

**Office of Administrative Hearings
Special Education Advisory Committee
October 26, 2010 Meeting Summary**

1. *Roll Call:* Kate Chilcote was absent at the beginning of the meeting. All other members were present. Ms. Chilcote arrived later and attended the rest of the meeting.

2. *Selection of Chairs and Note-takers:* Dan Harbottle was selected to chair the Southern California section, and Dora Dome was selected to chair the Northern California section. Margaret Broussard (Northern California) and Christine Smith (Southern California) were designated as the note-takers.

3. *Introductory Comments:* Special Education Division Presiding Administrative Law Judge (DPJ) Judith Kopec reviewed the mission and goals of the Advisory Committee. DPJ Kopec informed the members that committee meetings must comply with the Bagley-Keene Open Meeting Act. Each member was given a copy of the Act. The Committee is not required to follow Robert's Rules of Order.

4. *Staff Changes:* DPJ Kopec has replaced Richard Clark. Bob Varma is the Acting Presiding Administrative Law Judge (PJ) for the Sacramento special education office. Michael Barth has joined the Sacramento office since the last meeting and is now fully trained as a special education Administrative Law Judge (ALJ).

5. *Closure of Laguna Hills Office:* At the end of December 2010, the Laguna Hills office will be closed. The Laguna Hills staff remain with OAH and Tim Newlove will continue as the PJ. ALJs Susan Ruff and Darrell Lepkowsky have been relocated to the OAH San Diego office. ALJs Judy Pasewark and Robert Helfand, and PJ Newlove will participate in a telecommute pilot project and telecommute from their homes with full capabilities including video-conferencing. Special education ALJs are still calendared on a state-wide basis. Efforts will be made on a case-by-case basis to find hearing rooms in Orange County if parties do not wish to have matters heard in school district offices.

6. *Advisory Committee Members' Terms of Office:* The members' terms of office are for two years and are now staggered. New members are beginning their two years of service with this meeting and do not need to reapply in May if they wish to continue serving on the Committee for the second year. Members who are continuing their service will

complete their two-year term at the next meeting; if they wish to continue serving on the Committee, they must reapply in May.

7. *New OAH Website:* DPJ Kopec announced that OAH recently launched a new website. The new website was designed to provide easier navigation and access to information. Some members expressed frustration with the new website after being familiar with using the old website. DPJ Kopec encouraged people to send in comments regarding problems they may be having with the new website, or to call OAH if they are having difficulties. Feedback about the new website can be sent to DGSfeedback@DGS.ca.gov.

8. *New On-Line Forms:* DPJ Kopec announced that OAH has updated a number of online forms, including the special education scheduling guide, a form to request transcripts, a notice of resolution session outcome, a form to dismiss or withdraw a due process hearing request, and a form to request continuances. Some of the forms have been translated into Spanish and all of them will be translated into the five languages commonly used in California's schools.

DPJ Kopec reviewed the scheduling guide: Due process hearings are held Monday through Thursday, with hearings beginning at 1:00 p.m. on Mondays. Mediations are held Tuesday through Thursday from 9:30 a.m. to 4:30 p.m., except for Los Angeles Unified School District (LAUSD). LAUSD mediations are held from 9:00 a.m. to 12:30 p.m. or from 1:30 p.m. to 5:00 p.m. Trial Setting Conferences will be used infrequently, and held only on Wednesday, from 10:00 a.m. to 12:00 p.m., and 1:30 p.m. to 4:00 p.m.

The transcript form sets forth three rates for the preparation of transcripts, depending on whether the request is for expedited or normal processing. Rates are dependent on the number of days in which the transcript must be prepared, with rates increasing as the number of preparation days decreases.

Members expressed concern about the notice of resolution session outcome. One member was concerned that districts are sending information to OAH and not to parents or their representatives. A recommendation was proposed and seconded that districts be required to send a copy of the notice of resolution session outcome form to the parent or parent representative when it is sent to OAH.

DPJ Kopec and PJ Ann MacMurray explained that the purpose of the form was to gather data for Department of Education that it needs to report to the U.S. Department of Education. OAH does not take any action based on the information provided by the form.

Another member suggested that either party should submit the notice of resolution session outcome form to OAH and to the other party. This was initially adopted as an amendment to the recommendation, and later withdrawn.

One member expressed concern that this issue was not included on the agenda. DPJ Kopec responded that the discussion was consistent with the agenda item concerning the new forms available on-line.

