

California Department of Education:

Although It Generally Provides Appropriate Oversight of the
Special Education Hearings and Mediations Process, a Few Areas
Could Be Improved

December 2008 Report 2008-109

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The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the administration of, and processes used for, hearings held by the Office of Administrative Hearings (Administrative Hearings) and the California Department of Education's (Education) role within the process. Specifically, the report addresses how Administrative Hearings has conducted its operations since taking over the special education hearing process from the University of the Pacific's McGeorge School of Law (McGeorge) during fiscal year 2005-06.

This report concludes that when we compared the costs incurred by McGeorge to conduct hearings and mediations to the costs incurred by Administrative Hearings, we found that the average cost per case closed had increased by 14 percent since Administrative Hearings began managing the hearings and mediations process. We also found that the average time McGeorge took to close cases was 185 days, whereas, Administrative Hearings took an average of 118 days. Moreover, the number of cases closed before administrative law judges issued a hearing decision has not changed significantly since the years when McGeorge administered the hearings and mediations. We also found that when reviewing the outcomes of hearing decisions issued by McGeorge and Administrative Hearings over the last six years, McGeorge's data show that during the earlier two years it issued decisions in favor of students more often than did Administrative Hearings. However, by fiscal year 2004-05 McGeorge's decisions favoring students had decreased to a level that more closely matches the data for all three years that Administrative Hearings has overseen the process. Further, for the six years covered in our review, we could not determine the total number and costs of hearing decisions that students or school districts appealed to higher courts because neither Education nor any other entity consistently or completely tracks this information nor do laws require them to do so.

Our review also found that Education has established standards that Administrative Hearings must follow when administering the special education hearings and mediations process. We observed that, in general, Education appropriately oversees Administrative Hearings' execution of its interagency agreement with Education; however, it could tighten its oversight of Administrative Hearings in a couple of areas. Specifically, our review of one of Administrative Hearing's quarterly reports for each fiscal year between 2005-06 and 2007-08 found that it had not consistently included in these reports 10 items that the interagency agreement requires. Additionally, Education has not taken the steps to verify that Administrative Hearings ensures its administrative judges receive the training required by state law and the interagency agreement. Finally, our audit also revealed that Administrative Hearings has not always issued hearing decisions within the legally required time frame, which could potentially lead to sanctions by the federal government and affect special education funding for the State.

Respectfully submitted,



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Summary

Results in Brief

About three years ago, during fiscal year 2005–06, the Office of Administrative Hearings (Administrative Hearings) in the Department of General Services assumed responsibility for hearings and mediations related to the federal Individuals with Disabilities Education Act (IDEA). Until December 2005, the University of the Pacific’s McGeorge School of Law (McGeorge) administered these cases under a series of contracts with the California Department of Education (Education). Our limited comparison of selected performance measures found that the average costs per case closed have increased since Administrative Hearings took over the hearings and mediations process. On the other hand, the average time required to complete the process has decreased, while the number of cases closed before administrative law judges (administrative judges) issue hearing decisions has not changed significantly. In addition, Education has established standards that Administrative Hearings should follow when managing the hearings and mediations process. We also observed that in general, Education oversees Administrative Hearings’ execution of its interagency agreement appropriately; however, Education could improve its oversight in a few areas to ensure that Administrative Hearings is meeting Education’s established standards.

The U.S. Congress first passed the IDEA to ensure that all children with special needs receive a “free appropriate public education” that emphasizes special education and related services designed to meet each child’s unique needs. IDEA contains certain procedural safeguards, including those giving school districts¹ and parents the opportunity to present complaints about any matter related to a disabled student’s education. Under certain conditions and upon presentation of a complaint, a parent, guardian, or school district is entitled to a due process hearing before an impartial hearing officer.

State law requires Education to enter into an interagency agreement with another state agency or to contract with a nonprofit entity to conduct mediation conferences and due process hearings for special education cases. Between 1989 and December 31, 2005, Education contracted with McGeorge to conduct and administer due process hearings and mediations in California. Toward the end of its last two contracts with McGeorge, Education entered into a three-year

¹ The federal IDEA refers to “local educational agencies,” which, by definition, include school districts and county offices of education. However, because the majority of complaints involve school districts, we use school districts in place of local educational agencies throughout the report.

Audit Highlights . . .

Our review of the California Department of Education’s (Education) oversight of the special education hearings and mediations process revealed that:

- » *The average cost per case closed has increased by 14 percent since the Office of Administrative Hearings (Administrative Hearings) took over the hearings and mediations process.*
- » *The average time the University of the Pacific’s McGeorge School of Law took to close cases was 185 days, whereas, Administrative Hearings took an average of 118 days.*
- » *Neither Education nor any other entity tracks the total number and cost of appealed hearing decisions.*
- » *Education could improve its oversight to ensure Administrative Hearings is meeting established standards called for in its interagency agreement.*
- » *Administrative Hearings did not consistently include 10 items, required by the interagency agreement, in its quarterly reports to Education—seven of these items are also required by state law and five of these items must be reported annually to the federal government.*
- » *Administrative Hearings was unable to provide documentation demonstrating that its administrative law judges receive all the training required by state law and the interagency agreement.*
- » *Administrative Hearings has not always issued hearing decisions within the legally required time frame, which could potentially lead to sanctions by the federal government.*

interagency agreement with Administrative Hearings, which took over the management of the due process hearings as of June 1, 2005, and the mediations as of January 1, 2006.

During the course of our audit, we compared various facets of McGeorge's and Administrative Hearings' management of hearings and mediations related to special education. When we compared the costs incurred by McGeorge to conduct hearings and mediations to the costs incurred by Administrative Hearings, we found that the average cost per case closed had increased by 14 percent since Administrative Hearings began managing the hearings and mediations process. Specifically, the average cost per case under the McGeorge contract was \$2,867; under the Administrative Hearings interagency agreement, the average cost per case was \$3,272.

In addition to reviewing costs, we compared other factors, such as the average time that McGeorge and Administrative Hearings took to complete the hearings and mediations process and the number of cases closed before administrative judges issued hearing decisions. For example, we found that the average time McGeorge took to close cases was 185 days, whereas Administrative Hearings took an average of 118 days to close cases. When we compared the number of cases closed before administrative judges issued hearing decisions, we found only minimal differences between McGeorge and Administrative Hearings. We also found, when reviewing the outcomes of hearing decisions issued by McGeorge and Administrative Hearings over the last six years, McGeorge's data show that during the first two years, it issued decisions in favor of students more often than did Administrative Hearings. However, by fiscal year 2004–05 McGeorge's decisions favoring students had decreased to a level that more closely matches the data for all three years that Administrative Hearings has overseen the process. Further, for the six years covered in our review, we could not determine the total number and cost of hearing decisions that students or school districts appealed to higher courts because neither Education nor any other entity consistently or completely tracks this information, nor do laws require them to do so.

Our review also found that Education has established standards for Administrative Hearings to follow when it manages the hearings and mediations process and that in general, Education appropriately oversees Administrative Hearings' execution of its interagency agreement through a number of means. Nonetheless, Education could improve its oversight in a couple of areas to ensure that Administrative Hearings always meets the standards. More specifically, our review of one of Administrative Hearings' quarterly reports for each fiscal year between 2005–06 and 2007–08 found

that it had not consistently included in these reports 10 items that the interagency agreement requires. By not ensuring that Administrative Hearings is consistently including all required information in its quarterly reports, Education is unable to review the information as part of its oversight activities, and it is not ensuring that Administrative Hearings complies with the reporting requirements of its interagency agreement and state law.

According to Education, it was aware that Administrative Hearings was not including all the required information in its quarterly reports, and we found some evidence that staff from Education and Administrative Hearings discussed this issue during monthly meetings involving both agencies. In September 2008 the presiding administrative judge for Administrative Hearings indicated that Administrative Hearings has modified the database to include the missing information, beginning with the first quarterly report for fiscal year 2008–09. However, when we later reviewed its first quarterly report, we found that Administrative Hearings was still missing one of the 10 items. It was not until we informed Administrative Hearings that the quarterly report was still missing one item that it amended the quarterly report to include all the required items on November 13, 2008.

Our review of Administrative Hearings' new database—Practice Manager—found that the data were inaccurate or missing in certain fields. Specifically, our review of a sample of 29 closed cases found that the reason-for-closure field was inaccurate for one and missing for another. Additionally, for three cases, one of the following fields were inaccurate: closed within the legally required time frame, case-closed date, and case-opened date. According to Administrative Hearings, it uses these fields to compile certain data that it includes in the quarterly reports it submits to Education. When Administrative Hearings does not ensure that the data its staff enter into these fields are accurate and complete, it cannot ensure that it is accurately reporting all required data to Education in accordance with the law and the interagency agreement, and Education cannot ensure that it is reporting accurate information to the federal government.

Additionally, Education has not taken steps to verify that Administrative Hearings is ensuring that its administrative judges receive all the training required by state law and the interagency agreement. Administrative Hearings has reported to Education that its administrative judges have participated in the required training. However, when we selected 15 administrative judges and attempted to verify that they had taken two classes listed in Administrative Hearings' report, we found that Administrative Hearings could not always demonstrate that all 15 had in fact taken the two courses.

Finally, our audit revealed that Administrative Hearings has not always issued hearing decisions within the legally required time frame. For example, Administrative Hearings reported that it issued only 29 percent and 57 percent of its decisions on time in the third and fourth quarters of fiscal year 2005–06, respectively, and it issued on-time decisions 72 percent of the time in the first quarter of fiscal year 2006–07. The types of noncompliance related to timeliness of decisions could potentially lead to sanctions by the federal government and affect special education funding for the State. Our review found that Education was aware of this issue and that it has been actively monitoring the timeliness of Administrative Hearings' decisions to promote improvement.

Recommendations

To ensure that Administrative Hearings complies with state and federal laws, as well as with the specifications in its interagency agreement, Education, in its oversight role, should do the following:

- Continue to work with Administrative Hearings to ensure that it reports all the required information in its quarterly reports and that its database contains accurate and complete information.
- Require Administrative Hearings to maintain sufficient documentation showing that its administrative judges have received the required training and review these records periodically to ensure that Administrative Hearings complies with the training requirements.
- Continue to monitor Administrative Hearings to ensure that it consistently issues hearing decisions within the timeline established in federal regulations and state law so that Education is not exposed to possible federal sanctions.

