

**Office of Administrative Hearings
Special Education Advisory Committee
November 9, 2012 Meeting Summary**

1. *Selection of Chairs and Note-takers:* Special Education Division Presiding Administrative Law Judge (DPALJ) Judith Kopec was selected to chair the Northern California section of the meeting, and Presiding Administrative Law Judge (PALJ) Richard Breen was selected to chair the Southern California section. Administrative Law Judge (ALJ) Terri Ravandi (Northern California) and Member Miho Murai (Southern California) were designated as the note-takers. The meeting was conducted via video conference and was also available as a live webcast.

2. *Roll Call:* Members and Office of Administrative Hearings (OAH) staff were introduced. Advisory Committee members Sam Neustadt, Blanca Siebels, and Amy Foody were absent. All other members were present.

3. *Open Meeting Act:* DPALJ Kopec provided a brief overview of the Bagley-Keene Open Meeting Act. Before the meeting, members were provided copies of the Open Meeting Act and *A Handy Guide to the Bagley-Keene Open Meeting Act 2004*, from the California Attorney General's Office, and were encouraged to become familiar with them. Each member is responsible for ensuring he or she complies with the Act. Members were informed of the prohibition against serial meetings under Government Code section 11122.5, subdivision (b).

4. *Terms of Advisory Committee Members:* Each member serves for two years. This is the beginning of a two-year term for members who were just appointed and the beginning of the final term for members who continued from last year. Continuing members who wish to remain on the Committee will need to reapply in Spring 2013.

5. *Staff Changes at OAH:* ALJ Robert Martin has joined the Van Nuys office. ALJ Melissa Crowell has been appointed Deputy Director of OAH. Deputy Director Crowell has been with OAH since 1995, and has served as the PALJ in the Oakland General Jurisdiction office.

6. *Timely Submission of Prehearing Conference Statements and Requests for Continuances:* DPALJ Kopec requested compliance with the long-standing order that prehearing conference (PHC) statements be submitted three business days prior to the PHC. Parties may jointly stipulate to delay the filing of the statements until noon the business day prior to the PHC. A joint stipulation to delay filing the PHC statements must also be filed three business days prior to the PHC. It is very difficult for OAH to allocate resources and assign ALJs to matters if parties do not submit timely PHC statements or continuance requests. Unless OAH has granted a continuance, a PHC shall go forward as scheduled and all parties are expected to participate by telephone.

7. *Special Education Decision Database:* In June 2012, the link on OAH's website to decisions issued prior to July 2005 was disabled without OAH's knowledge. The link is now maintained by the California Department of Education and the full database is now available. In response to a comment about the search engine for OAH's decision database, PALJ Kopec stated that OAH is aware that the search engine for the database for OAH's decisions (those issued after July 1, 2005) is not robust. OAH continues to explore other options for the search engine. Users are encouraged to report any problems with the decision database. By signing up for OAH's list serve, individuals will receive copies of decisions as OAH issues them.

8. *Digital Recording System:* There have been some technical problems with the digital recording system as a result of upgrades to OAH's computer system. The problems should be remedied by the end of the year when the digital recording software is also upgraded. The parties' continued patience is appreciated.

9. *E-mail Addresses and Evaluation Surveys:* Instead of distributing paper evaluation surveys, OAH is using a web-based system. OAH staff need to send emails to parties with information about accessing the on-line, confidential evaluation. Parties are encouraged to provide OAH with their email addresses when filing requests for hearing or mediation and to legibly provide their email addresses on the mediation sign-in form. In addition, the hearing ALJ will be asking parties to also provide their email addresses at the hearing.

Several Members commented that they have not regularly received emails with survey information. It was suggested that parties check to make sure that OAH's emails are not being blacked as potential "spam" email. Parties who do not have access to email may request that a paper survey be sent to them.

10. *LAUSD Mediation and Hearing Locations:* As of July 1, 2012, Los Angeles Unified School District (LAUSD) is conducting all mediations at its downtown headquarters. Hearings involving LAUSD are scheduled for OAH's Van Nuys office. If necessary, hearings will also be conducted at OAH's Los Angeles office or at LAUSD's headquarters. If the location identified in the scheduling order is not convenient, a party should file a motion to change venue as soon as possible. The motion should provide specific facts supporting the request to move the location; an order will be issued based on the specific facts and applicable law.

11. *Hearings Scheduled Day to Day:* The initial scheduling order assigns a first day of hearing and orders that the hearing will continue day to day, as necessary at the discretion of the ALJ. If a continuance is granted or after new dates are added at a PHC, specific dates will be assigned and the hearing will continue day to day as necessary at the discretion of the ALJ. Hearings are expected to go forward on consecutive days until finished. A Member asked how OAH will address cases already scheduled that conflict with a hearing that is continuing day to day. DPALJ Kopec explained that, in general, an ongoing hearing will be given priority over a hearing that has not yet begun, but that each continuance request will be decided on the facts presented.

