

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

OAH Response to Recommendations from October 26, 2010 Meeting

The Office of Administrative Hearings (OAH) Special Education Advisory Committee met in a joint meeting on October 26, 2010, 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:

Notice of Resolution Outcome

The California Department of Education (CDE) requested that OAH collect data on the outcomes of resolution sessions that CDE is required to report to the United States Department of Education. OAH sends a notice of resolution session outcome form to each school district when a request for due process hearing is filed. Districts are asked to return the form after conducting a resolution session. OAH compiles the data and reports it to CDE each quarter. The information is provided solely for CDE's record-keeping purposes. No action is taken in the due process matter based on information on the form.

The Committee recommended that the form be revised to instruct the school district to send a copy of the notice of resolution session outcome to the parents or their representative when the form is sent to OAH.

OAH declines to adopt the recommendation. OAH's collection of resolution session data is a solely ministerial function done on behalf of CDE. OAH has implemented the process requested by CDE. Since no action is taken based on information from the notice of resolution session outcome form, and it is not used in the hearing process, there is no legal reason for OAH to require that it be sent to parents or representatives.

Subpoenas and Subpoenas Duces Tecum

The Committee recommended that OAH provide written guidance concerning the laws governing the issuance of subpoenas and subpoenas duces tecum in special education hearings. Specifically, the Committee requested guidance on whether the subpoena provisions of the Code of Civil Procedure and the Administrative Procedure Act (APA) apply to special education hearings.

The subpoena provisions of the Code of Civil Procedure and the APA do not directly apply to special education due process hearings. California Code of Regulations, title 5,

section 3089 provides that the subpoena provisions of the APA, which incorporate provisions of the Code of Civil Procedure, do not apply to special education due process hearings. Nevertheless, the provisions of both the APA and the Code of Civil Procedure offer helpful guidance in areas not otherwise covered in state or federal laws governing special education proceedings, such as procedures concerning service and the protection of privacy interests. As a result, OAH appropriately looks to the APA and the Code of Civil Procedure for guidance in such areas.

For example, it has been long established that a person who is the subject of individually identifiable records in the possession of a third party has constitutionally guaranteed privacy rights in those records. To protect those rights, the subject of the records must be given advance notice that the records are being sought before a third party can produce the records in response to a subpoena. (See *Burrows v. Superior Court* (1974) 13 Cal.3d 238.) In civil litigation, those rights are protected by the notice provisions of Code of Civil Procedure section 1985.3. In special education proceedings, substantial compliance with those provisions ensures that the privacy rights of the person whose records are requested are protected. OAH will continue to rule on motions to quash subpoenas on a case-by-case basis taking into consideration the applicable law. When the *Guide to Understanding Special Education Due Process Hearings* is revised, OAH will consider clarifying the provisions concerning subpoenas.

Stipulations to Extend Deadline to File Prehearing Conference Statements

The Committee recommended that if the parties submit a joint stipulation to extend the filing deadline for their prehearing conference (PHC) statements no later than the date the PCH statements are due, the deadline shall be extended and PHC statements shall be due no later than noon the last business day before the PHC. Committee members believed that this will allow the parties to focus their attention on resolving cases amenable to settlement prior to a PHC.

OAH agrees to accept this recommendation on a trial basis in order to determine whether doing so will facilitate efficient case management. The failure to file PHC statements or timely requests for continuances makes it difficult to efficiently manage calendar assignments. When a request for an extension of time to submit PHC statements is filed, OAH will have some indication that the matter may resolve prior to the PHC, allowing more efficient use of resources. Therefore, when the parties submit a joint stipulation to extend the filing deadline for PHC statements no later than the date the PHC statements are due, the extension shall be granted; the PHC statements shall be due no later than noon the last business day prior to the PHC. It is expected that the parties will file timely statements whether or not there is an extension of time to file them.

Placement of Training Information on the OAH Website

The Committee recommended that OAH provide the names of training presenters, training agendas, and training materials on its website. This recommendation was

made in response to concerns about what ALJs are being taught in training, particularly in the area of research-based strategies.

OAH declines to adopt this recommendation. OAH is required by law to provide extensive training to ALJs prior to their conducting hearings and mediations, and each fiscal year thereafter. OAH endeavors to obtain training from knowledgeable and qualified practitioners and scholars. In order to best utilize its resources, the ALJs most often attend training courses sponsored by independent vendors. As a result, the posting of the requested information on OAH's website raises numerous legal issues. Similarly, it would not be feasible to seek releases from each presenter authorizing the posting of the information. Committee members are encouraged to provide information or recommendations about training presenters or training agendas to the Division Presiding Administrative Law Judge.