Agency Comments

Education indicated that it is continuing to work with Administrative Hearings to address two of our recommendations. In addition, Education stated that it plans to conduct periodic reviews of training records to address the third recommendation. Administrative Hearings also agreed to take appropriate actions to address the areas for improvement identified in the report related to its operations.

Introduction

Background

According to the California Department of Education (Education), as of December 2007, just under 680,000 children were enrolled in special education programs in California schools. These students ranged in age from birth to 22 years old, and they had disabilities that included speech or language impairments, autism, and specific learning disabilities. Both federal law and laws in the State of California (State) specify that disabled students have specific educational rights. The federal Individuals with Disabilities Education Act (IDEA) was enacted to ensure that all children with disabilities have access to a “free appropriate public education,” emphasizing special education and related services designed to meet their unique needs. Congress significantly amended, or reauthorized, IDEA in December 2004, with most of the provisions arising from the amendment becoming effective July 2005.

IDEA requires states and local governments receiving certain federal funds to establish, among other things, certain procedural safeguards that meet requirements specified in federal law to ensure that children with disabilities receive a free appropriate public education. The law specifically requires state and local governments to establish the procedures by which a school district,² the parents of a special education student, or—in certain cases—a person assigned to act as a surrogate for such parents can present a complaint related to the disabled student’s education. The parties may resolve a complaint through voluntary mediation before a qualified, trained, and impartial mediator. During mediation, which is paid for by the State, the parties discuss the complaint and attempt to resolve it informally before proceeding to a formal due process hearing. Either party may also initiate a more formal resolution process by requesting an impartial due process hearing. According to the Office of Administrative Hearings (Administrative Hearings) in the Department of General Services (General Services), a due process hearing is a trial-like proceeding in which all parties have the opportunity to present evidence and arguments before an administrative law judge (administrative judge) issues a written decision resolving the issues presented in favor of one party or the other. Although both school districts and parents

² The federal IDEA refers to “local educational agencies,” which, by definition, include school districts and county offices of education. However, because the majority of complaints involve school districts, we use school districts in place of local educational agencies throughout the report.

may avail themselves of IDEA's procedures for mediations and due process hearings, as a practical matter, parents initiate most mediation and hearing requests.

The federal law also requires state compliance in order for the State to receive certain federal funds for the purpose of providing special education and related services to disabled children. The State has elected to receive those federal funds and has therefore adopted procedures consistent with IDEA. Accordingly, federal and state laws and regulations govern the State's hearings and mediations process for special education cases, and the State's special education laws parallel much of the federal law. State law also requires Education to enter into a contract with a nonprofit entity or an interagency agreement with another state agency to administer the hearings and mediations process for special education cases. Between 1989 and December 2005, Education contracted with the University of the Pacific's McGeorge School of Law (McGeorge) for those services. However, after a union challenged Education's contract with McGeorge on the grounds that under the California Constitution the work should be performed by civil servants, the State Personnel Board approved the challenged contract but strongly indicated that it would not approve future contracts, except under very limited circumstances. Ultimately, in June 2005, Education entered into an interagency agreement with Administrative Hearings to oversee the hearings and mediations process for special education cases.

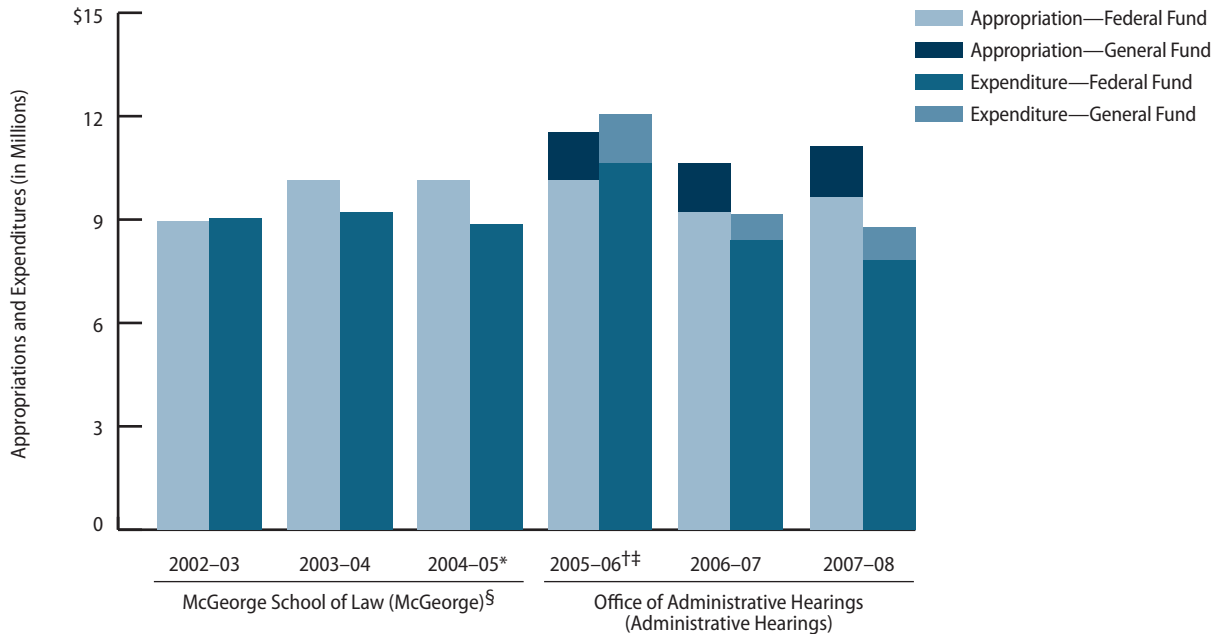
Funding for Special Education Hearings and Mediations

Federal money is the primary source of funding for the due process hearings and mediations that resolve California's special education complaints. The Federal Trust Fund (Federal Fund) contains the funds that the State receives from the federal government to pay for special education hearings and mediations. When necessary, the State's General Fund provides additional funding for this purpose. Figure 1 shows the General Fund and Federal Fund appropriations for fiscal years 2002-03 through 2007-08, the years we reviewed, as well as the actual expenditures incurred by McGeorge and Administrative Hearings under those appropriations.

As Figure 1 indicates, for fiscal years 2002-03 through 2004-05, the Federal Fund provided 100 percent of the funding for the hearings and mediations process for special education cases. However, during fiscal years 2005-06 through 2007-08, the Legislature appropriated through the General Fund approximately 13 percent of the funding for special education hearings and mediations. According to a manager within its special education division, this change in the source of funding was the result of Education's decision regarding how it budgets its federal support funds for special education.

She also indicated that, if the agency determines that the special education grant has insufficient funding to cover all necessary areas of expenditure, including the costs associated with its interagency agreement with Administrative Hearings, Education then requests the difference as a General Fund augmentation. Such a situation occurred during each of the last three fiscal years.

Figure 1
Total Appropriations and Expenditures for the Hearings and Mediations Process
Fiscal Years 2002–03 Through 2007–08



Sources: The Department of Finance’s final budget summaries and the invoices from McGeorge and Administrative Hearings for fiscal years 2002–03 through 2007–08.

* The interagency agreement between Administrative Hearings and the California Department of Education (Education) began on June 1, 2005. During June 2005 Administrative Hearings spent about \$117,000 of the total \$9 million in Federal Trust Fund (Federal Fund) expenditures.

† Funding for fiscal year 2005–06 includes a one-time \$1.4 million appropriation from fiscal year 2006–07 to compensate Administrative Hearings for transition costs and for processing cases inherited from McGeorge. However, Administrative Hearings spent \$1 million more than the amount appropriated, and the expenditure shown here does not reflect this amount. Education paid McGeorge and Administrative Hearings about \$509,000 more than the appropriation, which it funded through its operating expenses appropriation from the Federal Fund.

‡ For the first six months of fiscal year 2005–06, Education contracted with McGeorge to complete the hearings and mediations McGeorge had started before June 30, 2005, and to assist Administrative Hearings with mediations that it referred to McGeorge during the same time. In completing these procedures, McGeorge spent \$2.9 million of the \$12 million in total expenditures for fiscal year 2005–06.

§ According to Education, these three fiscal years were 100 percent federally funded.

Additionally, Figure 1 shows that during fiscal years 2003–04 and 2004–05, McGeorge did not use the full amounts that the State appropriated for the hearings and mediations process for special education cases. Further, Figure 1 depicts the fact that in fiscal years 2006–07 and 2007–08, Administrative Hearings also did not

use the full amount that the State appropriated for this program. According to Education, it bases its proposed annual appropriation for the special education hearings and mediations process on Administrative Hearings' estimate of its anticipated workload and the costs associated with that workload. During fiscal years 2006–07 and 2007–08, Administrative Hearings' workload was less than it originally estimated during the budgetary process; thus, it did not spend the full amount appropriated.

The appropriation for the hearings and mediations process in fiscal year 2005–06 was the highest of the six years we reviewed. Further, as Figure 1 illustrates, McGeorge and Administrative Hearings together spent the most in that same year. Fiscal year 2005–06 was the year that the hearings and mediations process for special education transitioned from McGeorge to Administrative Hearings. Thus, according to Education, it requested and received a one-time appropriation of \$1.4 million to compensate Administrative Hearings for transition costs and for processing cases that it unexpectedly inherited from McGeorge. According to Administrative Hearings, it underestimated the additional amount it needed to process the 1,559 cases it inherited from McGeorge and should have requested \$2.4 million rather than the \$1.4 million it received to cover these costs. Ultimately, for fiscal year 2005–06, Administrative Hearings spent a total of \$10.2 million, which exceeded by just under \$1 million the amount agreed to in its amended interagency agreement as well as the amount of the appropriation. Education did not reimburse Administrative Hearings for this amount; therefore, according to staff from the budget and planning section, General Services absorbed these costs in its Service Revolving Fund, which is the fund it uses to account for its operations. The higher expenditures also reflect that, according to its contract with Education, McGeorge continued to provide hearing services for all cases that it had already begun, and to mediate those cases submitted before June 30, 2005. In addition, McGeorge supplied mediation services for cases referred to it by Administrative Hearings during the first six months of fiscal year 2005–06. During those six months, McGeorge incurred expenditures totaling about \$2.9 million.

