

**MEETING MINUTES  
ADVISORY COMMITTEE TO THE  
DISTRICT OF COLUMBIA OFFICE OF ADMINISTRATIVE HEARINGS**

**December 12, 2019**

The Advisory Committee to the District of Columbia Office of Administrative Hearings (OAH) met on Thursday, December 12, 2019 at 12:00 p.m. in the BEGA Hearing Room, 441 4th Street, NW, Washington, DC 20001.

**ATTENDENCE**

**Committee Members**

**Chair Betsy Cavendish**, Committee Chair, General Counsel to Mayor Muriel Bowser  
**Eugene Adams**, Chief Administrative Law Judge of the Office of Administrative Hearings  
**Michael Krainak**, General Counsel, Office of Risk Management  
**Mary Buckley**, Community Representative  
**Toni Jackson**, Chief, Equity Section, Public Interest Division, Office of Attorney General

Several OAH Administrative Law Judges (ALJs) and staff from the OAH General Counsel's Office were present in the audience.

Also present in the audience:

**Hillary Hoffman-Peak**, Office of the State Superintendent of Education  
**Matt Wilcoxson**, Office of Inspector General  
**Fritz Mulhauser**, DC Open Government Coalition  
**Anthony Crispino**, Department of Public Works  
**Rebekah Mason**, Legal Counsel for the Elderly

**CALL TO ORDER**

Chair Betsy Cavendish called the meeting to order at 12:01 p.m.

**PRESENTATION BY HILLARY-HOFFMAN-PEAK**

Hillary Hoffman-Peak from the Office of the State Superintendent of Education provided the Committee with a presentation concerning school residency fraud in DC Public Schools and DC Public Charter Schools.

OSSE is regulator of residency fraud for DCPS public schools and public charter schools in the District of Columbia. When OSSE brings a residency case, it is for tuition, but when it is turned over to the Office of the Attorney General, it can be for treble the damages. In the situations when it is turned over to the OAG, OSSE has determined that there has been intent to defraud.

Chair Cavendish asked that in cases where fraud is found, is it blatant, or are there borderline cases in which fraud is open to interpretation? Ms. Hoffman-Peak answered that the term of fraud is problematic as it relates to school residency, but it continues to be used by policy makers. The fraud cases are those in which it was determined that there was no residency in the District of Columbia. Intent to deceive was not necessarily established.

Chair Cavendish asked if OSSE establishes there is intent, does OSSE send it over to the Office of the Attorney General. Ms. Hoffman-Peak responded that it depends, and the investigation will normally determine the course of action. For example, there are situations when parents of DCPS students live separately, and one may live in the District and the other outside of the District. In these situations, even if the child does not reside in DC, the child is entitled to attend DCPS based on the residency of the parent who lives in the District.

DCPS enrolls approximately 48,000 and has a budget of \$885M. DC has a number of tuition free options for Public Charter schools which serve about 41,000 students with a budget of approximately \$723M.

Purpose of residency is who can attend for public and charter schools for free. Parents of students can provide many types of documentation to prove residency in the District of Columbia: driver's license, bill, lease, etc.

An Office of Inspector General investigation into residency fraud around the 2014/2015 school year was the major basis for a change for how these cases were conducted. At that time, tuition was required to be paid up-front. Now tuition can be paid month to month.

An OIG report that review the school years from 2014-16, noted it reviewed records of 85 self-identified non-residents. It found that OSSE did not collect tuition in full at the beginning of the school year from 82 of 85 students. Only 3 paid tuition in full. Again, these were just 85 self-identified non-residents. Of the 82, it was determined that OSSE did not establish circumstances to extend a payment contract to 79 students. Of the 79 students, 51 defaulted on their payments.

This is the reason the issue of residency fraud has been so important recently, and why these cases are being brought before OAH. OSSE is no longer extending the payment contracts and waivers it did previously.

Chief Adams asked if the 85 students were the entire universe of non-resident students that should have been paying tuition. Ms. Hoffman-Peak answered no, this number was only a sample, and at the current moment, it is unknown what the actual number could be.

Based on the number of people who call the hotline, the number is probably significantly higher. The financial loss of the non-resident students cited in the OIG report was \$169,127 in uncollected tuition. OSSE knows how much it costs for each student to attend each school per year. OSSE makes the decision on October 5 how much money each school will receive. This is based on the enrollment.

From 2014-2016, OSSE identified 46 fraud cases, and action was brought in 14 of those cases. The amount owed totaled about \$454,727, but only \$73,090 was collected.

Duke Ellington. Initially, only 5% of the school was audited for out of District residency. Based on their findings, it was determined that the entire school had to be audited. A contractor was used to do the auditing. All 575 student files were examined. OIG helped with the examination. It was found that there were significant and systemic issues with residency verification. Based on the audit, it was determined 164 students were non-residents. Further, 46 of those students did not have tuition agreements. It is mandatory to have a tuition agreement before the start of the school year. The school was paid \$12,000 per student for the school year, and it was estimated that \$1,995,224 was lost through non-payment of tuition.

For the current school year, the cost of tuition has increased. The highest tuition is alternative school, and the second highest is Pre-K/3.

