

**Office of Administrative Hearings
Special Education Advisory Committee**

OAH Response to Recommendations from May 4, 2012 Meeting

The Office of Administrative Hearings (OAH) Special Education Advisory Committee met in a joint meeting on May 4, 2012, in Los Angeles and Sacramento. The meeting was conducted via videoconference and was also available to the public through a webcast accessed on OAH's website. The joint meeting followed one agenda. During the course of the meeting, the Committee voted to make several recommendations to change or improve OAH's processes. After reviewing and considering the recommendations, OAH provides this response:

More Frequent Advisory Committee Meetings

The Advisory Committee recommended that the Advisory Committee meet quarterly. Members were concerned that there was too much time between meetings, the Committee could be more effective if it met more frequently, and more frequent meetings might encourage more participation.

OAH declines to adopt this recommendation. The current schedule of holding concurrent meetings in Northern and Southern California, linked by videoconference during the first and second halves of the year complies with the legal requirement. (Cal. Code of Regs., tit. 5, § 3094, subd. (b).) To facilitate the flow of information, OAH shall provide responses to the Committee's recommendations and make other meeting materials available in a timely fashion. Members are encouraged to submit agenda items for each meeting at any time. OAH shall promptly inform members if the meeting must be rescheduled from the tentative date announced at the last meeting.

Excluded Evidence in Administrative Record of Hearing

The Advisory Committee recommended that any documentary evidence offered into evidence at a hearing should be marked for the record and, if not admitted, included in the administrative record. OAH adopts this recommendation, which is the current OAH policy. Division Presiding Administrative Law Judge Judith Kopec discussed the policy and the Committee's concern that it was not consistently practiced at a statewide meeting of administrative law judges (ALJs) on May 7, 2012.

In Camera Review of Evidence

The Advisory Committee recommended that an ALJ should not discuss evidence outside the presence of both attorneys or parties and, if the ALJ believed it was necessary to make a decision about evidence that is not disclosed to counsel, a different ALJ should be assigned to hear the ex parte matter.

OAH declines to adopt this recommendation. The appropriate conduct to be taken must be determined by the specific facts and circumstances. While the Committee's recommendation may be appropriate in some circumstances, it may not be appropriate in others. Instead of adopting one policy, it is up to each ALJ, in consultation with the PALJ as appropriate, to exercise reasonable discretion consistent with all ethical requirements. Each ALJ is subject to a

variety of ethical requirements that address appropriate conduct in this and similar situations, including the Administrative Adjudication Code of Ethics (Gov. Code, §§ 11475 – 11475.70), and rules governing ex parte communications (Gov. Code, §§ 11430.10 – 11430.80; Cal. Code Regs., tit. 5, § 3084.5), disqualification (Gov. Code, § 11425.40), and conflicts of interest (Cal. Code Regs., tit. 5, § 3090.1, subd. (b), 3099.) Many of these provisions are also incorporated into OAH's contract with the Department of Education. (Interagency Agreement, § D, para. 2-3.)

Page Limits for Closing Arguments

The Advisory Committee recommended that an ALJ should explicitly state whether there are any limits on footnotes in a closing brief, such as limits on the number of words in a footnote or the percentage of a page that can consist of footnotes. OAH adopts this recommendation. It is reasonable to expect that parties will be informed of all specific limitations placed on closing briefs.

Meet and Confer Before Filing a Notice of Insufficiency (NOI)

The Advisory Committee proposed that OAH recommend that parties meet and confer prior to filing an NOI. OAH declines to adopt this recommendation. It may be good practice for a party to talk with the filing party before filing an NOI so that the filing party has an opportunity to correct or clarify the complaint without the need for an NOI. However, there is no requirement in either state or federal law that a party provide notice prior to filing an NOI. Providing recommendations to the parties about how they handle matters within their discretion is not consistent with OAH's role in resolving special education disputes.

Paperless Procedural Safeguards and Initial Documents

The Special Education Division operates in an increasingly paperless environment, yet it continues to send parties a variety of documents with the initial scheduling order. All of these documents are available on OAH's web-site. OAH proposed that it no longer send copies of the documents, but instead include a notice with the links to each document on the OAH web site and advise that copies of the document are available upon request. The Advisory Committee proposed that OAH continue to send the documents to unrepresented parents, but other parties should receive the links to the documents on OAH's web site and be advised that copies are available upon request.

OAH accepts this recommendation as a pilot project to implement a more efficient paperless process. By proceeding incrementally, OAH will be able to troubleshoot the process and assess the need to send parties copies of documents.