

Are there structure changes to the committee that should be considered?

Proposed Recommendation:

- Tabled until January 2009 meeting.

How to ensure continuity when new members of the committee are selected.

Proposed Recommendation:

- Tabled until the January 2009 meeting.

How is the new calendaring system working? Any recommendations for changes to the calendaring system.

Proposed Recommendation:

- Recommendation for more training and review of calendar clerk work. Complaint is that there is a “revolving door” of clerks and their work is not being checked by a supervisor.
- Recommendation to reinstitute TSCs when the attorneys cannot agree on dates for a continuance. The general consensus is that the TSC could be scheduled in all cases for right after mediation and/or taken care of if the mediation is not successful.
- Committee asked that OAH obtain the details of the calendaring system used by Massachusetts for discussion in January
- Committee asked for OAH to provide a detailed explanation of the calendaring process that can be posted on the webpage and included in the parent manual
- Recommendation that the OAH calendar system be similar to that used by the California courts.
- Recommendation that TSCs should be scheduled for the final day of mediation so that parties can concentrate on resolving the case.

What is good cause for a continuance?

Proposed recommendation:

- The complaint raised from the committee is that in many instances joint requests for continuance are being denied. The committee recommended that only experienced judges rule on motions to continue.
- The committee also stated that there is not a universal understanding of what constitutes good cause for a continuance and a recommendation is made that OAH publish the good cause standard it is using.
- Another recommendation is to have a rationale for granting or denying a continuance included in the order. The feeling is that

the summary order (check box) form does not help parties figure out if they have good cause or not.

- Recommendation that all orders, including continuance orders be published on the webpage.
- Examples of recommendations that are good cause
 - When time is needed to obtain school district records
 - Joint agreement of the parties
 - Time needed to resolve through settlement
 - Use California rules of court standard

Question: Should hearings be recorded by Court reporters?

Proposed Recommendation:

- Agreement that it is very expensive to use court reports
- Request to determine whether or not the FTR system permits a playback of testimony and if so train the judges on how to use that function
- Committee requests OAH collect data on the number of recordings that are missing and report back in January
- Alternative suggestions are to
 - Advise parties they can record although not the official record
 - Have OAH institute a backup recording.
 - Download daily hearings to a thumb drive for the parties
 - Advise parents a copy of CD recording is available

Should hearings be set at a neutral location rather than the school district?

Proposed Recommendation:

- The general recommendation is that there need to be clear guidelines on the type of room that OAH requires and the process for requesting a change of location
- The committee did not recommend that the hearings be set at another location but rather that flexibility is key and OAH should remain flexible in determining requests to change locations.
- Parents would like OAH to ensure that wherever the hearing is located there is a private place for the parents to meet and confer with their attorney and/or witnesses

Should all PHCs be recorded?

Proposed Recommendation:

- The consensus of the committee is that all PHCs should be recorded

- Committee also recommended that with proper notice the parties should also be allowed to make their own recording of the PHC

How can OAH help unrepresented parents access witnesses?

Proposed recommendation:

- OAH should require civility between the parties and require witnesses that are available to be made available.
- Recommendation to include in the parent manual how to get and serve a subpoena
- Have the issue of making witnesses available addressed by the Judge at the PHC
- A recommendation was made that OAH compel districts to make their employees available as witnesses for hearing.

Should there be an etiquette/decorum policy for participants?

Proposed Recommendation:

- Recommendation that OAH adopt a civility/Decorum policy similar to that issued by the Northern District of California and that contained in the APA
- Recommend that PHC orders include rules of civility and decorum.

What exhibit tab designations should be the standardized model?

Proposed Recommendation:

- Recommendation is that OAH adopt a rule that all tabs should be numbered tabs with a designation of "S" for student exhibits and "D" for District exhibits

Recommendations related to introduction of evidence at hearing

Proposed recommendation:

- Recommendation that OAH adopt a policy that all of the exhibits are admitted at the start of the hearing rather than having to admit each item individually. Where there is an objection to an exhibit that objection is raised when that document is discussed at the hearing. An alternative would be to admit only those that are not opposed.
- A recommendation was also made that OAH impose a meet and confer requirement for exhibits

What should be the process for Subpoena Duces Tecums served well in advance of the hearing since no discovery is permitted?