One of the recommendations received from OIG is that residents should be prioritized over non-residents in applications and admissions to all schools. OSSE believes that residents should be prioritized, which is one of the reasons it is bringing so many school residency cases. Tuition agreements must be in place for non-residents, and OSSE should know that the student is eligible before they start the school year.

One major issue presented in many of the school residency cases is that the student is in the care of a non-parent, but there is not documentation to establish that the parent is in some way absent from the situation. OSSE looks for records that clearly show that the child is in the care of the non-parent.

Ms. Buckley asked about a child from DC that is placed in foster care in Maryland and Virginia. Ms. Hoffman-Peak answered that children in DC foster care are considered wards of the District of Columbia. DC pays for them to attend school, even if it is outside of the District. Often times these children are bussed into the DC to attend DCPS.

Rebekah Mason asked if homeless families can still easily access DCPS. Ms. Hoffman-Peak answered that when a family declares they are homeless, OSSE stops investigating as it recognizes that homeless families have the absolute right to send their children to DCPS cost-free.

## **OFFICE OF RISK MANAGEMENT**

Comment from Michael Krainak. There are DC-wide systems that are rolling out, not exclusively for fraud, but it is a component. eRisk is a program for incident reporting. It is in a trial phase right. It is the important to collect the lowest common denominator of incidents, but something that will trigger a review. ORM is encouraged that the public sector worker's compensation program is rooting out instances of abuse. ORM concluded 17 hours of mediation with the previous third-party claims examiner for public sector's workers compensation. Now all of the reviews are now housed firmly under DC Government control.

## **OFFICE OF THE INSPECTOR GENERAL**

Chair Cavendish introduced Mr. Wilcoxson from the Office of the Inspector General to talk about OIG's efforts to curb waste, fraud, and abuse.

Mr. Wilcoxson. OIG is hyper-focused on internal agency controls (effective and efficient operations and looking at applicable laws). OIG recently did a review of DCRA to strengthen their internal control environment to ensure that when Notices of Infractions are sent to OAH, they are consistent and the correct processes were followed. In addition, OIG operates a hotline, and receives referrals from executive agencies. OIG does many types of investigations. He provided an example of a Medicaid provider that was excessively billing the District.

Chief Adams asked about the dollar amount associated with the case Medicaid fraud. Mr. Wilcoxson responded it was about \$1M.

Chair Cavendish said that in the first case, the offender was ordered to pay \$800K. The Medicaid fraud was a dentist who opened a business that provided contract dentists Billed DC about \$5M.

Chair Cavendish asked how DC caught the Medicaid fraud. Mr. Wilcoxson answered that OIG received referrals from DHCF, but sometimes OIG receives tips from its hotline.

Mr. Wilcoxson said that DHCF came to OIG about the TANF and SNAP benefits incidents of fraud in those programs. There were two incidents in which individuals were abusing the program. The offenders were tried and are now serving prison sentences.

Chair Cavendish opened the floor to the committee or public for questions or comment on the presentation by Mr. Wilcoxson and Ms. Hoffman-Peak.

Ms. Buckley noted that as her time as an investigator with DHCF, she observed that fraud was occurring due to medical codes and billing. Investigators must be trained in medical billing to understand when fraud is being committed.

## **UPDATES FROM CHIEF ADMINISTRATIVE LAW JUDGE EUGENE ADAMS**

No new updates on the items presented at the last meeting.

Last week, OAH had a meeting with the Mayor's Budget Review Team. OAH had a lot of traction with the Review Team and OAH should be in great financial shape for FY21.

Yesterday, the COST met and interviewed 9 of the 28 candidates who applied for the ALJ vacancies. Currently voting members of the COST and checking references, and the Chief believes the three candidates who have tentatively been selected will be great additions to the ALJ staff.

Negotiations with the ALJ union are moving slowly, but mainly this is due to the holidays.

Interviews have been underway to replace an out-going Deputy Clerk of Court.

The Chief thanked Ms. Hoffman-Peak and Mr. Wilcoxson for their presentations and hopes for the next meeting to have presentations from DHS or DHCF, or both to put what OAH is doing in context.

## **OLD BUSINESS**

Chair Cavendish asked if there was any progress made with DOES on the needs of OAH when the paid family leave cases will start to come online.

Chief Adams answered that things were moving along. Some funding for cases before OAH comes from MOUs that it has with other agencies. The number of MOUs in recent years has significantly decreased, but DOES is one of the agencies OAH still has a significant MOU with. Based on the preliminary responses from the Mayor's Budget Review Team, they are working aggressively to ensure OAH's needs are met by the team these cases start to come before OAH.

Ms. Buckley asked if the three ALJ candidates were District residents.

Chief Adams replied that new candidates are DC residents and have agreed to remain so in compliance with the law.

