

**Office of Administrative Hearings
Special Education Advisory Committee
October 9, 2015 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 Dena Coggins (Northern California) and ALJ Ted Mann (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, Karen Mates, S. Diane Beal, Mindy Fattig, Valerie Mulhollen and Maria Alejandra León. The following members were absent: Cindy Chandler and Natalie Cooper.

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

1d. *Introduction of OAH Staff:* In addition to Division Presiding ALJ Varma and ALJ Coggins, Deputy Director Melissa Crowell, Presiding ALJ Broussard, and ALJ Lisa Lunsford attended in Sacramento. In addition to Presiding ALJ Castillo and ALJ Mann, Presiding ALJ June Lehrman and ALJ Christine Arden 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, 2d. *Expectations of Members, Overview of Advisory Committee Meeting Process and Open Meeting Act:* 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. Advisory Committee meetings are informal and the Committee is not required to use Robert's 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.

2e. *Staff Changes at OAH:* ALJ Lehrman was appointed to a Presiding ALJ position in Van Nuys and is the second Presiding ALJ in that office covering Southern California. ALJ Broussard was appointed to the Presiding ALJ position in Sacramento covering Northern California. ALJ's Jamie Errecart, Dena Coggins and Lisa Lunsford were introduced as new ALJ's in the Sacramento office. ALJ Christine Arden was introduced as a new ALJ in the Van Nuys office. ALJ's Adeniyi Ayoade and Paul Kraus have left OAH for other employment. ALJ Susan Ruff retired.

Jennifer Haley is the new Staff Services Manager, supervising all the special education staff. OAH added two new case managers in Sacramento, Araceli Davila and Richard Biala. OAH added one new case manager in Van Nuys, Stefanie Kent.

3. *Hearing and Mediation Processes*

3a. *ADA Certification Process:* Since September 2015, OAH has implemented a Certification of Americans with Disabilities Act Compliant Facility and Rooms process for local education agencies providing facilities and rooms for special education mediations and hearings to ensure compliance with the ADA. The certification form can be obtained online. ALJ's will ensure the certification forms have been filed with OAH prior to mediations and hearings.

3b. *Requests for Reasonable Accommodations and Accessibility:* The OAH website now contains a fillable Request for Accommodation by a Person with Disabilities form, which can be sent to the case manager by email, facsimile, or U.S. mail.

3c. *Revising the "Guide to Understanding Special Education Due Process Hearings" and Frequently Asked Questions:* The Guide to Understanding Special Education has been revised to read at the sixth grade reading level to allow enhanced accessibility to the special education community. The Guide has been reduced from approximately 100 pages to approximately 40 pages to simplify the Guide and make it more user friendly. ALJ's Marian Tully and Darrell Lepkowsky were the editors. The Guide will be translated into the five most common languages and will be posted as soon as the translations are completed. The Frequently Asked Questions will be rewritten as well, translated and posted.

3d. *Filing by Email:* The community had requested OAH accept filings by email. As of September 2015, OAH can accept filings by email. Information about this new filing process has been provided on the OAH listserv and OAH website. OAH is developing a process for service for orders by email.

3e. *Late Filing of Prehearing Conference Statements:* In response to a question from community members, OAH reaffirmed its position that if parties are working on settlement, the parties may file their respective prehearing conference statements after the filing deadline. If parties intend to file their prehearing conference statements after the deadline because of settlement negotiations, they must inform OAH of their intent to do so. The prehearing conference statements must be filed no later than 12:00 p.m. on the day before the prehearing conference.

Committee Member Ruderman commented that attorneys spend a great deal of time in prehearing conferences in cases that never go to hearing. Mr. Ruderman requested as an agenda item for the next meeting a discussion of a process whereby parties could waive the prehearing conference and propose different prehearing conference dates when a case is near settlement. In response to Mr. Ruderman's suggested topic for the next meeting, Committee Member Mulhollen commented that attorneys can request a continuance at the time of the prehearing conference if the case is close to settlement. A short discussion followed. Division Presiding ALJ Varma agreed to put the item on the agenda of the next meeting.

