

**Office of Administrative Hearings
Special Education Advisory Committee
April 10, 2015 Meeting Summary**

1. Welcome and Introduction

1a. *Chairs at Each Location:* Special Education Division Presiding Administrative Law Judge Judith Kopec chaired the opening of the meeting, and Special Education Division Presiding ALJ Bob Varma continued as chair for 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 Theresa Ravandi (Northern California) and ALJ Marian Tully (Southern California) were note-takers.

1c. *Introduction of Committee Members:* Advisory Committee members introduced themselves. The following members were present in Northern California: Diane Foos, F. Richard Ruderman, Colleen Villarreal, Karen Mates, S. Diane Beal, Judith Holsinger and Mindy Fattig. The following members were absent: Han Tran and Valorie Mulhollen.

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

1d. *Introduction of OAH Staff:* In addition to Division Presiding ALJ's Kopec and Varma, and ALJ Ravandi, ALJ Redmon and Director and Chief Presiding ALJ Zack Morazzini attended in Sacramento. In addition to Presiding ALJ Castillo and ALJ Tully, ALJ's Chris Butchko, Cole Dalton and Caroline Zuk attended in Van Nuys.

2. Introductory Comments and Updates

2a. *Expectations of Members and Overview of Advisory Committee Meeting Process:* Division Presiding ALJ Kopec reviewed the expectations for Advisory Committee terms and membership and gave an overview of the process. The Advisory Committee complies with the Open Meeting Act. Advisory Committee meetings are informal and the Advisory Committee is not required to use Robert's Rules of Order. Agenda items are provided by members. 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. After the members have finished their discussion, the public may comment and public emails will be read. The process is repeated for each item.

2b. *Terms of Advisory Committee Members and Application Process:* Committee members serve a two-year-term. Division Presiding ALJ Kopec

acknowledged and thanked all Advisory Committee members for their dedication. The Advisory Committee meets in the spring and in the fall of each year. OAH will replace an Advisory Committee member who misses two meetings with an applicant who meets the requirements for membership. Applications for new members should be submitted by the close of business on June 13, 2015. Questions concerning applications should be directed to OAH Analyst Tim Dean. Division Presiding ALJ Kopec explained that this deadline may be extended.

2c. *Staff Changes at OAH:* Director and Chief Administrative Law Judge Linda Cabatic retired in December. OAH Director and Chief Administrative Law Judge Zackery Morazzini was appointed in January and introduced himself. Division Presiding ALJ Kopec and Presiding ALJ Richard Breen have accepted positions with the Social Security Administration. The new Division Presiding ALJ is Bob Varma. Presiding ALJ Tim Newlove and ALJ's Gary Geren and Dee Johnson have retired. Presiding ALJ Newlove's position was moved to the Van Nuys office to address workload. Former ALJ Castillo is the new Presiding ALJ. New ALJ's to OAH include Paul Kraus in Sacramento and Caroline Zuk, Chris Butchko and Cole Dalton in Van Nuys. The new ALJ's introduced themselves.

Division Presiding ALJ Kopec informed the Advisory Committee that she would be leaving in May 2015; she thanked everyone for their efforts and turned the meeting over to Division Presiding ALJ Varma. Division Presiding ALJ Varma thanked DPALJ Kopec for all her service and chaired the remainder of the meeting.

3. *Hearing and Mediation Processes*

3a. *Increase in Case Filings and Impact on Calendar:* There has been an 8 percent increase in filings over the number of filings during the last fiscal year. This is consistent with the pattern of increase in caseload over the past several years. Calendar needs are being met with additional ALJ's. ALJ's are handling more mediations, resulting in less reliance on pro tem mediators.

3b. *Website Video about Special Education Dispute Resolution at OAH:* Following an Advisory Committee recommendation a video regarding special education dispute resolution has been developed and posted on OAH's website. Division Presiding ALJ Varma thanked Assistant Director Melissa Crowell and the ALJ's who worked to develop the video. Additionally, the Department of General Services was recognized for their assistance in developing and posting the video. A question was raised by Advisory Committee member Zambrano as to whether the video is only in English. Division Presiding ALJ Varma noted that it was currently only in English, however, OAH is working towards making it available in the five most commonly spoken languages in California.

3c. *Update on Forms Available on Website:* Fillable forms for Special Education are available on the website. They are forms for asking for a due process hearing and for a mediation only case. They can be printed and submitted to OAH.

Online submission is still being developed. Languages include Spanish, Hmong, Tagalog, Chinese and Vietnamese.

3d. *Requests for Reasonable Accommodation and Accessibility:* Division Presiding ALJ Varma asked that requests for accommodations be included on the due process hearing or mediation request. If a need for accommodation is discovered after the filing of the case, parties should include it in the prehearing conference statement for discussion at the PHC. OAH's ADA Coordinator is Nicole Buckowski. She may be reached through the main OAH telephone number.