The Role of Education in Special Education Hearings and Mediations

Education has multiple roles and responsibilities relating to special education hearings and mediations. Not only does state law require Education to enter into an interagency agreement with another state agency or to contract with a nonprofit entity to conduct special education hearings and mediations, it also requires the adoption of regulations establishing standards for certain components of the interagency agreement or contract. For example,

these standards must address the training and qualifications for mediators and hearing officers as well as the monitoring, tracking, and management of cases.

State law and federal regulations also require Education to monitor and oversee special education hearings and mediations and to ensure that the responsible agency administers these procedures in accordance with the interagency agreement and all applicable laws and regulations. Specifically, Education requires Administrative Hearings to provide quarterly reports to Education so that Education can manage and report to the federal government all of the State's hearing and mediation activities related to special education. In addition, Education is required to report certain data and information to the federal government regarding the progress of special education hearings and mediations. Accordingly, state law requires Administrative Hearings to report on such factors as the number of complaints, mediations unrelated to hearing requests, and requests for special education hearings.

Administrative Hearings' Role in Special Education Hearings and Mediations

Between 1989 and December 2005, Education contracted with McGeorge to conduct and administer due process hearings and mediations in California. Toward the end of its last two contracts with McGeorge, Education entered into a three-year interagency agreement with Administrative Hearings, which took over the management of hearings on July 1, 2005, and of mediations on January 1, 2006.

According to the Web site for Administrative Hearings, the Legislature originally established the office in 1945 to provide independent administrative law judges to conduct hearings for state and local governmental agencies. Its General Jurisdiction Division hears cases related to various types of administrative disputes, including those involving a licensing agency and its licensee, employee discipline, or disability retirement appeals. However, the interagency agreement to administer the special education hearings and mediations process requires Administrative Hearings to maintain a separate specialized unit of administrative judges who meet the minimum qualifications to function as special education hearing officers and mediators. Furthermore, the interagency agreement specifies that Administrative Hearings will provide hearing and mediation services as required by federal and state laws and regulations. The interagency agreement also specifically details certain other services that Administrative Hearings is to provide

under the categories of support staff, training, mediations and due process hearings, communications and information sharing, data collection and reporting, and transition.

The Four Types of Special Education Cases

Student-filed case:

- The parties have a 30-day period to resolve the case within the school district unless both parties agree to waive this resolution period.
- Mediation at the state level is voluntary.
- Within 45 days after the end of the 30-day resolution period, unless a party requests, and is granted, an extension, the parties must receive a final hearing decision from an administrative law judge.

District-filed case:

- The parties do not have a 30-day period to resolve the case within the school district.
- Mediation at the state level is voluntary.
- Within 45 days of the filing of the complaint, unless a party requests, and is granted, an extension, the parties must receive a final hearing decision from an administrative law judge.

Expedited case:

- A resolution meeting must occur within seven days of receiving the complaint unless both parties agree to waive this right.
- Mediation at the state level is voluntary.
- A special education hearing must occur within 20 school days of the filing date of the complaint requesting the hearing, and an administrative law judge must issue a decision within 10 school days after the hearing.

Mediation-only case:

- No 30-day resolution period.
- No hearing date is set.
- Mediation is scheduled within 15 days and completed within 30 days of the receipt of the complaint, unless both parties agree to extend the time.

Sources: U.S. Code, Title 20; the California Education Code; and the Code of Federal Regulations.

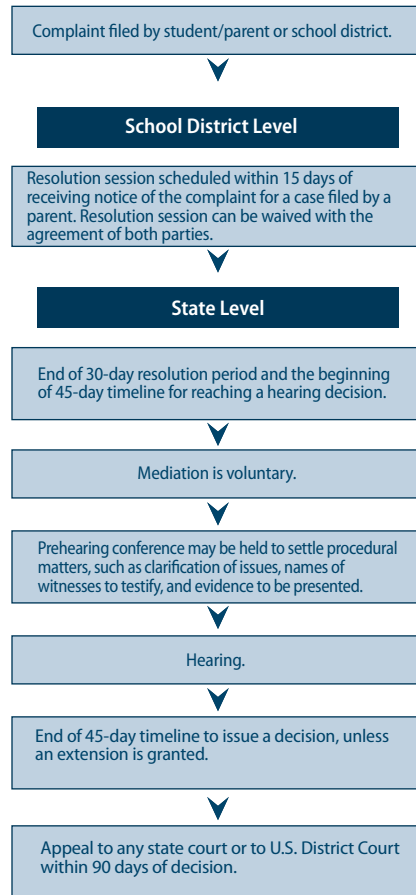
Administrative Hearings administers four types of special education cases, and the type of case determines the hearing process that Administrative Services will use. The text box details these four types of cases and the steps that each party must take. Figure 2 depicts Administrative Hearings' overall process for hearing or mediating special education complaints. Expedited cases, which the text box describes, involve issues such as those arising out of the student's violation of the school's code of conduct or other grounds for discipline. In such cases, federal regulations still require the parties to participate in the resolution process, unless both parties agree otherwise, but on a far shorter timeline.

Recent Changes in Federal Law Have Affected Hearings and Mediations for Special Education

Since 2004 changes in federal law have affected the special education hearings and mediations process. As explained earlier, IDEA was amended, or reauthorized, in 2004. Further, the timing of the reauthorization and the transition from McGeorge to Administrative Hearings was nearly simultaneous. In fact, most of the revisions to IDEA became effective on July 1, 2005. The federal regulations implementing the amendments to IDEA became effective on October 13, 2006. In order to remain in compliance with federal law and remain eligible to receive federal funding, California's procedures relating to special education complaints required significant change consistent with the amendments to IDEA.

One of the most significant changes imposed by the amendments to IDEA was the addition of the 30-day resolution period to be held at the school district level for parent-filed cases before a special education hearing. The amendments also made it possible for a party to respond to a complaint by challenging the complaint's sufficiency. Additionally, the new law specifies, with limited exceptions, that

Figure 2
The Hearings and Mediations Process for Special Education



Sources: U.S. Code, Title 20; Code of Federal Regulations; the California Education Code; and Office of Administrative Hearings' Special Education—Frequently Asked Questions.

the complaining party must request a due process hearing within two years of the date that the complaining party knew or should have known about the alleged action that forms the basis of the complaint. The previous version of IDEA contained no time limitation, although prior state law provided a three-year deadline for filing complaints. In addition, the new law enables the school district to obtain attorney's fees from parents who file frivolous complaints.

Further, two U.S. Supreme Court decisions were issued at nearly the same time that Administrative Hearings took over administering the special education hearings and mediations process, and these decisions may also have affected the types or numbers of cases that Administrative Hearings processed as compared to those that McGeorge processed during previous years.

In 2005, settling a long-standing split of legal authority, the U.S. Supreme Court ruled in *Schaffer v. Weast* that the party who seeks relief by filing a special education complaint has the burden of proving whether the child's individualized education program is appropriate. Moreover, in 2006, in its decision in *Arlington Central School District Board of Education v. Murphy*, the U.S. Supreme Court held that states may not reimburse parents for the fees of the expert witnesses who testify in support of the parent's case at the hearing.

As a result of the significant changes in the special education hearings process imposed by the reauthorization and by the *Schaffer v. Weast* and *Arlington Central School District Board of Education v. Murphy* decisions, it is possible that the burdens of the process have shifted in a manner that is beneficial to school districts. Parents must typically bear the burden of proof at hearings involving matters too contentious to resolve during the resolution process, without the ability to recover their expert witness fees. Because of amendments, parents are also now subject to the risk that if their case is deemed frivolous, they may be required to pay the school districts' attorney fees.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits examine how Administrative Hearings has conducted its operations since it began administering the special education hearings and mediations process. Specifically, the audit committee requested that we review and evaluate applicable laws, rules, and regulations specific to special education hearings and mediations and determine the roles and responsibilities of both Education and Administrative Hearings, including any oversight responsibilities Education has related to Administrative Hearings' performance under the interagency agreement.

We were also asked to review Administrative Hearings' sources and uses of special education funds to determine whether its uses of funds align with fulfilling its responsibilities and whether such uses are allowable. The audit committee requested that we calculate the cost of the special education hearings and mediations process before and after the interagency agreement with Administrative Hearings and determine the reason for any significant variances. In addition, the audit committee asked that we identify appropriate points of comparison and examine any fluctuations over the last five years for such factors as the number of settlements, the number and cost of appeals, the number and average time taken to resolve disputes, the number of cases involving repeat individuals or family members, and the number of mediations and success rates. Finally,

the audit committee requested that we make recommendations related to the future provision of special education mediation and adjudication functions, as appropriate.

To determine the roles and responsibilities of Education and Administrative Hearings, we reviewed applicable laws, regulations, and the interagency agreement and interviewed appropriate staff from both agencies. We reviewed the interagency agreement to determine if its scope-of-work requirements were consistent with applicable laws and regulations. We assessed whether Administrative Hearings adhered to the scope-of-work requirements included in the interagency agreement with Education by reviewing whether it had provided the required support staff for administering the special education hearings and mediations process and whether it had supplied the required training necessary to ensure that its administrative judges meet or exceed the minimum training standards as required by law, among other requirements. To determine whether Education was fulfilling its oversight responsibilities related to its interagency agreement with Administrative Hearings, we interviewed key Education staff and reviewed various documents such as quarterly reports, progress reports, and annual reports that Education submits to the federal government.

To determine Administrative Hearings' sources and uses of funds, we interviewed key staff and obtained relevant budgetary documents and invoices for fiscal years 2005–06 through 2007–08. We also obtained this same documentation from McGeorge for fiscal years 2002–03 through December 31, 2005, so that we could identify the amounts appropriated and the total costs incurred during the final years of McGeorge's contracts. By using the invoices from McGeorge and Administrative Hearings, we were also able to compare McGeorge's average cost per case for the last three full fiscal years of its contract with that of Administrative Hearings for the first three fiscal years of its interagency agreement. However, we could not specifically identify the costs associated with the mediations process and those associated with the hearings process because neither McGeorge nor Administrative Hearings clearly tracked their costs by these two categories.

