

**Office of Administrative Hearings  
Special Education Advisory Committee  
April 22, 2016 Meeting Summary**

1. Welcome and Introduction

1a. *Chairs at Each Location:* Special Education Division Presiding Administrative Law Judge Bob Varma chaired the Northern California section of the meeting. Presiding ALJ Peter Paul Castillo chaired the Southern California section. The meeting was conducted via video conference and was also available as a live webcast.

1b. *Selection of Note-taker at Each Location:* ALJ Cheryl Carlson (Northern California) and ALJ Alexa Hohensee (Southern California) were note-takers.

1c. *Introduction of Committee Members:* Advisory Committee members introduced themselves. The following members were present in Northern California: F. Richard Ruderman, Colleen Villarreal, Cindy Chandler, Natalie Cooper, Mindy Fattig, Valerie Mulhollen and Maria Alejandra León. Diane S. Beall resigned from the committee and was not present. The following member was absent: Karen Mates.

The following members were present in Southern California: Margaret Adams, David German, Elias Economou, Melissa Hatch, Paula West-Hernandez, Douglas Siembieda and Blanca Zambrano. The following members were absent: Sara Young and Ricky Alyassi.

1d. *Introduction of OAH Staff:* In addition to Division Presiding ALJ Varma and ALJ Carlson, Deputy Director Melissa Crowell and Presiding ALJ Broussard attended in Sacramento. In addition to Presiding ALJ Castillo and ALJ Hohensee, ALJ's Vernon Bogy and Marc Levine attended in Van Nuys.

2. Introductory Comments and Updates

2a. *Welcome New Members:* All Committee members were welcomed and new members were introduced.

2b & 2c. *Expectations of Members and Overview of Advisory Committee:* Division Presiding ALJ Varma reviewed the expectations for Advisory Committee terms and membership and gave an overview of the process. The service of the members was acknowledged and all Committee members were thanked for their dedication. The Advisory Committee meets in the spring and in the fall of each year. OAH may replace a Committee member who misses two meetings with an applicant who meets the requirements for membership.

The Committee complies with the Open Meeting Act, a copy of which was sent to all members prior to the meeting. The Committee does not follow the Roberts Rules of Order. Agenda items are provided by OAH and the members. OAH or the member requesting the agenda item presents the item proposed and makes a recommendation. Recommendations require a second by another member to ensure there is sufficient interest to proceed with a

discussion of the recommendation. If a recommendation is seconded, a vote is taken in both Northern and Southern California. After the members have finished their discussion, the public may comment and public emails will be read. The process is repeated for each item.

2d. *Membership Terms and Application Process:* Division Presiding ALJ Varma reviewed the membership list and identified the members whose two-year term would be concluding at the end of the 2015 – 2016 fiscal year. The application process was reviewed and members of the public were encouraged to apply. Members ending their two-year term were encouraged to reapply.

2e. *Staff Changes at OAH:* Laurie Crom became the Associate Government Program Analyst for the Special Education Division and works closely with the Division Presiding ALJ to monitor implementation of the special education program. Noe Fajardo has been promoted to a Staff Services Analyst, a case manager position that handles complex cases. Dana Dill and Lucia Brambila accepted other positions within OAH and the Special Education Division is looking to fill these vacant case manager positions.

OAH hired three new ALJ's. ALJ Cheryl Carlson was hired to fill a vacant position in the Sacramento office, and ALJ's Vernon Bogy and Marc Levine were hired to fill vacant positions in Van Nuys. The new ALJ's introduced themselves.

### 3. *Hearing and Mediation Processes*

3a. *OAH's Guide to Understanding Special Education Due Process Hearings:* OAH provided the Committee with an update on the revisions to the Guide to Understanding Special Education Due Process Hearings. The Guide has been revised to a reading level that is more useable and easier to understand. The revision did not compromise the detailed information that was available in the prior version of the Guide. A discussion ensued amongst the Committee members as to contents of the Guide.

Committee member Zambrano described a video guide to the hearing process used by another state agency. Member Zambrano made a recommendation that OAH post on its website a video presentation with respect to the Guide with an accompanying PowerPoint. Members Adams and German seconded the recommendation. All members voted unanimously in favor of the recommendation. OAH will respond to the recommendation.

