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California State Senate

SENATOR
LOU CORREA
THIRTY-FOURTH SENATE DISTRICT



February 15, 2008

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Honorable Nell Soto, Chairwoman,
Joint Legislative Audit Committee
1020 N Street, Room 107
Sacramento, CA 95814

RE: Audit Request for the Special Education Division of the CA Office of Administrative Hearings

Dear Chairwoman Soto,

It has come to my attention through parents and other concerned individuals that there may be serious problems with how the California Office of Administrative Hearings (OAH) has conducted its operations since taking over the special education administrative hearing process. OAH started conducting special education administrative hearings July 1, 2005 and special education mediations starting January 1, 2006. Previously, both processes were operated by the Special Education Hearing Office (SEHO) at McGeorge School of Law.

I am urging you to please review the following list of concerns that have been brought to my attention I believe that an independent investigation of the OAH special education division is urgently needed to inquire about and subsequently address the following:

Concerns:

1. Oversight and Fairness

- a. Parents have been increasingly frustrated that the California Department of Education (CDE) is not adequately providing necessary oversight over OAH and believe that the system should be more closely scrutinized.
- b. There are questions as to OAH's ability to conduct fair and unbiased hearings. In particular, many parents of children with disabilities believe that OAH's decisions in special education issues have been disproportionately skewed in favor of the school districts. There has been a dramatic shift in hearing outcomes since OAH was granted its contract.

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- c. Participants in special education hearings from both sides have asserted that OAH's rules are inconsistently applied among its administrative law judges and throughout the state. OAH has not managed to conduct hearings in a fair and timely manner.
- d. Legislative oversight as well as transparency to the public has been hampered by gaps in OAH's reports regarding their activities.

2. Problematic Use of Funds

- a. Although OAH obtained the special education contract based on claims it would be more cost-effective, it has repeatedly sought and received supplemental appropriations. It is not clear whether the funds allocated have been appropriately or effectively utilized.
- b. OAH switched to a more expensive mediation system whereby mediators must be attorneys (some are regular administrative law judges and others are pro tem judges solely providing mediation services). Previously, under SEHO, mediators were trained professionals, in many cases educators who were committed to the special education mediation process, but many of them were not attorneys. This switch to a more costly system has been accompanied by a declining success rate for mediations, throwing more cases into costly hearings.
- c. OAH has introduced prehearing conferences and other additional costly, legalistic processes. These hurdles not only cost more for the state to administer, but for both parents and districts to navigate.

3. Efficacy

- a. Settlements have dropped dramatically under OAH's authority.
- b. Costly appeals to federal and state courts appear to have become far more common, as decisions are rendered which not only leave one or both sides very dissatisfied but which are also written in ways which parties believe create strong prospects for reversal.
- c. The overly legalistic processes that OAH has implemented have not proven to be more effective at resolving disputes and quickly ensuring that special needs students get appropriate services. Whereas school districts often used to use their own staff for mediations and hearings, they now almost invariably hire outside counsel or refer cases to their growing legal staffs. Parents find that fewer lawyers are handling special education matters, and they are charging more because of the increased cost of the process.

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- d. There are concerns that OAH hearing officers are not being properly trained. This is reportedly resulting in problematic hearing decisions and a dramatically increased number of appeals from administrative decisions to federal and state courts.
- c. OAH appears to have had significant difficulties filling positions and retaining staff, and indeed to have decided to use temporary appointees for many of its special education responsibilities, all of which are problematic for a system that is entrusted with conducting fair and timely hearings.
- f. Problems with special education adjudications are reportedly adversely affecting the timeliness and quality of the agency's decision making in other areas, including regional center hearings which affect many of the same individuals and families as special education cases.

Objectives of Audit

1. Determine whether adequate oversight is being provided to OAH by CDE.
2. Determine whether the funds allocated to OAH are being properly used and allocated and whether restoring the pre-2006 system of independent mediation would save money and improve outcomes.
3. Determine the efficacy of the OAH in special education due process and mediation cases and make recommendations with respect to future provisions of special education mediation and adjudication functions.

Scope of Audit

The scope of the audit should only encompass the Special Education Division of the Office of Administrative Hearings and CDE's monitoring thereof; there may be some peripheral attention to the impact of the special education workload on OAH's handling of other cases.

Families and advocates have been requesting since spring 2005 that the legislature consider their concerns regarding the proposal to transfer special education mediations and hearings to the Office of Administrative Hearings. We are now almost three years into the transition, and OAH's agreement with CDE is up for renewal. It is critical that the legislature investigate the functioning of a system which shapes the quality of educational services for approximately 1/10 of students, and which indirectly affects the educational programs of many other students and the well-being of millions of Californians.

- *Audit Request for the Special Education Division of the CA Office of Administrative Hearings continued.*

In particular, the outcome of many of these hearings may affect the future of many special needs children whose education and future is dependent upon the results of those hearings. An examination of the practices of OAH and their system as a whole is critical in securing the due process rights of the citizens of California.

Thank you for your consideration of this request. If you have questions, I will be happy to speak with you and to put you in touch with people and organizations which can provide additional information.

Sincerely,



LOU CORREA
Senator, 34th District