

OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
ADVISORY COMMITTEE

SUMMARY OF OCTOBER 2020 COMMITTEE MEETING

WELCOME

Introductions by Division Chief Administrative Law Judge Margaret "Peggy" Gibson and Deputy Director and Assistant Chief Administrative Law Judge Bob Varma.

Administrative Law Judges are often referred to as ALJs. The Office of Administrative Hearings is often referred to as OAH.

CHANGE TO AGENDA ORDER

Proposal by Division Chief ALJ Peggy Gibson to modify agenda order by moving agenda item five: introduction of committee members to agenda item four so that the introduction of committee members would precede the selection of chair for the agenda collectors. No objections from the committee.

EXPLANATION OF MEETING FORMAT

Meeting format explained as occurring by livestream of a Microsoft Teams meeting. Committee members instructed to use the "raise hand" feature of Teams to indicate desire to comment at any time. Members informed if "raise hand" feature appears to not be functioning properly can also get attention by raising physical hand to be seen on their video feed. Discussion amongst committee members occurs first, then agenda items opened to public comment via livestream comment feature. Time delay in broadcast to livestream described and to be accounted for in the pause after each agenda

to allow for livestream delay to “catch up” and allow for public comment to be included for the relevant agenda items.

OVERVIEW OF THE COMMITTEE MEETING PROCESS

Discussion, vote counting process and recommendation requirements explained.

INTRODUCTION OF COMMITTEE MEMBERS

Committee members in attendance for northern California: Rochelle Hooks, Danielle Christy, Elizabeth Schwartz, Paula Senigar, and Ramaah Sadasivam - quorum established. Northern California Committee Member Meghan Magee absent. Committee members in attendance for southern California: Dr. Aileen Herlinda Sandoval, Elaine Kooima, Eric Menyuk, Lindsey Steinholt, Marianne Grosner, and Victor Duran - quorum established.

SELECTION OF CHAIR FOR AGENDA COLLECTOR

Member Marianne Grosner volunteered as the southern California chair and Rochelle Hooks volunteered as the northern California chair for the collection of the agenda items for the June 2021 Committee Meeting.

INTRODUCTION OF INTERPRETERS AND OAH STAFF

No interpreters requested for the meeting.

OAH staff in attendance: Presiding ALJ Marian Tully, Presiding ALJ Peter Paul Castillo, Anna Brown, Laura Gutierrez, and Asa Standfeldt.

DISCUSSION OF MEMBER TERMS

No current openings. Committee members in attendance serving until June 2022 meeting. Expectations of members reviewed.

AGENDA ITEM #12: REVIEW OF JUNE 2020 RESPONSES TO RECOMMENDATIONS

June 2020 recommendation: That OAH request verification from districts to ensure that they actually have standing to participate in due process and that the case has been approved by the school board as the Brown Act requires. OAH Response: OAH rejects this recommendation. OAH has limited jurisdiction. A local educational agency such as a school district is entitled to file a request for due process. Similarly, a parent or student may file a due process complaint against a school district. OAH has no authority or responsibility to look behind the complaint to determine if a governing board has authorized the prosecution or defense of a due process filing. Whether a school district has complied with state law regarding open meetings or the Education Code regarding the duties and responsibilities of governing boards is not within OAH's jurisdiction. Committee discussed and public comment heard.

Member Grosner recommended OAH reconsider its response to the June 2020 recommendation. Member Kooima seconded. Northern Committee voted: two for yes and three for no. Southern Committee voted: five for yes and one for no. OAH will respond to this recommendation.

AGENDA ITEM #13: TIMING OF SUBMISSION OF AGENDA ITEMS

OAH proposed change to submission dates from October 1st and June 1st to September 15th and May 15th respectively to allow for review and accessibility compliance processing. Committee discussed and no public comment submitted for this item.

Member Sadasivam recommended OAH consider changing the time of submission for Advisory Committee agenda items to May 25 for the June 2021 meeting, and September 25 for the October 2021 meeting. Member Menyuk seconded. Unanimous votes for yes. OAH will respond to this recommendation.

AGENDA ITEM #14: TIMING AND FORMAT OF REVIEW OF PROPOSED COMMITTEE PROCEDURE CHANGES

Proposed procedures changes to be discussed in an Advisory Committee Meeting be sent to the Committee members and posted to the OAH website with the agenda 10 business days before the meeting. Committee discussed and public comment heard.

Member Sadasivam recommended OAH consider requiring any proposed procedure changes to be discussed at an Advisory Committee meeting be sent to the committee members with the agenda 10 business days before the meeting, and that the proposals be posted with the agenda on OAH's website. Member Schwartz seconded. Unanimous votes for yes. OAH will respond to this recommendation.

AGENDA ITEM #15: VIDEOCONFERENCE HEARINGS AND MEDIATIONS

Case filings and events held data for the March 1st through September 30th timeframe presented. Electronic evidence management program, CaseLines, implemented. OAH is in the process of planning and implementing "Self-Help" center to be available to the public to facilitate participation in the virtual hearings and mediations

process. OAH also planning for possible livestream of hearing options to facilitate open hearing options in real-time rather than providing recording of the hearing at request following completion of the hearing. Committee discussed and public comment heard.

AGENDA ITEM #16: MEDIATION PROCESS FOR COMPLIANCE COMPLAINT MEDIATIONS

In July 2020, CDE contracted to have the OAH Special Education Division to conduct mediations between people who file compliance complaints against local education agencies with CDE. Mediation requests must be submitted by party to CDE, which are then provided to OAH to open the case and schedule the mediation. Mediations are held on half-day and full-day basis at the request of the parties. Parties agree upon and provide mediation dates between 14 and 30 days from the date of request for mediation and OAH schedules a mediation for the requested date. Issue resolution status is reported to CDE following the mediation. Committee discussed and no public comment submitted for this item.

AGENDA ITEM #17: COMPLAINT PROCESS ISSUE REGARDING OAH OR AN ALJ

Three types of "complaints" identified: a) Complaints when there is an active case for issues that arise in the case; b) Complaints after a case is concluded; and c) General concerns or questions. Ex parte communication and judicial authority were explained as applicable to this item. Feedback opportunities on mediation and hearing surveys explained. Committee discussed and public comment heard.

Member Grosner recommended OAH consider providing on its website the process for making complaints against ALJs as outlined by Advisory Committee Agenda. Member Menyuk seconded. Unanimous votes for yes. OAH will respond to this recommendation.

Member Senegar recommended OAH consider providing ALJs training on implicit bias faced by African American students with disabilities and their families. Member Menyuk seconded. Unanimous votes for yes. OAH will respond to this recommendation.

AGENDA ITEM #18: PREVAILING PARTY DECISION STATISTICS AND IDENTIFICATION AND ELIMINATION OF BIAS

Prevailing party statistics reviewed and explained pertaining to district, student and split determinations. Typical issue distribution among cases types explained. Statutory and interagency agreement reporting requirements identified.

Member Menyuk recommended OAH consider posting on its website, on a quarterly basis, its Interagency Agreement Data Report and Quarterly Report. Member Sadasivam seconded. Unanimous votes for yes. OAH will respond to this recommendation.

AGENDA ITEM #19: APPLICATION OF ETHICAL STANDARDS TO PROFESSIONAL WITNESSES

Appearance of vulnerability and potential conflict of interests for witnesses explained. OAH scope of jurisdiction clarified. Committee discussed and public comment heard.

PUBLIC COMMENT

All general comments submitted heard.