

OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
RESPONSE TO ADVISORY COMMITTEE
RECOMMENDATIONS FROM JUNE 2021 MEETING

The recommendations identified below were put forth by the Special Education Advisory Committee at the June 18, 2021 meeting. Each recommendation was offered in relation to an agenda item the Committee discussed, public comment was offered, and the Committee voted to move the recommendation to OAH for response. For each recommendation, the last name of the recommending committee member is identified, as well as the last name of the seconding member. The "outcome" identifies whether the Committee's vote passed or failed to move the recommendation to OAH for response.

AGENDA ITEM 15: RECOMMENDATION

Recommendation by SADASIVAM: That OAH post advisory meeting transcripts on its website within 30 days of the meeting. **Second:** GROSNER. **Outcome:** Passes.

AGENDA ITEM 15: OAH RESPONSE

OAH Response: OAH does not accept this recommendation. OAH cannot commit to this timeline because OAH uses an outside vendor to provide the written transcripts of Advisory Committee meetings. OAH will commit to timely sending the request for transcription to the vendor and to timely post the transcript once approved.

AGENDA ITEM 16: RECOMMENDATION

Recommendation by SENIGAR: That OAH provide members of the public an opportunity to make verbal comment at the end of each Advisory Committee meeting, not to exceed three minutes per person. **Second:** SANDOVAL **Outcome:** Passes.

AGENDA ITEM 16: OAH RESPONSE

OAH Response: This recommendation is accepted as to the opportunity for the public to make verbal comments at the end of an Advisory Committee meeting, although implementation will be delayed because the current videoconference platform, Microsoft Teams, will not allow verbal comment from members of the public. Advisory Committee meetings have historically invited verbal public comment for items not on the agenda at the end of the Advisory Committee meetings. OAH currently takes public comment for items not on the agenda in writing and the comments are read by OAH personnel. OAH is currently working to ensure that verbal public comment will again be part of Advisory Committee meetings and hopes to have the technology to allow this soon.

This recommendation is declined as to the allowance of three minutes per speaker. OAH is pleased that public attendance via videoconverence has substantially increased the number of participants that are able to attend Advisory Committee meetings. However, in order to provide the opportunity for verbal public comment to a greater number of participants and complete the meeting within the reasonable amount of time scheduled, OAH will need to adjust the amount of time allocated for each speaker depending upon the number of speakers at that particular Advisory Committee meeting.

AGENDA ITEM 17: RECOMMENDATION

Recommendation by SCHWARTZ: That OAH wait three business days before issuing an order on a non-urgent motion in accordance with its policy posted online, unless the responding party has filed a response earlier than the expiration of the three business days. **Second:** HOOKS **Outcome:** Passes.

AGENDA ITEM 17: OAH RESPONSE

OAH Response: OAH does not accept the recommendation. While OAH will generally allow three business days for the other party to respond to a motion before issuing an order, there are some situations where an order may need be issued earlier. Examples of this are orders where no response is required and orders that are time-sensitive.

AGENDA ITEM 18: RECOMMENDATION

Recommendation by SCHWARTZ: That OAH make half-day mediations available in all cases if requested by all parties. **Second:** MENYUK **Outcome:** Passes.

AGENDA ITEM 18: OAH RESPONSE

OAH Response: OAH accepts this recommendation. Beginning January 1, 2022, parties will have the option to request a full day mediation (9:00 am until 4:30 pm), a morning mediation (9:00 am until 12:30 pm), or an afternoon mediation (1:30 pm until 5:00 pm). As with all mediation requests, OAH may deny a requested date and time if no mediator is available. The optional OAH forms for mediation requests, website information and scheduling orders will be updated to reflect this change. This applies to requests for mediations filed on and after January 1, 2022. This does not apply to

requests filed before January 1, 2022, even if the date requested for mediation is after January 1, 2022.

AGENDA ITEM 19: RECOMMENDATION

Recommendation by SCHWARTZ: That OAH assign an ALJ to a case as soon as a due process case has been filed to handle all rulings and matters through hearing. Nothing in this recommendation shall prevent parties from exercising their peremptory challenges timely. **Second:** HOOKS **Outcome:** Fails.

AGENDA ITEM 19: OAH RESPONSE

No response to agenda item 19 is required because the recommendation did not pass.

AGENDA ITEM 20

RECOMMENDATION 20A

Recommendation 20A by SCHWARTZ: That OAH establish a procedure to bifurcate jurisdictional issues from substantive issues two to three weeks before the due process hearing on substantive issues. **Second:** HOOKS **Outcome:** Fails

AGENDA ITEM 20A: OAH RESPONSE

No response to agenda item 20A is required because the recommendation did not pass.

RECOMMENDATION 20B

Recommendation 20B by CHRISTY: That OAH collect the following data, separated by type of jurisdictional issue (statute of limitations, residency requirement, etc.) **Second:** SCHWARTZ **Outcome:** Passes.

1. The number of times parties have filed a motion to bifurcate a due process hearing.
 - a. Of this number, the number of times OAH has granted the motion to bifurcate. OAH shall specify:
 - i. The number of times the motion was granted as a law and motion ruling on a filed motion
 - ii. The number of times the motion was granted at hearing.
 - b. The number of times OAH has denied the motion to bifurcate.
2. For motions to bifurcate based on a challenge to the statute of limitations, the number of times the moving party successfully challenged the statute of limitations, and the number of times the moving party was unsuccessful in challenging the statute of limitations.

AGENDA ITEM 20B: OAH RESPONSE

OAH Response: OAH declines to accept this recommendation. OAH is required by statute, regulation and inter-agency agreement with the California Department of Education to keep specific data and provide that data quarterly. These reports are made available on OAH's website for the public. The requested information on bifurcated cases is not a part of the data OAH is mandated to collect. OAH's current case management system does not have the ability to track this additional information, and OAH does not have the staffing capability for manual tracking.

AGENDA ITEM 21: RECOMMENDATION

Recommendation by GROSNER: That OAH sponsor or support legislation giving OAH authority to request verification from districts that they have authority to file a due process case. **Second:** SENIGAR **Outcome:** Passes.

AGENDA ITEM 21: OAH RESPONSE

OAH Response: OAH declines to accept this recommendation. As an independent quasi-judicial agency, OAH does not support or sponsor any legislation.