To review whether Administrative Hearings' use of funds aligned with fulfilling its responsibilities and were allowable in accordance with laws, regulations, and the interagency agreement, we discussed the invoices and the charges included on them with the staff at Education who are responsible for monitoring the interagency agreement and related expenditures. In doing so, we sought to gain assurance that Administrative Hearings is using the

funds for appropriate purposes. We also performed a high-level review of the invoices to ensure that the charges included on them seemed appropriate when compared to the interagency agreement.

Although the audit committee requested that we examine how certain factors have fluctuated over the last five fiscal years, we expanded the time frame to six fiscal years to enable us to compare the final three full fiscal years of the McGeorge contract with the first three fiscal years of the Administrative Hearings' interagency agreement. To determine whether certain factors have fluctuated over the last six fiscal years, we used information included in the case management databases maintained by McGeorge and Administrative Hearings. The audit request asked us to review, to the extent possible, the number of settlements, the number and cost of appeals, the number and average time taken to resolve disputes, the number of cases involving repeat individuals or family members, and the number of mediations and success rates; however, we were unable to compare all of these factors because the two databases did not always capture the requested information. For example, we were unable to compare the number of settlements for McGeorge with those for Administrative Hearings because their databases did not clearly identify the cases settled as opposed to those that were simply withdrawn or dismissed. Likewise, we were unable to identify the number of cases involving repeat individuals or families because the information was not fully captured. However, we attempted to use the data contained in the case management databases to identify the number of cases closed, the number of cases closed before administrative judges issued hearing decisions, the number of hearing decisions in favor of each party, and the average time taken to close cases.

The U.S. Government Accountability Office, whose standards we follow, requires us to assess the reliability of computer-processed data. We assessed the reliability of Administrative Hearings' data by performing electronic testing of key data elements, tracing a statistically random sample of 29 cases to supporting documents, and ensuring that a haphazardly selected sample of hard copy case files were found in the data. We found logic errors in several data fields needed for our analysis and inaccurate entries in the reason-for-closure field. Additionally, we found that the case-open date for some sampled cases could not be tested. Based on our analysis, we determined that Administrative Hearings' data were not sufficiently reliable for the purposes of identifying the number of cases closed before administrative judges issued hearing decisions and the number of hearing decisions in favor of each party. We found that Administrative Hearings' data were sufficiently reliable for the purposes of determining the number of cases closed but were of undetermined reliability for the purposes of identifying the average time cases took to close.

Subsequent to our initial assessment of the reliability of Administrative Hearings' data, we assessed the reliability of the data for cases closed between October 1, 2007, and June 30, 2008. We selected this second sample to determine whether the information included in Administrative Hearings' new database—Practice Manager—which it began using on August 13, 2007, contained reliable data for the purpose of determining the percentage of cases that were closed within the legally required time frame of 45 days, excluding any extensions. Administrative Hearings uses the database to compile the quarterly reports, including information related to whether it is meeting the 45-day requirement. Because only six of the records selected as part of our original sample were closed during this period, we randomly selected another 20 records to test. Additionally, we added three records to the sample that the data indicated were closed because of a hearing decision. Of the sampled records, we found inaccuracies in the fields for the date the case was opened, the date the case was closed, the reason for closure, and in the field indicating whether there was an extension granted. Based on this analysis, we determined that Administrative Hearings' data are not sufficiently reliable for the purpose of identifying the percentage of cases that were closed within the legally required time frame between October 1, 2007, and June 30, 2008.

We assessed the reliability of McGeorge's data by performing electronic testing of key data elements, tracing a statistically random sample of 29 records to supporting documents, and ensuring that a haphazardly selected sample of hard copy case files were found in the data. We performed these procedures on McGeorge's data for cases that followed the standard hearing process and on the data for cases that were filed for mediations only. We found logic errors in both sets of data and inaccurate entries in the closure date field in the data for cases that followed the standard hearing process. We also found instances in which supporting documentation could not be located for the filing date and closing date fields in the data for cases that followed the standard hearing process. Based on this analysis, we determined that the McGeorge data were not sufficiently reliable for the purposes of identifying the number of cases closed before administrative judges issued hearing decisions, the number of hearing decisions in favor of each party, and the number of cases and the average time cases took to close.

Once we determined the databases were not reliable for several key fields, we instead summarized data from the quarterly reports prepared by McGeorge and Administrative Hearings. According to McGeorge and Administrative Hearings, they use the information in their databases to compile the data included in the quarterly reports. We did not audit the preparation of the quarterly reports or adjustments, if any, made by McGeorge or Administrative Hearings

when preparing the reports. However, to obtain some assurance that the quarterly reports were supported by the underlying database, we compared the total of the cases closed included in the quarterly reports to the same information in the databases and found that the totals were not materially different.

Finally, to determine the total number and costs of special education hearing decisions appealed for fiscal years 2002–03 through 2007–08, we obtained documentation and interviewed key individuals at Education, Administrative Hearings, and McGeorge. We obtained from Administrative Hearings the number of appeals and the costs associated with the appeals for fiscal years 2005–06 through 2007–08. We obtained from McGeorge the total costs of appeals for fiscal years 2002–03 through December 2005; however, McGeorge was unable to provide the number of appeals related to those costs. Further, although Education provided its estimate of the number of appeals for which it was named a party, Education was unable to provide any cost information for these appeals. Although we present in the report the information related to appeals, we did not verify its accuracy, nor did we attempt to compare the information, because it was incomplete and the methods used by McGeorge and Administrative Hearings to track these costs differed significantly.

Audit Results

Although Costs Have Increased Since the Office of Administrative Hearings Began to Manage the Hearings and Mediations Process for Special Education, the Average Time to Close Cases Has Decreased

The average cost per case closed has increased since the Office of Administrative Hearings (Administrative Hearings) in the Department of General Services assumed the management of hearings and mediations for special education; however, the average time required to complete these procedures has decreased. Moreover, the number of cases closed before an administrative law judge (administrative judge) issued a hearing decision has not changed significantly since the years in which the University of the Pacific's McGeorge School of Law (McGeorge) administered the hearings and mediations.

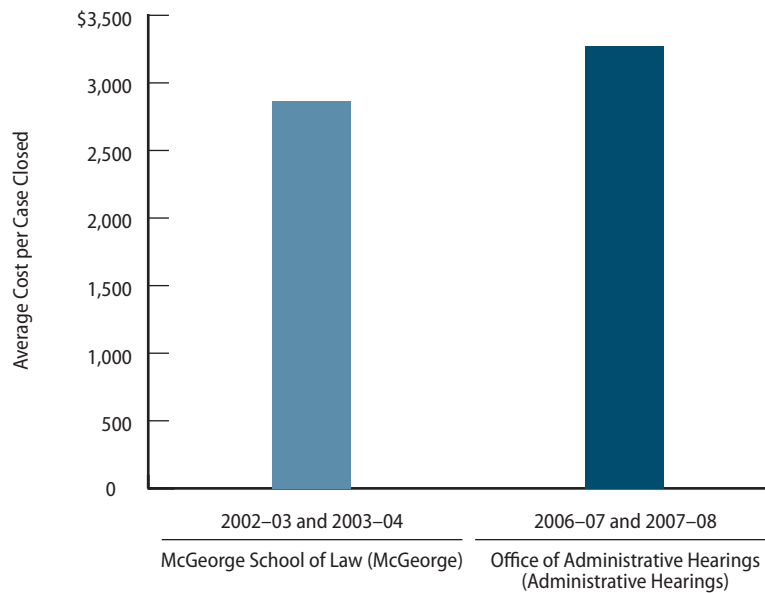
However, making such comparisons can be difficult or imprecise because, as the Introduction discusses, at about the same time that Administrative Hearings assumed management of this process, the federal government made significant changes to the Individuals with Disabilities Education Act (IDEA) and the U.S. Supreme Court issued two decisions that may have affected special education hearings and mediations. For example, in 2004 federal law added a requirement that in a parent-filed case a school district³ engage in a 30-day resolution period with parents before a case may proceed to a due process hearing; this requirement did not exist when McGeorge administered the process. Thus, under current law, it is possible that the less contentious cases close during the 30-day resolution period and only the more difficult cases move forward to Administrative Hearings. The makeup and types of cases that Administrative Hearings processes may therefore be different from those that McGeorge processed in the past, and the data used in making these comparisons may not be completely analogous. Additionally, as the Introduction describes, differences and limitations in the data provided by McGeorge and Administrative Hearings allowed us to make only a few comparisons.

Initially, we compared the average cost per case incurred by McGeorge during the last three full years of its contract with Education—fiscal years 2002–03 through 2004–05—with the average cost per case incurred by Administrative Hearings during the three years of its interagency agreement—fiscal years 2005–06 through 2007–08. We found that the average cost per case has increased by 22 percent since Administrative Hearings took over

³ The federal IDEA refers to “local educational agencies,” which, by definition, include school districts and county offices of education. However, because the majority of complaints involve school districts, we use school districts in place of local educational agencies throughout the report.

the hearings and mediations process from McGeorge. However, our review of the average cost per case for McGeorge during the last year of its contract—fiscal year 2004–05—revealed that its costs had in fact decreased when compared to the earlier two years. Further, the average cost per case for Administrative Hearings during its first year of the interagency agreement—fiscal year 2005–06—was significantly higher than in the subsequent two years. Data from these two years may not reflect each entity’s normal operations because each was in a state of transition with the program. Thus, we believe that the more relevant comparison is between data from the years when both entities were fully operational and providing the services required under their respective contracts and interagency agreement with the California Department of Education (Education). Figure 3 reflects this comparison by showing the average cost per case for the earlier two years of the McGeorge contract as compared to the average cost per case for the later two years of Administrative Hearings’ interagency agreement.