3f. *Outreach Presentations:* OAH is continuing to conduct Special Education Outreach programs. Organizations may contact Division Presiding ALJ Varma or Presiding ALJs at their local OAH office to request a presentation. OAH must be the only presenter at the presentation, no fees may be charged for the presentation, and the presentation must be open to all.

3g. *California Department of Education Attendance at Advisory Committee Meetings:* Committee Member Ruderman addressed the Committee as the agenda item was requested by Mr. Ruderman. Mr. Ruderman believes it would be useful for a representative from CDE to attend the Advisory Committee meetings. Mr. Ruderman made a recommendation, which was discussed and clarified. Ms. Mulhollen seconded the recommendation.

Committee recommendation: A representative from CDE be invited to attend, and the Committee requests that the representative attend each Advisory Committee meeting.

The recommendation passed unanimously in both Northern and Southern California, with no abstentions. OAH will consider the recommendation.

3h. *Continuances of OAH Special Education Matters:* Committee Member Léon addressed the Committee as the item was requested by her. Ms. Léon expressed concerns about OAH denying joint requests for a continuance because the parties are unavailable. Ms. Léon believes a joint request for continuance due to the parties' unavailability should constitute good cause. Division Presiding ALJ Varma asked Ms. Léon to clarify if she was referring to an initial request for continuance or request that is made after a continuance has been granted in the case. Ms. Léon indicated that she was referring to both situations. Mr. Ruderman commented that more deference

should be given when parties jointly request a continuance for settlement purposes based on his reading of the law. Ms. Mulhollen stated her understanding of OAH's procedures as they related to requests for continuances. Ms. Léon disagreed with Ms. Mulhollen's comments as they applied to Ms. Léon's original concern. Committee Member Adams and Mr. Ruderman discussed other situations where they believe good cause should be found. Ms. Léon made a recommendation and Committee Member Fattig seconded the recommendation.

Committee recommendation: The Committee recommended that OAH issue additional guidance regarding the standard for good cause in relation to joint requests for continuances.

The recommendation passed unanimously in both Northern and Southern California with no abstentions. OAH will consider the recommendation.

Mr. Ruderman made a second recommendation regarding continuances. Committee Member Economou sought clarification as to the difference between Mr. Ruderman's recommendation and that of Ms. Léon. The members discussed the difference. Ms. Léon seconded Mr. Ruderman's recommendation.

Committee recommendation: When parties submit a joint request for continuance, there is a presumption that good cause exists for continuance.

The recommendation passed in Northern California with members Léon and Ruderman voting in favor; member Fattig voting in opposition; and members Beall, Mulhollen, and Villarreal abstaining. In Southern California the recommendation passed with members Economou, German, Hernandez, Adams, and Zambrano voting in favor; members Siembieda and Young voting in opposition; and member Hatch abstained. OAH will consider the recommendation.

The Committee took a short break. Upon reconvening, Mr. Ruderman addressed the Committee further on the issue of continuances. He stressed his view that when parties file a joint continuance request a presumption should be favored because if the parties are agreeing, then they must be ensuring that the child's needs are being addressed in the interim, and, therefore, a continuance does not violate the speedy resolution mandate of the Individuals with Disabilities Education Act. A new or amended recommendation was not made.