Proposed Recommendation:

- Recommendation is that OAH have an application process for SDTs that requires parties to demonstrate the necessity of a subpoena rather than allowing parties to fill out and issue themselves.
- Committee would like OAH and CDE to explain the jurisdictional issues related to school records and how those issues are being handled

What NOI standard should be used?

Proposed recommendation:

- OAH should use a consistent standard when determining whether a student or district filed complaint is sufficient. If students are required to provide detailed facts about why violations of the IDEA exist, districts should also be required to provide details as to why the proposed IEP is appropriate.
- Recommendation that the standard for pleadings be identified in the parent handbook along with the standard for reviewing NOIs
- Recommendation that all NOI rulings be made by the most experienced judges
- Recommendation that the standard used by OAH be “leveled down”. Complaint is that OAH is too stringent in determining NOIs.

Who should be served in a district filed complaint – student or attorney?

Proposed recommendation:

- OAH should refuse to accept any due process complaint which does not have a proof of service
- The timelines for hearing etc. should not commence until a due process complaint is properly served
- Recommendation that the issue of service should be addressed in the parent handbook

What recommendations to improve ALJ and Mediator Training can be made?

Proposed Recommendation:

- Recommendation that all trainings should include both perspectives to avoid bias.
- Recommend that judges receive training on the difference between intensive and non-intensive needs
- Recommendation that ALJs be required to pass a test designed by the committee before they can hear a case

- Recommendation that the OAH website include all of the training ALJs have received.
- Recommendation that an outside entity evaluate the training provided to ALJs
- Recommendation that ALJs attend IEP meetings to see the process. Waivers could be obtained from parents and ALJ would be conflicted from hearing the case if one was filed.

Should the criteria used to be included on the list of attorneys/advocates be changed?

Proposed recommendation:

- Recommendation that OAH revise the form to add a box for “free or low cost” with a disclaimer to call attorney to determine what that means.

What recommendations for improvement/changes to the OAH web-based search engine can be made?

Proposed Recommendation:

- Recommendation to improve the web search engine. Preference is to have drop down menus to make the search function easier
- Recommend that SE cases have their own search engine rather than being mixed with all OAH decisions.
- Include all orders on the website
- Ensure that forms are available in the 5 common languages
- There should be a way to research key phrases so that the search yields relevant results

When should translations of forms, decisions, orders be made available?

Proposed Recommendation:

- OAH should ensure that orders are made available in the native language both orally and in writing as soon as they are issued.

Should a pamphlet be created that can be distributed to parents at IEPs?

Proposed Recommendation:

- Pamphlet is being designed to provide to parents upon request that will also be sent out to school districts and other educational agencies for parents. Pamphlet will be completed no later than July 2009.

Should there be a separate core of mediators and ALJs?

Proposed recommendation:

- Recommendation was split. However, the majority requested that OAH should adopt a system keeping separate the ALJs from the mediators.
- Recommendation that mediators could rotate six months as an ALJ and 6 months as a mediator.
- Recommendation that OAH contract with known mediators (such as Marian McClean or Elaine Talley) to identify a skills test for mediators.
- Recommendation that OAH have a better vetting process for identifying the ALJs mediator skills

Concerns over sufficient staffing

Proposed Recommendation:

- OAH explained that staff are allocated statewide and regardless of the number of judges assigned to a particular office, there are sufficient judges to address all of the statewide calendaring needs.

OTHER

1. **Status of Joint legislative Audit** – The audit is still in the data collection phase. At last report, a report was to issued sometime in December.
2. **How are parents notified of the advisory meeting** – Notice of the meeting is posted on the OAH website and sent to anyone in the public who has requested notice. Suggesting was made that the agenda be published at least 2 weeks in advance.
3. **Can Transcripts be made available on disk as well as paper?** – OAH will research and report back in January
4. **Question for CDE** – is CDE going to independently monitor compliance with OAH decisions or will CDE restrict its follow-up to the four corners of the OAH order? CDE responded that it will follow up on the actual order. However, if they see a pattern of non-compliance they can act further

NEXT MEETING PROPOSED DATE: January 26, 2009