Figure 3
Comparison of the Costs per Case Closed From Fiscal Years 2002–03 Through 2003–04 With Those Incurred per Case Closed From Fiscal Years 2006–07 Through 2007–08



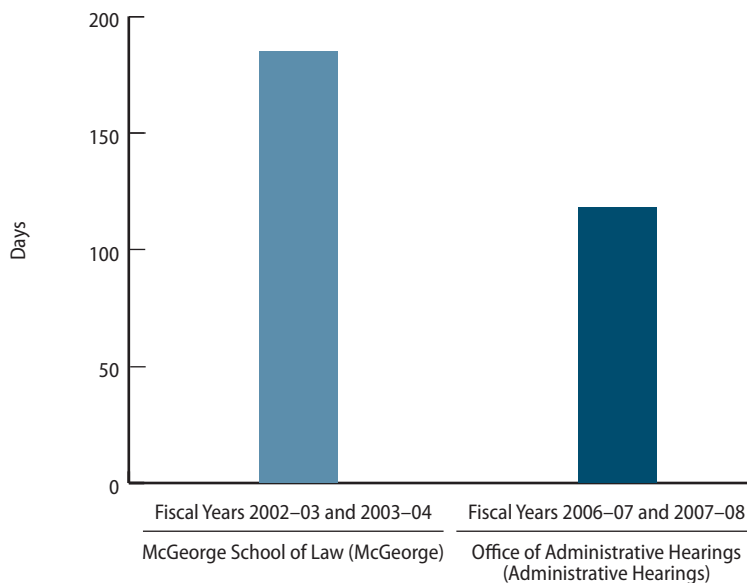
	McGeorge	Administrative Hearings
Total costs	\$18,236,263	\$17,937,696
Total cases closed	6,360	5,482
Average Cost per Case Closed	\$2,867	\$3,272

Source: Unaudited quarterly reports and invoices from McGeorge and Administrative Hearings.

As Figure 3 shows, McGeorge spent an average of \$2,867 per special education case, and Administrative Hearings spent an average of \$3,272 per case, or an increase of just over 14 percent. Because the two entities use dissimilar methodologies to capture their costs for billing purposes, we were unable to use their invoices to identify specifically the types of costs or charges that had increased under Administrative Hearings' interagency agreement and the amounts by which they had increased. However, we can assume that some of the increases in Administrative Hearings' costs related to increases in salaries that it granted its employees during this period and to normal price increases for such items as equipment and goods and services. To provide some additional perspective, the U.S. Bureau of Labor Statistics' Consumer Price Index, which measures the monthly changes in prices paid by consumers for goods and services, showed price increases of more than 13 percent during this same period. Thus, the 14 percent increase does not seem unreasonable.

In addition to comparing costs, we also calculated the average time that McGeorge took to close cases and compared these data to the corresponding data for Administrative Hearings. For the same reasons discussed earlier, we excluded the data for the transition years. As Figure 4 shows, the average time McGeorge took to close

Figure 4
Average Number of Days to Close a Case in the Special Education Hearings and Mediations Process



Sources: Databases for McGeorge and Administrative Hearings.

Note: As described in the Scope and Methodology, the data we obtained from McGeorge were not sufficiently reliable and the data from Administrative Hearings were of undetermined reliability for the purposes of determining the average time each took to close a case. As this was the only source for this data, we present it here.

The average time McGeorge took to close cases was 185 days, whereas, Administrative Hearings took an average of 118 days.

cases for fiscal years 2002–03 and 2003–04 was 185 days. In contrast, the average time that Administrative Hearings took to close cases was 118 days for fiscal years 2006–07 and 2007–08. Thus, Administrative Hearings is taking less time to close cases than McGeorge did in the earlier years.

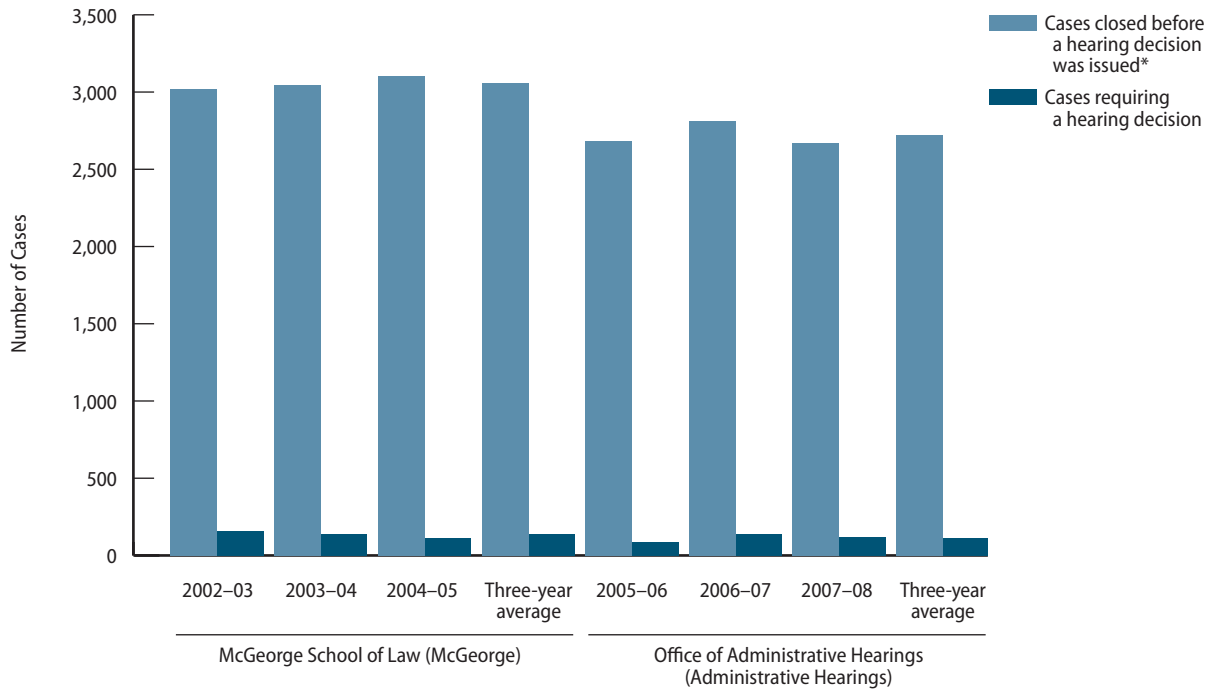
Additionally, we compared the number of cases closed before administrative judges issued hearing decisions under McGeorge’s contract to the corresponding number under Administrative Hearings’ interagency agreement. As Figure 5 indicates, the number of cases closed before administrative judges issued hearing decisions averaged 3,056 per year for McGeorge, compared with 2,807 for Administrative Hearings. When we compute each number as a percentage of the total cases closed by the respective entity and compare the two percentages, the difference between the two is less than 1 percent. Figure 5 also shows that Administrative Hearings averaged 116 cases that required hearing decisions during its three years, while McGeorge averaged 136 cases. When we compute the numbers as a percentage of the total cases closed by each entity, the average for both McGeorge and Administrative Hearings is about 4 percent.

A case may be resolved before it goes to a hearing or after the hearing but before the administrative judge issues the hearing decision. Administrative Hearings’ presiding administrative judge told us that settling a case before a hearing begins can have many benefits. Specifically, she asserted that a hearing is the costliest and most time-consuming part of the special education hearings and mediations process, so avoiding a hearing can spare both parties the time and money needed to prepare for it. In addition, parties who come to an agreement before an administrative judge issues a hearing decision have control over when and how that agreement is implemented. On the other hand, when an administrative judge renders a decision on a special education case, he or she has the sole authority to decide the means by which the complaint will be resolved and when the judgment will take effect. Furthermore, Administrative Hearings’ presiding administrative judge told us that there are other benefits to parties settling in mediation, such as facilitating rebuilding what may have become a strained relationship between parents and districts.

The Outcomes of Special Education Hearing Decisions Have Shifted Slightly Since Administrative Hearings Took Over

When we compared the outcomes of hearing decisions issued by McGeorge during fiscal years 2002–03 through 2004–05 to those issued by Administrative Hearings during fiscal years 2005–06 through 2007–08, we found that a slight shift occurred in

Figure 5
Comparison of the Number of Special Education Cases Closed Before Administrative Law Judges Issued Hearing Decisions
Fiscal Years 2002–2003 Through 2007–2008



Sources: Unaudited quarterly reports from McGeorge and Administrative Hearings for fiscal years 2002–03 through 2007–08.

* Excludes the 30-day resolution sessions.

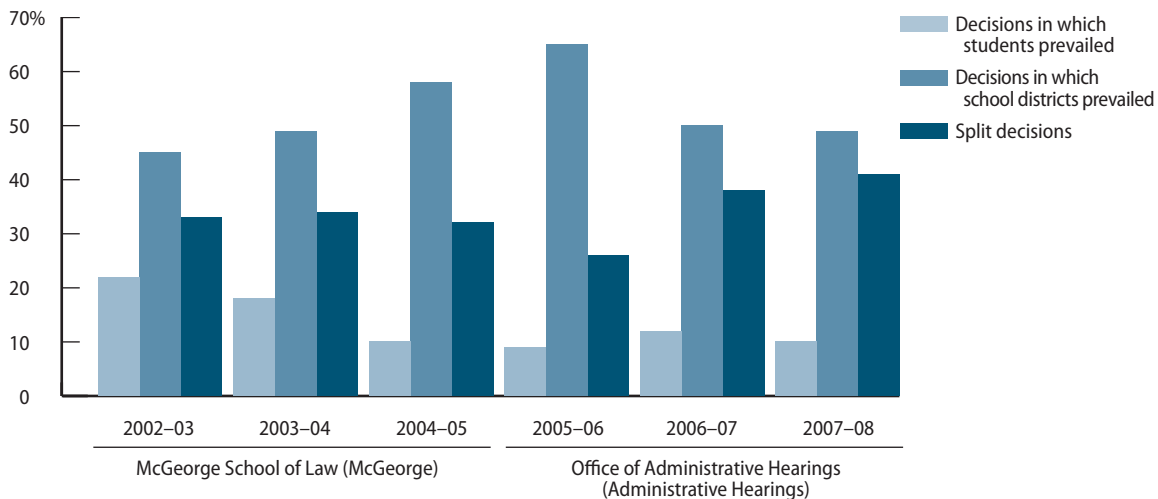
the outcomes. As Figure 6 on the following page illustrates, the high point of McGeorge’s decisions favoring students was 22 percent in fiscal year 2002–03, declining to a low of 10 percent in fiscal year 2004–05. On the other hand, during the three years that Administrative Hearings has been overseeing the hearings and mediations process, its decisions favoring students have been within a narrow range of 9 percent to 12 percent of its total decisions. Thus, although McGeorge’s data show that during the earlier two years it issued decisions in favor of students more often than did Administrative Hearings, by fiscal year 2004–05 McGeorge’s decisions favoring students had decreased to a level that more closely matches the data for all three years that Administrative Hearings has overseen the process.

