums served well in advance of the hearing since no discovery is permitted?

Issue:

Proposed Recommendation:

Final recommendation:

Question: What NOI standard should be used?

Issue: The question was raised concerning the potentially different standard used when ruling on a NOI. In a student filed case, it appears that the pleading must include extensive detail outlining the alleged violations and facts supporting it. To the contrary, district filed cases appear to only require a statement that a particular IEP is appropriate without giving a detailed explanation as to why it is appropriate, if it is a change in placement, why the change was appropriate.

Proposed recommendation:

OAH should use a consistent standard when determining whether a student or district filed complaint is sufficient. If students are required to provide detailed facts about why violations of the IDEA exist, districts should also be required to provide details as to why the proposed IEP is appropriate.

Final recommendation:

Question: Who should be served in a district filed complaint – student or attorney?

Issue: California Education Code 56502(c)(1) requires school district's and their counsel to serve the school district's request for a due process hearing on the student's parents. "The party, or the attorney representing the party," initiating a due process hearing by filing a written request with the Superintendent shall provide the other party to the hearing with a copy of the request at the same time as the request is filed with the Superintendent." (Emphasis added) California Education Code 56502(c)(1) does not permit school districts to effect service of process upon a lawyer, who may or may not file a Notice of Representation to represent the student. Indeed, in the case of a school district's request for a due process hearing, service upon a lawyer who may or may not then or in the future represent a student could violate the confidentiality of the due process proceedings because at that point in time the student's lawyer has not filed a Notice of Representation.

Proposed recommendation:

OAH should refuse to accept any due process complaint filed by a school district which does not have a proof of service reflecting service on the student's parents. Such filings should be returned to the school district and/or their counsel with an explanation that the proof of service for the due process complaint must reflect service on the student's parents. The timelines for hearing etc. should not commence until a due process complaint is properly served upon a student's parents. OAH should not attempt to effect service of the due process complaint upon the student's parents. If OAH attempts to effect service of a due process complaint upon a student's parents, the parents could argue that OAH has acted as an agent for the school district thereby disqualifying OAH from adjudicating the matter.

Final recommendation:

Question: What recommendations to improve ALJ and Mediator Training can be made?

Issue:

Proposed Recommendation:

Final recommendation:

Question: Should the criteria used to be included on the list of attorneys/advocates be changed?

Issue: The issue raised concerns both the criteria used by OAH to post the attorneys on their “list of attorneys” and how it is determined that they provide free or low cost legal services. One parent contacted most, if not all, of the attorneys on the list designated as free or low cost and was unable to find one that did not require a significant retainer

Proposed recommendation:

OAH should identify criteria for determining whether the attorneys are actually free or provide legal services at a reduced cost before posting the names. OAH should also identify the criteria used for placing the names on the list.

Final recommendation:

Question: What recommendations for improvement/changes to the OAH web-based search engine can be made?

Issue:

Proposed Recommendation:

Final recommendation:

Question: When should translations of forms, decisions, orders be made available?

Issue:

Proposed Recommendation:

Final recommendation:

Question: Should a pamphlet be created that can be distributed to parents at IEPs?

Issue:

Proposed Recommendation:

Final recommendation:

Question: Should there be a separate core of mediators and ALJs?

Issue: Can OAH separate the ALJs that hear the cases from the mediators. The dual roles provide less access to the mediators before or after the actual mediation date. The dual roles also impact other aspects of the system including having ALJs appear unbiased towards the parties.

Proposed recommendation:

OAH should adopt a system keeping separate the ALJs from the mediators.

Final recommendation:

Question: Concerns over sufficient staffing

Issue:

Proposed Recommendation:

Final recommendation:

PLANNING FOR NEXT MEETING

Proposed Dates/Times :

1st Choice: _____

2nd Choice: _____

3rd Choice: _____