Judge William England addressed the Committee on new information, not presented at the previous meeting, concerning the residency issue on OAH Administrative Law Judges. Judge England, who has been an ALJ since 2004 is also president of the ALJ's union. He spoke of his continued concern of the new residency requirements for OAH ALJs. Of the 7 ALJs affected, one has resigned, and one will leave OAH at the end of January 2020. The ALJs who left or are leaving are doing so well in advance of the end of their six year terms. They are valuable members of the ALJ corps. Judge England provided background on the establishment of OAH, and the legislation that created it. The legislation did not mandate that the ALJs be DC residents. In 2003, the then-Chief of OAH gave a recruiting presentation to Maryland ALJs. In fact, seven of the ten initial ALJs were not District residents. At one point, half of the ALJs were not DC residents. Judge England explained that the 2018 amendment required ALJs to be residents at the time of their next appointment. He recognized the concern that ALJs should be residents, but there are other agencies in the District in which ALJs are not required to be residents. Judge England believed the amendment specifically targeted OAH ALJs as they are the only ALJs in District Government who are unionized. He did not challenge the desire to have District residents employed as ALJs going forward, but what is the point of losing the remain non-resident ALJs?

Ms. Buckley commented that she did not want to suggest that currently employed ALJs should be dismissed if they are not District residents. She added it is not necessarily smart that current ALJs should leave if they are not residents.

Judge England agreed with Ms. Buckley's point and suggested that a one sentence amendment should be added to the statute.

Fritz Mulhauser, DC Open Government Coalition, recognized the importance of public access to records, meetings, and data. He asked the Committee to keep on the agenda open access to OAH records and data. OAH has a ways to go to provide online information to the public. He encouraged OAH to add more information online, not just pleadings, but more data. He was encouraged to learn at last year's budget presentation that a plan for public access would be offered. However, there is not a plan just yet. He encouraged OAH to provide public access to information. The starting point has been case information, and he wanted the agency to stay on top of it.

Chair Cavendish responded that it is a standing item on the report, and appreciated Mr. Mulhauser's encouragement.

Chief Adams agreed with Mr. Mulhauser's call for public access, but disagreed that there is not a plan. Due to budgetary constraints, OAH has not been able to execute the plan. It is hard to move forward if money requested for a public portal is not received. A big challenge is to be mindful of public resources and what is useful to litigants. The data Mr. Mulhauser is interested in being public facing is not necessarily that the public seeks from OAH. Currently, there only about 80 hits per quarter on the website that contains final orders.

Chair Cavendish suggested the issue was circular, and the Chief agreed that it probably was. Moving to electronic filing is the next most important step.

Mr. Mulhauser commented that he sought OAH's plan through public records requests, but he was told one did not exist. There was nothing about a public access plan in emails or anywhere else. Furthermore, the public should have input on the effect to provide a public information portal.

Chief Adams provided that he has a standing biweekly meeting with the judge essentially runs the IT portion of the case management system. He understood that there is not necessarily a piece of paper with a plan, but there is a plan going forward.

Mr. Mulhauser commented that he was ready to meet with OAH to assist in helping the effort.

Chief Adams indicated OAH would reach out to Mr. Mulhauser when future planning is going forward. He encouraged Mr. Mulhauser to reach out to the General Counsel's office to set a date that was mutually beneficial for both OAH on Mr. Mulhauser's organization.

Judge England commented that the ALJ who is the IT expert will leave OAH in January 2020.

Judge Scott Harvey addressed the Committee concerning recruitment of ALJs in Northern Virginia. Judge Harvey was recruited in 2005 and has been reappointment multiple times. He received multiple assurances from different Chief ALJs and COST members that DC residency was not required for the ALJ position. Continuing to live in Northern Virginia was extremely

important to him as it has been his home for most of his life, and it affords him the opportunity to be close to sick family members.

Rebekah Mason commented in support increased access to the public of OAH records. Her agency receives a huge amount of requests for services, and she is constantly reaching out to OAH staff for information. At one point, an OAH staff member requested she stop asking for information due to the heavy volume. Ms. Mason said it is a burden on OAH staff to constantly answer questions, and public access would relieve some of the burden. Furthermore, motions filed with OAH do not make it to ALJs on time due to the current document management system. Her organization would like to be part of the discussion on the public portal. All litigants before OAH are appreciative of the long tenure of ALJs and would like to be part of the discussion about keeping them tenured with the agency. If OAH loses ALJs the timeless of hearing requests, particularly home health care cases, may suffer.

Chair Cavendish said that there will be three more budget forums. She urged Ms. Mason and Mr. Mulhauser to make their concerns known there as well. The issue of the tenure of ALJs is for the Council to decide.

Chief Adams thanked Ms. Mason for her comments. He added that staffing is challenging for OAH, and it is something the agency is looking into. The role agencies that appear before OAH can dictate how the public benefits cases are processed. He reemphasized the traction OAH had with the Mayor's Budget Review Team.

Judge Sharon Goodie commented that OAH must work around the schedule of the DHS employees who appear before OAH. DHS must increase the number of employees who handle these cases. Judge Goodie praised the professionalism of the DHS staff, but added they have too much work to handle.

## **ADJOURNMENT**

Ms. Jackson's motion to adjourn the meeting was seconded by Chief Adams. The meeting was adjourned at 1:25 p.m.

Minutes submitted by Joseph Mangan, OAH Staff