As Figure 6 also shows, McGeorge’s decisions favoring school districts ranged from a low of 45 percent in fiscal year 2002–03 and steadily increased to a high of 58 percent in fiscal year 2004–05. In comparison, Administrative Hearings’ percentage of decisions

in favor of school districts started at a high of 65 percent in fiscal year 2005–06 and steadily declined to a low of 49 percent in fiscal year 2007–08.

Finally, Figure 6 shows that McGeorge’s proportion of decisions that were split between the district and the student fell within a limited range of 32 percent to 33 percent of its total decisions. According to Administrative Hearings’ presiding administrative judge, such split decisions occur when cases include more than one issue and the administrative judge issues separate decisions for each of the issues. Split decisions favor one party for some issues and the other party on other issues, rather than finding unanimously for one party. Unlike McGeorge’s split decisions, Administrative Hearings’ split decisions have ranged more broadly from 26 percent to 41 percent of its total hearing decisions over the three years of its interagency agreement with Education.

Figure 6
Percentage of Hearing Decisions in Which Students Prevailed, the School Districts Prevailed, or Split Decisions Occurred
Fiscal Years 2002–03 Through 2007–08



Sources: Unaudited quarterly reports from McGeorge and Administrative Hearings for fiscal years 2002–03 through 2007–08.

The federal government significantly revised the law related to special education hearings and mediations at about the same time that Administrative Hearings took over from McGeorge, and these revisions may have played a role in the slight shift in the outcomes of hearing decisions. For example, Education indicated that the change in the law requiring a 30-day resolution period, during which the school district must meet with the parents to discuss

a possible resolution before a parent-filed complaint is allowed to move on to Administrative Hearings, may indirectly influence which party prevails in a hearing.

Further, as explained in the Introduction, the U.S. Supreme Court issued decisions in two cases—*Schaffer v. Weast* and *Arlington Central School District Board of Education v. Murphy*—at nearly the same time that Administrative Hearings began to administer the special education hearings and mediations process. These decisions may also have affected the types or numbers of cases that Administrative Hearings processed.

Specifically, the reauthorized IDEA's changes to the hearings and mediations process and the two Supreme Court decisions may have shifted the burdens of the hearing process in a manner that is more beneficial to the school district. Parents must now typically bear the burden of proof at hearings that involve matters too contentious to settle during the resolution process, and most do so without the ability to recover fees for expert witnesses. Moreover, parents are now subject to the risk that—depending on the administrative judge's decision—they may be required to pay the school district's attorney fees if their cases are deemed frivolous.

The shift in burdens caused by the reauthorized IDEA's changes to the hearings and mediations process and Supreme Court decisions may have benefited the school districts.

Laws Do Not Require Education to Track the Number or Cost of Appealed Special Education Cases, So It Does Not Do So

For the six years covered in our review, we attempted to obtain the number of special education hearing decisions that either the students or the districts appealed to higher courts and the cost to the State for those appeals. However, we were unable to obtain complete information because neither Education nor any other entity consistently tracks this information, and the law does not require them to do so. However, for fiscal year 2002–03 through December 31, 2005, McGeorge did provide limited information related to the number and cost of appeals. For fiscal years 2005–06 through 2007–08, Administrative Hearings also provided some information about the appeals to its decisions.

After Administrative Hearings has issued a hearing decision in a special education case, if either party is not satisfied with the decision, federal and state law allows either party to appeal that decision to a state or federal court. According to Education's general counsel, when this situation occurs, the appeal may name Education or Administrative Hearings as a party. (When McGeorge was administering the hearings and mediations process, the appeal might name McGeorge as a party.) She further indicated that the

parties or entities involved in the appeal typically incur some legal costs because some staff or retained counsel spend time defending the original decision.

Education's general counsel indicated that from fiscal years 2002–03 through 2007–08, Education's own legal staff defended the cases when appeals of a special education hearing decision named Education as a party. She also indicated that Education tracks under a variety of categories its legal staff's time for providing legal advice and litigation services, and these categories include special education, standards and assessment, charter schools, nutrition services, and child development. However, Education does not track each attorney's time or costs by case. Thus, even though the general counsel estimates that Education's legal staff spend approximately 25 percent of their time on special education, including litigation, Education was unable to determine how much of those costs relate to appeals of special education hearing decisions. The general counsel did report, however, that during these six years, Education was named in approximately 29 such appeals.

McGeorge and Administrative Hearings were able to provide some information—though incomplete—related to their respective costs and, for Administrative Hearings, the number of special education appeals. Specifically, according to McGeorge, if it was named a party in the appeal of a special education decision, either one of its senior legal counsel or legal staff from Education would represent McGeorge. Whenever McGeorge provided its own representation, it tracked and charged Education for its legal costs related to the appeals, which it indicated were about \$320,000 for fiscal year 2002–03 through December 2005. However, this figure does not include the costs of those appeals in which Education represented McGeorge. Further, although McGeorge supplied the cost of appeals, it was unable to provide the number of appeals that it handled during this period.

In contrast, when Administrative Hearings is named as a party in an appeal of a special education hearing decision and needs to defend the case, it obtains the services of the Office of the Attorney General (Attorney General), which Administrative Hearings reimburses for its costs of representation. According to Administrative Hearings, it was named a party in 33 cases in which either the student or the district appealed its decision, for a total cost of about \$219,000 that Administrative Hearings paid to the Attorney General between fiscal years 2005–06 and 2007–08. However, Administrative Hearings also indicated that these costs are incomplete because they do not include any of the time that its staff spent reviewing pleadings, gathering documents, creating files, or corresponding with the Attorney General, because it does not separately track its own costs related to these cases.

Neither Education nor any other entity consistently tracks the number and cost of special education appeals, and the law does not require them to do so.

Education Could Oversee Administrative Hearings More Effectively

Our review found that Education has established standards that Administrative Hearings must follow when administering the special education hearings and mediations process. We also observed that through a number of means, in general, Education appropriately oversees Administrative Hearings' execution of its interagency agreement with Education; however, it could tighten its oversight of Administrative Hearings in a couple of areas. Specifically, Education should ensure that Administrative Hearings is including all information in its quarterly reports required by state law and the interagency agreement, and it also needs to take the steps necessary to confirm that its administrative judges are attending all the training courses required in its interagency agreement and that Administrative Hearings is maintaining the appropriate documentation to demonstrate that this is the case. Administrative Hearings' failure to fulfill reporting requirements leaves it out of compliance with the interagency agreement and state law, and it restricts Education's ability to review this information as part of its oversight duties. Moreover, when Education, in its oversight role, does not ensure that Administrative Hearings can demonstrate that its administrative judges have received all required training, it opens itself up to scrutiny from those who might question the qualifications of the administrative judges.

State law requires Education to enter into a contract with a nonprofit entity or an interagency agreement with another state agency to conduct mediations and due process hearings. Education currently fulfills this requirement through its interagency agreement with Administrative Hearings, and Education previously met the requirement through its contract with McGeorge.

The law also requires the State to adopt regulations establishing certain standards under the categories listed in the text box that its contractor must follow when administering the special education hearings and mediations process. We found that Education has proposed regulations that address these standards and that it has incorporated them into its interagency agreement with Administrative Hearings. For example, in the interagency agreement, Education specifies that Administrative Hearings must provide its administrative judges with 80 hours of specialized training in their first year and 20 hours every year after that. Education also stipulates the types of training that administrative judges must receive, which include

Categories Under Which State Law Requires the Adoption of Regulations That Establish Standards for the Contractor

- Training and qualifications for mediators and hearing officers.
- Availability of translators and translated documents.
- Prevention of conflicts of interest for mediators and hearing officers.
- Supervision of mediators and hearing officers.
- Monitoring, tracking, and management of cases.
- Process for conducting mediations and hearings.
- Communication with parties to mediations and due process hearings.
- Establishment of an advisory committee.
- Contents of a manual to describe procedures for mediations and hearings.

Source: California Education Code, Section 56504.5.

special education law, mediation techniques, and prehearing processes. In another example, under the communications category, the interagency agreement requires Administrative Hearings to maintain a special education hearing office advisory committee (advisory committee) composed of attorneys, advocates, parents, and school employees. It further states that the advisory committee will hold two meetings each year—one in Northern California and one in Southern California.

Methods Used by the California Department of Education to Oversee the Office of Administrative Hearings

- Facilitating a monthly meeting with staff from the California Department of Education (Education) and the Office of Administrative Hearings (Administrative Hearings).
- Reviewing Administrative Hearings' quarterly reports.
- Reviewing invoices to ensure costs billed by Administrative Hearings are authorized by the interagency agreement.
- Attending Administrative Hearings' advisory committee meetings.
- Periodically sending letters to Administrative Hearings about issues for which Education desires a formal response.
- Reviewing Administrative Hearings' quarterly status reports on scope of work.

Sources: Education's contract monitor for the interagency agreement with Administrative Hearings, the contract monitoring training manual, and agendas and minutes for monthly meetings.

To supervise the execution of the interagency agreement and enforce these standards, Education employs a contract monitor who is primarily responsible for administering and monitoring Administrative Hearings' performance, including ensuring compliance with federal or special regulations, maintaining documentation, monitoring the agreement to ensure compliance with its provisions, and reviewing and approving invoices for payment. To accomplish these objectives, the contract monitor and Education use a variety of methods to oversee the interagency agreement, some of which are listed in the text box.

