

Special Education Advisory Committee
OAH Response to Recommendations from April 20, 2010 Meeting

The Office of Administrative Hearings (OAH) Special Education Advisory Committee met in a joint meeting held on April 20, 2010, in Los Angeles and Sacramento. The meeting was conducted via videoconference and was also available to the public through the OAH Webcast. The joint meeting followed one agenda. At the start of the meeting, the Committee was asked to present written recommendations to OAH for any suggestions to change or improve OAH processes. After reviewing and considering the recommendations made by the Committee, OAH provides the following response.

PREHEARING CONFERENCE ORDERS

The Committee recommended that if the Due Process Hearing (DPH) Judge is changed following a prehearing conference (PHC), then the DPH Judge should follow the rulings made at the PHC unless the parties agree to re-argue the motions after providing timely notice to the parties. Currently, it is the practice of OAH to assign the same administrative law judge to both the PHC and DPH. At times, after a PHC is conducted, the ALJ becomes unavailable and OAH has to reassign the hearing. In those circumstances, the newly assigned ALJ retains the discretion to handle any motions made. Accordingly, OAH declines to adopt a rule that requires an ALJ to revisit issues decided at the PHC, but leaves it to the discretion of the ALJ.

AUDIO RECORDING OF MEDIATIONS

The Committee discussed whether OAH should allow the parties to audio record a mediation. The Committee recommended that OAH not permit the recording of mediation discussions. OAH agrees and adopts the recommendation of the Committee. Mediation is a confidential, voluntary process. The discussions that occur in mediation are not admissible at hearing. Allowing the tape recording of mediation discussions would have a chilling effect on the mediation process which is contrary to the stated preference under the IDEA or California Education Code to encourage mediation and settlement between the parties. OAH will continue the current practice of not allowing an audio or video recording at mediation.