

**Office of Administrative Hearings
Special Education Advisory Committee
May 4, 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 ALJ Marian Tully 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 Paul Eisenberg, Ann Delfosse, and Thomas Gibson were absent. All other members were present. Members and Office of Administrative Hearings (OAH) staff were introduced.

3. *Introductory Comments:* DPALJ Kopec reviewed the meeting's format. She presents items placed on the agenda by OAH and the Committee member presents items the member proposed. The members discuss each item. After the members finish their discussion, the public may comment and public emails are read. The committee is not required to follow Robert's Rules of Order.

4. *Terms of Advisory Committee Members and Application Process:* Each member serves for two years. This is the end of the final term for members who continued from last year. DPALJ Kopec thanked outgoing members for their service and encouraged them to reapply. Applications must be submitted by the close of business June 15, 2012.

5. *Staff Changes:* Linda Cabatic has been appointed Director and Chief Administrative Law Judge. New ALJs in Sacramento are Terri Ravandi, Joan Herrington, and Troy Taira. New ALJs in Van Nuys are Marian Tully and Alexa Hohensee. Paul Kamaroff is a new ALJ in San Diego. OAH is recruiting another ALJ for Southern California. Sheetal Sharma has been promoted to Legal Support Supervisor. There are three new calendar clerks: Renee Smith, Collette Clark, and Karen Thai. Jennifer Haley is filling in for Crystal Freeman and prepares the quarterly reports.

6. *Timely Peremptory Challenges:* This item was continued from the October 2011 meeting. DPALJ Kopec summarized the current provisions governing peremptory challenges found in California Code of Regulations, title 1, section 1034. A peremptory challenge must be made no later than the commencement of a prehearing conference (PHC). The memorandum of understanding with the California Department of Education provides that if OAH reassigns the hearing to another ALJ for a reason other than as a result of a peremptory challenge, then a peremptory challenge shall be made no later than noon the business day prior to the first day of hearing. If the ALJ is reassigned after the PHC, OAH will notify the parties. Parties are encouraged to monitor the website to confirm which ALJ will preside at the hearing.

7. *More Frequent Advisory Committee Meetings:* Member Margaret Dalton has a concern about the length of time for action on Advisory Committee recommendations and suggested it would be more effective if the Committee met quarterly. Other members observed that more frequent meetings might encourage more participation, while others expressed concern that more meetings might make it more difficult to obtain a quorum.

Committee Recommendation: A recommendation was proposed and seconded that the Advisory Committee meet quarterly. The recommendation passed in Northern and Southern California.

8. *Conducting Student-Filed Hearings During Spring Break:* Member Miho Murai discussed parents' concerns that districts argue they are unable to produce witnesses during spring and summer breaks in student-filed cases but are able to go to hearing in district-filed matters. Committee members and members of the public commented on potential prejudice to students because this delays services and placement and prejudice to districts because necessary witnesses might not be available. Committee members and members of the public further commented on challenges districts face with furloughs and the need for scheduling flexibility.

Member Recommendation: A recommendation was proposed and seconded that a general assertion that district personnel are not available over summer break does not constitute good cause for a continuance. The recommendation did not pass in either Northern or Southern California.

9. *Special Education Dispute Resolution Process Help Line:* Member Bob Wright discussed the creation of a special education help line to "triage" due process cases and assist parents. Committee members and members of the public discussed the need for more information, resources that were already available, and the proper role of OAH in providing assistance to the public.

Member Recommendation: A recommendation was proposed and seconded that OAH explore the ability to provide a dispute resolution help line. The recommendation did not pass in either Northern or Southern California.

10. *Excluded Evidence in Administrative Record of Hearing:* Member Maureen Graves expressed concern that evidence that was marked for identification but not admitted into evidence is not always included in the administrative record. DPALJ Kopec clarified that OAH's policy is that all evidence that has been marked, whether it has been admitted or not, is to be included in the record for the purpose of appeal. She stated she would address this at an upcoming statewide meeting of ALJs, and encouraged anyone to contact her if this continues to be a problem.