First, as part of its interagency agreement, Education requires Administrative Hearings to report certain information in quarterly reports, and federal law requires that Education annually report some of the same information to the federal government. We reviewed one of Administrative Hearings' quarterly reports for each fiscal year between 2005–06 and 2007–08 to confirm whether or not the reports contained all the information that Administrative Hearings is required to provide. Our review revealed

that Administrative Hearings did not consistently include all 10 items that the interagency agreement requires to be included in the quarterly reports. Some of the missing information included the number of mediations pending, the number of hearings pending, the number of hearing request cases resolved without a hearing, the number of settlement agreements related to expedited hearings, and the costs of hearings and mediations on both an aggregate and individual basis. State law also requires the entity administering the hearings and mediations process—Administrative Hearings in this case—to report seven of these 10 items to Education. Further, federal law requires Education to report five of the seven items annually to the federal government. Although Administrative Hearings did not consistently report these five items in its quarterly reports, Education asserted that it was still able to obtain this

information from Administrative Hearings, and we verified that Education reported these five items to the federal government in the annual reports for fiscal years 2005–06 through 2007–08.

According to Education, it was aware that Administrative Hearings was not including all the required information in its quarterly reports and that it expected Administrative Hearings to correct the problem after it had resolved the issues we discuss in the next paragraph related to its database. We were able to find some evidence that this issue was discussed during monthly meetings between key staff at Education and Administrative Hearings. However, Education’s contract monitor indicated that Education had not sent Administrative Hearings any formal correspondence requesting a corrective action plan, as it had done in a similar situation involving hearing decisions that we describe in the next section. By not ensuring that Administrative Hearings is consistently including all required information in its quarterly reports, Education is unable to review the information as part of its oversight activities, and it is not ensuring that Administrative Hearings complies with the reporting requirements of its interagency agreement and state law.

According to Administrative Hearings, it did not consistently include most of this information in its quarterly reports because its database was not originally set up to capture this information, although it also believes some of this information was included in aggregate data in the reports. The presiding administrative judge over Administrative Hearings indicated in September 2008 that Administrative Hearings has modified the database and that the missing information would be included starting with the next quarterly report, containing data for the first quarter of fiscal year 2008–09. When we later reviewed this quarterly report, we found that Administrative Hearings had included all but one of the required 10 items. It was not until we informed Administrative Hearings that the quarterly report was still missing one item that it amended the report to include this last item on November 13, 2008.

Nevertheless, as indicated in Scope and Methodology, our review of Administrative Hearings’ new database—Practice Manager—found that the data in certain fields were inaccurate or missing, with most errors occurring in the reason-for-closure field. Specifically, when we reviewed a sample of 29 closed cases, we found that the reason-for-closure field was inaccurate for one case and missing in another. We also found that for one of the 29 cases, the field that identifies whether a case was closed within the legally required time frame was incorrect. In addition, we found that the case-closed date was inaccurate for one of the 29 cases, while the case-opened date was inaccurate for another. According to Administrative Hearings, it uses these fields to compile certain data that it includes in the

We found that in five of 29 closed cases we reviewed from Administrative Hearings’ new database, data in certain fields were inaccurate or missing.

quarterly reports it submits to Education. When Administrative Hearings does not ensure that the data its staff enter into these fields are accurate and complete, it cannot ensure that it is accurately reporting all required data to Education in accordance with the law and the interagency agreement, and Education cannot ensure that it is reporting accurate information to the federal government. Thus, we believe that it is important not only that Education continue to work with Administrative Hearings to ensure that it reports all required information in its quarterly reports, but also that Education continue to help Administrative Hearings make certain that its database contains accurate and complete information.

Examples of Training Courses Available to Administrative Law Judges Serving the Office of Administrative Hearings

- Advanced Administrative Law
- Aspects of Judging
- Autism Spectrum Disorder
- Child Protective Services
- Comprehensive Mediation
- Conducting an Administrative Hearing
- Decision Writing
- Evidence-Based Social Interventions at School
- Facilitation Skills
- How to Conduct a Pre-Hearing Conference
- IDEA Basic
- Judging Judges
- Legal Update for Administrative Judges in Special Education
- Overview of Legal Issues in Special Education

Source: Worksheet listing training courses that was provided by the Office of Administrative Hearings' chief of administration.

Further, Education has not taken steps to verify that Administrative Hearings is ensuring that its administrative judges receive all the training required by state law and its interagency agreement. Administrative Hearings reported to Education that its administrative judges are receiving the appropriate training; however, when we attempted to verify this assertion, we found that Administrative Hearings could not always demonstrate that the administrative judges had attended all required classes. State law requires the adoption of regulations that establish standards related to the training and qualifications for mediators and hearing officers. Therefore, regulations have been proposed that require the entity responsible for conducting due process hearings to ensure that all hearing officers have completed at least 80 hours of training before conducting their first hearing and that, subsequently, hearing officers complete at least 20 hours of continuing education annually. Education included these same requirements in its interagency agreement with Administrative Hearings. Administrative Hearings makes various training sessions available, as shown in the text box, to ensure that its administrative judges have a working knowledge of the special education laws and regulations and effective mediation techniques.

To provide assurance to Education that its administrative judges have met the training requirements, Administrative Hearings recently compiled a training report that identifies the number of training hours completed and the specific courses attended by each special education administrative judge for the first three fiscal years of the interagency agreement.

To verify the accuracy of the information in the training report, and to confirm that the administrative judges were receiving the required training, we selected 15 administrative judges from this report as well as two training courses that the training records indicated they had all attended. We attempted to verify that these administrative judges attended the selected courses by reviewing training documentation such as class sign-in sheets, certificates of completion, and participant registration lists. We found that we could not always confirm that the 15 administrative judges we reviewed had in fact taken the two courses. For example, the Table shows that Administrative Hearings was unable to provide documentation demonstrating that three of its administrative judges had attended either course and could only provide documentation that another seven had attended one of the two courses. Moreover, Administrative Hearings incorrectly reported to Education that one of the administrative judges in our

Table
Training Attendance Verification for Administrative Law Judges
From Fiscal Year 2005–06 Through 2007–08

ASSIGNED SAMPLE NUMBER FOR EACH ADMINISTRATIVE LAW JUDGE REVIEWED	VERIFIED ATTENDANCE* AT BOTH CLASSES	VERIFIED ATTENDANCE* AT ONLY ONE CLASS	NO VERIFICATION OF ATTENDANCE AT EITHER CLASS
1	✓		
2		✓	
3		✓	
4	✓		
5	✓		
6		✓	
7			✓
8		✓	
9			✓†
10			✓
11		✓	
12		✓	
13	✓		
14		✓	
15	✓		
Totals	5	7	3

Source: The Office of Administrative Hearings' training attendance documentation.

* *Verified attendance* refers to confirmation of the administrative judge's attendance by a class sign-in sheet, participant registration list, or certificate of completion.

† Although training records for this administrative law judge indicate that he attended the training class, his name does not appear on the sign-in sheet.

sample had attended a training class, even though he was not included on the class sign-in sheet. When we discussed this situation with Administrative Hearings, it asserted that the training report contained an error, which it planned to correct.

We would expect that as part of Education's oversight of its interagency agreement with Administrative Hearings, Education would require Administrative Hearings to maintain sufficient documentation to verify that its administrative judges have received the required training and that Education would periodically review these records to ensure that Administrative Hearings complies with the training requirements. By not reviewing these records, Education cannot be certain that Administrative Hearings is meeting the law and the training requirements outlined in its interagency agreement. Moreover, when Education, in its oversight role, is not ensuring that Administrative Hearings can demonstrate that its administrative judges have received the required training, it opens itself up to scrutiny from those who might question the qualifications of the administrative judges.

Administrative Hearings Has Not Always Issued Hearing Decisions Within the Legally Required Time Frame

During our review of the information that Administrative Hearings includes in its quarterly reports, we found that for the first year and a half of the period covered by the interagency agreement, Administrative Hearings did not always issue hearing decisions within the legally required time frame. Such delays could lead to federal sanctions. Specifically, Administrative Hearings, unless an extension is granted, is required by state law and federal regulations to issue hearing decisions no later than 45 days after the end of the 30-day resolution period for parent-filed cases or after the complaint is filed for district-filed cases, which we describe in the Introduction. Although Administrative Hearings did not report on the timeliness of hearing decisions in the first two quarters of fiscal year 2005-06, it reported to Education that it issued only 29 percent and 57 percent of its decisions on time in the third and fourth quarters of that year, respectively, and was timely for 72 percent of its hearing decisions rendered in the first quarter of fiscal year 2006-07. Consequently, many hearing decisions were delayed, and in these instances Administrative Hearings was not complying with the law.

Further, although Education reported to the federal government in its annual performance report for fiscal year 2006-07 that Administrative Hearings issued 100 percent of its decisions within the legally required time frame, we found instances in which this was not the case. Specifically, we found that Administrative Hearings' database contained at least two cases filed during fiscal

Administrative Hearings reported it issued only 29 percent and 57 percent of its hearing decisions on time in the third and fourth quarters of fiscal year 2005-06, respectively, and was timely for 72 percent of its decisions rendered the following quarter.

year 2006–07 that had not met the deadline. When we brought this to Administrative Hearings’ attention, the presiding administrative judge confirmed that the two cases had not met the deadline. However, she believes that staff made an unintentional error when compiling the information to report to Education and that Education, in turn, erroneously reported to the federal government that Administrative Hearings issued 100 percent of its decisions within the legally required time frame.

The types of noncompliance related to the timeliness of decisions could potentially lead to sanctions by the federal government and effect special education funding for the State. Specifically, the federal Office of Special Education Programs performed a verification review of Education and, in a letter dated February 2007, concluded that the State was out of compliance with the law dictating the timeliness of hearing decisions. It also indicated that it expected the State to demonstrate compliance to the federal government by February 2008. Depending on the length of time and the degree to which the federal government determines that a state is out of compliance with IDEA, the federal government could enforce a variety of sanctions. Potential sanctions range in severity and could include, among other things, advising a state of available sources of technical assistance that might help the state correct the problem, requiring a state to prepare a corrective action plan, seeking repayment of previously awarded grant money, or withholding future special education grants.

