

Special Education Advisory Committee
OAH Response to Recommendations from October 21, 2009 Meeting

The Office of Administrative Hearings (OAH) Special Education Advisory Committee met in a joint meeting held on October 21, 2009, 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 the same 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 OAH provide a copy of the PHC template and a copy of the PHC Order seen by Committee Member Tamara Brock so that the Committee could provide additional recommendations for a template to be used in all cases. Ms. Brock was asked to provide her example of the PHC Order that she thought was helpful. OAH has considered this recommendation and as currently stated, OAH cannot act on the recommendation. The PHC form viewed by Ms. Brock has not been provided to OAH, but OAH welcomes any suggested language that the public believes should be incorporated into a PHC template.

AUDIO RECORDING OF HEARING

The Committee recommended that OAH allow all parties to record a due process hearing. OAH notes that recording of hearings is not prohibited under the IDEA or California Education Code, and that OAH permits recording of the hearings at the discretion of the ALJ presiding at the hearing. The official recording remains the recording by the ALJ. Any time that the ALJ is off the record, the tape recording by the parties must also stop. The parties should address recording of the hearing with the assigned ALJ at the prehearing conference. As a procedure is already in place, OAH will not take any additional action on this recommendation.

DAYS FOR HEARING

The Committee recommended that OAH continue to use the process of setting one day for hearing. If the hearing cannot be completed in the one day as set in the OAH Scheduling Order, the parties should stipulate to the number of days and dates for hearing. If the parties are unable to reach an agreement, the parties should request a trial setting conference with OAH. The recommendation is similar to the process OAH already has in place. Therefore, OAH will not adopt this recommendation, but continue the practice currently in place. It is incumbent upon the parties to notify OAH as soon as possible if additional days for hearing are needed and if the parties are proceeding to hearing on the initial date set. The parties should continue to meet and confer regarding agreeable hearing days and dates, and notify OAH only if the parties are not able to agree.

CLOSING BRIEFS

The Committee recommended that OAH secure agreement of the parties as to whether closing arguments will be made orally or by written brief prior to the first day of hearing. Currently, the assigned ALJ has discretion to control the process for closing briefs. OAH declines to adopt a recommendation that limits the discretion of the assigned ALJ. However, discussion of closing briefs by the parties should occur as soon as possible, and as early as the prehearing conference. The parties should request that the assigned ALJ address closing briefs at the PHC. OAH will advise all SE ALJs about the concerns of the Committee regarding closing briefs.

ASSIGNMENT OF MEDIATOR

The Committee recommended that OAH advise the parties if a change in the assigned mediator occurs after the initial contact by the assigned mediator. Currently, OAH does its best to ensure that the mediator assigned in the scheduling order maintains the mediation throughout the process. In those cases where the assigned mediator is changed after contact has been made by a mediator, the Committee is requesting that OAH advise the parties of the change. OAH has considered the recommendation and will adopt the recommendation. In those cases when the mediator is changed after contact with the parties has been made, OAH will endeavor to notify the parties of the change.

ASSIGNMENT OF PRO TEM MEDIATORS ON FURLOUGH DAYS

The Committee recommended that if the parties agree to a pro tem mediator, the parties should be permitted to mediate the case on a scheduled furlough day or an ALJ training date so long as the pro-tem is available. OAH has considered this recommendation and declines to adopt it. The current budget situation forces OAH to be closed on the first three Fridays each month. In addition, because of budget concerns, OAH must limit the use of pro tems and assign matters to regular ALJs when possible. Thus, pro tems are used primarily when there is a scheduling conflict, but are not used in the regular assignment rotation. Pro tems cannot be used to circumvent the furlough process ordered by the Governor. In addition, OAH does not have the resources to have pro tem mediators available for all parties who may request a pro tem. Therefore, when OAH is closed for furlough or training, no mediations or hearings will take place, and pro tems will not be utilized in the manner recommended by the Committee.

NEW FORMS FOR THE OAH WEBSITE

The Committee recommended that OAH make the following forms available on the OAH website: Request for Due Process Hearing in Word format; Frequently Asked Questions separate from the User Guide; and a sample settlement agreement.

Regarding having the Request for Due Process available online in Word format, OAH cannot put documents in Word format on the website. OAH will explore other options to make the form available for completion online and advise the public whether that is possible.

The Frequently Asked Questions that OAH provides the parties are available online at the OAH website. The link is <http://www.oah.dgs.ca.gov/Special+Education/SE-FAQ.htm>.

The Nor Cal and So Cal OAH Advisory Committee members did not reach a consensus about having a sample settlement agreement available online. As OAH is not generally involved in the settlement of cases except through mediation with the parties, and since the Committee did not reach a consensus on this recommendation, OAH will not adopt the recommendation and will not add a sample settlement agreement to the OAH website.