One member expressed concern that the information being sent to OAH may legally compel the decision time line to be changed. PJ MacMurry responded that no action is taken based on receipt of the resolution outcome form. Dates are only advanced upon action of the parties, such as submission of a written waiver of the resolution session.

Committee Recommendation: A vote was taken on the recommendation that the district should send a copy of the notice of resolution session outcome to the parents or representative when it is sent to OAH. The recommendation passed.

9. *Online-Filing and Electronic Service:* DPJ Kopec reported on the progress of online-filing and electronic service. As reported at the last meeting, OAH is exploring the use of electronic service of documents for OAH to serve documents on the parties.

10. *Subpoena Update:* DPJ Kopec reported that the issue of subpoenas was addressed two meetings ago because there was concern that the ALJs were not consistently interpreting various subpoena laws. OAH has done extensive research, and will continue to follow the prior procedures: attorneys can issue subpoenas and subpoenas duces tecum and OAH will issue them for non-attorney represented parties. An objecting party can file a motion to quash.

Committee Recommendation: One member expressed concern that OAH has required compliance with the Code of Civil Procedure and the Administrative Procedure Act (Gov. Code, §§ 11450.05-.30), when they do not apply to special education hearings (Cal. Code Regs., tit. 5, § 3089). A recommendation was proposed and seconded that OAH should address this issue and provide guidance in writing. The recommendation passed.

11. *Prehearing Conference (PHC) Statements:* DPJ Kopec discussed the case management problems created when PHC statements were not filed as required three business days before a PHC. She acknowledged the parties' desire to focus resources on resolving cases. DPH Kopec explained that parties often file a stipulation asking for the time for filing PHC statements to be extended. Several members commented on uncertainty concerning whether their stipulations to extend the filing deadline were accepted or not.

Committee Recommendation: A recommendation was proposed and seconded that when the parties submit a joint stipulation to extend the filing deadline for 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. The recommendation passed.

12. *Notice of Withdrawal Following Settlement:* DPJ Kopec discussed the case management problems when parties do not promptly file a notice of withdrawal or dismissal after a matter settles. Parties are encouraged to use the form available on OAH's website. If a party is going to submit a settlement agreement to OAH in order to dismiss or withdraw the case, the agreement should be redacted to maintain confidentiality. DPJ Kopec explained that if a settlement is reached, but is pending approval by the school district's governing board, OAH will generally schedule a status conference for a Wednesday after the board meeting. The status conference will be vacated upon receipt of the dismissal.

13. *Request for Mediation or Calendar Changes:* DPJ Kopec advised that the calendar is generally set by Thursday for mediations held the first part of the following week. Therefore, it is important that if parties wish to request a change of mediation date or mediator, or cancel a mediation, they should submit these requests no later than Thursday of the preceding week.

14. *Stipulated Orders:* DPJ Kopec encouraged parties submitting stipulated requests to include "IT IS SO ORDERED," and signature and date lines at the end of the stipulation for faster processing. If the order is granted as submitted, the ALJ can sign and date the submitted form.

15. *Notice by Parties of Preemptory Challenge:* DPJ Kopec stated that a preemptory challenge must be made no later than the beginning of a PHC. The sooner the

challenge is filed, the sooner a new judge can be assigned so that the PHC can proceed without any delay. Although there sometimes are last-minute reassignments that result in a different ALJ being assigned to the case, it is often the case that the ALJ has been assigned for quite some time, but parties are waiting until the last minute to submit their challenges.

16. *Requesting Change in Mediator:* DPJ Kopec commented that there have been an increasing number of multiple requests to change mediators. Numerous reassignments make calendaring difficult. OAH will try to accommodate requests for specific mediators, but other calendaring issues may prevent it. OAH will comply with a request for a new mediator once per side.

17. *Pro Tem Usage:* DPJ Kopec stated that the OAH policy is that if there is a regular ALJ available for a mediation, an ALJ will be used, not a pro tem. If a pro tem is assigned and the mediation is then canceled, a regular ALJ will be assigned for the new mediation date, unless one is not available. However, if a pro tem mediator conducts a mediation and an additional mediation session is scheduled, the same pro tem will be assigned if he or she is available.

18. *Mediation Evaluations:* DPJ Kopec explained that as a result of the delay in enacting a budget, OAH ran out of hard copies of the mediation surveys. Once they arrive they will be sent out to the parties. OAH has received several suggestions about having the surveys available to be completed online. OAH is still evaluating whether this is feasible.

