

**Office of Administrative Hearings
Special Education Advisory Committee
May 11, 2011 Meeting Summary**

1. *Selection of Chairs and Note-takers:* Kent Rezowalli was selected to chair the Northern California section for the meeting, and Robert Wright was selected to chair the Southern California section. Margaret Broussard (Northern California) and 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:* Advisory Committee members Dora Dome and Dan Harbottle were not present. All other members were present. Members and OAH staff present were introduced.

3. *Introductory Comments:* Special Education Division Presiding Administrative Law Judge (DPALJ) Judith Kopec apologized for the delay in starting the meeting due to technical difficulties. She reviewed the mission and goals of the Advisory Committee. The committee is not required to follow Robert's Rules of Order. The general process to make motions was reviewed: recommendations need to be seconded to indicate sufficient interest by members; the recommendation is discussed to see if consensus can be reached; and the members vote.

4. *Committee Terms and Application Process:* Advisory Committee members serve two-year terms. Members finishing their second year will need to reapply if they wish to stay on the Committee. The application deadline is June 15, 2011.

5. *Staff Changes:* Ron Diedrich returned to OAH as Director and Chief Administrative Law Judge after serving as Acting Director of the Department of General Services. Van Nuys Special Education Presiding Administrative Law Judge (PALJ) Ann McMurray left OAH for the federal General Services Administration in Denver, Colorado. The Laguna Hills Special Education office of OAH has closed and moved to the San Diego OAH office. Tim Newlove remains the PALJ of what is now the San Diego Special Education office. PALJ Newlove, ALJ Helfand, and ALJ Pasewark now telework, and ALJ Lepkowsky and ALJ Ruff work at the San Diego OAH office.

6. *Furloughs and Friday Calendar:* As a result of employee contracts, staff are no longer furloughed on Fridays. All OAH offices are now open five days a week. The current Special Education Scheduling Guide will remain in place and OAH will not schedule mediations or hearings on Fridays. ALJs may use discretion in individual cases to extend a hearing to a Friday.

7. *Stipulated Extension of Time to Submit Prehearing Conference (PHC) Statements:* DPALJ Kopec announced that OAH has agreed on a trial basis to adopt the Committee's recommendation concerning the extension of time to file PHC statements. If the parties submit a joint stipulation to extend the filing deadline for their PHC statements no later than the date the PCH statements are due, the deadline shall be extended and PHC

statements shall be due no later than noon the last business day before the PHC. If no stipulations are filed, then PHC will continue as scheduled.

8. *Identification of Expedited Issues:* The current practice for scheduling expedited matters was described: calendar staff review each complaint when a case is opened; if the complaint raises an issue that gives rise to an expedited hearing, the matter is scheduled for an expedited hearing; if the matter raises both expedited issues and regular issues, an expedited and regular hearing are both scheduled. Parties are encouraged to clearly identify the issues that are entitled to an expedited hearing and those that are not. OAH has provided two Web resources addressing this – the Frequently Asked Questions (FAQs) and the Guide to Understanding Special Education Due Process Hearings on OAH’s website.

9. *Requests to Unexpedite Hearings:* DPALJ Kopec explained that OAH has seen an increase in requests from parties to “unexpedite” a matter so that an expedited hearing is not held. OAH does not believe that it has discretion not to conduct an expedited hearing if a complaint raises issues that are entitled to an expedited hearing. DPALJ Kopec requested guidance or recommendations from the Committee and members discussed possible options.

Committee Recommendation: A recommendation was proposed and seconded that OAH should allow both parties to present argument as to whether a case that has been scheduled for an expedited hearing can be “unexpedited.” The recommendation passed in Northern and Southern California.

10. *Legal Help/Hotline:* An Advisory Committee member raised the need for a special education legal help hotline. He suggested that OAH establish a legal help hotline modeled on a legal help hotline for real estate licensees to help unrepresented parents navigate special education law. The Advisory Committee members had an extensive discussion of this proposal. One member stated that there are a number of governmental and non-profit agencies that provide support for unrepresented parents. Another member stated that school district special education directors routinely help parents with questions that they have. Other members stated that OAH, as the deliberative body for special education matters, cannot provide legal advice through a hotline.

Committee Recommendations: As an alternative to a hotline, one member recommended that OAH update the list of free or low cost attorneys and advocates include non-profits and other agencies that provide free or low-cost services in special education matters, and that the list explain that free services are available in certain circumstances. The recommendation was seconded and discussed. The recommendation passed in Northern and Southern California.

A member recommended that OAH not include anyone on the list without consent and without input about the information provided on the list. The recommendation passed in Northern and Southern California.

11. **Status Conference After Settlement:** PALJ Kopec discussed the status conference procedure. OAH sets a status conference in cases where the parties have reached a settlement agreement but are waiting for the district's governing board to approve the agreement. It is anticipated that in most cases, the filing party will submit a request to withdraw or dismiss the matter prior to the status conference. However, many status conferences remain on the calendar; when OAH conducts the status conferences, in numerous cases the parties are not available and the status of the matter remains uncertain. PALJ Kopec requested help from the special education community to make the status conference a more efficient process. The parties can assist by using the OAH withdrawal or dismissal form when the school board approves a settlement agreement and the case is finished. If necessary, the parties should submit a request to continue the status conference.

12. **Motions Included in Other Filings:** PALJ Kopec discussed the practice by some parties of embedding motions within other filings such as due process complaints. A common example of this practice occurs when a party embeds a motion for stay put in a request for hearing. She informed the Advisory Committee that OAH will not rule on such motions; the party who wishes to bring a motion must submit a "stand alone" document.

13. **Timelines on Website:** An Advisory Committee member discussed his proposal that OAH place timelines for due process proceedings on the OAH website. His concern is that such information be more accessible to parties, especially parents who are not represented by an advocate or attorney.

Committee Recommendation: A member recommended that OAH include a link on its web site providing important timelines for due process hearings. The recommendation passed in Northern and Southern California.

14. **Update on Electronic Service:** DPALJ Kopec updated the Advisory Committee that OAH is exploring serving documents by fax and email. A member commented that OAH should send information on the listserv when its fax system is not working. She was encouraged to submit an agenda item for the next meeting to discuss this.

15. **Monday Hearings:** OAH will schedule all Monday hearings starting at 1:30 p.m., and not 1:00 p.m.

16. **Update on Web-based Evaluations:** OAH is moving forward on establishing a web-based system to submit evaluations of special education mediations and hearings.

17. **Public Comments:** A member of the public complained that OAH had not processed his son's request for due process. PALJ Kopec asked the public member to contact OAH staff regarding the matter. An Advisory Committee member raised concerns about difficulty searching decisions and orders on the OAH website. PALJ Kopec acknowledged there have been problems with the search engine on the web site and encouraged that any problems be reported via the "contact us" area of the website. .

18. *Date of Next Advisory Committee Meeting:* The tentative date for the next meeting is Friday, October 14, 2010. Members were encouraged to submit agenda items.

Meeting was adjourned.