3b. *OAH Scheduling Conflicts for School Districts:* The agenda item was proposed by Committee member Siembieda and he addressed the Committee. Member Siembieda expressed the difficulties imposed upon school district with respect to logistics, facilities and costs when a matter has additional dates added or dates altered by the ALJ presiding at the hearing. Member Fattig discussed the added difficulties of small rural or remote school districts in providing facilities that are compliant with the Americans with Disabilities Act, cost effective and conveniently located to the parties. Member Hatch added that such scheduling changes also impact a school district's ability to produce witnesses, as well as the ability of school staff who are witnesses to meet their educational duties. Member West-Hernandez expressed difficulties posed on parents with respect to their schedules and child

care issues. Member Cooper added that it also imposed other costs and difficulties on parents with respect to expert witnesses. Member Léon echoed some of the concerns from the other members and expressed that it was difficult for some school districts to find locations compliant with the ADA.

Division Presiding ALJ Varma responded to the Committee by noting that changing days of hearings on the eve of, or at, the hearing is not a frequent occurrence. OAH encourages parties to use the prehearing conference process to request additional dates ahead of the hearing. If additional dates are requested at the hearing, the ALJ will consider each party's position and rule accordingly. With respect to compliance with the ADA, the hearing is an event held by OAH and therefore OAH must ensure compliance with the ADA. The parties have available to them the OAH office closest to them, should they be unable to locate an appropriate location.

The Committee made no recommendations on this agenda item. A public comment was emailed to OAH. The member of the public asked OAH to consider the impact on the parents, and public's ability to observe, when setting the location. The comment went on to describe the person's negative experience in participating in a hearing concerning their child, which was held at the school district's office. Public comments are for the consideration of the Committee Members. Without a recommendation from the Committee, OAH does not respond to public comments.

3c. *Proximity of Calendar Dates in School District Filed Cases:* The agenda item was proposed by Committee member Léon and she addressed the Committee. Member Léon stated that school districts were having a difficult time with the calendaring of school district filed cases because the mediation date may coincide with either the prehearing conference statement filing date or the exchange of evidence date. When these dates coincide, the concern is that it makes it difficult for the parties to focus on mediation and a possible settlement. It can turn mediation into an adversarial situation because school districts are required to serve the student's parents with an evidence packet or prehearing conference statement at the mediation. Several other members, including Members Hatch, Adams, German and Ruderman, echoed some of the concerns raised in the agenda item. An additional concern raised was that parties were expending extra resources in handling all of the calendar events which could be reduced if mediation was set earlier than dates for the prehearing conference statement or service of evidence. Member Cooper commented that if the dates are set farther apart it does not encourage the school districts to prepare fully for the mediation.

Division Presiding ALJ Varma responded to the committee by setting out the overall calendaring process for OAH. There are different timelines for cases filed by school districts than those filed by students. OAH also has to account for the time required for mail delivery to a parent of the scheduling order in a district filed case, when setting mediation dates. OAH has previously discussed its calendaring guidelines with the Committee and the guidelines are posted on the website in prior Committee meeting notes and materials. OAH encourages school districts to use those guidelines, prior to filing a case, to approximate when events in its case will be set.

Member Léon made a recommendation that if the prehearing conference statement filing date and the mediation date in a matter fall on the same day, OAH should either advance the mediation date or delay the prehearing conference statement due date. Member Villarreal seconded the recommendation. Members Ruderman, Villarreal, Fattig, Mulhollen, Léon, Adams, German, Economou, Hatch, and Siembieda voted in favor of the recommendation; Members Chandler and Cooper voted against the recommendation; and Members West-Hernandez and Zambrano abstained. OAH will respond to this recommendation

Member Ruderman made a recommendation that when dates for prehearing conference statements and mediations fall on the same date, OAH advance the mediation to an earlier date. Member Cooper seconded the recommendation. The vote in favor was unanimous in both Northern and Southern California. OAH will respond to this recommendation.

A member of the public commented that OAH should create a form for the parties to use to request a delay of the filing of the prehearing conference statements. This form could clarify to the unrepresented parent that the hearing dates are not being continued. Also, that OAH consider advancing mediations in these situations. Public comments are for the consideration of the Committee Members. Without a recommendation from the Committee, OAH does not respond to public comments.

*3d. ADA Compliant Locations Provided by School Districts:* Member Léon withdrew this agenda item.

*3e. Reassignment of Cases Following Prehearing Conferences:* The agenda item was proposed by Committee member Léon and she addressed the Committee. Member Léon stated that parties spend considerable time at the prehearing conference discussing issues in a case and refining the issues. Then, if OAH changes the assigned ALJ for hearing, between the prehearing conference and the hearing, parties find they have to review all of those prior discussions with the new ALJ at the hearing. Member Léon stated that this was frustrating to the parties. Members Mulhollen and Ruderman echoed some of Member Léon concerns. Member Léon also stated that at times parties were hesitant to use a peremptory challenge to a newly assigned ALJ because they were aware that the ALJ was traveling a considerable distance to convene the hearing.