3e. *Outreach Presentations:* Special Education Outreach programs have been restarted. The main goal of the outreach is to provide information intended to help parents and families access the due process hearing system and access OAH's proceedings. It provides an overview of the process and some key points on what ALJ's are looking for when they analyze a case. Organizations may contact OAH to request a presentation, however, OAH must be the only presenter, no fees may be charged for the presentation, and the presentation must be open to all.

3f. *OAH Scheduling Policies*

(1) *General Policies:* Handouts setting forth decision timelines and scheduling policies were available at the meeting and online. Advisory Committee member Ruderman addressed the Advisory Committee, as the agenda item was requested by Mr. Ruderman. A discussion followed. No recommendation was made.

(2) *Failure to Convene a Resolution Session:* The Advisory Committee discussed the need for a process to advance timelines if a resolution session is not held within 15 days. Division Presiding ALJ Varma informed the Advisory Committee that OAH has in the past and will continue to consider requests to advance dates when no resolution session was held, consistent with the applicable statutes. No recommendation was made.

3g. *Continuances:* Division Presiding ALJ Varma explained OAH policy. Generally OAH grants the first request for continuance if the date requested is within the guidelines set out in OAH's continuance request form. If the request is for a continuance outside of the guidelines or constitutes a request for a further continuance, the request is evaluated for good cause. OAH considers a number of factors in determining whether good cause has been shown, including among other things, the age of the case, the need for speedy resolution, and prejudice to a party. Division Presiding ALJ Varma encouraged all parties seeking a continuance to set forth all applicable grounds for good cause in their motion. No recommendation was made.

(1) *In Connection with an Amended Complaint:* Mr. Ruderman asked if OAH applied a stricter standard to a continuance request following an amendment of the complaint than is applied to an initial request on the original complaint. Division Presiding ALJ Varma explained that OAH views an amendment to the complaint as a continuance of the same case, not as a newly filed case. Therefore, after the first

continuance in the case, if consistent with OAH guidelines, all subsequent continuances are required to establish good cause, including those continuance requests filed after the amendment of the complaint. No recommendation was made.

(2) *Pending an Independent Assessment:* The Advisory Committee discussed continuances in cases where independent assessments are pending or where the parties have reached an interim agreement. Members expressed concerns that a limited pool of independent evaluators puts pressure on OAH deadlines and withdrawing or amending a complaint may not be an available option. Division Presiding ALJ Varma explained that requests for multiple continuances, including requests based upon interim agreements, must demonstrate good cause. The ALJ will consider the facts of each case and the relevant factors consistent with the speedy resolution mandate of the Individuals with Disabilities Education Act. No recommendation was made.

(3) *Joint Motion for Continuance:* The Advisory Committee members discussed cases where OAH has denied a joint request for a continuance. Division Presiding ALJ Varma stated that the OAH form sets out the criteria for a first joint request for continuance. If the request does not meet that criteria or it is a second or further request for continuance, parties should set forth all the facts that may establish good cause for a continuance. No recommendation was made.

3h. *Expedited Hearings:* Advisory Committee member Beal raised concerns with how OAH was processing cases for the expedited and non-expedited calendar when student was represented by an attorney and the complaint did not request an expedited hearing on its face. Ms. Beal also raised a concern that there seemed to be inconsistent rulings, on similar fact patterns, when parties made a motion to deem an expedited case a non-expedited case. Other Advisory Committee members discussed the concerns of inconsistent rulings and difficulty in having matters deemed non-expedited. Division Presiding ALJ Kopec explained that OAH follows the law by looking at the issues in a complaint to determine whether to expedite. Division Presiding ALJ Varma explained the case law is not clear as to how to interpret the statute when a party alleges a problem with the manifestation determination, but the disciplinary measure has already been carried out. Until there is legal authority to the contrary, OAH must apply the statute as written. Ms. Beal made a recommendation which was discussed, clarified and seconded by Advisory Committee member Economou as follows:

Committee recommendation: OAH will research and develop a process, where the issue is raised as a FAPE violation, to schedule an early conference to determine whether the matter should be expedited.

The recommendation passed in Northern California with members Beal, Foos, Holsinger, Fattig, Mates and Villarreal voting in favor; member Ruderman voted in opposition; and, there were no abstentions. The recommendation passed in Southern California with members Economou, Adams, German, Hatch, West-Hernandez, Young

and Zambrano voting in favor; there were no votes in opposition or abstentions. OAH will consider the recommendation.

4. *Public Comment:* Public comment was invited. A question was raised as to whether the California Department of Education should send a representative to the Advisory Committee meetings. Division Presiding ALJ Kopec explained that CDE had participated in the past and was aware of the dates and times of the meetings. Mr. Ruderman asked that the topic be placed on the agenda for the next meeting. Division Presiding ALJ Varma agreed to put the item on the next agenda.

5. *Date and Time of Next Meeting:* The next meeting was set for October 9, 2015, beginning at 10:00 a.m.

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