

Special Education Advisory Committee  
OAH Response to Recommendations from January 26, 2009 Meeting

The Office of Administrative Hearings (OAH) provides its' response to the Special Education Advisory Committee recommendations made at the joint meeting held on January 26, 2009, in the Van Nuys and Sacramento offices of OAH. The meeting was conducted via videoconference and was also available to the public through the OAH Webcast. The joint meeting followed the same agenda and the Committees submitted joint recommendations to OAH on February 12, 2009. After reviewing and considering the recommendations, we are providing our responses to the Committees' recommendations below.

## **CALENDARING SYSTEM**

### **Massachusetts System**

The Committees recommended that OAH adopt the Massachusetts off-calendar system, including filing of an Order to Show Cause (OSC). OAH has reviewed and considered how the Massachusetts special education calendaring system would work in California and determined that it is not a workable system for OAH. While OAH appreciates the concerns discussed and raised by the Advisory Committees, OAH declines to adopt the Massachusetts off-calendar system because it does not facilitate the prompt resolution of matters consistent with the principles of the IDEA and California statutes.

Massachusetts follows a system based upon the former model of calendaring utilized by the Special Education Hearing Office (SEHO). Massachusetts averages 900 case filings per year, while in California, OAH handled approximately 2,700 cases last year or three times the case filings of Massachusetts. In Massachusetts, one judge is assigned to a matter at the outset and conducts a calendaring phone call on day 19 after filing of the complaint. At that time, the judge has the ability to grant an off-calendar status to the case for 90-days, with authority to grant an additional 90-days if appropriate, or a total of 180 days if both 90 day extensions are requested. When OAH began hearing special education due process matter in July 2005, OAH inherited a significant number of cases that had languished in an off-calendar status as a result of the SEHO model. OAH did not then, and does not now believe that the SEHO off-calendar system or the Massachusetts off calendaring system facilitates the prompt resolution of matters as is contemplated under the IDEA and California statutes.

In practice, OAH offers a modified calendaring system that permits the parties reasonable time to resolve their matters. The parties are permitted to continue the hearing for at least 90 days without explanation after receiving the initial scheduling order. The parties further have the ability to continue the matter again upon a showing of good cause. OAH has liberally interpreted good cause for parties working diligently towards resolution of matters. OAH provides continuance forms to all parties in the initial scheduling packet of information that explains the calendaring system and what is required by the parties to delay the hearing. If the parties cannot articulate a reason for

delaying the matter, then the hearing goes forward. For all practical purposes, parties to an OAH matter can conceivably have the same 180 days offered by the Massachusetts system by following the current OAH calendaring system.

To the extent the forms may be confusing to the parties, OAH is willing to review any recommendations from the Committees to modify and improve the forms so that the forms meet the needs of the parties.

### **Trial Setting Conference**

The Committees took a separate vote to recommend that OAH adopt a trial setting system after mediation is held, with limited off-calendar opportunities, if mediation and hearing dates are continued. This recommendation did not receive a majority vote. Since the recommendation did not receive a majority vote, OAH did not believe it was a recommendation that needed to be considered. We do note, however, that OAH has previously addressed and declined to adopt a recommendation from the Committees that it return to a telephonic trial setting system.

Further, the parties have the ability to change hearing dates at mediation without the necessity of a formal trial setting conference on calendar. The parties may work with the mediator to select new hearing dates that are within a reasonable time after the mediation, but hearing dates must be on calendar to facilitate a prompt resolution of the issues. OAH declines to adopt a system that does not diligently encourage the parties to resolve their matters or move them forward to hearing, consistent with the principles of the IDEA and California statutes.

The Committee recommended that OAH reinstitute the use of telephonic trial setting conferences (TSCs) when requested by the parties. OAH has considered the recommendation and declines to adopt it at this time. OAH has found that requiring the parties to meet and confer about dates to continue the matter is a more efficient use of resources for the parties and for OAH. The regulations that govern OAH require that the parties meet and confer and in circumstances where the parties do not agree, the parties must submit dates in which they are unavailable and OAH will select the dates for the parties. OAH has instituted a form that is available online that should simplify the process for continuing matters.

### **GOOD CAUSE STANDARD FOR A CONTINUANCE**

The Committees recommended that OAH accept a stipulation of the parties as good cause to continue a matter. OAH already has this procedure in place and permits the parties to continue matters for up to 90 days after the initial scheduling order is issued. However, after the initial 90 days, any further continuance requires a finding of good cause and a stipulation of the parties is one of the factors to consider in the analysis of good cause, but alone would not be sufficient. OAH is guided by the California Rules of Court when considering motions to continue, as well as the California Code of Regulations and state and federal law. OAH has updated its website

to include orders where a continuance was denied or where an ALJ ruled on a contested continuance request.

## **DAILIES FROM FTR**

The Committees recommended that OAH research the ability to provide daily recordings of a hearing using flash drives from the ALJ's computer. OAH has consulted with its Information Technology Office and because of security concerns, cannot adopt this recommendation. Using flash drives potentially compromises the security of the OAH network by potentially permitting unverified sources access to OAH computers and computer based systems, as well as that of the entire State. However, OAH is required to provide either the compact disc (CD) or transcript of the hearing to the Student, but not both. Parties will be permitted to purchase a copy of a CD of the hearing testimony at the end of the hearing and after the ALJ indicates the record has closed in a particular matter.