For its part, Education has been raising this issue with Administrative Hearings in letters and during monthly meetings between staff of Education and Administrative Hearings. For instance, over the three-year period covered by the interagency agreement, Education sent Administrative Hearings two letters on separate occasions expressing its concern about the timeliness of Administrative Hearings’ case decisions and requesting plans for corrective action. In response, both Administrative Hearings’ former assistant chief administrative judge and the current presiding administrative judge submitted letters containing corrective action plans to Education. We found that several of the minutes and agendas for the monthly meetings also referenced the subject of the timeliness of hearing decisions.

To its credit, Administrative Hearings has shown measurable improvement in this area. In fact, excluding the third quarter of fiscal year 2007–08, Administrative Hearings reported that an average of 96 percent of its hearing decisions have been on time since the second quarter of fiscal year 2006–07. In other words, Administrative Hearings had only about one late case in each quarter. For the third quarter of fiscal year 2007–08, Administrative Hearings reported that it issued 83 percent of

Noncompliance related to the timeliness of decisions could potentially lead to sanctions by the federal government that range in severity and could include withholding future special education grants or seeking repayment of previously awarded grant money.

its hearing decisions on time and had five late cases. One of the letters sent by Education to Administrative Hearings requesting a corrective action plan specifically responded to the decrease in the timeliness of Administrative Hearings' decisions in this quarter. Although Administrative Hearings has improved, it needs to issue 100 percent of its hearing decisions on time to ensure that it complies with relevant laws and regulations. Education should continue to aggressively monitor Administrative Hearings' performance regarding the timeliness of its decisions to ensure that it avoids unnecessary federal government penalties.

Recommendations

To ensure that Administrative Hearings complies with state and federal law, as well as with the specifications in its interagency agreement, Education, in its oversight role, should do the following:

- Continue to work with Administrative Hearings to ensure that it reports all the required information in its quarterly reports and that its database contains accurate and complete information for reporting purposes.
- Require Administrative Hearings to maintain sufficient documentation showing that its administrative judges have received all required training and periodically review these records to ensure that Administrative Hearings complies with the training requirements.
- Continue to monitor Administrative Hearings to ensure that it consistently issues hearing decisions within the timeline established in federal regulations and state law so that Education is not exposed to possible sanctions by the federal government.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of the report.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: December 16, 2008

Staff: Denise L. Vose, CPA, Audit Principal
Katrina Solorio
Heidi Broekemeier, MPA
Nick Lange, CIA
Meghann K. Leonard, MPPA
Benjamin W. Wolfgram

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

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(Agency response provided as text only.)

California Department of Education
1430 N Street
Sacramento, CA 95814-5901

November 26, 2008

Ms. Elaine M. Howle, State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

Subject: Response to Bureau of State Audits Draft Audit Report No. 2008-109

This is the California Department of Education's (Education) response to the Bureau of State Audits' (BSA) draft audit report titled, *California Department of Education: Although It Generally Provides Appropriate Oversight of the Special Education Hearings and Mediations Process, a Few Areas for Improvement Exists.*¹

Recommendation No. 1

Education should continue to work with Administrative Hearings to ensure that it reports all the required information in its quarterly reports and that its database contains accurate and complete information for reporting purposes.

Education's Comments and Corrective Action:

Education has been working with Administrative Hearings to ensure that the required information is included in the Administrative Quarterly Reports. As noted by the BSA, for the first quarter of fiscal year 2008–09, Administrative Hearings reported all but one required data element. Additionally, Education's new interagency agreement (IA) with Administrative Hearings, effective June 26, 2008, for the period of July 1, 2008, through June 30, 2011, further expands on the required data elements that must be reported in the quarterly reports. To ensure Administrative Hearing's compliance with the IA requirements, Education has added additional staff to the monitoring team including an attorney from the Legal Office and a manager from the Contracts Office.

Education is exploring options that will further strengthen existing monitoring procedures to ensure that all information, as required in the IA with Administrative Hearings, is accurate and included in the quarterly reports. For example, Education plans to develop a monitoring checklist to ensure that all required information is received timely from Administrative Hearings. Additionally, to further ensure the accuracy of the Administrative Hearings' database, Education plans to review and inspect, on a sample basis, books, documents, papers, and records supporting required information that is contained in the Administrative Hearings quarterly reports.

¹ While preparing our draft report for publication, some wording changed, including the report's title that is referred to by the California Department of Education.

Elaine M. Howle, State Auditor
November 26, 2008
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Recommendation No. 2

Education should require Administrative Hearings to maintain sufficient documentation showing that its administrative judges have received all required training and periodically review these records to ensure that Administrative Hearings complies with the training requirements.

Education's Comments and Corrective Action:

Education entered into a new IA with Administrative Hearings effective June 26, 2008, for the period of July 1, 2008, through June 30, 2011. This IA sets forth the training requirements for all administrative law judges and mediators, with much more specificity than in prior IAs. The new IA also requires, for the first time, that Administrative Hearings "agrees to provide Education, quarterly, with training logs for each administrative law judge and the mediator covering training taken during the previous quarter. The logs will include the names of each administrative judge and the mediator, title, description, date, and the number of training hours." (See Exhibit A.1 of the IA.)

As required in the IA, Administrative Hearings provides Education with quarterly training logs for each administrative law judge and mediator covering training taken during the previous quarter. To ensure accuracy of training data, Education plans to conduct periodic reviews of documentation supporting the quarterly logs for a sample selection of administrative law judges and mediators. Review of documentation will include training certificates or similar documentation from the training entity or instructor delineating the course description, date and hours of training, and attendee names.

Recommendation No. 3

Education should continue to monitor Administrative Hearings to ensure that it consistently issues hearing decisions within the timeline established in federal regulations and state law so that Education is not exposed to possible sanctions by the federal government.

Education's Comments and Corrective Action:

As noted by the BSA, Education has worked with Administrative Hearings in an effort to ensure compliance with the issuance of hearing decisions within the timeline established in federal and state law; Administrative Hearings has shown increasing compliance. However, Education concurs with the BSA that 100 percent compliance is required, and Education will continue to effectively monitor Administrative Hearings to ensure that all hearing decisions are issued within the required time frames established by federal regulations and state law.

Elaine M. Howle, State Auditor
November 26, 2008
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If you have any questions or need additional information, please contact Kevin W. Chan, Director, Audits and Investigations Division, at 916-323-1547, or by e-mail at kchan@cde.ca.gov.

Sincerely,

(Signed by: Gavin Payne)

GAVIN PAYNE
Chief Deputy Superintendent of Public Instruction

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(Agency response provided as text only.)

State and Consumer Services Agency
915 Capitol Mall, Suite 200
Sacramento, CA 95814

November 26, 2008

Elaine Howle, State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

Enclosed is our response prepared by the Department of General Services to the Bureau of State Audits' Report No. 2008-109 entitled, *California Department of Education: Although It Generally Provides Appropriate Oversight of the Special Education Hearings and Mediations Process, a Few Areas for Improvement Exist.*¹ A copy of the cover letter and response are also included on the enclosed CD.

If you have any questions or need additional information, please contact me at 653-4090.

Sincerely,

(Signed by: Michael Saragosa for)

Rosario Marin, Secretary

Enclosures

¹ While preparing our draft report for publication, some wording changed, including the report's title that is referred to by the State and Consumer Services Agency.

Department of General Services Memorandum

Date: November 25, 2008

To: Rosario Marin, Secretary
State and Consumer Services Agency
915 Capitol Mall, Suite 200
Sacramento, CA 95814

From: Will Bush, Director
Department of General Services

Subject: RESPONSE TO BUREAU OF STATE AUDITS' REPORT NO. 2008-109

Thank you for the opportunity to comment on Bureau of State Audits' (BSA) Report No. 2008-109 which addresses recommendations to the California Department of Education (Education) involving the Office of Administrative Hearings (Administrative Hearings) role in the special education hearings and mediations process. Administrative Hearings will take appropriate actions to address the areas for improvement identified in the report related to its operations.

In general, BSA observed that Education appropriately oversees its interagency agreement with Administrative Hearings to administer the hearings and mediations process for special education cases. However, BSA recommended three additional actions that should be taken by Education to ensure that Administrative Hearings complies with state and federal law as well as with the specifications of the interagency agreement entered into by the parties.

Administrative Hearings remains firmly committed to fully complying with Education's established standards for managing the special education hearings and mediations process. The following sections briefly identify the actions that have been or are being taken related to the areas for improvement identified by the BSA.

- ***Complete and Accurate Reporting*** – Administrative Hearings has taken action to ensure that its quarterly reports and program database contain accurate and complete information. In fact, after one additional revision was made in mid-November 2008 upon the recommendation of BSA staff, the first quarterly report submitted to Education for the 2008/09 fiscal year fully complied with all reporting requirements, including containing information on the 10 items referenced in the audit report. Administrative Hearings has also recently provided additional training to support staff responsible for data entry that included a discussion of the relevance and importance of the data being accurately and completely recorded into the case management and calendaring system database.
- ***Training Documentation*** – Administrative Hearings has improved its record keeping to ensure that sufficient documentation is maintained showing that its administrative law judges have received all required training. As part of this process, Administrative Hearings has hired an executive assistant within its Special Education Division whose responsibilities include the collection and maintenance of all training records, including training requests, sign-in sheets and certificates of completion.

Rosario Marin

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November 25, 2008

- ***Timely Hearing Decisions*** – Administrative Hearings continually strives to issue hearing decisions within required timelines and has increased its on-time decision rate to approximately 93 percent. To attempt to further improve the timeliness of the decision making process, Administrative Hearings has recently reemphasized to all of its Administrative Law Judges the importance of timely hearing decisions. The office has also implemented processes which ensure that compliance is continually monitored by executive and program management.

The Department of General Services appreciates BSA's in-depth and professional audit of its special education program operations. Administrative Hearings will work with Education to ensure that the issues identified in the audit report are promptly and completely addressed.

If you need further information or assistance on this issue, please call me at (916) 376-5012.

(Signed by: Scott Harvey for)

Will Bush, Director
Department of General Services

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press