

California Department of Education

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

REPORT NUMBER 2008-109, DECEMBER 2008

The California Department of Education's and Department of General Services' Office of Administrative Hearings' response as of December 2008

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) examine how the Department of General Services' Office of Administrative Hearings (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 the California Department of Education (Education) and Administrative Hearings, including any oversight responsibilities Education has related to Administrative Hearings' performance under the interagency agreement. The audit committee also requested that we make recommendations related to the future provision of special education mediation and adjudication functions, as appropriate.

Finding #1: Education needs to continue to work with Administrative Hearings to ensure that it reports all required information in its quarterly reports and its database contains accurate and complete information.

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.

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.*

Additionally, our review of Administrative Hearings' new database—Practice Manager—found that the data were inaccurate or missing in certain fields. Specifically, we reviewed a sample of 29 closed cases and found that the reason-for-closure field was inaccurate for one case 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.

To ensure that Administrative Hearings complies with state and federal laws, as well as with the specifications in its interagency agreement, we recommended that Education, in its oversight role, 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.

Education's Action: Partial corrective action taken.

According to Education, it has been working with Administrative Hearings to ensure that the required information is included in the quarterly reports. Education also indicated that it is exploring options that will further strengthen existing monitoring procedures to ensure that all information, as required in the interagency agreement with Administrative Hearings, is accurate and included in the quarterly reports. For example, it stated that it plans to develop a monitoring checklist to ensure that all required information is received timely from Administrative Hearings. Finally, 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 Administrative Hearings' quarterly reports.

Finding #2: Education has not verified that the administrative law judges (administrative judges) are receiving the appropriate training.

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.

To ensure that Administrative Hearings complies with state and federal laws, as well as with the specifications in its interagency agreement, we recommended that Education, in its oversight role, 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.

Education's Action: Pending.

Education entered into a new interagency agreement with Administrative Hearings effective June 26, 2008, for the period of July 1, 2008, through June 30, 2011, and it requires Administrative Hearings to provide Education with quarterly training logs for each administrative judge and mediator covering training taken during the previous quarter. To ensure accuracy of training data, Education stated that it plans to conduct periodic reviews of documentation supporting the quarterly logs for a sample selection of administrative judges and mediators. It also stated that its 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.

Finding #3: Administrative Hearings has not always issued hearing decisions within the legally required time frame.

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. For its part, Education has been raising this issue with Administrative Hearings in letters requesting corrective action plans and during monthly meetings between staff of Education and Administrative Hearings. Administrative Hearings has reported measurable improvements, including that since the second quarter of fiscal year 2006–07 it had only about one late case in each quarter. However, despite this improvement, it needs to issue 100 percent of its hearing decisions on time to ensure that it complies with relevant laws and regulations.

To ensure that Administrative Hearings complies with state and federal laws, as well as with the specifications in its interagency agreement, we recommended that Education, in its oversight role, continue to monitor Administrative Hearings to ensure that it consistently issues hearing decisions within the time frame established in federal regulations and state law so that Education is not exposed to possible federal sanctions.

Education's Action: Pending.

Education stated that it concurs with the bureau that Administrative Hearings should issue 100 percent of its hearing decisions on time. It indicated that it will continue to monitor Administrative Hearings to ensure that all hearing decisions are issued within the required time frames established by federal regulations and state law.