## **HEARINGS HELD AT A NEUTRAL LOCATION**

The Committees suggested, but did not vote upon, a recommendation that OAH move hearings to a neutral location if it is within 80 miles of the school district. The Committees, however, voted to recommend that OAH grant a parent's request to change the hearing location from a district office unless the location is unreasonably far from the district.

Currently, OAH follows state and federal law that requires hearings to be held in a location reasonably convenient for the parents. OAH declines to adopt a blanket 80-mile rule, but will continue to address a parent's request to change the hearing location based upon the reasonableness of the proposed location on a case by case basis. This information will be included in the Parent Manual and in the FAQs available on the OAH website.

## **IMPROVEMENTS TO ALJ AND MEDIATOR TRAINING**

The Committee recommended that ALJ training include the subject of using interpreters in the mediation and hearing process. OAH accepts this recommendation and will provide training on the use of interpreters in the hearing and mediation process.

## **OAH WEB-BASED SEARCH ENGINE**

The Committees recommended that OAH improve its web search engine. The Committees' preference is to have drop down menus that search only special education decisions to make the search function easier. OAH has improved its web search engine by providing a more specific search engine tool that includes fields that allow searches by keyword, judge, case number and school district. OAH uses a Google based search engine and OAH has included instructions on the website to help improve searching via the website. In addition, beginning February 1, 2009, OAH included on its website all

Orders issued that involved analysis by an ALJ; generic orders, such as scheduling orders and check-box orders, are not included on the website. The Orders are fully searchable on the website. At the current time and in view of the budgetary constraints facing the State, no further changes to the OAH website are contemplated.

## **BROCHURE**

The Committees asked for an update on the brochure that OAH is publishing. The brochure will feature information about accessing the OAH Special Education System and will be widely distributed to school districts, regional centers, and other locations that serve children with disabilities. The brochure will be included on the OAH website as well. The brochure is in production and should be available by July 31, 2009.

## **STRUCTURE OF THE ADVISORY COMMITTEE**

The next meeting for the Advisory Committee is May 12, 2009. The meeting will follow the same format, connecting both the Northern California Parent Advisory Committee and Southern California Parent Advisory Committee via videoconference and made available to the public via Webcast, as was used at the January 2009 meeting. The Committees will sit around one table so that discussion will be facilitated among the committee members. There will be a separate time allotted for any public comments.

The Committees recommended that OAH maintain the same number of Committee members (currently 18) and that OAH fill the open-committee slot in southern California. The Committees also recommended that the Advisory Committee term be for two years, with staggered terms, rather than the current one year terms. OAH is considering this recommendation and is requesting further input from the Advisory Committee. Some suggest that a smaller, statewide committee will help focus on the issues presented more effectively and efficiently and ensure that OAH is operating consistently throughout the state. One year terms also allow the greatest possible number of people to serve as Committee members.

OAH seeks a recommendation from the Committee related to whether the Committee should be one statewide Committee, rather than two committees, and if so, the appropriate size for the statewide committee. If it is to become one statewide committee, OAH seeks a recommendation whether one-year terms would ensure that as many people as possible have the ability to serve on the Committee. Whether it remains two committees or one statewide committee, the Committee will continue to include a majority of members who are parents, or advocates or attorneys for parents. Consistent with the Inter-Agency Agreement with the California Department of Education, OAH consults with the Advisory Committee in the areas of its website, forms, documents, scheduling procedures, staff training, training materials, parent procedure manual, consumer brochure, outreach to families and student, and proposed revisions

to laws and rules. Since this is an advisory board and not an oversight board, OAH requests input from the committee about the best structure and terms for the committee.

The Committee recommended that the round table format with room for public seating be maintained, and that the meetings be joint meetings. OAH accepts and adopts this recommendation. The meetings will be structured as recommended.

The Committee also recommended that the frequency of meetings be increased to six times per year. OAH has considered this recommendation and declines to adopt it because the Inter-Agency Agreement requires two meetings per year, one in southern and one in northern California, during the first and second halves of the year. The current structure of videoconference meetings with the availability of the meetings for the public via Webcast has increased the access of the Advisory Committees meetings statewide and the information and availability of the meetings. Consistent with the Inter-Agency agreement with the CDE, the Advisory Committee meetings will be held twice per year in northern and southern California.

## **INTERSECTION WITH CDE**

The Committees recommended that CDE appear in person at the next meeting to address concerns about the intersection of CDE and OAH. The Committees agreed to have any questions for CDE submitted to CDE via email no later than February 27, 2009, but recommended that "CDE should be prepared for a dynamic discussion of these and other issues." The questions were to be emailed to CDE so that it could have the correct person present to address the Committees' questions.

CDE has been invited to attend the meeting and will have a representative present to address the only question of concern raised by the Committees and emailed to CDE. OAH would like to respectfully remind the Committees that the scope and purpose of the Advisory Committees is to focus on improving the OAH process and not on issues that are beyond the control of OAH. OAH will monitor the Advisory Committee agenda and only include items over which OAH has control or fall within the defined IA guidelines, purpose and structure for the Advisory Committee.

We look forward to seeing you on May 12, 2009.