Member Recommendation: A recommendation was proposed and seconded that any documentary evidence offered into evidence should be marked for the record and, if not admitted, should be included in the administrative record. The recommendation passed in Northern and Southern California.

11. *In Camera Review of Evidence:* Member Maureen Graves raised concern about an ALJ meeting with a witness without counsel to review documents in dispute.

Member Recommendation: A recommendation was proposed and seconded that an ALJ should not discuss evidence outside the presence of both attorneys and, if the ALJ believed it was necessary to make a decision about evidence that is not disclosed to counsel, a different ALJ should be assigned to hear the ex parte matter. The recommendation passed in Northern and Southern California.

12. *Page Limits for Closing Arguments:* Member Maureen Graves discussed the need for ALJs to clearly identify all limitations on closing arguments, particularly concerning any limitation on the number or size of footnotes.

Member Recommendation: A recommendation was proposed and seconded that an ALJ should explicitly state whether there are any limits on footnotes in a closing brief, such as limits on the number of words in a footnote or the percentage of a page that can consist of footnotes. The recommendation passed in Northern and Southern California.

13. *Meet and Confer Before Filing a Notice of Insufficiency (NOI):* Member Margaret Broussard suggested that it would be helpful if an opposing party called to discuss concerns about a complaint prior to filing an NOI. This would allow the filing party to fix obvious errors or clarify allegations without the other party incurring the expense of filing an NOI.

Member Recommendation: A recommendation was proposed and seconded that OAH recommend that parties meet and confer prior to filing an NOI. The recommendation passed in Northern California, and did not pass in Southern California.

14. *PHCs on Monday and Friday:* DPALJ Kopec discussed scheduling PHCs on Mondays and Fridays, rather than on Mondays and Wednesdays. Hearings following a PHC on Friday would be set for the second week following the PHC. The change would become effective with the new fiscal year, on July 1, 2012. Several members expressed support for the proposal.

15. *Paperless Procedural Safeguards and Initial Documents:* DPALJ Kopec explained that the Special Education Division operates in a paperless environment, yet it continues to send parties a variety of documents with the initial scheduling order. All of these documents are on OAH's web-site. OAH proposed that it would no longer send copies of the documents, but instead include a notice with the links to each document on the OAH web site and advise that copies of the document are available upon request. Both members and members of the public expressed concern that this would place the cost of printing the information on parents, and not all parties have internet access or can navigate the web-site.

Member Recommendation: A member proposed and seconded that OAH continue to send the documents to unrepresented parents and all others should receive the links to the documents on OAH's web site and be advised that copies are available upon request. The recommendation passed in Northern and Southern California.

16. *Changes to Initial Scheduling Order:* DPALJ Kopec explained that the initial scheduling order is being revised to clarify the law concerning continuances of expedited matters, explain the procedures for peremptory challenges, identify resources available on OAH's website and the process for receiving documents by facsimile.

17. *Adding New Parties to Complaint:* OAH withdrew this item.

18. *OAH's Service of Documents and Courtesy Copies:* DPALJ Kopec explained OAH's current practice is to serve all parties by U.S. mail. Courtesy copies are sent by fax and overnight delivery if a party does not have fax. OAH proposes serving by fax if it is available. If fax is not available, OAH proposes serving by U.S. mail, or as an alternative, overnight delivery, and sending a courtesy copy by email. If a party did not have email or fax, then OAH would use overnight delivery. Members and the public expressed a variety of concerns, including parties not receiving fax or email as a result of technical problems, and email not reaching the correct person due to staff turnover or email address changes.

19. *Public Comments:* A member of the public commented via email on the quorum requirement for joint Advisory Committee meetings. A member of the public voiced concern about inaccurate calendar information being posted on the website, and the difficulty reaching

calendar clerks by telephone. A member of the public commented about difficulty scheduling mediations. A member of the public complimented the work of the mediators who stepped in as necessary to help out. A member of the public requested information about resolution sessions.

20. *Tentative Date of Next Meeting:* The tentative date for the next meeting is Friday, October 5, 2012. Notice will be sent as soon as possible if an alternative date becomes necessary.

21. Meeting was adjourned.