Committee Recommendation: A recommendation was made and seconded that when a party is in a hearing that is going day to day that conflicts with an upcoming hearing, and parties in the upcoming hearing are informed of this scheduling conflict, good cause will be found and a continuance would be granted for the second hearing. The recommendation did not pass in Northern California or Southern California.

12. *Mediation in Lieu of Resolution Session and Waiver of Resolution Session:* DPALJ Kopec advised that OAH has received notices from parties stating that they are waiving the resolution session, but do not seem to intend that the hearing dates and time line for decision be moved forward. She explained that there are two distinct provisions in federal law: The parties can waive the resolution session in writing, which will begin the 45-day hearing timeline and OAH will move the hearing date forward to accommodate the new timeline. (34 C.F.R. § 300.510(c)(1).) In contrast, the parties can agree to use mediation in lieu of a resolution session. (34 C.F.R. § 300.510(a)(3)(ii).) If this is done, the parties can request that the mediation date be moved forward into the 30-day resolution period. Otherwise, the scheduled dates and the timeline for decision do not change. OAH may send a notice to the

parties when their request is unclear stating that OAH is treating it as a request to use mediation in lieu of a resolution session and the dates will remain the same. The parties must notify OAH if they intended otherwise. Parties are encouraged to explain clearly what they are seeking, particularly if they desire to waive the resolutions session and have the hearing moved forward. DPALJ Kopec clarified the process in response to Members' questions. A Member suggested that this procedure be explained in OAH's FAQs. DPALJ Kopec said that this can be done when OAH revises the FAQs and *Understanding Special Education Due Process Hearing* manual that are available on OAH's website.

13. *Notice Regarding No Action to be Taken:* When OAH receives a document that concerns matters outside its jurisdiction, a Notice of No Action Taken will be sent and OAH will take no further action.

14. *Notice Regarding Documentation of Educational Rights:* Parties were reminded that when a request for mediation or hearing is filed concerning a student 18 years of age or older, OAH must have proof that the person filing the request holds educational rights for the student, unless a parent is exercising his or her own rights under the IDEA. OAH may develop a notice to the filing party when a request is filed without verification of educational rights.

Recommendation of Committee: A recommendation was made and seconded that OAH create a form informing parties of the documentation required to show that a filing party holds educational rights for the student. The recommendation passed in both Northern and Southern California.

15. *Availability of Record of Prehearing Conference:* DPALJ Kopec explained that OAH will not provide a free audio recording or transcript of a PHC to parents or students prior to the completion of the hearing. If either party wishes to have an audio recording or transcript of a PHC before the hearing ends, the party may purchase it for the regular fee. In response to a Member's question, DPALJ Kopec explained that if either party wishes to record the PHC, the party should include the request in the PHC statement and the ALJ will address it. If permission is granted, OAH's recording is the official record of the PHC.

16. *Status Conferences:* Status conferences are scheduled if there is a signed settlement agreement that the school district's governing board must approve. A status conference is usually scheduled on Wednesday at least two weeks after the board meeting date. It is anticipated that if the board approves the settlement, the district will promptly notify student, and the filing party will promptly submit a request to withdraw or dismiss the matter prior to the status conference date. DPALJ Kopec asked parties to make sure that school districts promptly inform students of the settlement agreement's approval and that the filing party promptly submit a request to withdraw or dismiss the matter with OAH. If there is a delay in submitting the settlement to the school district's governing board, and the parties stipulate to continue the status conference, the parties should submit a joint request for a continuance. Unless OAH has granted a continuance, a status conference will go forward as scheduled and all parties are expected to participate by telephone.

17. *Cross Complaints:* A number of parties against whom complaints are filed have filed cross complaints in the same matter. There is no authority for the filing of cross complaints in special education matters. A party against whom a complaint has been filed must file a separate request for hearing in order to seek remedies, along with a motion to consolidate the matters, if appropriate. If a cross complaint is filed in a matter, it will be addressed at the PHC.

Recommendation of Committee: It was recommended and seconded that OAH include information in the FAQs that cross complaints will not be entertained and a party should instead file a request for hearing. The recommendation passed in both Northern and Southern California.

18. *Public Comment:* A member of the public expressed concern that summary judgment was granted concerning a statute of limitations issue; parents who are not represented by attorneys always lose their cases; ALJs should be retrained on the law when a case is overturned; and federal law is being ignored concerning access to a student's educational records. A comment submitted to the web site was read.

19. *Tentative Date of Next Meeting:* The tentative date for the next meeting is Friday, May 10, 2013.

The meeting was adjourned.