Division Presiding ALJ Varma responded that OAH also wants to avoid changing assigned ALJ's prior to the hearing in a matter, as the ALJ who conducted the prehearing conference has also invested significant time in the matter. However, due to the fluidity of the calendar, late settlements of other matters and peremptory challenges in other matters, sometimes OAH is required by necessity to reassign an ALJ following a prehearing conference, but prior to the commencement of the hearing. OAH does its best to maintain calendar assignments, but those assignments can be affected by events in other cases, outside of OAH's control.

No recommendations were made on this agenda item.

3f. *Logistics of Dual Matters:* This agenda item was proposed by Committee member Léon and she addressed the Committee. Member Léon stated that when a case with both expedited and non-expedited issues is filed, OAH issues the matter the same case number with two sets of calendar dates. This results in two different time lines for each part of the case, including two different possible appeal timelines. Member Léon wanted to know why OAH set matters in this manner and whether OAH could issue two separate case numbers. Member Mulhollen suggested that parties could ask to bifurcate cases with dual timelines.

Division Presiding ALJ Varma informed the Committee that when parties file a single complaint, with one document containing both expedited and non-expedited issues, OAH opens the matter as one case, with one case number. OAH does not have the ability to separate out parts of a complaint to create two cases because all allegations are contained in one document. If parties want two separate cases, the parties should file separate complaints for the expedited and the non-expedited issues, which OAH has seen parties do before.

No recommendations were made on this agenda item.

3g. *Conducting Mediations on Mondays and Fridays:* This agenda item was proposed by Committee member Léon and she addressed the Committee. Member Léon stated that while OAH holds mediations on Tuesdays through Thursdays due to its impacted calendar, the school districts have impacted calendars for those days due to hearings. She proposed that adding Mondays and Fridays as days when OAH would conduct mediations would alleviate the impact on the calendar of school districts. Member Ruderman stated that student's attorneys are also impacted and would find Monday and Friday mediations beneficial as well. Member Cooper stated that expanding mediations to all business days of the week would allow matters to be resolved faster, thus addressing the educational needs of the students sooner than the currently impacted calendar allowed. Member Siembieda joined in the request.

Member Léon made a recommendation that OAH consider holding mediations Mondays through Fridays. Member Ruderman seconded the recommendation. The vote was unanimous in favor of the recommendation in both Norther and Southern California. OAH will respond to the recommendation.

3h. *Ability to waive prehearing conferences:* This agenda item was proposed by Committee member Ruderman and he addressed the Committee. Member Ruderman stated that up to 90 percent of OAH cases that proceed through a prehearing conference settle prior to hearing. Parties and the ALJ spend considerable time in preparing for and participating in the prehearing conference. Given the number of settlements, Member Ruderman wanted to know if parties could waive a prehearing conference or, upon request, hold the prehearing conference on the morning of the due process hearing. Member Mulhollen stated that if the parties know they are close to settling, in her experience, OAH has accommodated the parties by continuing the prehearing conference. She also stated that prehearing conferences act as a motivator for attorneys to work towards a possible settlement and if they were eliminated this would remove the incentive to settle as early as possible. Member Ruderman suggested

OAH allow a meet and confer process in lieu of a prehearing conference. Member Siembieda expressed concerns with introducing new procedures into the system as it would make the system more confusing for unrepresented parties.

Division Presiding ALJ Varma stated that prehearing conferences serve a greater purpose than just a review and refinement of the issues in the matter. They allow parties to discuss and clarify the location and logistics of the hearing. They allow parties to exercise their peremptory challenges. Prehearing conferences provide the opportunity to resolve many of the concerns raised in some of the other agenda items.

No recommendations were made on this agenda item.

4. *Public Comments*

A member of the public stated that they had experience participating in OAH proceedings. They felt that OAH did not follow its own policies. The public member stated that they had attended a mediation only proceeding where the school district was permitted to have an attorney, but they were not. The school district had told the parent that OAH would accept the presence of an attorney for the school district at a mediation only event, despite the policy that attorneys cannot attend mediation only proceedings. The public member felt that OAH favors school districts and that it has different standards for parents and school districts. Such a perception by the student community created a lack of trust in the due process system. Public comments are for the consideration of the Committee Members. Without a recommendation from the Committee, OAH does not respond to public comments.

5. *Date and Time of Next Meeting:* The next meeting was set for October 28, 2016, beginning at 10:00 a.m. This date was later changed to October 21, 2016.

6. *Adjournment:* The Special Education Advisory Committee meeting was adjourned.