3i, 3j. *Training of New Administrative Law Judges and Training of New Mediators:* Committee Member Siembieda addressed the Committee as the agenda items were requested by him. He discussed both items together. Mr. Siembieda expressed concerns about the training of new ALJ's and mediators. He believes that hearing times are being doubled and the hearing process is not being managed effectively by new ALJ's. Mr. Siembieda also expressed concern about the new ALJ's and mediators' understanding of the IDEA. Committee Member Zambrano sought clarification from Mr. Siembieda as to whether his concerns also stemmed from parental

concerns about new ALJ's and mediators, to which Mr. Siembieda answered affirmatively. Division Presiding ALJ Varma detailed the mandatory and informal training provided to new ALJ's and mediators. Ms. Fattig asked if a list of training provided to new ALJs and mediators is available if requested. Division Presiding ALJ Varma answered affirmatively. Ms. Zambrano asked for more information about the type of training provided to new mediators and the number of hours mediators are observed by OAH staff. Division Presiding ALJ Varma provided additional information about new mediator training. Ms. Zambrano asked how to obtain a list of the training provided to new ALJ's and mediators. Division Presiding ALJ Varma stated that requests could be made by facsimile, mail, or email to OAH. Division Presiding ALJ Varma also indicated that the OAH website has information available that lists relevant data about this subject. No recommendation was made.

3k. *Designated ALJ's for Mediations and Hearings:* Committee Member Siembieda addressed the committee as this agenda item was requested by him. Mr. Siembieda believes some ALJ's are more effective at hearings, and other ALJ's are more effective during mediation. He asked if OAH could designate certain ALJ's as ALJ's who handle hearings, and other ALJ's as those who handle mediations. Ms. Fattig asked about the process for assigning ALJ's to hearings and mediations. Division Presiding ALJ Varma stated that the workload is distributed amongst ALJ's based on operational needs and the location of the hearings and mediations. Division Presiding ALJ Varma also discussed the responsibilities of ALJ's Pro Tempore. Mr. Economou asked Mr. Siembieda for clarification regarding his proposed process for dividing hearings and mediations between the ALJ's. Mr. Siembieda indicated that OAH would decide the process. Ms. Siembieda made a recommendation as follows:

Committee recommendation: OAH designate certain ALJ's to do mediations only, and others to do prehearing conferences and hearings.

The recommendation was not seconded by a Committee member so the recommendation was not taken up for a vote.

3l. *Process for Updating Posted Orders:* Committee Member Adams addressed the Committee as this agenda item was requested by her. Ms. Adams asked whether OAH has a process for updating orders online, such as providing a designation when an OAH order is overturned or upheld. Division Presiding ALJ provided the Committee with further information as to a recent case that involved an OAH order being appealed by a party during the pendency of the administrative action, without OAH being notified of the appeal. Division Presiding ALJ Varma explained OAH's process of updating orders and highlighted the importance of parties informing OAH if an OAH order has been appealed so that OAH may track it. Ms. Adams made a recommendation and the recommendation was seconded by Ms. Mulhollen.

Committee recommendation: OAH post on its website the process by which it tracks the outcome of appeals of OAH orders during the pendency of the administrative matter.

The recommendation passed unanimously in both Northern and Southern California with no abstentions. OAH will consider the recommendation.

4. *Public Comment*

A comment was made regarding the membership of the Advisory Committee. The public member expressed concerns that the membership comprised of more school district attorneys and representatives than parents and attorneys representing students. Members having dual roles as parents of students with disabilities and representatives of a school district cannot support the parent's perspective. The public member asked that OAH revise the membership and add more parent representatives.

The same public member commented that when revising the *Guide to Understanding Special Education and Due Process Hearings* and the *Frequently Asked Questions*, OAH keep in mind the importance of the information in the documents. The public member expressed concerns that in an effort to reduce the length of the document and make it more readable, valuable information may be sacrificed.

The same public member asked that OAH members of the Advisory Committee attend meetings of the Advisory Commission on Special Education, as the two committees were not discussing similar items and could benefit from the connection. The public member also recommended that the Advisory Committee check if the Special Education Task Force was still meeting, as that Task Force had made recommendations on special education that the Governor's office was considering.

5. *Date and Time of Next Meeting:* The next meeting was set for April 22, 2016, beginning at 10:00 a.m.

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