19. *Training for ALJs:* DPJ Kopec advised that all special education ALJS recently attended training at Pepperdine University. The training was conducted by the National Association of Administrative Law Judiciary, and included sessions on decision writing, notices of insufficiency, assessing the credibility of witnesses, and the duties of a hearing officer. The ALJS also attended a full day of mediation training with Professor Mary Culbert from Loyola University Law School.

OAH's spring training is now being planned. OAH is working with Jim Rosenfeld of Seattle University Law School to develop a program. The public is invited to send emails with suggestions for possible trainings. OAH is looking for suggested trainers in the areas of general disability awareness; the impact of disabilities on academic, developmental and

functional needs of students in educational environment; and the adaptation of general education strategies for students with disabilities.

Committee Recommendation: A member expressed concern about what the ALJs are learning about research-based strategies. A recommendation was proposed and seconded that OAH provide the names of training presenters, training agendas, and training materials on its website: The recommendation passed.

20. *Public Comments:* A public comment was received concerning audio recordings of IEP meetings. A member asked whether transcripts of IEP meetings were always required for a hearing. DPJ Kopec responded that it is up to each ALJ as to how to handle this issue. She recommended that the parties raise the issue at the PHC and request guidance from the ALJ.

Another public comment was received concerning the new OAH website asking that it be put back as it was before because the new website does not work.

Another public comment was received concerning the subjects discussed by the Committee, and stating that parents want more substantive issues discussed. The commenter stated that Committee seems only to exist to create an illusion of public participation.

An audience member asked how to find out about the meetings, and whether the agendas and minutes can be posted online. A member responded that this information is posted on the OAH website.

A member of the public commented that the system is stacked against parents. There are no lawyers for parents. Parents should be entitled to free legal representation. School districts refuse to provide services to students, so parents must take the case to hearing. The commenter then described an IEP meeting for a specific student, and how the parents were forced to retain an attorney. The commenter believed it was better when McGeorge School of Law conducted the due process hearings.

A commenter asked about the impact of the Governor's veto of AB 3632 funding. DPJ Kopec responded that issues concerning the funding of special education services are not generally within the scope of special education due process matters. A member responded that there is currently a case pending in the United States District Court, Central District of California with a request for an injunction, and this matter should be on the

calendar within the next few days. Another member commented that mental health agencies may now be asking to be dismissed from cases. DPJ Kopec responded that there was one such case currently before OAH. DPJ Kopec explained that if this issue is raised in any case, the ALJ will address it on a case-by-case basis.

Two questions were asked concerning how OAH counts business days. DPJ Kopec responded that recently OAH was open on October 12 (a court holiday), and considered it to be a business day. Furlough Fridays are also counted as business days. If this is an issue in a specific case, the party should raise it in a motion.

An audience member asked if OAH had upcoming trainings concerning new statutes and case law. DPJ Kopec responded that in almost every training there is some training on new case law and statutory law. A member of the audience in Northern California suggested Peter Wright for this training.

An audience member asked how information from the Committee's meetings is disseminated to the public. DPJ Kopec responded that OAH meets monthly with CDE and information about these meetings is shared with them. OAH also hopes that those who come to the meetings, or see them on the webcast will pass that the information along to others. Agendas, summaries of prior meetings, and webcasts are all available on OAH's website.

A member of the public expressed concern because there were not many substantive issues being discussed. DPJ Kopec responded that the mission and goals of the Advisory Committee focus on improving the procedures used by OAH for hearings and mediations. However, there are other opportunities, such as CDE's Special Education Advisory Committee, to address more global issues.

A member of the public expressed concern that school districts are not following through with things they have agreed to do in an IEP meeting or settlement agreement. She asked if there was an expedited method for families to use OAH's services, so that an ALJ can then order mediation. DPJ Kopec explained that OAH can conduct due process hearings and mediations as provided by the law, and its role is limited. OAH is not authorized to enforce its own orders or decisions. One can file a compliance complaint with CDE for failure to comply with settlement agreements or decisions.

A member of the public asked if OAH can conduct hearings regarding section 504 matters. DPJ Kopec responded that OAH does not have jurisdiction over these matters.

A member of the public suggested that a PHC be held at least four days after the mediation.

A member announced that she was circulating a petition asking CDE to issue a print version of the Composite of Laws since all that is available now is a web-based version, and she provided her email address, Maureen@MaureenGraves.com.

21. *Next Meeting:* The tentative date for the next meeting is April 26, 2011.

MEETING WAS ADJOURNED.